



## MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE OFFICE OF THE MAYOR ON MONDAY, 8 MAY 2023

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### PRESENT:

The Executive Mayor, Alderman J H Cleophas (chairperson)  
The Deputy Executive Mayor, Cllr J M de Beer  
Cllr D G Bess  
Cllr N Smit  
Ald T van Essen  
Cllr A K Warnick

### 1. OPENING

The chairperson opened the meeting.

### 2. MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD ON 17 APRIL 2023

#### RESOLUTION

(proposed by cllr N Smit, seconded by cllr D G Bess)

That the minutes of a meeting of the Appeal Authority held on 17 April 2023 be approved and signed by the Executive Mayor.

### 3. MATTERS FOR CONSIDERATION

#### 3.1 OUTCOME ON APPEAL RECEIVED ON THE PROPOSED REZONING AND SUBDIVISION OF ERF 1220, MALMESBURY (15/3/3-8, 15/3/6-8)

An appeal was received on the decision by the Municipal Planning Tribunal on 16 November 2022, i.e. to refuse the application for the rezoning and subdivision of Erf 1220, Malmesbury.

The evaluation of the appeal was presented to the Appeal Authority on 17 April 2023 in the report of the Municipal Manager dated 7 March 2023 and the report of the authorized official dated 2 March 2023, respectively.

At a meeting of the Appeal Authority held on 17 April 2023 all the parties to the appeal, being the appellant and objectors were given the opportunity, in order to apply the *audi alteram partem* rule, to make submissions to the Appeal Authority.

The Appeal Authority **RESOLVED** on 17 April 2023 –

“That the appeal will not be resolved on date and that all parties will be notified of the outcome of the Appeal Authority after due consideration of all the information, including (but not limited to) all submissions made (orally and in writing).”

The merits of the appeal was considered and assessed by the Appeal Authority on 8 May 2023, taken into account all relevant legislation and policy guidelines, including the Swartland Municipal Spatial Development Framework (MSDF, approved by Council on 30 May 2021) in order to adhere to all requirements.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the MPT in order to conclude on the matter.

An appeal is considered by the appeal Authority of Swartland Municipality in terms of the provisions of Section 89 to 91 of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), hereafter referred to as **the By-Law**.

In terms of section 89(5) of the By-Law, "... when the appeal authority considers an appeal, it must have regard to-

- (a) the provisions of section 75, read with the necessary changes; and
- (b) the comments of the Provincial Minister contemplated in section 52 of the Western Cape Land Use Planning Act, 2014

In this case the comment of the Provincial Minister was not deemed necessary and was therefore not requested by the Municipal Manager as determined by Section 52 (a) of the Western Cape Land Use Planning Act, 2014.

In terms of section 90(2) An appeal must set out the following—

- (a) the grounds for 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 Tribunal or authorised employee erred in concluding his / their decision.

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the audi alteram partem rule.

The chairperson requested the appellant, represented by Mr Dalvie from N M & Associates Planners and Designers, to table their appeal dated 15 December 2022.

Thereafter the chairperson requested the objectors, represented by Mr Bezuidenhout, to address the Appeal Authority.

Then the chairperson requested the Senior Town and Regional Planner to table the evaluation of the authorised official and to reply on the presentation by the appellant.

The following matters were discussed in reaching the decision:

### **(1) Process**

With reference to Section 90(2) of the By-Law, the Appeal Authority notes that the appellant did not appeal the process followed by the Municipality during the consideration of the application.

The process followed in the consideration of the application is therefore deemed true and fair.

### **(2) Public Participation**

Concerns raised by the residents regarding the public participation followed by the Municipality are noted. However, in terms of Section 56(2) (c) & (d) of the By-Law, formal notice were served on each person whose rights or legitimate expectations were deemed to be affected by the approval of the application as well as on every owner of land adjoining the land concerned. A total of 19 properties were identified by the municipality, deemed to be affected, should the property be used as offices.

In terms of Section 55 of the By-Law, public notice of the application was also done as required with the publishing of the application in a newspaper circulating in the area, the Provincial Gazette as well as the municipality's website.

The public participation process followed is therefore deemed compliant with the applicable legislation.

Given the nature of the response received from the residents in the area, the Appeal Authority deems the public participation process followed with the consideration of the application as effective.

### **(3) Timeframes**

With the decision of the Municipal Planning Tribunal taken on the 16<sup>th</sup> of November 2022 the Appeal Authority notes that the period provided for the submission of appeals did run from 28 November to the 19<sup>th</sup> of December 2022 and the notices for the commenting on the appeal to all interested and affected parties, was therefore during the school holidays.

The Appeal Authority finds it to be purely circumstantial and not intentional as to exclude anybody from the process. The application was processed in terms of the relevant timeframes required and the notices were sent in accordance with the provisions of the applicable By-Law.

Secondly, in terms of an appeal, Section 90 of the By-law does not make provision for any extension of commenting periods, however, it is clear that the municipality did allow an extension of the period for comments on the appeal.

The Appeal Authority deems it to be reasonable to the residents of the area and none of the parties objected to this extension.

### **(4) Contradiction with planning policy, norms and standards**

The Appeal Authority is of opinion that the development proposal is inconsistent with the Western Cape Provincial Spatial Development Framework, 2014 as the proposal will not achieve higher densities, will not result in the optimum use of land / space within the urban edge, will detract from the character of the area as well as negatively impact the sense of place within the residential neighbourhood it is located, as well as will not improve accessibility.

The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area.

Authority usage as defined, is very diverse, with the applicable development management scheme (Schedule 2 of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020) referring to military training centres, police stations, correctional institutions, road stations and camps as well as a variety of municipal service delivery related uses and public utility facilities.

It can therefore not be interpreted that because the land use proposal zone, as proposed in the Municipal Spatial Development Framework, 2019 approved by Council (Item 7.2 of Council Meeting dated 30 May 2019), make provision for authority use, that all types of authority use is consistent with the area as well as the spatial planning vision and principles of the said Municipal Spatial Development Framework.

The Appeal Authority therefore conclude that the proposed use of administrative offices in the proposed location as well as the scale of the proposed rezoning is in contradiction with the MSDF, 2019 and therefore the Municipal Planning Tribunal did not err in its decision to refuse the application.

Section 42(1) of Spatial Planning and Land Use Management Act, Act 16 of 2013, clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework.

### **(5) Public interest**

The Appeal Authority is of opinion that the proposal will have some short term gains for the department however the significant cost as well as the long term negative impact for the residents in the area as well as the department, far outweighs the idea of the sustainable accommodation of the community corrections office on Erf 1220. Public administration facilities should be conveniently located next to transport routes, within the Central Business District or clustered with other public administration facilities as it ensures improved accessibility for all.

The Appeal Authority therefore believes that the proposal is deemed not in the interest of the community affected by the application nor is it in the interest of the staff or the parolees that need to visit erf 1220, as it will not improve accessibility.

Lastly, the Appeal Authority determined that the proposed application contains no detail on the future developments on the rezoned erf, the impacts thereof on the residential neighbourhood can therefore not be determined.

Section 89. (1) of the By Law determines that '...The executive mayor is the appeal authority in respect of decisions of the Tribunal or an authorised employee contemplated in sections 78(a) or (b) and a failure to decide on an application as contemplated in section 68.

## **RESOLUTION**

- (a) The Executive Mayor as Appeal Authority of Swartland Municipality therefore dismiss the appeal received from N & M Associates Planners and Designers (on behalf of the owner National Government of the Republic of South Africa), for the following reasons:
  - (i) The proposal will not result in the optimum use of land/space within the urban edge, will detract from the character of the area as well as negatively impact the sense of place within the residential neighbourhood it is located;
  - (ii) The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area;
  - (iii) The proposed use of administrative offices in the proposed location as well as the fact that none of the offices is proposed to be accessed from the identified activity street, is deemed in contradiction with the Municipal Spatial Development Framework, 2019. Section 42(1) of the Spatial Planning and Land Use Management Act, 2013 clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework, 2019. The Municipal Planning Tribunal therefore did not err in its decision to refuse the application;
  - (iv) The proposal is deemed to be not in the interest of the community affected by the application nor is it in the interest of the staff or the parolees that need to visit the property. The short term gain for the department is recognised however the significant cost as well as the long term negative impact for the residents in the area, as well as the department, far outweighs the idea of the sustainable accommodation of the Community Corrections office on erf 1220;
- (b) The Executive Mayor as Appeal Authority of Swartland Municipality, in terms of Section 91(7)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), confirms the decision by the Municipal Planning Tribunal, Item 6.5 dated 16 November 2022, to refuse the application for rezoning and subdivision of Erf 1220, Malmesbury.





# Verslag ♦ Ingxelo ♦ Report

Office of the Municipal Manager  
18 May 2023

15/3/3-8 (Erf 1220)  
15/3/6-8 (Erf 1220)

## ITEM 4.1 OF AN APPEAL COMMITTEE MEETING TO BE HELD ON 21 JUNE 2023

<b>SUBJECT:</b> APPEAL RECEIVED ON THE PROPOSED REZONING OF ERF 975, DARLING
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### 1. BACKGROUND

Full background is contained in the evaluation of the appeal by the authorised official (**Annexure A**).

This report **is aimed at affording the appeal authority an opportunity to dispose of the appeal** in terms of paragraphs 91(13) and 90(14) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 dated 25 March 2020).

### 2. COMMENTS: MUNICIPAL MANAGER

2.1 In terms of section 33 of the Constitution, everyone has the right to administrative action that is lawful, reasonable and procedurally fair, and to be given written reasons. The Constitution also provides for the enactment of national legislation, hence the Promotion of Administrative Justice Act (PAJA) 3 of 2000.

2.2 Administrative law entails the following general legal principles governing the organisation of administrative institutions, with specific reference to the FAIRNESS and REASONABLENESS of administrative processes. Naturally, the scope of administrative law includes the administrative actions of a municipality in performing a public function or taking a decision.

2.3 Administrative action is defined as:

*“... any decision taken, or any failure to take a decision, by an administrator which adversely affects the rights of any person and which has a direct external legal effect ...”*

2.3.1 As far as the “*direct external legal effect*” is concerned, the decision is binding, having been taken in terms of statute.

2.3.2 It also includes a decision that needs to be taken to, inter alia:

- impose conditions;
- set a requirement; and
- grant permission.

2.4 Before any “decision-making institution” can take a decision that affects the rights of individuals/the public –

(s)he needs to have the statutory mandate to take such a decision, and the “decision-making institution” – in this instance, the MUNICIPAL PLANNING TRIBUNAL – must derive his/her powers/functions from the enabling provisions of statute, common law rules, customary law, and agreements or policies applicable to the relevant sphere of government.

2.5 PAJA:

- sets a benchmark for minimum standards applicable to administrative actions;

- gives effect to the constitutional principle of just and fair administrative decision-making; and
- provides a minimum set of procedures for:
  - taking decisions; and
  - supplying reasons for decisions.

2.6 The principles of legality are as follows:

- o Fair manner  
The administrative action must be performed and taken in a fair manner (procedurally).
- o Reasonable  
The administrative action must be reasonable.
- o Administrator/decision-making institution  
The institution must be mandated by statute (the administrator) to take the decision.
- o Authorised  
The administrator must be lawfully authorised to perform a specific action or take the decision.

2.7 Legal effect

2.7.1 Administrative decisions are presumed to have been taken lawfully, until a particular decision is declared unlawful by a court of law.

2.7.2 This is to establish legal certainty.

2.8 **SUMMARY**

Judged against the principles of legality stated in paragraph 2 above, the following can be confirmed:

2.8.1 The administrative action (process to take the decision) was subjected to a public participation process, the applicant's comments and motivations were weighed against the legal framework, the applicant was informed of their right to appeal, and therefore, it can be confidently stated that the action was FAIR and PROCEDURALLY CORRECT.

2.8.2 Moreover, it is clear that the administrative action was REASONABLE and that the decision was taken in terms of the scheme regulations and the by-law, which acknowledge the rights of the individuals residing in the residential area.

2.8.3 The Municipal Planning Tribunal was duly authorised to take the decision in terms of the applicable legislation, and the Executive Mayoral Committee is the institution/authority who serves as the Appeal Authority and considers appeals.

3. **RECOMMENDATION: MUNICIPAL MANAGER**

- (a) That, considering the evaluation of the appeal by the authorised official as outlined in Annexure A, resolution 6.3 of the Municipal Planning Tribunal dated 8 February 2023 be confirmed;
- (b) That the appeal be dismissed for the reasons as stated by the authorised official in Annexure A.

(sgd) J J Scholtz

**MUNICIPAL MANAGER**



**Verslag ♦ Ingxelo ♦ Report**

Kantoor van die Direkteur: Ontwikkelingsdienste  
Afdeling : Ontwikkelingsbestuur

4 May 2023

15/3/3-3/Erf\_975

**SUBJECT: EVALUATION OF THE APPEAL ON THE PROPOSED REZONING OF ERF 975, DARLING**

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**1. BACKGROUND**

The application for rezoning of Erf 975, Darling in terms of section 25(2) (a) of Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020) has been received. It is proposed that Erf 975 (9134m<sup>2</sup> in extent) be rezoned from Industrial Zone 2 to Business Zone 2 in order to develop the premises as a business premises consisting of shops and offices.

Erf 975, Darling, is zoned Industrial Zone 2, which does not permit the proposed use of shops and offices.

The application has been considered by the Municipal Planning Tribunal on 8 February 2023 and has been refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

Reasons for refusal are as follows:

- (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
- (b) The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature;
- (c) The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;
- (d) It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry;
- (e) The location of the proposed usage is not desirable and furthermore no site specific circumstances have been submitted to deviate from the SDF;
- (f) The proposal, given its location, is deemed not to be in the interest of the community of Darling.

**2. SUPPORTING DOCUMENTATION**

Inclosed are the following documentation:

**Annexure 1:** Item 6.3 served before the Municipal Planning Tribunal on 8 February 2023  
.....bl 19-46

- Annexure 2:** Letter to applicant, C K Rumboll & Partners dated 15 February 2023 to inform them on the decision of the Municipal Planning Tribunal and their right to an appeal.....bl 47-48
- Annexure 3:** Letter to objectors dated 15 February 2023 to inform them on the decision of the Municipal Planning Tribunal and their right to an appeal ..... bl 49-52
- Annexure 4:** Appeal received from C K Rumboll & Partners dated 14 March 2023  
.....bl 53-78
- Annexure 5:** Letter to objectors dated 14 March 2023 sent by C K Rumboll & Partners to inform them on their appeal in terms of the Swartland Municipality: By-Law regarding Municipal Land Use Planning (PG 8226 van 25 Maart 2020) and to grant the opportunity to comment on the appeal received.....bl 79-80

3. **TIME FRAME FOR FINALISING THE APPEAL IN ACCORDANCE WITH THE SWARTLAND MUNICIPALITY: BY-LAW REGARDING MUNICIPAL LAND USE PLANNING (PG 8226 VAN 25 MAART 2020)**

<b>Section 89(1):</b> The executive mayor is the appeal authority in respect of decisions of the Tribunal or an authorised employee contemplated in sections 78(a) or (b) and a failure to decide on an application as contemplated in section 68.			
		<b>RESPONSIBLE PERSON(S) / ACTION</b>	<b>ADHERENCE TO DEADLINE (YES/NO)</b>
<b>Section 89(2)</b>	A person whose rights are affected by a decision contemplated in subsection (1) may appeal in writing to the appeal authority within 21 days of notification of the decision.	Development Management: Notice dated 15 February 2023 /registered mail dated 21 February 2023	14 March 2023
<b>Section 90(3)</b>	An applicant who lodges an appeal must, within the period referred in subsection 89(2), submit proof of payment of appeal fees as may be determined by the municipality to the municipal manager.	C K Rumboll & Partners	Yes, appeal and proof of payment of appeal fees received on Tuesday, 14 March 2023
<b>Section 90(4)</b>	An applicant who lodges an appeal must simultaneously serve notice of the appeal to any person who commented on the application concerned and any other person as the municipality may determine	C K Rumboll & Partners	Yes, on Tuesday, 14 March 2023
<b>Section 90(6)</b>	The notice contemplated in subsection (5) must invite persons to comment on the appeal within 21 days of the date of notification.	C K Rumboll & Partners	Yes, on Tuesday, 4 April 2023
<b>Section 90(7)</b>	The appellant must submit proof of service of the notice as contemplated in subsection (5) to the municipal manager within 14 days of receipt thereof.	C K Rumboll, & Partners	Yes, on Tuesday, 14 March 2023
<b>Section 90(12)</b>	An authorised employee must draft a report assessing an appeal and must submit it to the municipal manager within 30 days of the closing date for comments requested in terms of subsection (6).	Development Management	Yes, on Thursday 4 May 2023
<b>Section 90(13)</b>	The municipal manager must within 14 days of receiving the report contemplated in subsection (12) submit the appeal to the appeal authority.	Municipal Manager	Yes, 18 May 2023
<b>Section 91(8)</b>	Subject to subsection (12), the appeal authority must decide on an appeal within 60 days of receipt of the assessment report as contemplated in section 90(13).	Executive Mayoral Committee	On/before 17 July 2023
<b>Section 91(11)</b>	The appeal authority must within 21 days from the date of its decision notify the parties to an appeal in writing of the outcome.	Executive Mayoral Committee	To be confirmed.

#### 4. EVALUATION OF APPEAL BY AUTHORISED OFFICIAL

##### 4.1 Background

The appeal is lodged by the applicant (CK Rumboll & Partners) on behalf of the owner MMRN Family Trust.

Appeal is lodged against whole of the decision of the Tribunal to refuse the application.

Appeal is also lodged against all the grounds/reasons relating to the merits which the Tribunal erred in concluding their decision which includes reasons for the decision C(a) to C(f).

The appellant referred the appeal to the objector during the public participation process for comments. The objector had no response.

It is pointed out to the Appeal Authority that the impact on municipal engineering services could not effectively be evaluated by the Municipal Planning Tribunal (MPT) as the applicant did not provide any information in this regard. The statement made by the applicant that sufficient capacity of services is available to accommodate the proposed development is not supported by any specialist report e.g. Services report or Traffic Impact Assessment.

The Department Civil Engineering Services provided the following comments:

- Sewerage – The sewer network need to be expanded in order to provide the proposed development with a sewer connection. For this, the developer appoint an Engineer appropriately registered in terms of the provisions of Act 46 of 2000 to design the extension. The design be submitted to the Director: Civil Engineering Services for approval after which the construction work be done under the supervision of the engineer.
- General – Should it be determined necessary to expand or relocate any of the engineering services in order to provide any of the portions with connections, said expansion and/or relocation will be for the cost of the owner/developer.

An engineering report addressing the connection to existing services, the handling of storm water and the traffic impact be provided. Further comments regarding civil engineering services will be provided with consideration of the engineering reports.

- Refuse removal – If waste must be collected inside the premises, the refuse storage areas must be easily accessible for the refuse compactor truck and refuse must be placed outside the storage areas. The truck has an approximate turning radius of 10m and a loaded weight of 20 tons.

It is pointed out that the extension of Caledon / Madeliefie Street is an un-surfaced road. With the proposed development not being situated next to a main activity corridor as well as that the developer makes no proposal to mitigate any potential impact on the municipal road network, it could be argued that in the long run the cost of potential upgrades to the Evita Bezuidenhoudt Boulevard / Caledon Street intersection as well as the formalisation of the Caledon – Madeliefie Street extension will put additional financial burden on the municipality.

The Department Electrical Engineering Services provided the following comments:

- The actual cost of expanding the electrical network is for the developers account.
- The developer provide for a mini-substation that is cut into the existing 11kV network.

The feasibility of the development from a cost perspective for the provision of services infrastructure to the development has not been determined by the owner/developer. These costs alone may make the development not feasible.

##### 4.2 Comments on the appeal

a) Reason C(a)

In accordance with Article 42 of the *Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013*, a Municipal Planning Tribunal must be guided by the development principles as

set out in Chapter 2 when considering an application. In terms of Section 6 (1), the general principles set out in Chapter 2 apply to all organs of state and other authorities responsible for the implementation of legislation governing the use and development of land. The following principles apply in terms of Section 7 to spatial planning, land development and land use management, namely: Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience, and Good Administration. In accordance with Section 59 (2) of the *Land Use Planning Act (LUPA), Act 3 of 2014*, a Municipality considering a land use application should, amongst other aspects, refer to the principles as set out in Chapter VI. Under Rule 58, the Land Use Planning Principles set out in Chapter VI apply to all organs of state responsible for implementing legislation that governs land use planning and development. These principles correspond with those of *SPLUMA* namely: Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience, and Good Administration.

The proposed development to accommodate business premises on Erf 975, Darling, supports the principles of Chapter 2 (Article 7) of *SPLUMA* and Chapter VI (Article 59) of *LUPA* as follows:

- **Spatial Justice:**

The physical footprint of the proposed development on Erf 975 supports an urban type of development within the identified urban edge of Darling. The contextual background of the surrounding area of Erf 975 is general industrial of nature, as illustrated in Figure 1. The property borders Industrial Zone 2 properties, utilised for general industrial purposes, towards its eastern and southern boundaries. Opposite Erf 975 in a western direction, Darling Brew is located on Erf 4404. Darling Brew currently consists of a brewery, restaurant, and tasting facility. Recently (February 2023), approval was granted to the owners of Erf 4404 to establish additional land uses on the property, consisting of a Place of Education to accommodate a hospitality training centre and a Place of Entertainment for the presentation of events. A vacant Community Zone 1 property is located between a higher residential area in Darling and Erf 975.



Figure 1: Surrounding Land Uses

The establishment of a Business Zone 2 property will contribute to creating a mixed-use development area where Erf 975 is in Darling. Erf 975 is within walking distance ( $\pm 135\text{m}$ ) from a higher-density residential area of Darling, which provides a great opportunity to utilise the property for commercial purposes. The development will promote an integrated settlement by creating a transitional zone consisting of various commercial uses between the residential

neighbourhood and the industrial area of Darling. Furthermore, the development will create a diverse and vibrant community encouraging people to live, work, and play in the same area.

The COVID-19 pandemic has had a severe impact on everyone's lives (especially economically). The proposal will create job opportunities in the local community, both during the construction phase and once the development is operational. This, in turn, will alleviate economic stress and improve socio-economic circumstances. Thus, the proposal redresses the spatial imbalances and realizes the principle of spatial justice. The owners of Erf 975 can prioritize leasing the proposed shops or offices to previously disadvantaged individuals or groups, which will promote access for all (including low-income communities) to business opportunities. The proposed development does not support further segregation within the community.

The development will attract investment from outside of the Swartland Municipal Area as well, which will stimulate economic growth and create new business opportunities for local entrepreneurs. The proposed development aligns with the *Swartland Municipal Spatial Development Framework (MSDF)* as a spatial instrument that directs future development at a Local Municipal level by promoting sustainable economic growth and economic development. The use of the property for business premises is consistent with the applicable zoning regulations to Business Zone 2, as well as *MSDF* proposals for the area in which the property is located.

Erf 967 is located in an established urban area with existing services. Sufficient capacities of services are available to provide connections to the erf for the proposed business premises. The proposed development aligns with the *MSDF's* goal of promoting efficient and effective land use and development patterns.

- **Spatial sustainability:**

Erf 975 is a vacant and underutilised property located within the urban edge of Darling. No development has previously occurred on this site, which can be dated back almost 50 years. The development is within the Environmental Management requirements by developing land within the existing urban edge and leaving the surrounding natural areas untouched. The proposal will have no negative effects on any high-potential agricultural land or any heritage resources. The application promotes spatial compactness and resource-frugal development, whilst protecting the environment.

The proposal limits urban sprawl by optimising the utilisation of existing land within the urban periphery and forms part of the existing densification environment suggested for all towns within the Western Cape. The development will benefit from existing infrastructure and services that will ensure the quality of life to present and future generations. The application promotes the financial viability of the municipality in the present and for the future.

Erf 975 is well located in Darling to accommodate business uses due to its proximity to a higher-density residential area of Darling, being within walking distance ( $\pm 135\text{m}$ ) from Erf 975. The development will promote an integrated settlement by creating a transitional zone between the residential neighbourhood and the industrial area of Darling. This will reduce reliance on cars and promote more sustainable modes of transportation and encourage social interaction and community building. This can also help reduce traffic congestion, improve air quality, and promote a more active and healthier lifestyle. The development will contribute to a settlement that is integrated both from a socio-economic and land use perspective, as job opportunities for all (including previously disadvantaged communities) will be provided within walking distance (less than 1km) from a low-income residential area.

The development can prioritize smart growth principles, which involve designing compact, walkable, and transit-oriented communities that prioritize efficient land use and resource conservation. This can help reduce sprawl and promote more sustainable development patterns. The proposal advocates for business use on the property and would see the property be utilised to its full spatial potential.

- **Efficiency**

Infill development is an effective spatial planning tool that promotes sustainable development by making optimal use of available opportunities. The proposed development contributes to the integration of the settlement, which includes economic and land use integration with adequate business opportunities. The development will promote urban functions to remain within urban areas. The proposal limits urban sprawl by optimising the utilisation of existing land within the urban periphery and forms part of the existing densification environment. The development also redresses the distorted spatial patterns of the settlement by providing business premises within walking distance (less than 1km) from a low-income residential area, providing access to business and job opportunities for all.

The property can be developed to its full potential in accordance with the *Swartland MSDP (2019)* and zoning scheme regulations set out in Schedule 2 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*. The zoning scheme regulations can be considered sufficient in regulating future development. The proposed development uses the optimal efficiency of the land and existing services.

- **Spatial resilience**

The principle of spatial resilience allows more flexibility in spatial plans, policies, and systems. More flexible development opportunities promote sustainable livelihoods. The proposed rezoning will still be resilient in terms of the multiple uses that are allowed if the correct land use rights are obtained. The proposed development does not limit any future benefits of the properties or the surrounding area and has no negative impact on disadvantaged communities.

- **Good administration**

In terms of Section 55-57 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, Swartland Municipality followed a public participation process for this land use application and all relevant departments were approached. The application was advertised in the local newspaper and Provincial Gazette, and individual notices were sent to neighbouring property owners as identified by Swartland Municipality. Participation of different relevant departments and the public ensures an informed decision.

From the above, it can be concluded that the development proposal to accommodate business premises on Erf 975, Darling, supports the spatial principles as contained in *SPLUMA* and *LUPA*.

Comment on the appeal:

*Spatial Justice:*

*Erf 975 is situated in the industrial area of Darling. Surrounding land uses to erf 975 are predominantly industrial in nature. Darling Brew (erf 4404) is situated directly across erf 975 which consist of ancillary uses to the industrial activities on the property which includes consent uses for a restaurant, tasting facility, hospitality training centre and a facility for hosting events. To the north of erf 975 is erf 4192 which is zoned Community zone 1: Place of Education and is vacant. To the north of erf 4192 is a low cost housing area (high density residential area) which consist of 7 business zoned erven which are centrally located to the area. These business zoned erven are undeveloped/vacant and serves as a business node for the area.*

*The SDF indicates the industrial area and the area to the north of erf 975 are situated into 2 different zones. The reason being that the character of the two areas are different. No transitional uses are proposed on the communal boundaries of these two zones to link them with each other or to create a mixed use development area. It is therefore clear that the industrial uses remain in the industrial zone and the business uses in the other zone as identified in the high density residential area with its business node.*

*Business uses are clearly supported within the SDF zone for the industrial area of Darling, however, it must be secondary in nature, scale and intensity to the industrial uses. Given the character of the area, being predominantly industrial in nature, business uses in the area, specifically the scale and intensity of the proposed development, detracts from the nature or sense of place of the area.*



*The proposed business uses remains to be in conflict with the spatial planning of Darling. The principle of spatial justice is therefore not supported.*

*Spatial Sustainability:*

*The applicant/appellant did not provide any information regarding the impact of the proposed development on municipal services infrastructure. The statement made by the applicant/appellant that sufficient capacity of services is available to accommodate the proposed development is not supported by any specialist report e.g. Services report or Traffic Impact Assessment. The feasibility of the development from a cost perspective for the provision of services infrastructure to the development has not been determined by the owner/developer. These costs alone may make the development not feasible. As the impact on municipal services infrastructure is not known, it remains a possibility that the provision and maintenance of infrastructure may be created which may burden the municipality financially if approved. The principle of sustainability is therefore not supported.*

*Efficiency:*

*Erf 975 has been vacant for many years. The intention of the owner/developer to develop the property is encouraged. This will lead to the optimal use of the property as well as infrastructure. Given the location of erf 975 inside the industrial area of Darling as well as the vacant 7 business erven (business node) in the nearby high density residential area, the desired mix of land uses surrounding erf 975 will not be achieved if erf 975 is used for business purposes. It is rather suggested that the existing business node in the high density neighbourhood be strengthened by a development as proposed. The principle of efficiency is therefore not supported.*

*Spatial Resilience:*

*The SDF is clear on the proposed uses which can be accommodated on erf 975. The further unknown aspects of the impact on engineering services by the proposed development creates the questions whether this development can be accommodated in the position as proposed. The specific area of the industrial area of Darling are not resilient enough to accommodate the scale and intensity of the proposed development. The principle of spatial resilience is therefore not supported.*

*Good administration:*

*All administrative processes that were followed was done accordance the requirements of the Swartland Planning By-law.*

*The application remains to not be supported by the principles of LUPA and SPLUMA.*

b) Reason C(b)

The *Western Cape Spatial Development Framework (PSDF), March 2014*, is a planning document that guides spatial development and land use management in the Western Cape province of South Africa. The *PSDF* aims to achieve sustainable development in the province by promoting social, economic, and environmental objectives. It provides a framework for the coordination of development planning across the different local municipalities in the province, including Swartland Municipality, and it helps to ensure that development is aligned with provincial policy objectives.

The following are identified as some of the key policy objectives of the *PSDF* and how the proposed development supports these objectives:

- a) Economic growth and job creation: The *PSDF* seeks to support economic growth and job creation by promoting the development of key economic sectors by providing the necessary infrastructure and support services to attract investment. By proposing the rezoning of a vacant and underutilised industrial-zoned property to a business-zoned property, new businesses can be attracted to the area, creating jobs, and stimulating economic growth in Darling and the Swartland Municipal area, particularly in underdeveloped or disadvantaged areas.
- b) Enhanced social cohesion: The development of the property for business land uses will enhance social cohesion and community participation by providing new opportunities for the

local community to participate in the economy and engage with other members of the community. This can help to promote a sense of place and identity and strengthen social ties within the community.

- c) Efficient Land Use: The *PSDF* emphasizes the efficient use of land. Since Erf 975 was created, no development previously occurred on the property. The property has been vacant for almost 50 years. By rezoning industrial land that is currently underutilised as it is and has been vacant for some time, to establish business premises, the land can be put to better use, increasing its productivity and efficiency. This will also help to reduce urban sprawl and pressure on natural resources, while also promoting compact, walkable, and transit-orientated development, as there is no need for additional land outside the urban edge to be developed.

One should also contextualise oneself with the general context of Darling, which is a small town with a rural setting. The town is a well-known tourist attraction, having rich historical and cultural significance. Darling is host to a collection of some of the West Coast's finest festivals, performances, art, landscapes, wine, beer, food, and activities. A large commercial building of this extent, as proposed in the Site Development Plan attached as **Annexure C** may detract from the unique character and charm of a small rural town, which could deter visitors and harm the local economy. The fringe of an industrial area close to a residential area is deemed a much better location for a development of this scale.

As mentioned in Point i., Erf 975 borders Industrial Zone 2 properties, utilised for general industrial purposes, towards its eastern and southern boundaries. A vacant Community Zone 1 property is located between a higher residential area in Darling and Erf 975 (refer to Figure 1). The establishment of a Business Zone 2 property will contribute to creating a mixed-use development area on the fringe of the industrial area. Erf 975 is well located in Darling to accommodate business uses due to its proximity to a higher-density residential area of Darling, being within walking distance (less than 1km) from Erf 975. The development will promote an integrated settlement by creating a transitional zone between the residential neighbourhood and the industrial area of Darling. Furthermore, the development will create a diverse and vibrant community encouraging people to live, work, and play in the same area. This will also reduce reliance on cars and promote more sustainable modes of transportation, encouraging sustainable development.

Overall, the proposed development supports the key policy objectives of the *PSDF* by promoting economic growth and job creation, enhanced social cohesion, and efficient land use. It is not perceived that the development of business premises on Erf 975 will adversely detract from the sense of place the surrounding area has.

Comment on the appeal:

*These type of business developments be earmarked within an existing economic node, township centre or CBD. The business node of the neighbouring high density residential development is still undeveloped and is deemed perfect to accommodate the proposed development. Economic growth and job creation will still be promoted. Furthermore, business opportunities in the high density residential area are provided for by means of house shops on residential zoned properties. By developing the business node with a development as proposed will enhance the social cohesion of the neighbourhood and promote the sense of place according to the *PSDF* policy objectives.*

*The fact that erf 975 has been vacant for many years does not automatically means that it is suitable for any other use as what the industrial zone zoning and SDF permits. Utilising erf 975 for business uses as proposed will not have to affect that the land is efficiently used.*

*The proposed business uses on erf 975 remains to be in conflict with the principles of the *PSDF*.*

- c) Reason C(c)

The *Swartland Spatial Development Framework (MSDF) (2019)* determines the strategic policy guidelines for future development in the Swartland region and in this case, in Darling. Regarding the land use proposals applicable to Darling, the *MSDF (2019)* identifies the area in which Erf 975 is located as Zone D, which is the industrial area of Darling with supportive social infrastructure. The development of a public recreational node north of the station is supported within this zone. Erf 975 borders an identified Activity Street on its western boundary and is located at the entrance higher-density residential neighbourhood, which provides the ideal opportunity for the proposed development to take place. The Land Use Proposals Map is attached as **Annexure D**.

The *MSDF* has five spatial objectives to achieve the desired vision for Swartland Municipality. The following describes how the proposed development aligns with some of these spatial objectives:

a) Objective 1: Grow economic prosperity and facilitate economic sector growth & Objective 4: Protect and grow place identity and cultural integrity

Commercial: Darling was and is primarily established as a service centre for the surrounding rural community. The Central Business District (CBD) area is accessible for all residents of Darling, except for those in the north. Hence, house shops frequent the northern precinct. Mixed uses, social and industrial, are located in close proximity to the northern precinct.

- o *Support business uses along activity streets.* – As illustrated in **Annexure D**, Erf 975 is bordering an activity street on its western boundary. The proposed development to accommodate business premises on Erf 975 will support business uses along an identified Activity Street.
- o *Develop integrated and smaller secondary commercial nodes in higher-density poorer neighbourhoods. Commercial uses in these secondary nodes can include residential elements.* – The proposed development will create a commercial development at the entrance of a higher-density residential development in Darling. The proposed development will provide a commercial property to be used for business premises on the northern fringe of an industrial area, and at the entrance to a higher-density residential neighbourhood. The *MSDF* clearly states that the CBD of Darling is accessible for all residents of Darling, except for those in the north. The proposal will provide access for all, especially the high-density neighbourhood in the northern part of Darling, to business and job opportunities.

b) Objective 2: Proximate convenient and equal access

- o Darling: *Concentrate and support mixed-use development along identified activity corridors and streets to support integration.* – As mentioned in point a) above, Erf 975 is bordering an activity street on its western boundary. Residential properties and a vacant Community Zone 1 property border this Activity Street in a northern direction from Erf 975, while an Industrial Zone 2 property is utilised by Darling Brew for industrial and commercial uses, and is located opposite Erf 975 in a western direction. The proposal to establish business uses on Erf 975 will support development along an identified Activity Street to support integration and create a mixed-use development area on the fringe of the industrial area of Darling. This area will also serve as a transitional zone between the residential area north of Erf 975 and the industrial area.

Providing additional business uses within an established built environment of Darling and on underutilised land, could be regarded as effective spatial planning. The area in which Erf 975, Darling, is situated supports the provision of business uses (refer to **Annexure D**).

To conclude, the proposal supports the land use proposals of the *MSDF (2019)*, which supports the concentration of mixed-use development along an identified Activity Street to support integration at the entrance of a higher-density and poorer neighbourhood.

Comment on the appeal:

*As previously stated, according to the SDF the industrial area and the area to the north of erf 975 are situated into 2 different zones. The reason for that being that the character of the two areas*

are different. No transitional uses are proposed on the communal boundaries of these two zones to link them with each other or to create a mixed use development area.

The objectives of the SDF is clear that secondary commercial nodes in the high density poorer neighbourhoods should be created. This is already the case in the high density residential development to the north of erf 975. Erf 975 is situated inside the identified industrial area of Darling and not in the high density residential area. The strengthening of the existing business node must be supported in stead of creating a new business uses outside the node.

Even though erf 975 is situated on an activity street which gives access to the higher density residential area to the north of it, the higher density residential area obtains its main access from from 2 activity streets from Evita Bezuidenhout Avenue. The access from the industrial area to the high density residential development mainly provides access for people to easily access the industrial area for job opportunities. The status the appellant is giving to the gravel road linking the industrial area and the high density residential development is not justified. This also raises the question whether it should have the status of an activity street.

In this case convenient and equal access to mixed uses along activity streets can only be achieved in areas with the same character. The strengthening of the existing business node in the high density residential area is promoted rather than creating a business use on an activity street outside this area inside an industrial area.

The proposed business uses remains to be in conflict with the spatial planning of Darling and objectives of the SDF.

d) Reason C(d)

According to the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, the objective of Industrial Zone 2 is “to accommodate all forms of industry, except noxious trades and risk activities, in order to promote the manufacturing sector of the economy. Allowance is made for nonindustrial activities, but these should not compromise the general use of the area zoned for industry. It is accepted that the intensive nature of the industrial activity or the scale of the operation could generate some negative impact on adjacent land.”

Zone D of Darling, where Erf 975 is located according to the *MSDF*, allows business uses within this area. It is noted that the colour code purple proposing/indicating industrial land uses, is used on the Land Use Proposals Map (refer to **Annexure D**). However, the Land Use Proposals Map should not be interpreted as a zoning map. As mentioned in Point ii., clear imagery from Google Earth dating back to 20 years ago (February 2003) indicates that the property is vacant (refer to Figure 2). Although the property is zoned as Industrial Zone 2, it has not been developed in the past. To accommodate the desired proposal of business premises, rezoning from Industrial Zone 2 to Business Zone 2 is proposed. The proposed development conforms with the objective of the Business Zone 2 zoning, as stated below, which is “to provide for low intensity commercial and mixed-use development which satisfies the needs of the local precinct for commodities and personal services. Such development should be limited in extent and must be able to integrate with the adjacent precinct without adversely affecting the amenities of the residential precinct.”

The proposed development promotes business opportunities which will satisfy the needs of a high-density poorer neighbourhood in the northern part of Darling. The rezoning of Erf 975 from Industrial Zone 2 to Business Zone 2 will not negatively affect the surrounding properties as the area is earmarked for, amongst others, commercial uses and supports the provision of business premises, according to the *MSDF (2019)*. The development will integrate with the surrounding mixed-use development area which has been established on the northern fringe of the industrial area along the identified Activity Street. A transitional zone, consisting of various business uses, will be created between the residential and industrial areas in the northern part of Darling.

Therefore, the proposed rezoning is not deemed to conflict with the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)* or the *Swartland MSDF (2019)*.

Comment on the appeal:

*The fact erf 975 has been vacant for many years does not automatically makes it fit to be developed with any land use other than general industrial. The existing Industrial zone 2 zoning makes provision for certain primary and consent uses. These uses need to compliment and not detract from the nature or sense of place of the area.*

*The development proposal complies with all zoning parameters of the Business zone 2 zoning. However, the locality of erf 975 in the industrial area of Darling does not make the property suitable for the proposed business use from a spatial planning perspective as already discussed.*

*In this case the non-industrial land use (business uses) will compromise the general use of the area zoned for industries.*

e) Reason C(e)

Refer to Points ii. - iv. The proposal is compliant with the development parameters for a Business Zone 2 property as set out in Schedule 2 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, as well as the land use proposals as set out in the *Swartland MSDP (2019)*. The location of Erf 975 along an Activity Street on the northern fringe of the industrial area, and at the entrance of a high-density residential neighbourhood, which cannot easily access the CBD, is deemed highly suitable for the proposed development to establish business premises on Erf 975. Some business uses are already accommodated on Erf 4404 opposite Erf 975, also on the northern fringe of the industrial area. The proposed development will integrate with the mixed-use development area and create a transitional zone between the residential and industrial areas.

Comment on the appeal:

*It is agreed that the development proposal on erf 975 complies with all zoning parameters of the Business zone 2 zoning.*

*The high density residential development obtains access to the CBD of Darling via 2 activity streets (Bloekomboom and Disa Avenues) inside the neighbourhood and then via Evita Bezuidenhout Avenue leading into the CBD. The main access to the CBD from the high density residential development to the CBD is not through the industrial area.*

*As already discussed, the spatial planning of Darling does not make provision for the establishment of a transitional zone between the industrial area and high density residential area to the north of it.*

f) Reason C(f)

As mentioned in the introduction of this document, a public participation process was followed by Swartland Municipality. Only one objection was received from a member of the public. It is rather argued that the location of the proposal is deemed in the interest of the community of Darling, by providing new opportunities and improving the quality of life for the surrounding area, especially the higher-density and poorer neighbourhood in the northern part of Darling.

Comment on the appeal

*Public interest is not the only criteria which is taken into account when a land use application is considered. A land use application is also evaluated by planning legislation, planning policies and norms and standards. In many cases these two criterias are weighed up against each other to decide an application. In this case the application complies with planning legislation (zoning parameters) but is in contradiction with planning policies and norms and standards and can therefore not be supported.*

4.3 **Conclusion**

The fact that erf 975 has been vacant for many years does make it suited to be used for any other land uses as permitted by the Industrial zone 2 zoning.

The development proposal may comply with planning legislation (zoning parameters of the Business zone 2 zoning), but remains to be in conflict with the spatial principles of LUPA and SPLUMA and the spatial planning of Darling.

Section 42(1) of SPLUMA clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework.

The feasibility of the development from a cost perspective for the provision of services infrastructure to the development has not been determined by the owner/developer. These costs alone may make the development not feasible.

## **5. RECOMMENDATION: AUTHORISED OFFICIAL**

5.1 The appeal authority dismisses the appeal in entirety.

5.2 The appeal be dismissed for the following reasons:

- a) The proposed development remains to be non-compliant with the principles of LUPA and SPLUMA.
- b) The proposed development remains to be non-compliant with the Municipal Spatial Development Framework.
- c) No site specific circumstances were argued to deviate from the spatial planning of Darling.
- d) An existing business node exists in the high density residential development to the north of erf 975 which is better suited to accommodate a development of this scale. This will enhance the social cohesion of the neighbourhood and promote the sense of place according to the Provincial Spatial Development Framework policy objectives. The application as presented remains to be non-compliant with the Provincial Spatial Development Framework.
- e) The impact of the proposed development on municipal infrastructure is not known and could not be considered.



# Verslag ♦ Ingxelo ♦ Report

Kantoor van die Direkteur: Ontwikkelingsdienste

Afdeling: Ontwikkelingsbestuur

31 January 2022

15/3/3-3/Erf\_975

WYK: 6

## ITEM 6.3 VAN DIE AGENDA VAN 'N MUNISIPALE BEPLANNINGSTRIBUNAAL WAT GEHOU SAL WORD OP WOENSDAG 8 FEBRUARIE 2023

### LAND USE PLANNING REPORT

### APPLICATION FOR REZONING OF ERF 975, DARLING

<i>Reference number</i>	15/3/3-3/Erf_975	<i>Application submission date</i>	13 October 2022	<i>Date report finalised</i>	31 January 2023
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#### PART A: APPLICATION DESCRIPTION

The application for rezoning of Erf 975, Darling in terms of section 25(2) (a) of Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020) has been received. It is proposed that Erf 975 (9134m<sup>2</sup> in extent) be rezoned from Industrial Zone 2 to Business Zone 2 in order to develop the premises as a business premises consisting of shops and offices.

Erf 975, Darling, is zoned Industrial Zone 2, which does not permit the proposed use of shops and offices.

The applicant is CK Rumboll and Partners and the owner of the property is M M R N Family Trust.

#### PART B: PROPERTY DETAILS

Property description (in accordance with Title Deed)	Erf 975, Darling, in the Swartland Municipality, Division Malmesbury, Province of the Western Cape				
Physical address	Caledon Street, Darling. Please refer to the location plan attached as Annexure A		Town	Darling	
Current zoning	Industrial zone 2	Extent (m <sup>2</sup> /ha)	9134m <sup>2</sup>	Are there existing buildings on the property?	Y N
Applicable zoning scheme	Swartland Municipal By-Law on Municipal Land Use Planning (PG 8226 of 25 March 2020)				
Current land use	Vacant		Title Deed number & date	T1440/2017	
Any restrictive title conditions applicable	Y	N	If yes, list condition number(s)		
Any third party conditions applicable?	Y	N	If yes, specify		
Any unauthorised land use/building work	Y	N	If yes, explain		

#### PART C: LIST OF APPLICATIONS (TICK APPLICABLE)

Rezoning	<input checked="" type="checkbox"/>	Permanent departure	<input type="checkbox"/>	Temporary departure	<input type="checkbox"/>	Subdivision	<input type="checkbox"/>
Extension of the validity period of an approval	<input type="checkbox"/>	Approval of an overlay zone	<input type="checkbox"/>	Consolidation	<input type="checkbox"/>	Removal, suspension or amendment of restrictive conditions	<input type="checkbox"/>

Permissions in terms of the zoning scheme	Amendment, deletion or imposition of conditions in respect of existing approval	Amendment or cancellation of an approved subdivision plan	Permission in terms of a condition of approval
Determination of zoning	Closure of public place	Consent use	Occasional use
Disestablish a home owner's association	Rectify failure by home owner's association to meet its obligations	Permission for the reconstruction of an existing building that constitutes a non-conforming use	

#### PART D: BACKGROUND

The rezoning of Erf 975, Darling, from Industrial Zone 2 to Business Zone 2 is applied for to accommodate business premises (offices and single shops) on the property as primary rights

#### PART E: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)

Has pre-application consultation been undertaken?	Y	N	If yes, provide a brief summary of the outcomes below.
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Not deemed necessary

#### PART F: SUMMARY OF APPLICANTS MOTIVATION

*(Please note that this is a summary of the applicant's motivation and it, therefore, does not express the views of the author of this report)*

1. According to the applicant, the proposed business premises (offices and shops) will provide a mixed-use development near the entrance of a higher density residential area at the northern part of Darling.
2. Being vacant, the property is currently underutilised and the owners wish to utilise the property better.
3. The establishment of a Business Zone 2 property will contribute to create a mixed land use development area where Erf 975 is located in Darling.
4. The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental/heritage assets.
5. The Swartland SDF supports the Western Cape Spatial Development Framework's principle of densification within existing urban areas. The applicant is of opinion that by providing additional business uses within an established built environment of Darling could be regarded as effective spatial planning. The area in which Erf 975, Darling, is situated supports the provision of business uses.
6. The applicant motivates that, infill-development on underutilised or vacant land throughout the built area of the town is one of the suggested ways in which densification in urban areas can occur.
7. The applicant is of opinion that the proposed development enhances the principles of LUPA and SPLUMA.
8. The proposal complies with the Swartland Spatial Development Framework (2019) as the main forward planning document for Darling and the Swartland Municipal Area as a whole.
9. The proposed development complies with the Swartland Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).
10. The development supports the Western Cape SDF by promoting compactness within the existing urban areas.
11. The development proposal will complement the character of the area and not adversely affect any natural conservation areas or surrounding agricultural practises.
12. There are no physical restrictions on the property that will negatively affect the proposed use.
13. The optimal utilisation of existing services, as it reduces past expenditure on infrastructure.
14. The proposed application will limit urban sprawl in Darling.
15. This development uses an existing plot within the Urban Edge to its optimal potential.
16. An income opportunity will be created for the landowners through the provision of business premises on Erf 975, Darling.
17. The proposal will create job opportunities and ultimately economic growth for area.



**PART G: SUMMARY OF PUBLIC PARTICIPATION**

Was public participation undertaken in accordance with section 55- 59 of the Swartland Municipal: By-law on Municipal Land Use Planning		<b>Y</b>	<b>N</b>				
The application was published in local newspapers and the Provincial Gazette on 28 <sup>th</sup> of October 2022, in terms of Section 55 of the By-law. The commenting period, for or against the application, closed on 28 <sup>th</sup> of November 2022.							
In addition to the abovementioned publication, a total of 16 written notices were sent via registered mail to the owners of affected properties, in terms of Section 56(1) & (2) of the By-Law (refer to Annexure C).							
Total valid comments	<b>1</b>		Total comments and petitions refused	<b>0</b>			
Valid petition(s)	<b>Y</b>	<b>N</b>	If yes, number of signatures	<b>N/A</b>			
Community organisation(s) response	<b>Y</b>	<b>N</b>	N/A	Ward councillor response	<b>Y</b>	<b>N</b>	The application was referred to the Ward Councillor and no comments were received.
Total letters of support	<b>None</b>						

**PART H: COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS**

Name	Date received	Summary of comments	Recommendation	
Department: Civil Engineering Services	17-11-2022 & 01-02/2023	<p><b>Water</b> The development be provided with a single water connection.</p> <p><b>Sewerage</b> The sewer network need to be expanded in order to provide the proposed development with a sewer connection. For this, the developer appoint an Engineer appropriately registered in terms of the provisions of Act 46 of 2000 to design the extension. The design be submitted to the Director: Civil Engineering Services for approval after which the construction work be done under the supervision of the engineer.</p> <p><b>Streets and storm water</b> The proposed parking surfaces with due consideration of the access to the parking area, be provided with a suitable dust-free surface.</p> <p><b>Parks</b> No comment</p> <p><b>General</b> Should it be determined necessary to expand or relocate any of the engineering services in order to provide any of the portions with connections, said expansion and/or relocation will be for the cost of the owner/developer;</p> <p>An engineering report addressing the connection to existing services, the handling of storm water and the traffic impact be provided. Further comments regarding civil engineering services will be provided with consideration of the engineering report.</p>	<b>Positive</b>	Negative
Cleaning Services	07-11-2022	<p>Refuse must be placed on kerbside on collection days not later than 07:30.</p> <p>If waste must be collected inside the premises, the refuse storage areas must be easily accessible for the refuse compactor truck and refuse must be placed outside the storage areas. The truck has an approximate turning radius of 10m and a loaded weight of 20 tons.</p> <p>The refuse storage areas must have sealed floor surfaces with drainage connected to the sewer system and a water point for washing the storage areas.</p>	<b>Positive</b>	Negative

Protection Services	17-10-2022	No comments	<b>Positive</b>	Negative
Electrical Engineering Services	25 January 2023	The real cost of expanding the electrical network is for the developers account. The developer provide for a mini-substation that is cut into the existing 11kV network.	<b>Positive</b>	Negative
Development Services: Building Control	22-03-2022	Building plans be submitted to Building Control for consideration and approval.	<b>Positive</b>	Negative

PART I: COMMENTS RECEIVED DURING PUBLIC PARTICIPATION	SUMMARY OF APPLICANT'S REPLY TO COMMENTS	MUNICIPAL ASSESSMENT OF COMMENTS	
<p>Mr Paul Loubser on behalf of the Paul Loubser Trust</p>	<p>Mr Loubser states that they wish to object to the proposed rezoning and, for the following reasons, request that the Municipality should not approve the proposal;</p> <p>Erf 975 is situated in the industrial area of Darling and falls within zone "D" as per SDF (Spatial Development Framework) of Darling. According to the objector, the above mentioned area is primarily the industrial area of Darling and includes supportive social infrastructure.</p> <p>The objector is of opinion that commercial / retail businesses, as proposed in the application, should be accommodated in the CBD of the town. The proposal is therefore deemed to be in conflict with the existing industrial area and will not be supporting as such. Zone "D" as per SDF of Darling accommodate various industrial uses, as well as agricultural industries which are providing the local community with job opportunities.</p> <p>The objector asks that the area be kept industrial as per the SDF principals for the town of Darling.</p>	<p>The applicant agrees that the land use proposals for Darling identify Erf 975 to be located in Zone D, which is the industrial area with supportive social infrastructure. Referring to the table in the SDF document, the applicant motivates that business uses are supported within the land use proposals.</p> <p>Furthermore the applicant argues that the proposed development support commercial development adjacent to an activity street and is within walking distance from a higher density residential neighbourhood.</p> <p>The applicant therefore argues that the proposed development is consistent with the proposals of the Swartland SDF (2019).</p> <p>The applicant adds that the proposal will contribute to creating a mixed-use development area serving as a transitional zone between the industrial area and the residential neighbourhood. The principle of creating a mixed-use development along identified activity streets in Darling to support integration is, according to the applicant, also promoted by the SDF (2019).</p> <p>The applicant argues that due to this transitional zone that will be created, the proposal will have a positive impact on the surrounding environment.</p> <p>The applicant also refers to the property, erf 4404 on which the Darling Brew, brewery is situated and adds that the said property is not only used as a brewery but also a restaurant and tasting facility and with the occasional events taking place at the facility, it attracts large numbers of tourists to the area.</p>	<p>It is agreed that in terms of the MSDF, 2019 Zone D is the industrial area of Darling. It is also clear from the land use proposal table that Business use is supported in the area.</p> <p>It could however be argued that it is not for the proposed scale or intensity. Given the character of the area, being predominantly industrial in nature, business use in the area should not detract from the nature or sense of place of the area.</p> <p>It is noted that under the Industrial zone 2 zoning, being the predominant zoning for the general industrial area, commercial uses are accommodated as primary rights, including service trade, car wash, public parking, service station as well as public garage. The following consent uses (with special permission), which are commercial in nature, are also accommodated under the Industrial zone 2 zoning including a shop, bottle store, place of entertainment, adult entertainment enterprise, restaurant and funeral parlour. With all these commercial uses accommodated under the Industrial zone 2 zoning the support for business use in this land use proposal zone is deemed consistent with the applicable By-Law, however the business use should not be in conflict with the objective of the Industrial zone 2 zoning and therefore it should not compromise the general use of the area zoned for industry.</p> <p>Given the intensity of the proposed commercial development being ±2566m<sup>2</sup> GLA in extent, it is deemed in contradiction with the MSDF, 2019.</p> <p>The MSDF further does support the concentration of mixed use development along identified activity corridors and streets in order to support integration.</p>



Figure 2: Surrounding land uses

The proposed development fully complies with the development parameters of Business Zone 2 properties, as stipulated in the Swartland Municipal By-law on Land Use Planning (PG 8226).

According to the mentioned By-law the purpose of Business Zone 2 is as follows: "the objective of this zone is to provide for low intensity commercial and mixed-use development which satisfies the needs of the local precinct for commodities and personal services." The proposed development complies with this objective and will fit into the surrounding area creating a mixed use, walkable, sustainable area.

The applicant concludes that the Swartland SDF supports the Western Cape Spatial Development Framework's principle of densification within existing urban areas.

Providing additional business uses within an established built environment of Darling could be regarded as effective spatial planning.

The Covid-19 pandemic has had a severe impact on everyone's lives (especially economically). The proposal

With the identified activity street merely touching the corner spay of the subject property, the proposed development not taking its access from the activity street, as well as the fact that there are no other commercial development of this nature in the vicinity, does not result in consistency with the objectives of the MSDF.

It could further be argued that the position of the above mentioned activity street was done in error as the street, although indicated on a general plan, has never been built. Activity streets are normally not planned for, they evolve due to the location / connection the road provides between two or more commercial / mixed use nodes. Activity streets, as defined in the Guidelines for Human Settlement Planning and Design, are streets which are experiencing mixed traffic and intense fronting land use activity. Many activity streets start as high-mobility arterials but, because of their high accessibility, become congested and attract commercial land use. This is one of the key issues currently being investigated with the revision of the MSDF, 2019.

Other objectives of the MSDF include the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods.

		creates job opportunities which in turn will alleviate economic stress and improve socio economic circumstance. The proposal, in the applicant's opinion therefore redresses the spatial imbalances and realizes the principle of spatial justice. Access for all (including low income communities) to business opportunities are promoted.	
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## PART J: MUNICIPAL PLANNING EVALUATION

### 1. Type of application and procedures followed in processing the application

The application in terms of the By-law was submitted on 13<sup>th</sup> of October 2022. The public participation process commenced on the 28<sup>th</sup> of October 2022 and ended on the 28<sup>th</sup> of November 2022. An objection was received and referred to the applicant for comment on 30<sup>th</sup> of November 2022 and the municipality received the comments on the objection on the 19<sup>th</sup> of December 2022.

Division: Planning is now in the position to present the application to the Swartland Municipal Planning Tribunal for decision making.

### 2. Legislation and policy frameworks

Matters referred to in Section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA

The application is evaluated according to the principles of spatial planning, as contained in the abovementioned legislation.

Spatial Justice: The proposed development could redress past spatial development imbalances if successful / feasible. The property is fairly large and the proposed development will certainly result in the improvement of access to economic opportunities to the people of the low income area of Darling North.

All the relevant facts and considerations surrounding the application is taken into account during the decision-making process. The proposal does not cause any inequality nor exclusion of any groups. Therefore, the application is deemed consistent with the principle of spatial justice.

Spatial Sustainability: The proposed application is deemed undesirable as it is in conflict with the general nature "sense of place" within the general industrial area and will therefore detract from the character of the area. Although the proposal does include the use of under-utilised property is not spatially sustainable as the proposal will not result in the promotion of an appropriate land use mix as the scale and intensity proposed as well as the potential cumulative impact, should the application be approved will fragment the industrial area of Darling.

Efficiency: The development proposal will promote the optimal utilisation of services on the property and enhance the tax base of the Municipality. However, given the uncertainty regarding the impact on the Municipal services and especially the road network the contribution of the proposal to the principle of efficiency is questioned. The proposal will result in a diverse combination of land uses however due to its scale and intensity development of this nature is more suited within the primary business node or along main activity corridors / streets. Therefore the application does not contribute to the principle of efficiency.

Spatial Resilience: Spatial resilience relates to flexibility in spatial plans, policies and land use management to ensure sustainable livelihoods most likely to suffer impacts of economic & environmental shocks. This is considered irrelevant to the proposal.

Good Administration: The application was communicated to the affected landowners through registered mail and advertisement in local newspapers and the Gazette. The application was also circulated to the relevant municipal departments for comment. Consideration is given to all correspondence received and the application is dealt with in a timeous manner. It is therefore argued that the principles of good administration were complied with by the Municipality. The decision making is guided by a number of considerations as required by the relevant By-law and MSDF;

The development proposal clearly does not adhere to the spatial planning principles and can therefore be considered inconsistent with the abovementioned legislative measures.

#### Provincial Spatial Development Framework (PSDF, 2014)

According to the PSDF (2014), the average densities of cities and towns in the Western Cape is low by international standards, in spite of policies to support mixed-use and integration. There is clear evidence that urban sprawl and low densities contribute to unproductive and inefficient settlements as well as increase the costs of municipal and Provincial service delivery.

The PSDF, 2014 refers to the lack of integration, compaction and densification in urban areas in the Western Cape which has serious negative consequences for municipal finances, for household livelihoods, for the environment,

and the economy. Therefore the PSDF provides principles to guide municipalities towards more efficient and sustainable spatial growth patterns.

One of the policies proposed by the PSDF is the promotion of compact, mixed-use and integrated settlements. This according to the PSDF can be achieved by doing the following:

1. **Target existing economic nodes** (e.g. **CBDs, township centres**, modal interchanges, vacant and under-utilised strategically located public land parcels, fishing harbours, public squares and markets, etc.) as levers for the regeneration and revitalisation of settlements.
2. **Promote functional integration** and mixed-use as a key component of achieving improved levels of settlement liveability and counter apartheid spatial patterns and decentralization through densification and infill development.
3. Locate and package integrated land development packages, infrastructure and services as critical inputs to business establishment and expansion in places that capture efficiencies associated with agglomeration.
4. Prioritise rural development investment based on the economic role and function of settlements in rural areas, acknowledging that agriculture, fishing, mining and tourism remain important economic underpinnings of rural settlements.
5. Respond to the logic of formal and informal markets in such a way as to retain the flexibility required by the poor and enable settlement and land use patterns that support informal livelihood opportunities rather than undermine them.
6. Delineate Integration Zones within settlements within which there are opportunities for spatially targeting public intervention to promote more inclusive, efficient and sustainable forms of urban development.
7. Continue to deliver public investment to meet basic needs in all settlements, with ward level priorities informed by the Department of Social Development's human development indices.
8. Municipal SDFs to include growth management tools to achieve SPLUMA's spatial principles. These could include a densification strategy and targets appropriate to the settlement context; an urban edge to protect agricultural land of high potential and contain settlement footprints; and a set of development incentives to promote integration, higher densities and **appropriate development typologies**.

The PSDF further states that scenic landscapes, historic settlements and the sense of place which underpins their quality are being eroded by inappropriate developments that detracts from the unique identity of towns. **These are caused by inappropriate development, a lack of adequate information and proactive management systems.**

The Provincial settlement policy objectives according to the PSDF are to:

1. **Protect and enhance the sense of place and settlement patterns**
2. **Improve accessibility at all scales**
3. **Promote an appropriate land use mix and density in settlements**
4. Ensure effective and equitable social services and facilities
5. Support inclusive and sustainable housing

In order to secure a more sustainable future for the Province the PSDF also propose that settlement planning and infrastructure investment achieves:

1. Higher densities
2. A shift from a suburban to an urban development model
3. More compact settlement footprints to minimise environmental impacts, reduce the costs and time impacts of travel and enhance provincial and municipal financial sustainability in relation to the provision and maintenance of infrastructure, facilities and services.
4. Address apartheid spatial legacies by targeting investment in areas of high population concentration and socio-economic exclusion.

The development proposal is therefore deemed inconsistent with the PSDF as the proposal is not within an existing economic node, CBD or the township centre. It can also be argued that given the scale of the development, it will not result in functional integration as it is not situated next to a main road / main activity corridor. The proposal will most certainly have a negative impact on the sense of place as the proposed high intensity commercial is deemed contradictory to the current industrial nature of the area. The proposal will not result in the promotion of an appropriate land use mix as the scale and intensity proposed as well as the potential cumulative impact, should the application be approved will fragment the industrial area of Darling.

#### West Coast District SDF (WCDSDF, 2020)

In the WCDSDF, 2020 it is stated that the functional classification for Darling is an Agricultural service centre. Agriculture plays such an important part that Darling is also identified as an Agri-tourism destination.

The WCDSDF rightfully looks at spatial development on a district level. However the WCDM SDF promotes the approach that local municipalities in the WCDM should focus on spatial integration, efficiency, equal access, sustainability, and related planning principles, (as required in terms of SPLUMA and recommended in the PSDF,

2014), to inform planning decisions. Improving the quality of life as well as access to amenities and opportunities to all residents in the WCDM is some of the main development goals identified by the said document.

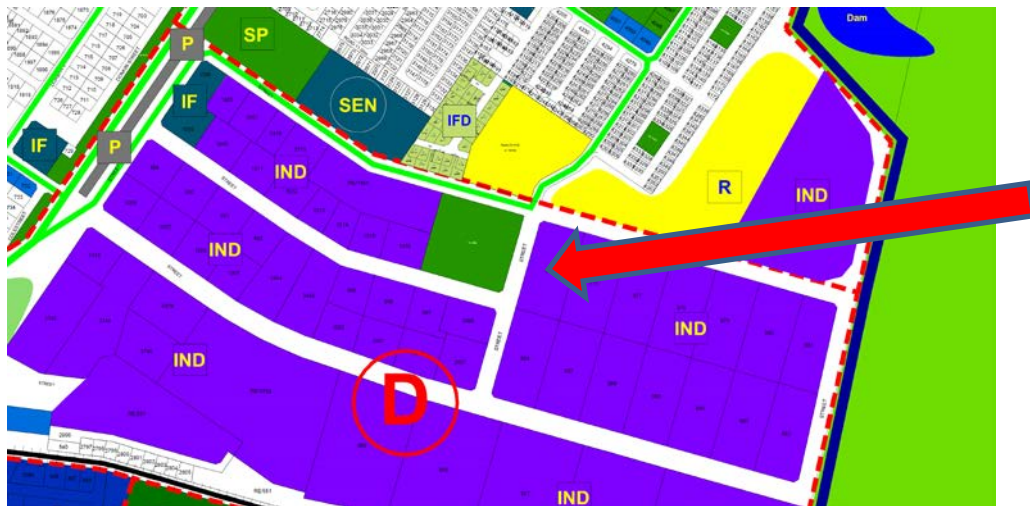
In terms of the built environment policy of the WCDSDF, local municipalities should plan sustainable human settlements that comply with the objectives of integration, spatial restructuring, residential densification and basic service provision. Priority should also be given to settlement development in towns with the highest economic growth potential and socio-economic need.

With reference to the evaluation of the planning principles mentioned above as well as the reference to it within the WCDSDF, 2020 as well as the principles of effective and sustainable development, locating high intensity development on higher order activity corridors / streets where it is deemed appropriate, it could be argued that the proposal is not consistent with the spatial planning policies of the WCDSDF, 2020.

Municipal Spatial Development Framework (SDF), 2019

According to the MSDF, 2019 Darling was and is primarily established as a service centre for the surrounding rural community. It is stated that the CBD area is accessible for all residents of Darling, except for those in the north. Hence house shops frequent the northern precinct. Mixed uses, social and industrial, are located in close proximity to northern precinct.

Erf 975, Darling is located in land use proposal zone D as indicated in the land use proposal map for Darling. Please refer to the extract below:



Zone D is the industrial area of Darling with supportive social infrastructure. The table below indicate the land use proposals for the different land use zoned identified for Darling.

**LAND USE ZONE PROPOSALS FOR DARLING**

Refer to the land use zone map for Darling: The urban area of Darling is divided into eight (8) zones (areas with common features) and the recommended land uses for the different zones are listed in the table below:

DARLING LAND USE ZONES		Low Density Residential Uses	Medium Density Residential	High Density Residential Uses	Secondary Educational Uses	Institutional Uses	Professional Services	Business Uses	Secondary Business Uses	Churches	Institution	Guest houses	Authority	Sport/Recreational Facilities	Industries & Service Trade
A	Zone A is the commercial core of the town with supportive social and residential uses.	X	X	X	X	X	X	X	X	X	X	X	X	X	X 7
B	Zone B consists mainly of low and medium density residential uses with supportive community and institutional facilities and a tourism node. Limited expansion opportunities.	X	X	X 3	X	X	X 2	X 2	X	X	X	X	X	X	X 6
C	Zone C expansion area for low and medium density residential development including institutional functions and recreational facilities	X	X	X 3	X	X	X	X 2	X	X	X	X	X	X	X
D	Zone D is the industrial area of Darling with supportive social infrastructure. Support development of a public recreational node north of the station							X	X				X	X 4	X
E	Zone E is a high density residential area with														



Business use is clearly supported within the area, however, it could be argued that it is not for the proposed scale or intensity. Given the character of the area, being predominantly industrial in nature, business use in the area should not detract from the nature or sense of place of the area.

It is noted that under the Industrial zone 2 zoning, being the predominant zoning for the general industrial area, commercial uses accommodated as primary rights are service trade, car wash, public parking, service station, public garage. The following consent uses (with special permission), which are commercial in nature are also accommodated under the Industrial zone 2 zoning, including a shop, bottle store, place of entertainment, adult entertainment enterprise, restaurant and funeral parlour. With all these commercial uses accommodated under the Industrial zone 2 zoning the support for business use in this land use proposal zone is deemed consistent with the applicable By-Law, however the business use should not be in conflict with the objective of the Industrial zone 2 zoning and therefore it should not compromise the general use of the area zoned for industry.

Given the intensity of the proposed commercial development being  $\pm 2566\text{m}^2$  GLA in extent, it is deemed in contradiction with the MSDF, 2019.

The MSDF does support the concentration of mixed use development along identified main activity corridors and streets to support integration. However, with the identified activity street merely touching the corner spay of the subject property, the proposed development not taking its access from the activity street, as well as the fact that there are no other commercial development in the vicinity, does not result in consistency with the objectives of the MSDF.

It could further be argued that the position of the above mentioned activity street was done in error as the street, although indicated on a general plan, has never been built. Activity streets are normally not planned for, they evolve due to the location / connection the road provides between two or more commercial / mixed use nodes. Activity streets, as defined in the Guidelines for Human Settlement Planning and Design, are streets which are experiencing mixed traffic and intense fronting land use activity. Many activity streets start as high-mobility arterials but, because of their high accessibility, become congested and attract commercial land use. This is one of the key issues currently being investigated with the revision of the MSDF, 2019.

Other objectives of the MSDF include the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods.

For the above reasons the proposal is deemed to be in contradiction with the objectives of the MSDF, 2019

#### 2.4 Zoning Scheme Provisions

It is however noted that the applicant applies for shops and offices and indicates a total of 37 commercial units on the site development plan. In the Development Management Scheme a shopping centre is defined as, "...a group of three or more retail stores or service establishments usually with ample parking facilities and designed to serve a community or neighbourhood". It is believed that the proposal is more accurately described as a shopping centre rather than just shops and offices.

It is noted that shopping centre is a primary right under the Business zone 2 zoning being applied for however, the objective of Business zone 2 is to provide for low intensity commercial and mixed-use development which satisfies the needs of the local precinct for commodities and personal services. Such development should be limited in extent and must be able to integrate with the adjacent precinct without adversely affecting the amenities of the residential precinct.

Therefore in the context of Darling the proposed shopping centre with a GLA of  $\pm 2566\text{m}^2$  is deemed to be in contradiction with the objective of the Business zone 2 zoning.

#### 3. Desirability of the proposed utilisation

There are no physical restrictions on the property that will have a negative impact on this application.

The proposed application is deemed to be in contradiction to the Spatial Development Frameworks adopted on Provincial, District and Municipal levels as discussed above.

The proposed development however is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it negatively impact on environmental / heritage assets.

The proposal will have a negative impact on the character of the area due to the nature and intensity of the proposed commercial development within a predominant industrial area.

A development of this scale and intensity is deemed appropriate at primary business nodes, existing secondary business nodes within neighbourhoods as well as along main activity corridors or streets. As discussed above the identified activity street within the industrial area of Darling is questioned as well as given the fact that the proposed development does not take its access from the activity street, the proposal will not result in appropriate land use mix.



In the context of Darling the proposed shopping centre with a GLA of  $\pm 2566\text{m}^2$  is deemed to be in contradiction with the objective of the Business zone 2 zoning.

#### 4. **Impact on municipal engineering services**

The impact on municipal engineering services could not effectively be evaluated as the applicant did not provide any information in this regard. The statement made by the applicant that sufficient capacity of services is available to accommodate the proposed development is not supported by any specialist report e.g. Services report or Traffic Impact Assessment. It is noted that this extension of Caledon / Madeliefie Street is an un-surfaced road. With the proposed development not being situated next to a main activity corridor as well as that the developer makes no proposal to mitigate any potential impact on the municipal road network, it could be argued that in the long run the cost of potential upgrades to the Evita Bezuidenhoudt Boulevard / Caledon Street intersection as well as the formalisation of the Caledon – Madeliefie Street extension will put additional financial burden on the municipality.

#### 5. **Response by applicant**

See Part F in terms of the motivation as well as part I in terms of the comments on the objections received.

#### 6. **Comments from other organs of state/departments**

Please refer to the comments received by the internal departments as contained in Part H of this report. No comments were requested from external departments.

Should the application be approved it does not exonerate the department to comply with any other legislation.

#### 7. **Public interest**

Public interest must be taken into account with reference to Section 42 of SPLUMA as well as Section 65 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG8226 of 25 March 2020) and can be summarised as follows:

**The degree to which the development principles as well as the norms and standards of relevant legislation and policy will be promoted or prejudiced**

From the above information, the proposed application is not promoted in terms of the development principles and norms and standards of the planning legislation and policy. The proposal is inconsistent with the spatial planning proposals, is situated in an industrial area and the scale and intensity of the proposed commercial use within an industrial area is deemed undesirable as it is in conflict with the general nature “sense of place” of the area.

**The degree of risk or potential risk**

Development of this scale and intensity is deemed appropriate at existing primary or secondary business nodes as well as along main activity corridors / streets. Not only does it brings forth functional integration due to the supporting movement networks it also optimise the use of existing infrastructure. There is a degree of risk that, should the application be approved, the proposal will place a negative financial burden on the Municipality.

**Impact on existing and surrounding land uses**

The proposal is seen as detrimental to the character of the area being predominantly industrial in nature. It is agreed that business use is supported, however the business use should not be in conflict with the objective of the Industrial zone 2 zoning and therefore it should not compromise the general use of the area zoned for industry.

**Whether the proposed development is prejudicial to the interests of the community**

It is agreed that the position will result in bringing commercial opportunities closer to the low cost housing / highly populated area of Darling. The location of the proposed usage is not desirable and furthermore no site specific circumstances has been submitted to deviate from SDF. It is recommended that the developer seek an alternative location for the proposed shopping centre, in a location that could be considered favourable. It is advised that the developer and the Municipality work together in identifying property that is ideally located, that is suitably zoned / consistent with the MSDF, will not have a negative impact on the character of the area, as well as would be in the interest of the community it serves.

**The long term benefit of the proposed development, which at times may be in conflict with short terms gains**

As explained above, development of this scale and nature is warranted at existing business nodes or next to main activity corridors / streets. This is mainly due to accessibility, impact on engineering services as well as public transport. The proposal may result in an increase in property value as well as a large amount of scrutiny fees for the municipality but will put a burden on the Municipality for the upgrading and formalisation of certain roads and infrastructure which does not form part of the proposal made by the applicant.

**PART K: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

The financial or other value of the rights

N/A

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

N/A

The social benefit of the restrictive condition remaining in place, and/or being removed/amended

N/A

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights

N/A

**PART L: RECOMMENDATION WITH CONDITIONS**

The application for the rezoning of Erf 975, Darling, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

**General**

1. Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

**PART M: REASONS FOR RECOMMENDATION**

1. The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA.
2. The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature.
3. The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods.
4. It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial zone 2 zoning as it will compromise the general use of the area zoned for industry.
5. The statement that sufficient services exist to accommodate the proposed development is not supported by any specialist studies. The real impact and possible contributions could not effectively be evaluated due to the lack of information.
6. The proposal, given its location, is deemed not to be in the interest of the community of Darling.



**PART N: ANNEXURES**

Annexure A	Location plan
Annexure B	Site development plan
Annexure C	Public Participation Plan
Annexure D	Objection Mr P Loubser
Annexure E	Applicants comments on the objection

**PART O: APPLICANT DETAILS**

Name	CK Rumboll and Partners			
Registered owner(s)	MMRN Familie Trust	Is the applicant authorised to submit this application?	Y	N

**PART P: SIGNATURES**

Author details: Herman Olivier Town Planner SACPLAN: A/204/2010		Date: 31 <sup>th</sup> January 2023
Recommendation: Alwyn Zaayman Senior Manager Development management SACPLAN : B/8001/2001	Recommended	Not recommended
		Date: 1 <sup>st</sup> February 2023

**PART Q: RESOLUTION**

A. The application for the rezoning of Erf 975, Darling, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

**B. GENERAL**

Appeals against the Municipal Planning Tribunal's decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

C. The application be refused for the following reasons:

- (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
- (b) The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature;
- (c) The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;
- (d) It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry;
- (e) The location of the proposed usage is not desirable and furthermore no site specific circumstances have been submitted to deviate from the SDF;
- (f) The proposal, given its location, is deemed not to be in the interest of the community of Darling.

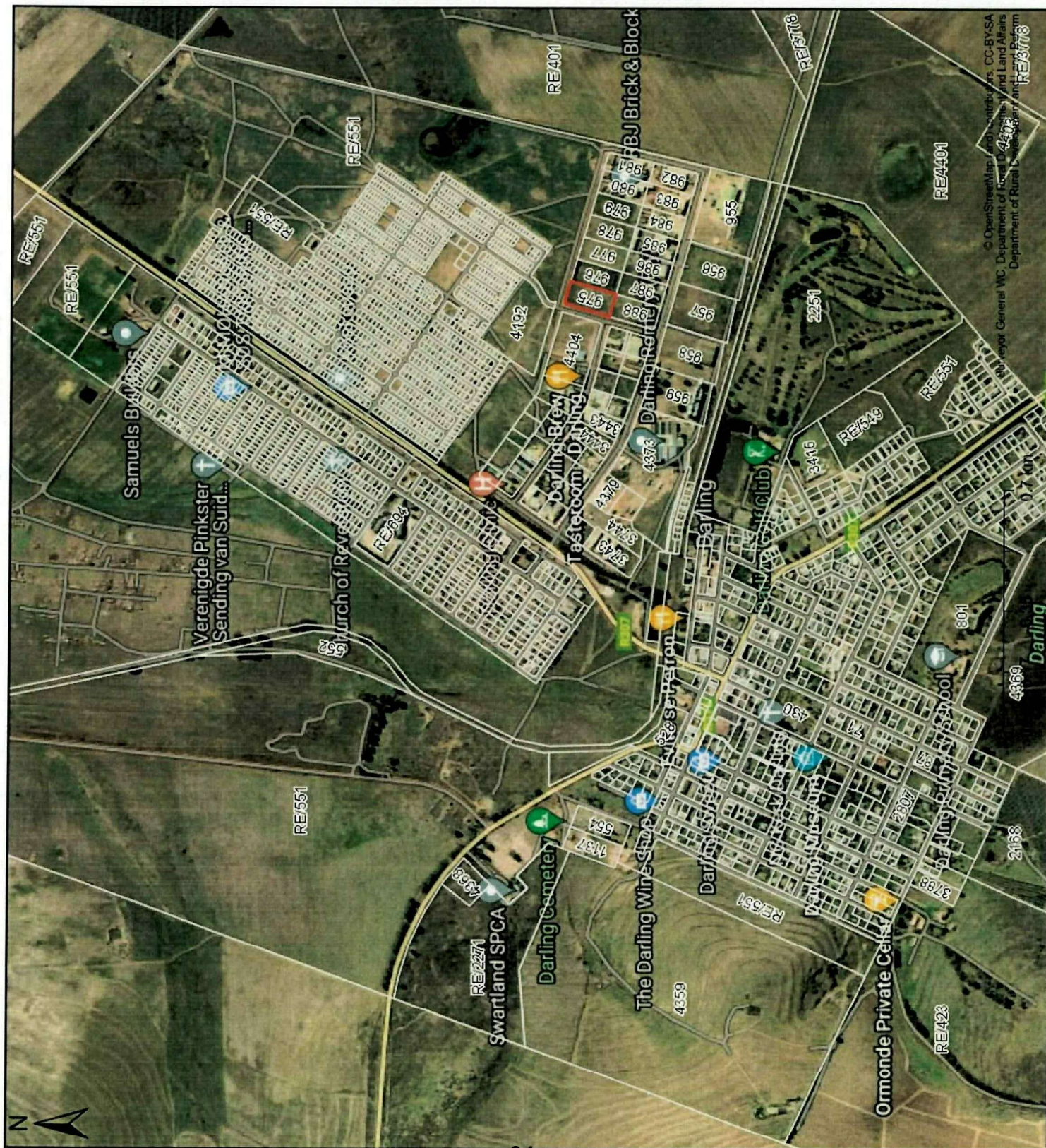
**COPIES:**

1. ABB – for attention
2. Town/Regional Planner and GIS – for cognisance



# Locality Map: Erf 975, Darling

Legend  
 Erf



Map Center: Lon: 18°23'2.3"E  
 Lat: 33°22'15.8"S  
 Scale: 1:18 056  
 Date created: September 16, 2022



Western Cape  
 Government  
 FOR YOU

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 Surveyor General WC, Department of Rural Development and Land Affairs  
 Department of Rural Development and Land Affairs



# SITE DEVELOPMENT PLAN: ERF 975, DARLING

# ANNEXURE B



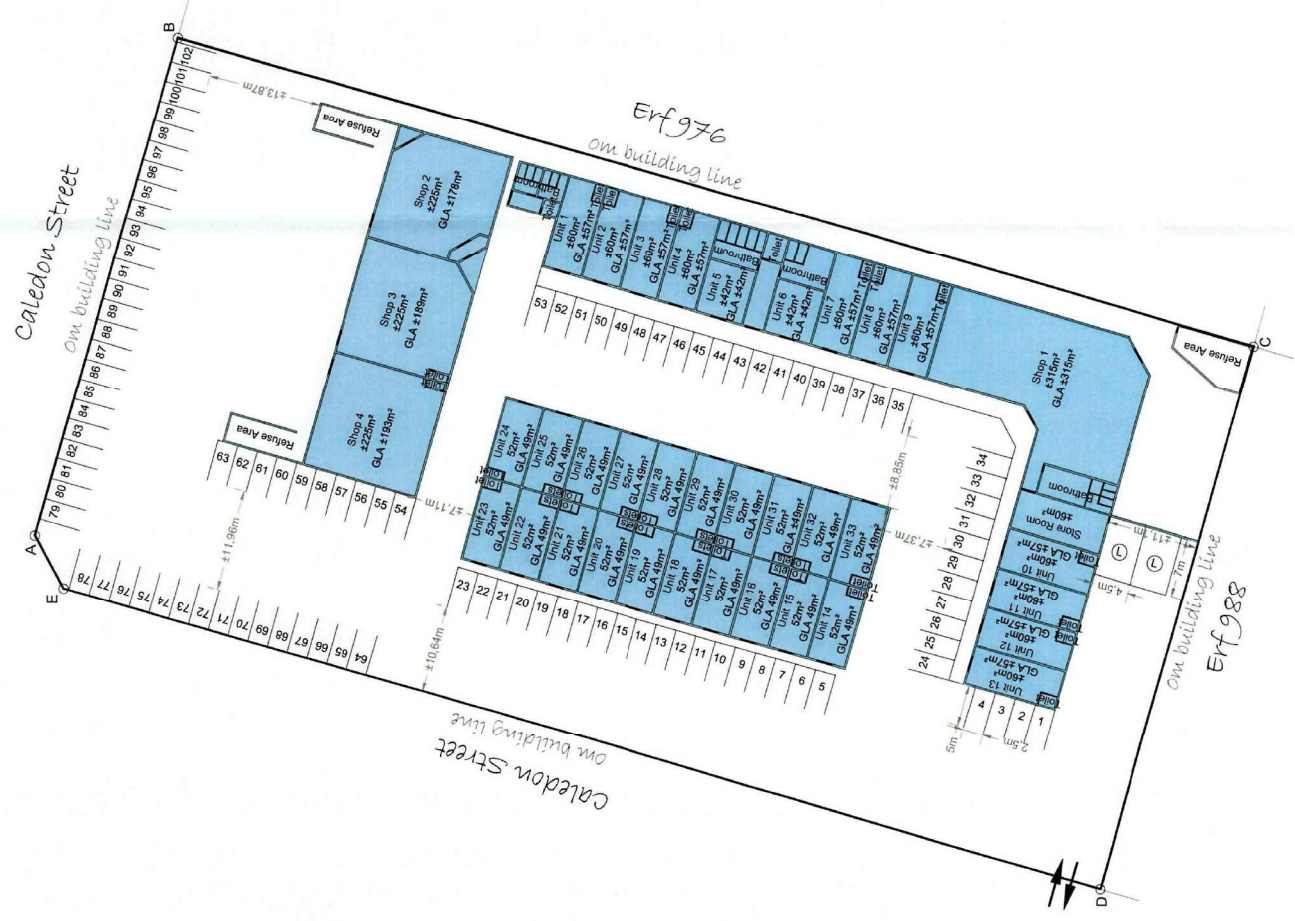
- KEY:**
- Subject property
  - Existing cadastral boundaries
  - Building lines
  - Proposed Access Point

**ZONING I.T.O. THE ZONING SCHEME:**

Current: Industrial Zone 2  
Proposed: Business Zone 2

**NOTES:**

Figure ABCDE represents Erf 975, Darling, with an extent of 9134m<sup>2</sup>.  
Business premises (Offices and shops) are proposed to be accommodated on Erf 975, Darling.



Drawing by: **Mercen Viljoen**

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING

C.K. RUMBOLL & VENNOTE  
TOWN PLANNERS  
PROFESSIONAL SURVEYORS  
Tel: 022 - 482 845  
Fax: 022 - 482 1661  
Email: planning1@rumbol.co.za



DATE: SEPTEMBER 2022

AUTHORITY: SMARTLAND MUNICIPALITY

REF: DAR/12749ZNMV



# ANNEXURE C

- Legend**
-  Farm Portions
  -  Erf

16

Map Center: Lon: 18°23'31.8"E  
 Lat: 33°22'22.4"S

Scale: 1:9 028

Date created: September 22, 2022



Western Cape  
 Government  
**FOR YOU**  
 Agriculture



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 Department of Rural Development and Land Affairs  
 Chief Surveyor-General (DFOUR)  
 Department of Rural Development and Land Reform



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Tel: 022-4512824  
Faks: 022-4512414  
E-pos: [mml@xsinet.co.za](mailto:mml@xsinet.co.za)

REG NO: T1277/93

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28 October 2022

The Municipal Manager

Email: [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za)

Sir/Madam

**PROPOSED REZONING OF ERF 975, DARLING (NOTICE 35/2022/2023)**

We have received the above notice of rezoning and which to place our objection to this proposed rezoning on record.

This area "D" supports development of industries within existing industrial area which is compatible within such area. The proposed commercial/retail development will be in conflict with the existing industrial area and not be supportive as such. Businesses relating to industrial and agricultural industry to be supportive to the area and not commercial retail, which locality factors are within the CBD's of towns.

Erf 975 is situated in the industrial area of Darling and falls within zone "D" as per SDF (Special Development Framework) of Darling, which is primarily the industrial area of Darling, with supportive social infrastructure. Commercial / retail businesses as proposed in the application to be accommodated in the CBD of the town. Zone "D" as per SDF of Darling accommodated various industrial uses, as well as agricultural industries provided local community with job opportunities.

Therefore, Swartland Municipality is requested not to approve the application due to the factors mentioned above.

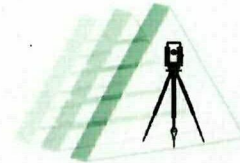
Please keep our zone "D" as industrial as per your SDF principals for the town of Darling.

Yours sincerely



PAUL F LOUBSER

# CK RUMBOLL & VENNOTE / PARTNERS



PROFESIONELE LANDMETERS ~ ENGINEERING AND MINE SURVEYORS ~ STADS- EN STREEKSBEPLANNERS ~ SECTIONAL TITLE CONSULTANTS

DATE: 14 December 2022

OUR REF: DAR/12749/ZN/MV

YOUR REF: 15/3/3-3/Erf\_975

**BY HAND**

**Attention:** Mr A. Zaayman  
The Municipal Manager  
Swartland Municipality  
Private Bag X52  
**MALMESBURY**  
7300

Mr,

Comments on Objections

**PROPOSED REZONING OF ERF 975, DARLING**

**1. Introduction**

Your letter dated 30 November 2022 refers.

CK Rumboll and Partners have been appointed by Cassim Mota, representative of the M M R N Family Trust, owners of Erf 975, Darling, to attend to all town planning actions regarding the rezoning of Erf 975, Darling. The application is made to accommodate business premises (offices and shops) on the mentioned property. During the public participation period, objections were received from the following surrounding neighbour:

- A. Paul F. Loubser on behalf of the Paul Loubser Trust

**2. Comments on objections**

Please see our office's response to the objections received below in tabular form.




MUNISIPALITEIT SWARTLAND				
LEER No: 15/3/3-3/Erf_975				
Verwys Nu	Inligting	verslag	Afkeuring	Kom/Taar
SSSB (A3)				
cc Del				
Ander Opdrag:				
SPERDATUM:				

VENNOTE / PARTNERS:  
IHJ Rumboll PrL (SA), BSc (Surv), M.I.P.L.S., AP Steyl PrL (SA), BSc (Surv), M.I.P.L.S.  
ADDRESS/ ADRES: [planning1@rumboll.co.za](mailto:planning1@rumboll.co.za) / PO Box 211 / Rainierstr 16, Malmesbury, 7299  
MALMESBURY (T) 022 482 1845 (F) 022 487 1661



Table 1: Comments on Objections

Objectors	Objections	Comments from CK Rumboll & Partners
A	<p>1. Erf 975 is situated in Zone D of Darling as per the SDF proposals, which is primarily the industrial area of the town that includes supportive social infrastructure. This zone also includes agricultural industries that provide the local community with job opportunities.</p> <p>Zone D supports development of industries within existing industrial area which is compatible within such area. The proposed commercial/retail development will be in conflict with the area. Commercial/retail businesses, as proposed in the application, should be accommodated in the CBD of the town.</p>	<p>1. The <i>Swartland Spatial Development Framework (SDF) (2019)</i> determines the strategic policy guidelines for future development in the Swartland region and in this case, in Darling. The land use proposals for Darling identify Erf 975 to be located in Zone D, which is the industrial area of Darling with supportive social infrastructure. Development of a public recreational node north of the station is supported within this zone. The zone also allows Business Uses as illustrated on the Land Use Proposals for Darling attached as <b>Annexure A</b>.</p> <p>As illustrated in Figure 1, Erf 975 borders Industrial Zone 2 properties, utilised for general industrial purposes, towards its eastern and southern boundaries. A vacant Community Zone 1 property (Erf 4192) is located between a higher-density residential area of Darling and Erf 975. According to the <i>Swartland SDF (2019)</i>, Erf 4192 and a portion of Erf 551/RE, which is located to Erf 975's northern boundary, are proposed for residential development (refer to Figure 1 below).</p>  <p>Figure 1: Extract from the <i>Swartland SDF (2019)</i></p>

VENNOTE / PARTNERS:

IHJ Rumboll PrL (SA), BSc (Surv), M.I.P.L.S., AP Steyl PrL (SA), BSc (Surv), M.I.P.L.S.

ADDRESS/ ADRES: [planning1@rumboll.co.za](mailto:planning1@rumboll.co.za) / PO Box 211 / Rainierstr 16, Malmesbury, 7299  
 MALMESBURY (T) 022 482 1845 (F) 022 487 1661

		<p>Erf 975 will gain access from an identified Activity Street, which makes the property highly accessible and provides great opportunity for commercial land uses to be established.</p> <p>Directly opposite to Erf 975 in a western direction, Darling Brewery is located on Erf 4404. Erf 4404 is zoned Industrial Zone 2 and is used for the purpose of a brewery, restaurant and a tasting facility. From time-to-time, events, such as, but not limited to, mountain bike racing, trial runs, craft markets, music and art festivals are held on this premises, which attract many tourists.</p> <p>The establishment of a Business Zone 2 property comprising of offices and shops, will contribute to creating a mixed-use development area serving as a transitional zone between the industrial area and the residential neighbourhood. The principle of creating a mixed-use development along identified activity streets in Darling to support integration is promoted by the <i>SDF (2019)</i>.</p> <p>Erf 975 is well-located in Darling to accommodate business uses due to its proximity to a higher-density residential area of Darling, being within walking distance (<math>\pm 135\text{m}</math>) from Erf 975. Erf 975 is located at one of the entrances to the residential neighbourhood (refer to Figure 2). The proposed development is deemed to have minimal negative impact on the surrounding environment and rather have a positive impact by creating a transitional zone between the existing industrial and residential areas.</p>
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Figure 2: Surrounding land uses

The proposed development to utilise Erf 975 for the establishment of business premises (offices and shops) is consistent with the proposals of the *Swartland SDF (2019)*. The proposed development will support commercial development adjacent to an Activity Street and within walking distance from a higher-density residential neighbourhood of Darling. Job opportunities will be created, which will ultimately contribute to economic growth of Darling.

		<p>The proposed development also fully complies with the development parameters of Business Zone 2 properties, as stipulated in the <i>Swartland Municipal By-law on Land Use Planning (PG 8226)</i>. According to the mentioned By-law the purpose of Business Zone 2 is as follows: <i>“the objective of this zone is to provide for low intensity commercial and mixed-use development which satisfies the needs of the local precinct for commodities and personal services.”</i> The proposed development complies with this objective and will fit into the surrounding area creating a mixed-use, walkable, sustainable area.</p>
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### 3. Conclusion

The *Swartland SDF* supports the *Western Cape Spatial Development Framework's* principle of densification within existing urban areas. Providing additional business uses within an established built environment of Darling could be regarded as effective spatial planning. The area in which Erf 975, Darling, is situated supports the provision of business uses. Infill-development on underutilised or vacant land throughout the built area of the town is one of the suggested ways in which densification in urban areas can occur.

The Covid-19 pandemic has had a severe impact on everyone's lives (especially economically). The proposal creates job opportunities which in turn will alleviate economic stress and improve socio-economic circumstance. The proposal thus redresses the spatial imbalances and realizes the principle of spatial justice. Access for all (including low income communities) to business opportunities are promoted.

Considering the above, it is evident that the proposed development will not have a significant impact on the surrounding properties, or built environment, seeing that the *Swartland Municipal Land Use Planning By-law (PG 8226)* and *Swartland Spatial Development Framework (2019)* are sufficient to coordinate development within the Swartland Municipal area. This office is of opinion that the proposed development on Erf 975, Darling, will maximize the development potential on the mentioned property and contribute to economic growth in Darling by providing new job opportunities. The owners of Erf 975, Darling, is also granted an income opportunity.

We trust you will find the above in order when considering the application.

Kind regards,



Zanelle Nortje / Mandri Crafford  
For *CK RUMBOLL & PARTNERS*

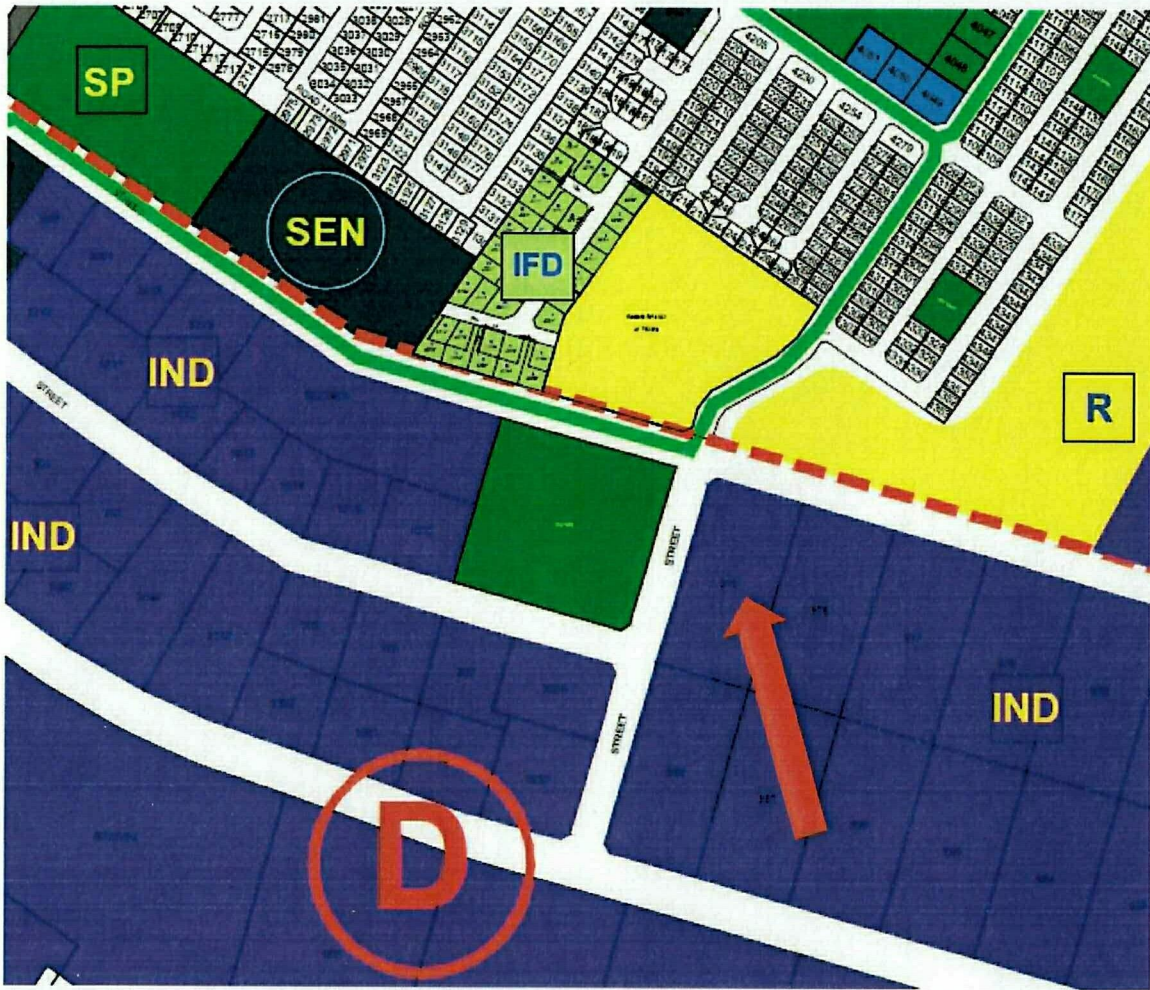


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**Annexure A**  
Land Use Proposals



## Darling Land Use Proposals



DARLING LAND USE ZONES		Low Density Residential Uses	Medium Density Residential	High Density Residential Uses	Secondary Educational Uses	Institutional Uses	Professional Services	Business Uses	Secondary Business Uses	Churches	Institution	Guest houses	Authority	Sport/Recreational Facilities	Industries & Service Trade
D	Zone D is the industrial area of Darling with supportive social infrastructure. Support development of a public recreational node north of the station.							X	X				X	X 4	X





CLEAN AUDITS SINCE 2010/11  
SKOON OUDITS SEDERT 2010/11



*Ons gee gestalte aan 'n beter toekoms!  
We shape a better future!  
Sakha ikusasa elingcono!*

Lêer verw/ 15/3/3-3/Erf\_975

Navrae/Enquiries:  
Ms D N Stallenberg

15 February 2023

C K Rumboll & Partners  
P O Box 211  
MALMESBURY  
7299

**By Registered Mail**

Sir/Madam

**PROPOSED REZONING OF ERF 975, DARLING**

Your application with reference DAR/12749/ZN/MV dated 12 December 2022 on behalf of Cassim Mota, has reference.

A. The Municipal Planning Tribunal has resolved at a meeting held on 8 February 2023 to refuse the application for the rezoning of Erf 975, Darling, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

**B. GENERAL**

Appeals against the Municipal Planning tribunal's decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za), no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

C. The application be refused for the following reasons:

- (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
- (b) The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature;
- (c) The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node

*Rig asseblief alle korrespondensie aan:*  
Die Munisipale Bestuurder  
Privaatsak X52  
Malmesbury 7299

**Darling Tel:** 022 492 2237

**Tel:** 022 487 9400  
**Faks/Fax:** 022 487 9440  
**Epos/Email:** [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za)

**Moorreesburg Tel:** 022 433 2246

*Kindly address all correspondence to:*  
The Municipal Manager  
Private Bag X52  
Malmesbury 7299

**Yzerfontein Tel:** 022 451 2366

- along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;
- (d) It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry;
  - (e) The location of the proposed usage is not desirable and furthermore no site specific circumstances have been submitted to deviate from the SDF;
  - (f) The proposal, given its location, is deemed not to be in the interest of the community of Darling.



**MUNICIPAL MANAGER**

via Department Development Services

/ds

Copies : Cassim Mota, 36 Tors lane, Mountain Rise, PIETERMARITZBURG, 3201  
ihmather@gmail.com





CLEAN AUDITS SINCE 2010/11  
SKOON OUDITS SEDERT 2010/11



*Ons gee gestalte aan 'n beter toekoms!  
We shape a better future!  
Sakha ikusasa elingcono!*

Lêer verw/ 15/3/3-3/Erf\_975

Navrae/Enquiries:  
Ms D N Stallenberg

15 February 2023

Paul Loubser  
Posbus 116  
DARLING  
7345

mml@xsinet.co.za

**By Registered Mail**

Sir/Madam

#### **PROPOSED REZONING OF ERF 975, DARLING**

Your comment/ objection dated 28 October 2022 with regard to the abovementioned application has reference.

The Municipal Planning Tribunal has resolved at a meeting held on 8 February 2023 to refuse the application for the rezoning of Erf 975, Darling, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

#### **A. GENERAL**

Appeals against the Municipal Planning tribunal's decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za), no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

#### **B. The application be refused for the following reasons:**

- (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
- (b) The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature;
- (c) The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;

- (d) It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry;
- (e) The location of the proposed usage is not desirable and furthermore no site specific circumstances have been submitted to deviate from the SDF;
- (f) The proposal, given its location, is deemed not to be in the interest of the community of Darling.

Yours faithfully

  
MUNICIPAL MANAGER  
via Department Development Services

/ds

15/3/3-3/Erf\_975

PROPOSED REZONING OF ERF 975, DARLING

By Registered Mail

C k Rumboll & Vennote

Posbus 211

MALMESBURY

7299

RH 061 779 324 ZA  
OFFICE REGISTER COPY

Paul Loubser

Posbus 116

DARLING

7345

RH 061 779 315 ZA  
OFFICE REGISTER COPY

DATE of DELIVERY DATUM van AFLEWERING	<b>IDENTIFICATION REQUIRED - IDENTIFIKASIE VERLANG</b> Receipt of INSURED PARCEL Ontvangs van VERSEKERDE PAKKET No <b>176559</b> Handed in at: Ingelewer te: Addressed to: Geadresseer aan: <b>X52</b>  <i>Issuing Officer / Uitreikingsbeamppte</i>  Identification/Identifikasie: This article will be returned to the sender if not collected within 21 days of the date of issue of the original delivery advice. Hierdie posstuk sall aan die afsender teruggestuur word as dit nie binne 21 dae na die uitreikingsdatum van die oorspronklike afleweringadvies afgehaal is nie.	<b>Post Office</b> 	<b>Malmesbury 7299</b> Post Office 21 FEB 2023 Cashier
INITIALS of DELIVERY OFFICER VOORLETTERS van AFLEWERINGSBEAMPTE	<i>Signature of recipient / Handtekening van ontvanger</i> <b>2/Two</b>	Post Office Counter No.: Poskantoor Toonbank Nr.:	Date-stamp Datumstemple
Please collect at: Haal asseblief af te:	<b>Note:</b> Demurrage at the applicable rate is payable as from <b>Opn:</b> Lêgeld teen die toepaslike tarief is vanaf	_____ betaalbaar	701965





# CK RUMBOLL & VENNOTE / PARTNERS



PROFESIONELE LANDMETERS – ENGINEERING AND MINE SURVEYORS ~ STADS- EN STREEKSBEPLANNERS ~ SECTIONAL TITLE CONSULTANTS

DATE: 14 March 2023

OUR REF: DAR/12749/ZN/MV  
YOUR REF: 15/3/3-3/Erf\_975

**BY HAND**

Attention: Mr A. Zaayman

The Municipal Manager  
Swartland Municipality  
Private Bag X52  
**MALMESBURY**  
7300

MUNISIPALITEIT SWARTLAND				REG
LEER No: 15/3/3-3/Erf_975		TFO		
Verreys Na	Inligting	verslag	Afhandel	Kom/Taar
Del				
cc SSSB				
cc P Carlise				
Ander Opdrag:				
SPERDATUM:				(get)BK

Mr,

**Appeal**

**PROPOSED REZONING OF ERF 975, DARLING**

**1. Introduction**

Your letter dated 15 February 2023 refers.

CK Rumboll and Partners have been appointed by Cassim Mota, representative of the M M R N Family Trust, owners of Erf 975, Darling, to attend to all town planning actions regarding the rezoning of the mentioned property. The application was made to accommodate business premises (offices and shops) on Erf 975.

The application was advertised in the local newspaper and Provincial Gazette, and individual notices were sent by Swartland Municipality to neighbouring property owners. Only one (1) objection was received from the public against the application. Mr Paul F. Loubser objected on behalf of the Paul Loubser Trust.

On 21 February 2022, our offices received the Decision Letter from Swartland Municipality via registered post. At a meeting held on 8 February 2023, the Municipal Planning Tribunal has resolved to **refuse** the application for the rezoning of Erf 975, Darling, in terms of Section 70 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*.

**VENNOTE / PARTNERS:**

IHJ Rumboll PrL (SA), BSc (Surv), M.I.P.L.S., AP Steyl PrL (SA), BSc (Surv), M.I.P.L.S.

ADDRESS/ ADRES: [planning1@rumboll.co.za](mailto:planning1@rumboll.co.za) / PO Box 211 / Rainierstr 16, Malmesbury, 7299  
MALMESBURY (T) 022 482 1845 (F) 022 487 1661



The following supporting documentation is attached:

- ❖ **Proof of Payment**
- ❖ **Annexure A:** Municipal Decision Letter
- ❖ **Annexure B:** Application Form
- ❖ **Annexure C:** Site Development Plan
- ❖ **Annexure D:** Darling Land Use Proposals Map

## 2. Purpose

In accordance with Section 89 (2) of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, this letter is intended to appeal against the decision taken by the Municipal Planning Tribunal. The Application Form is attached as **Annexure B**.

The section of the Decision Letter is listed below together with the action taken by the applicant against the decision, either accepting or appealing the decision. The Municipal Decision Letter is attached as **Annexure A**.

Table 1: Result of the Decision Letter

Condition	Municipal Tribunal Decision	Action by applicant
A	The Municipal Planning Tribunal has resolved at a meeting held on 8 February 2023 to refuse the application for the rezoning of Erf 975, Darling, in terms of Section 70 of the <i>Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)</i> .	<ul style="list-style-type: none"><li>• <u>Appeal</u> against the Decision.</li></ul>

## 3. Motivation for Appeal

The grounds for the appeal are motivated below in accordance with Section 89 (5) of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*. The reasons for Swartland Municipality not to approve the application are cited for ease of reference.

i. **Condition C (a):**

“The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA.”

In accordance with Article 42 of the *Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013*, a Municipal Planning Tribunal must be guided by the development principles as set out in Chapter 2 when considering an application. In terms of Section 6 (1), the general principles set out in Chapter 2 apply to all organs of state and other authorities responsible for the implementation of legislation governing the use and development of land. The following principles apply in terms of Section 7 to spatial planning, land development and land use management, namely: Spatial Justice, Spatial Sustainability,



Efficiency, Spatial Resilience, and Good Administration. In accordance with Section 59 (2) of the *Land Use Planning Act (LUPA), Act 3 of 2014*, a Municipality considering a land use application should, amongst other aspects, refer to the principles as set out in Chapter VI. Under Rule 58, the Land Use Planning Principles set out in Chapter VI apply to all organs of state responsible for implementing legislation that governs land use planning and development. These principles correspond with those of *SPLUMA* namely: Spatial Justice, Spatial Sustainability, Efficiency, Spatial Resilience, and Good Administration.

The proposed development to accommodate business premises on Erf 975, Darling, supports the principles of Chapter 2 (Article 7) of *SPLUMA* and Chapter VI (Article 59) of *LUPA* as follows:

- **Spatial Justice:**

The physical footprint of the proposed development on Erf 975 supports an urban type of development within the identified urban edge of Darling. The contextual background of the surrounding area of Erf 975 is general industrial of nature, as illustrated in Figure 1. The property borders Industrial Zone 2 properties, utilised for general industrial purposes, towards its eastern and southern boundaries. Opposite Erf 975 in a western direction, Darling Brew is located on Erf 4404. Darling Brew currently consists of a brewery, restaurant, and tasting facility. Recently (February 2023), approval was granted to the owners of Erf 4404 to establish additional land uses on the property, consisting of a Place of Education to accommodate a hospitality training centre and a Place of Entertainment for the presentation of events. A vacant Community Zone 1 property is located between a higher residential area in Darling and Erf 975.

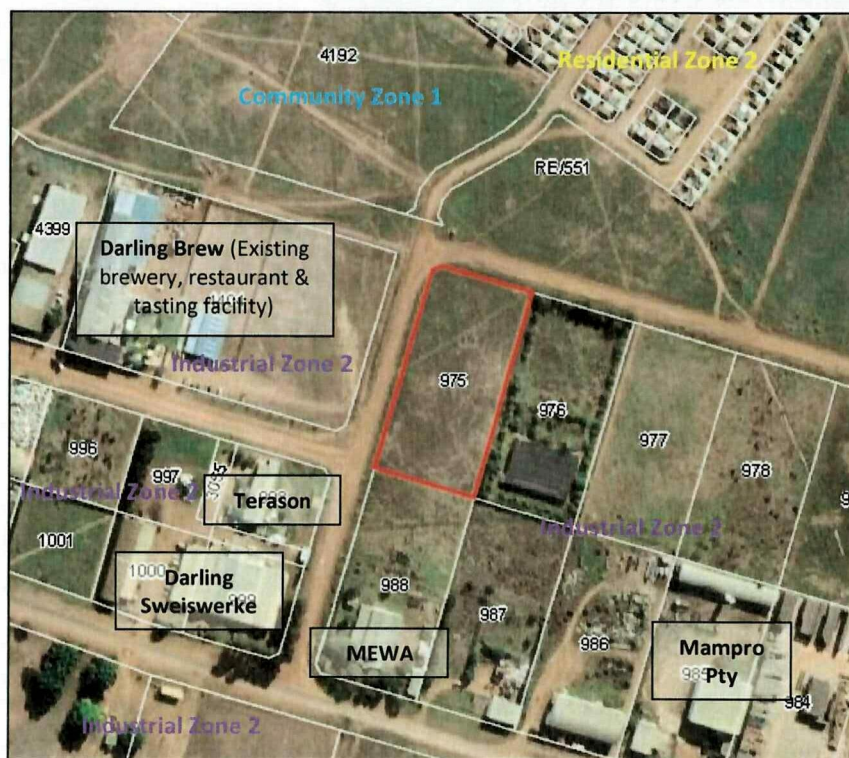


Figure 1: Surrounding Land Uses

The establishment of a Business Zone 2 property will contribute to creating a mixed-use development area where Erf 975 is in Darling. Erf 975 is within walking distance ( $\pm 135\text{m}$ ) from a higher-density residential area of Darling, which provides a great opportunity to utilise the property for commercial purposes. The development will promote an integrated settlement by creating a transitional zone consisting of various commercial uses between the residential neighbourhood and the industrial area of Darling. Furthermore, the development will create a diverse and vibrant community encouraging people to live, work, and play in the same area.

The COVID-19 pandemic has had a severe impact on everyone's lives (especially economically). The proposal will create job opportunities in the local community, both during the construction phase and once the development is operational. This, in turn, will alleviate economic stress and improve socio-economic circumstances. Thus, the proposal redresses the spatial imbalances and realizes the principle of spatial justice. The owners of Erf 975 can prioritize leasing the proposed shops or offices to previously disadvantaged individuals or groups, which will promote access for all (including low-income communities) to business opportunities. The proposed development does not support further segregation within the community.

The development will attract investment from outside of the Swartland Municipal Area as well, which will stimulate economic growth and create new business opportunities for local entrepreneurs. The proposed development aligns with the *Swartland Municipal Spatial Development Framework (MSDF)* as a spatial instrument that directs future development at a Local Municipal level by promoting sustainable economic growth and economic development. The use of the property for business premises is consistent with the applicable zoning regulations to Business Zone 2, as well as *MSDF* proposals for the area in which the property is located.

Erf 967 is located in an established urban area with existing services. Sufficient capacities of services are available to provide connections to the erf for the proposed business premises. The proposed development aligns with the *MSDF's* goal of promoting efficient and effective land use and development patterns.

- **Spatial sustainability:**

Erf 975 is a vacant and underutilised property located within the urban edge of Darling. No development has previously occurred on this site, which can be dated back almost 50 years. The development is within the Environmental Management requirements by developing land within the existing urban edge and leaving the surrounding natural areas untouched. The proposal will have no negative effects on any high-potential agricultural land or any heritage resources. The application promotes spatial compactness and resource-frugal development, whilst protecting the environment.

The proposal limits urban sprawl by optimising the utilisation of existing land within the urban periphery and forms part of the existing densification environment suggested for all towns within the Western Cape. The development will benefit from existing infrastructure and services that will ensure the quality of life to present and future generations. The application promotes the financial viability of the municipality in



the present and for the future.

Erf 975 is well located in Darling to accommodate business uses due to its proximity to a higher-density residential area of Darling, being within walking distance ( $\pm 135\text{m}$ ) from Erf 975. The development will promote an integrated settlement by creating a transitional zone between the residential neighbourhood and the industrial area of Darling. This will reduce reliance on cars and promote more sustainable modes of transportation and encourage social interaction and community building. This can also help reduce traffic congestion, improve air quality, and promote a more active and healthier lifestyle. The development will contribute to a settlement that is integrated both from a socio-economic and land use perspective, as job opportunities for all (including previously disadvantaged communities) will be provided within walking distance (less than 1km) from a low-income residential area.

The development can prioritize smart growth principles, which involve designing compact, walkable, and transit-oriented communities that prioritize efficient land use and resource conservation. This can help reduce sprawl and promote more sustainable development patterns. The proposal advocates for business use on the property and would see the property be utilised to its full spatial potential.

- **Efficiency**

Infill development is an effective spatial planning tool that promotes sustainable development by making optimal use of available opportunities. The proposed development contributes to the integration of the settlement, which includes economic and land use integration with adequate business opportunities. The development will promote urban functions to remain within urban areas. The proposal limits urban sprawl by optimising the utilisation of existing land within the urban periphery and forms part of the existing densification environment. The development also redresses the distorted spatial patterns of the settlement by providing business premises within walking distance (less than 1km) from a low-income residential area, providing access to business and job opportunities for all.

The property can be developed to its full potential in accordance with the *Swartland MSDF (2019)* and zoning scheme regulations set out in Schedule 2 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*. The zoning scheme regulations can be considered sufficient in regulating future development. The proposed development uses the optimal efficiency of the land and existing services.

- **Spatial resilience**

The principle of spatial resilience allows more flexibility in spatial plans, policies, and systems. More flexible development opportunities promote sustainable livelihoods. The proposed rezoning will still be resilient in terms of the multiple uses that are allowed if the correct land use rights are obtained. The proposed development does not limit any future benefits of the properties or the surrounding area and has no negative impact on disadvantaged communities.

- **Good administration**

In terms of Section 55-57 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, Swartland Municipality followed a public participation process for this land use application and all relevant departments were approached. The application was advertised in the local newspaper and Provincial Gazette, and individual notices were sent to neighbouring property owners as identified by Swartland Municipality. Participation of different relevant departments and the public ensures an informed decision.

From the above, it can be concluded that the development proposal to accommodate business premises on Erf 975, Darling, supports the spatial principles as contained in *SPLUMA* and *LUPA*.

ii. **Condition C (b):**

“The development proposal is deemed inconsistent with the *PSDF* as it will detract from the character of the area as well as negatively impact the sense of place. Decision-making should target existing economic nodes (CBDs or township centres) to accommodate a development of this scale and nature.”

The *Western Cape Spatial Development Framework (PSDF), March 2014*, is a planning document that guides spatial development and land use management in the Western Cape province of South Africa. The *PSDF* aims to achieve sustainable development in the province by promoting social, economic, and environmental objectives. It provides a framework for the coordination of development planning across the different local municipalities in the province, including Swartland Municipality, and it helps to ensure that development is aligned with provincial policy objectives.

The following are identified as some of the key policy objectives of the *PSDF* and how the proposed development supports these objectives:

- a) **Economic growth and job creation:** The *PSDF* seeks to support economic growth and job creation by promoting the development of key economic sectors by providing the necessary infrastructure and support services to attract investment. By proposing the rezoning of a vacant and underutilised industrial-zoned property to a business-zoned property, new businesses can be attracted to the area, creating jobs, and stimulating economic growth in Darling and the Swartland Municipal area, particularly in underdeveloped or disadvantaged areas.
- b) **Enhanced social cohesion:** The development of the property for business land uses will enhance social cohesion and community participation by providing new opportunities for the local community to participate in the economy and engage with other members of the community. This can help to promote a sense of place and identity and strengthen social ties within the community.
- c) **Efficient Land Use:** The *PSDF* emphasizes the efficient use of land. Since Erf 975 was created, no development previously occurred on the property. The property has been vacant for almost 50



years. By rezoning industrial land that is currently underutilised as it is and has been vacant for some time, to establish business premises, the land can be put to better use, increasing its productivity and efficiency. This will also help to reduce urban sprawl and pressure on natural resources, while also promoting compact, walkable, and transit-orientated development, as there is no need for additional land outside the urban edge to be developed.

One should also contextualise oneself with the general context of Darling, which is a small town with a rural setting. The town is a well-known tourist attraction, having rich historical and cultural significance. Darling is host to a collection of some of the West Coast's finest festivals, performances, art, landscapes, wine, beer, food, and activities. A large commercial building of this extent, as proposed in the Site Development Plan attached as **Annexure C** may detract from the unique character and charm of a small rural town, which could deter visitors and harm the local economy. The fringe of an industrial area close to a residential area is deemed a much better location for a development of this scale.

As mentioned in Point i., Erf 975 borders Industrial Zone 2 properties, utilised for general industrial purposes, towards its eastern and southern boundaries. A vacant Community Zone 1 property is located between a higher residential area in Darling and Erf 975 (refer to Figure 1). The establishment of a Business Zone 2 property will contribute to creating a mixed-use development area on the fringe of the industrial area. Erf 975 is well located in Darling to accommodate business uses due to its proximity to a higher-density residential area of Darling, being within walking distance (less than 1km) from Erf 975. The development will promote an integrated settlement by creating a transitional zone between the residential neighbourhood and the industrial area of Darling. Furthermore, the development will create a diverse and vibrant community encouraging people to live, work, and play in the same area. This will also reduce reliance on cars and promote more sustainable modes of transportation, encouraging sustainable development.

Overall, the proposed development supports the key policy objectives of the *PSDF* by promoting economic growth and job creation, enhanced social cohesion, and efficient land use. It is not perceived that the development of business premises on Erf 975 will adversely detract from the sense of place the surrounding area has.

iii. **Condition C (c):**

"The proposal is deemed to be in contradiction with the *MSDF*, 2019, which supports the concentration of mixed-use development along identified main activity corridors and streets to support integration. It also rather supports the strengthening of the primary commercial node along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher-density poorer neighbourhoods."

The *Swartland Spatial Development Framework (MSDF) (2019)* determines the strategic policy guidelines for future development in the Swartland region and in this case, in Darling. Regarding the land use proposals applicable to Darling, the *MSDF (2019)* identifies the area in which Erf 975 is located as Zone D,

which is the industrial area of Darling with supportive social infrastructure. The development of a public recreational node north of the station is supported within this zone. Erf 975 borders an identified Activity Street on its western boundary and is located at the entrance higher-density residential neighbourhood, which provides the ideal opportunity for the proposed development to take place. The Land Use Proposals Map is attached as **Annexure D**.

The *MSDF* has five spatial objectives to achieve the desired vision for Swartland Municipality. The following describes how the proposed development aligns with some of these spatial objectives:

a) Objective 1: Grow economic prosperity and facilitate economic sector growth & Objective 4: Protect and grow place identity and cultural integrity

Commercial: Darling was and is primarily established as a service centre for the surrounding rural community. The Central Business District (CBD) area is accessible for all residents of Darling, except for those in the north. Hence, house shops frequent the northern precinct. Mixed uses, social and industrial, are located in close proximity to the northern precinct.

- *Support business uses along activity streets.* – As illustrated in **Annexure D**, Erf 975 is bordering an activity street on its western boundary. The proposed development to accommodate business premises on Erf 975 will support business uses along an identified Activity Street.
- *Develop integrated and smaller secondary commercial nodes in higher-density poorer neighbourhoods. Commercial uses in these secondary nodes can include residential elements.* – The proposed development will create a commercial development at the entrance of a higher-density residential development in Darling. The proposed development will provide a commercial property to be used for business premises on the northern fringe of an industrial area, and at the entrance to a higher-density residential neighbourhood. The *MSDF* clearly states that the CBD of Darling is accessible for all residents of Darling, except for those in the north. The proposal will provide access for all, especially the high-density neighbourhood in the northern part of Darling, to business and job opportunities.

b) Objective 2: Proximate convenient and equal access

- *Darling: Concentrate and support mixed-use development along identified activity corridors and streets to support integration.* – As mentioned in point a) above, Erf 975 is bordering an activity street on its western boundary. Residential properties and a vacant Community Zone 1 property border this Activity Street in a northern direction from Erf 975, while an Industrial Zone 2 property is utilised by Darling Brew for industrial and commercial uses, and is located opposite Erf 975 in a western direction. The proposal to establish business uses on Erf 975 will support development along an identified Activity Street to support integration and create a mixed-use development area on the fringe of the industrial area of Darling. This area will also serve as a transitional zone between the residential area north of Erf 975 and the industrial area.

Providing additional business uses within an established built environment of Darling and on underutilised



land, could be regarded as effective spatial planning. The area in which Erf 975, Darling, is situated supports the provision of business uses (refer to **Annexure D**).

To conclude, the proposal supports the land use proposals of the *MSDF (2019)*, which supports the concentration of mixed-use development along an identified Activity Street to support integration at the entrance of a higher-density and poorer neighbourhood.

iv. **Condition C (d):**

"It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry."

*According to the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), the objective of Industrial Zone 2 is "to accommodate all forms of industry, except noxious trades and risk activities, in order to promote the manufacturing sector of the economy. Allowance is made for nonindustrial activities, but these should not compromise the general use of the area zoned for industry. It is accepted that the intensive nature of the industrial activity or the scale of the operation could generate some negative impact on adjacent land."*

Zone D of Darling, where Erf 975 is located according to the *MSDF*, allows business uses within this area. It is noted that the colour code purple proposing/indicating industrial land uses, is used on the Land Use Proposals Map (refer to **Annexure D**). However, the Land Use Proposals Map should not be interpreted as a zoning map. As mentioned in Point ii., clear imagery from Google Earth dating back to 20 years ago (February 2003) indicates that the property is vacant (refer to Figure 2). Although the property is zoned as Industrial Zone 2, it has not been developed in the past. To accommodate the desired proposal of business premises, rezoning from Industrial Zone 2 to Business Zone 2 is proposed. The proposed development conforms with the objective of the Business Zone 2 zoning, as stated below, which is "to provide for low intensity commercial and mixed-use development which satisfies the needs of the local precinct for commodities and personal services. Such development should be limited in extent and must be able to integrate with the adjacent precinct without adversely affecting the amenities of the residential precinct."

The proposed development promotes business opportunities which will satisfy the needs of a high-density poorer neighbourhood in the northern part of Darling. The rezoning of Erf 975 from Industrial Zone 2 to Business Zone 2 will not negatively affect the surrounding properties as the area is earmarked for, amongst others, commercial uses and supports the provision of business premises, according to the *MSDF (2019)*. The development will integrate with the surrounding mixed-use development area which has been established on the northern fringe of the industrial area along the identified Activity Street. A transitional zone, consisting of various business uses, will be created between the residential and industrial areas in the northern part of Darling.

Therefore, the proposed rezoning is not deemed to conflict with the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)* or the *Swartland MSDF (2019)*.

v. **Condition C (e):**

"The location of the proposed usage is not desirable and furthermore, no site-specific circumstances have been submitted to deviate from the SDF."

Refer to Points ii. - iv. The proposal is compliant with the development parameters for a Business Zone 2 property as set out in Schedule 2 of the *Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020)*, as well as the land use proposals as set out in the *Swartland MSDF (2019)*. The location of Erf 975 along an Activity Street on the northern fringe of the industrial area, and at the entrance of a high-density residential neighbourhood, which cannot easily access the CBD, is deemed highly suitable for the proposed development to establish business premises on Erf 975. Some business uses are already accommodated on Erf 4404 opposite Erf 975, also on the northern fringe of the industrial area. The proposed development will integrate with the mixed-use development area and create a transitional zone between the residential and industrial areas.

vi. **Condition C (f):**

"The proposal, given its location, is deemed not to be in the interest of the community of Darling."

As mentioned in the introduction of this document, a public participation process was followed by Swartland Municipality. Only one objection was received from a member of the public. It is rather argued that the location of the proposal is deemed in the interest of the community of Darling, by providing new opportunities and improving the quality of life for the surrounding area, especially the higher-density and poorer neighbourhood in the northern part of Darling.

#### 4. Conclusion

Economic factors will dictate what land use is most suitable for the needs of the community at the time. It is evident that the current demand of the community is for business premises with a retail component and office space, rather than additional industrial uses. The commercial section of Darling is at full capacity, with no space left for new development. Half of the existing buildings in the light industrial area of Darling are currently utilised for business and trading, such as but not limited to 'Builder's Choice', 'Cash & Carry,' and 'Pienaar Elektries'.

Each application for development represents a dream of an individual or group. That dream represents an area with an opportunity. In light of the current economic climate, opportunities for development should be treated with due consideration. The Swartland Municipal Area has become an increasingly favoured option for developers and migrants from the northern regions of the country, owing to its efficient management and favourable environment for growth. It is the duty of the Council to promote development, which they have been accomplishing effectively.



Rigorous regulation in zoning practices has been known to hinder the growth of cities and create transportation challenges, as evidenced in Cape Town. The City of Cape Town has adopted integrated development strategies that prioritize transit-oriented development, consisting of residential, retail, office, and industrial components. The Victoria & Alfred Waterfront is an excellent example of this approach, integrating a range of retail, office space, residential, dining, entertainment, tourist attractions, and industrial elements. Overall, the Waterfront is a dynamic and diversified urban space that combines a variety of functions and activities. The proposed development on Erf 975 aims to create a distinction between the subsidized housing and industrial area of Darling. The proposal would offer opportunities and amenities to the community, bringing them closer to their desired resources. Refusal of the commercial development application to maintain the hard industrial area will only serve to exacerbate segregation.

The *MSDF* supports the *PSDF*'s principle of densification within existing urban areas. Providing additional business uses within an established built environment of Darling, and more specifically, close to a higher-density and poorer neighbourhood could be regarded as effective spatial planning. According to the *MSDF*, the area in which Erf 975 is situated supports the provision of business uses. Infill development on underutilised or vacant land throughout the built area of the town is one of the suggested ways in which densification in urban areas can occur.

The proposal creates job opportunities, which in turn, will alleviate economic stress and improve the socio-economic circumstances. Thus, the proposal redresses the spatial imbalances and realizes the principle of spatial justice. Access for all (including low-income communities) to business opportunities is promoted. The proposed development also supports the spatial planning principles as contained in *SPLUMA* and *LUPA*.

Therefore, the proposed development will not have a negative impact on the surrounding properties, or built environment, seeing that the *Swartland Municipal Land Use Planning By-law (PG 8226)* and *MSDF (2019)* are sufficient to coordinate development within the Swartland Municipal area. This office is of opinion that the proposed development on Erf 975 will maximize the development potential of the property and contribute to economic growth in Darling. The owners of Erf 975 are also granted an income opportunity.

The proposed development is fully supported by this office. The appeal authority is, therefore, requested that the appeal against the decision taken by the Municipal Planning Tribunal be considered favourably.

Kind regards,



---

Zanelle Nortje / Mandri Viljoen  
For *CK RUMBOLL & PARTNERS*



**NOTIFICATION OF PAYMENT**

To whom it may concern:

First National Bank hereby confirms that the following payment has been made:

Date Actioned : 2023-03-14  
Time Actioned : 11:46:31  
Trace ID : RLZQQ5JK03

**Payer Details**

Payment From : C K RUMBOLL EN VENNOOTSKAP  
Amount : 4500.00

**Payee Details**

Recipient/Account no : ...865119  
Recipient Name : Swartland Municipality  
Bank : Standard Bank  
Branch Code : 051001  
Reference : Erf 975 Darling #12749  
Channel : *INTERNET*

**END OF NOTIFICATION**

To authenticate this Payment Notification please visit our website at <https://www.fnb.co.za>, click on Online Banking, select the "Verify Payment" option and follow the on-screen instructions

Our customer (the payer) has requested First National Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. First National Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

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Company Secretary: C Low

First National BankA division of FirstRand Bank Limited. An Authorised Financial Services and Credit Provider (NCRCP20).  
An Authorised Financial Services and Credit Provider (NCRCP20).

**Annexure A**

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Municipal Decision Letter



CLEAN AUDITS SINCE 2010/11  
SKOON OUDITS SEDERT 2010/11



Munisipaliteit  
Municipality  
Umasipala

Ons gee gestalte aan 'n beter toekoms!  
We shape a better future!  
Sakha ikusasa elingcono!

Lêer verw/ 15/3/3-3/Erf\_975

Navrae/Enquiries:  
Ms D N Stellenberg

15 February 2023

C K Rumboll & Partners  
P O Box 211  
MALMESBURY  
7299

By Registered Mail

Sir/Madam

**PROPOSED REZONING OF ERF 975, DARLING**

Your application with reference DAR/12749/ZN/MV dated 12 December 2022 on behalf of Cassim Mota, has reference.

- A. The Municipal Planning Tribunal has resolved at a meeting held on 8 February 2023 to refuse the application for the rezoning of Erf 975, Darling, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

**B. GENERAL**

Appeals against the Municipal Planning tribunal's decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za), no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

- C. The application be refused for the following reasons:

- (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
- (b) The development proposal is deemed inconsistent with the PSDF as it will detract from the character of the area as well as negatively impact the sense of place. Decision making should target existing economic nodes (CBDs or township centres) to accommodate development of this scale and nature;
- (c) The proposal is deemed to be in contradiction with the MSDF, 2019 which supports concentration of mixed use development along identified main activity corridors and streets to support integration. It also rather support the strengthening of the primary commercial node

Rig asseblief alle korespondensie aan:  
Die Munisipale Bestuurder  
Privaatsak X52  
Malmesbury 7299  
Darling Tel: 022 492 2237

Tel: 022 487 9400  
Faks/Fax: 022 487 9440  
Epos/Email: [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za)

Moorreesburg Tel: 022 433 2246

Kindly address all correspondence to:  
The Municipal Manager  
Private Bag X52  
Malmesbury 7299  
Yzerfontein Tel: 022 451 2366



- along Main Street and secondary nodes in neighbourhoods with specific reference to the secondary commercial nodes in higher density poorer neighbourhoods;
- (d) It is acknowledged that business uses are supported within the industrial area as the By-Law makes provision for numerous commercial uses as primary as well as consent uses. The proposed development is deemed to be in conflict with the objective of the Industrial Zone 2 zoning as it will compromise the general use of the area zoned for industry;
  - (e) The location of the proposed usage is not desirable and furthermore no site specific circumstances have been submitted to deviate from the SDF;
  - (f) The proposal, given its location, is deemed not to be in the interest of the community of Darling.

  
**MUNICIPAL MANAGER**  
via Department Development Services  
/ds

Copies : Cassim Mota, 36 Tors lane, Mountain Rise, PIETERMARITZBURG, 3201  
ihmather@gmail.com

**Annexure B**

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Application Form



Munisipaliteit  
Municipality  
Umasipala

## LAND USE PLANNING APPLICATION FORM

In terms of the Swartland Municipal By-law on Municipal Land Use Planning, 2020

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

### PART A: PROPERTY DETAILS (in accordance with Title Deed)

Property Description [Erf / Erven / Portion(s) and Farm number(s)]	Erf 975, Darling				
Physical Address	Caledon Street, Darling, 7345				
GPS Coordinates	33°22'22.5"S 18°32'32.1"E	Town	Darling		
Current Zoning	Industrial Zone 2	Extent	9134m <sup>2</sup>	Are there existing buildings?	Y N
Current Land Use	Vacant				
Title Deed number & date	T	1440/2017			
Any restrictive conditions prohibiting application?	Y	N	If Yes, list condition number(s).		
Are the restrictive conditions in favour of a third party(ies)?	Y	N	If Yes, list the party(ies).		
Is the property encumbered by a bond?	Y	N	If Yes, list Bondholder(s)?		
Any existing unauthorised buildings and/or land use on the subject property(ies)?	Y	N	If yes, is this application to legalise the building/land use?	Y	N

### PART B: PRE-APPLICATION CONSULTATION

Has there been any pre-application consultation?	Y	N	If Yes, please complete the information below and if available attach the minutes.
Official's name	Reference number	Date of consultation	

**PART C: TYPE OF LAND USE APPLICATIONS BEING SUBMITTED IN TERMS OF SECTION 25 OF THE SWARTLAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING & APPLICATION FEES PAYABLE**

Has there been any previous related application(s)?	Y	N	If yes, provide the municipal reference no.
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**All prices include VAT(15%) and are valid from 1 July 2022 to 30 June 2023**

Tick	Type of application		FEES PAID
		R3 260.00	
√	a rezoning of land – Section 25(2)(a); [9/222-945 9234]	Rezoning to sub-divisional area	R3 260.00+ R1 250.00 per land use (open spaces and roads not included)
√	a permanent departure from the development parameters of the zoning scheme – Section 25(2)(b); [9/222 347 9254]	Erven < 500m <sup>2</sup>	R550.00
		Erven 501-750m <sup>2</sup>	R670.00
		Erven > 750m <sup>2</sup>	R820.00
√	a departure to use land for a purpose not provided for in the zoning scheme granted on a temporary basis – Section 25(2)(c); [9/222 337-9192]	House shop [9/222 339 9192]	R2 450.00 R680.00
√	a subdivision of land that is not exempted in terms of section 34, including the registration of a servitude or lease agreement – Section 25(2)(d); [9/222 1109 9244]		R1 736.00
√		More than 10 erven	R1 736.00 + R75/ erf above 10 erven
√	a consolidation of land which is not exempted in terms of section 34 – Section 25(2)(e); [9/222 279 9244]		R1 736.00
√	an amendment, suspension or removal of restrictive conditions in respect of a land unit – Section 25(2)(f); [9/222 919 9234]		R3 260.00
√	a permission required in terms of the zoning scheme – Section 25(2)(g); [9/222-275-9234]	Keeping of animals	R3 260.00 R703.00
√	an amendment, deletion or imposition of conditions in respect of an existing approval – Section 25(2)(h); [9/222 89 9234]	If public participation is required	R2 400.00
		If public participation is not required	R1 100.00
√	an extension of the validity period of an approval – Section 25(2)(i);	Of a rezoning or consent use [9/222-945-9234]	R1 100.00
		Of a subdivision [9/222 1109-9244]	R600.00
		Of a temporary departure [9/222-337-9192]	R600.00
		House shops / Day care centres [9/222-339-9192]	R340.00
√	an approval of an overlay zone as provided for in the zoning scheme – Section 25(2)(j); [9/222-945-9234]		R3 260.00
√	a phasing, amendment or cancellation of a plan of subdivision or a part thereof – Section 25(2)(k); [9/222-1109-9244]		R1 736.00
√	a permission required in terms of the conditions of approval – Section 25(2)(l); [9/222 89 9234]		R3 260.00
√	a determination of a zoning – Section 25(2)(m); [9/222 345 9246]		R3 260.00
√	a closure of a public place or part thereof – Section 25(2)(n); [9/222-251 9246]		R1 736.00



√	a consent use provided for in the zoning scheme – Section 25(2)(o); [9/222-275-9234]	House shops / Day care centre [9/222-277-9234]	R3 260.00	
√	To disestablish a home owner's association – Section 25(2)(p); [9/222-281-9246]		R680.00	
√	To rectify a failure by a home owner's association to meet its obligations in respect of the control over or maintenance of services – Section 25(2)(q); [9/222-281-9246]		R650.00	
√	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 – Section 25(2)(r); [9/222-945-9234]		R3 260.00	

**PRESCRIBED NOTICE AND ADVERTISEMENT FEES\*\***

√	SERVING OF NOTICES	Delivering by hand; Registered Letters; [9/222-811-9188]	R47/ Letter	
√	PUBLICATION OF NOTICES	Local Newspaper(s); [9/222-50-9188]	R4 500.00	
		Combination applications: Additional cost per application type. [9/222-49-1443]	R905.00	
√	PUBLICATION OF NOTICES	Provincial Gazette [9/222-52-9188]	R1 330.00	
√	NOTICE OF DECISION	Provincial Gazette [9/222-52-9188]	R1 330.00	
√	INTEGRATED PROCEDURES	T.B.C. [9/222-51-1443]		

**ADDITIONAL APPLICATIONS**

√	Amendment of the SDF – Section 10 [9/222-87-9190]		R3 260.00	
√	Exemption from approval – Section 34 [9/222-460-9244]		R380.00	
√	Approval of a constitution – Section 39(3) [9/222-281-9246]		R1 300.00	
√	Approval of an architectural design manual – Section 39(3)(d) [9/222-281-9246]		R1 300.00	
√	Amendment of a constitution or an architectural design manual – Section 39(6) [9/222-281-9246]		R670.00	
√	<b>Appeal – Section 89(2)</b> [9/222-96-9234]		R4 500.00	<b>R4 500.00</b>

**TOTAL APPLICATION FEES\***

**R4 500.00**

\* Application fees that are paid to the Municipality are non-refundable and proof of payment of the application fees must accompany the application.

\*\* The applicant is liable for the cost of publishing and serving notices of an application.

\*\*\* The publishing of notices in the local newspapers and/or Provincial Gazette may be required for all types of applications.

Please contact the division Planning of the Department: Development Services for the relevant banking details

**PART D: DETAILS OF PROPOSAL**

**Departure / Consent / Amendment / Rezoning required**

Y	Building line encroachment	Street	From		m	To		m
		Street	From		m	To		m
		Side	From		m	To		m
		Side	From		m	To		m
		Rear	From		m	To		m
Y	Exceeding permissible site coverage		From		%	To		%
Y	Exceeding maximum bulk / floor factor		From			To		
Y	Exceeding height restriction		From		m	To		m
Y	Exceeding maximum storey height		From		m	To		m
Y			From			To		
Y	Other / Temporary departure / Consent use (Please specify)							

Brief description of proposed development / intent of application:

**Proposed Rezoning of Erf 975, Darling, from Industrial Zone 2 to Business Zone 2 to accommodate business premises (offices**



and shops) on the property.

SEE MOTIVATIONAL REPORT.

**PART E: APPLICANT DETAILS**

First name(s)	Zanelle		
Surname	Nortje	SACPLAN Reg No. (if applicable)	A/2299/2016
Company name (if applicable)	CK Rumboll & Partners		
Postal Address	P.O. Box 211		
	Malmesbury	Postal Code	
Email	<u>planning1@rumboll.co.za</u>		
Tel	022 482 1845	Fax	022 487 1661
		Cell	

**PART F: REGISTERED OWNER(S) DETAILS (compulsory if different from applicant)**

Registered owner	Cassim Mota		
Postal Address	36 Tors Lane, Mountain Rise		
	Pietermaritzburg	Postal code	3201
E-mail	<u>ihmather@gmail.com</u>		
Tel		Fax	
		Cell	081 772 9640

**PART G: ATTACHMENTS & SUPPORTING INFORMATION AND DOCUMENTATION FOR LAND USE PLANNING APPLICATIONS [Section 25(2)(a) to (r) of the By-law on Municipal Land Use Planning]**

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

Is the following compulsory information attached?

Y	N	Power of Attorney / Owner's consent if applicant is not owner	Y	N	Bondholder's consent
Y	N	Motivation report / letter	Y	N	Proof of payment of fees
Y	N	Full copy of the Title Deed	Y	N	S.G. noting sheet extract / Erf diagram / General Plan
Y	N	Proof of agreement or permission for required servitude			

Minimum and additional requirements:

Y	N	N/A	Locality plan	Y	N	N/A	Proposed Subdivision Plan (including street names and numbers)
Y	N	N/A	Land Use Plan	Y	N	N/A	Consolidation Plan
Y	N	N/A	Zoning plan	Y	N	N/A	Landscaping / Tree Plan
Y	N	N/A	Site Development Plan	Y	N	N/A	Conveyancer's Certificate
Y	N	N/A	Phasing Plan	Y	N	N/A	Home Owners' Association consent
Y	N	N/A	Abutting owner's consent	Y	N	N/A	1:50 / 1:100 Flood line determination plan
Y	N	N/A	Copy of Environmental Impact	Y	N	N/A	Any additional documents or information

			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) (strikethrough irrelevant)				required as listed in the pre-application consultation form/minutes
Y	N	N/A	Services Report or indication of all municipal services / registered servitudes	Y	N	N/A	Other (specify)
Y	N	N/A	Proof of lawful use right (Zoning certificate)				

**SECTION H: DECLARATION**

I / We hereby wish to confirm the following:

1. That the information contained in this application form and accompanying documentation is complete and correct.
2. That I/we am/are properly authorized to make this application on behalf of the owner and (where applicable) that copies of such full relevant Powers of Attorney/Consent are attached hereto.
3. That where a consultant/agent is indeed appointed to submit this application on the owner's behalf, it is accepted that correspondence and formal notification as required in terms of the by-law will only be sent to such consultant/agent and that the owner will regularly consult with the consultant/agent in this regard.
4. That, as owner/applicant/developer, I'm/we're aware of the state of existing bulk services provision and infrastructure availability in the subject area and that any development contributions might be payable in respect of the development herein proposed (if applicable).
5. **I'm aware that it is an offense in terms of Section 96(1) (d) 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 and in doing so can lead to criminal proceedings of a fine or imprisonment or both.**
6. 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 owner will regularly consult with the agent in this regard.
7. That this submission includes all necessary land use planning applications required to enable the development proposed herein.
8. 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.
9. I hereby authorise Swartland Municipality to use, review and process any personal information (as defined in POPIA) provided in this form in support of the application made hereby.

I understand my right to privacy and the right to have my personal information processed in accordance with the conditions for the lawful processing of personal information and hereby give my consent to the Swartland Municipality to collect, process, store and distribute relevant personal information where the Municipality may be required to do so, solely in respect of this application, and to dispose of such personal information as required by law, on the understanding that the Municipality:

- a) implements reasonable security safeguards designed to protect personal data from loss, misuse, alteration, destruction or damage; and
- b) takes steps to limit access to personal data to those officials who need to have access to it.

Applicant's signature:



Date: **14/03/2023**

Full name:

**Zanelle Nortje**

Professional capacity:

**Professional Town Planner**

FOR OFFICE USE ONLY

Date received:


Received by:

--

Receipt number:

Date application complete

ANNEXURES

The following Annexure is attached for your information, only if applicable:

Annexure A: Land use planning application submission and protocol

Please do not submit this Annexure with the application form.

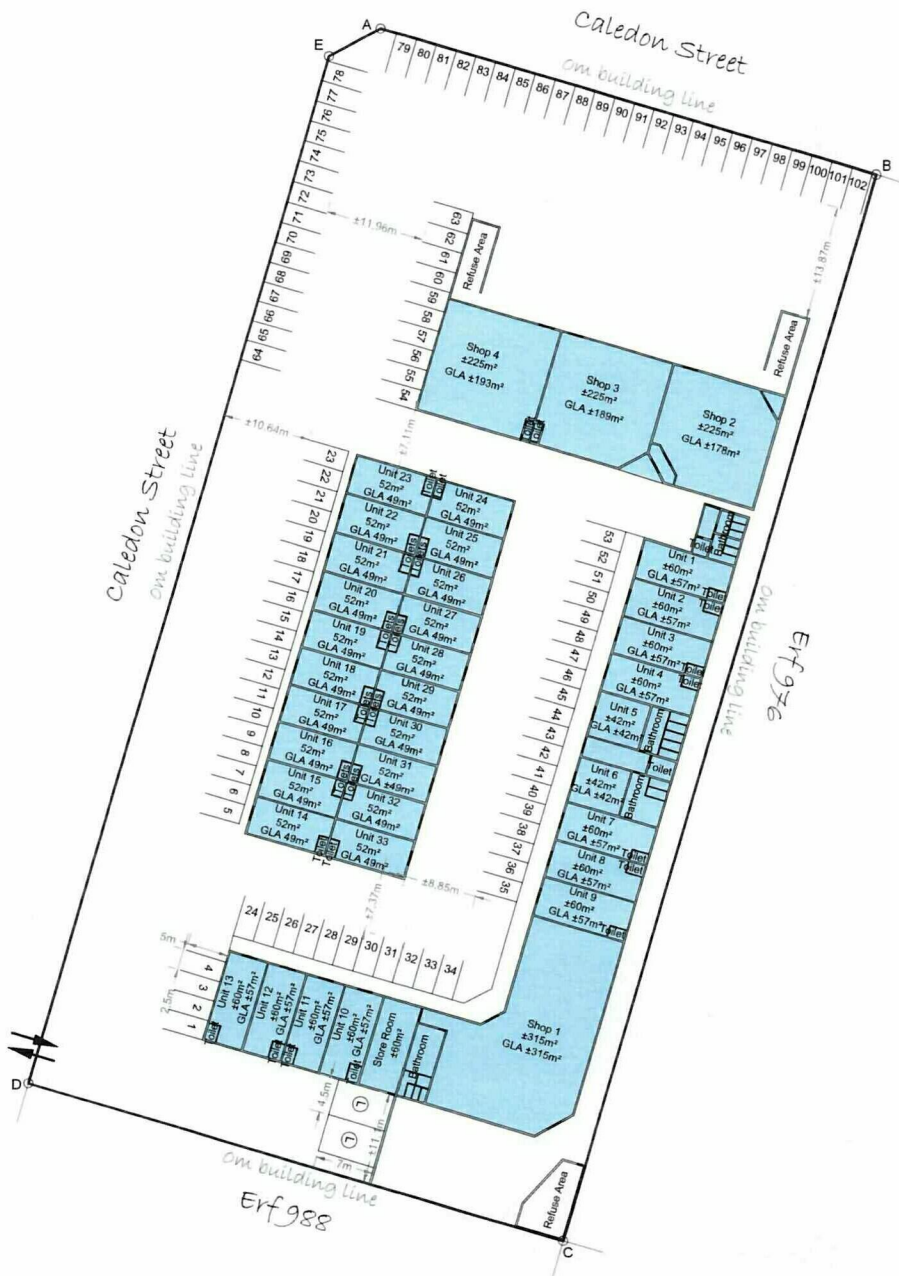
**Annexure C**

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Site Development Plan



# SITE DEVELOPMENT PLAN: ERF 975, DARLING



## KEY:

- Subject property
- Existing cadastral boundaries
- Building lines
- Proposed Access Point

## ZONING I.T.O. THE ZONING SCHEME:

- Current: Industrial Zone 2
- Proposed: Business Zone 2

## NOTES:

Figure ABCDE represents Erf 975, Darling, with an extent of 9134m<sup>2</sup>.

Business premises (Offices and shops) are proposed to be accommodated on Erf 975, Darling.

Drawing by:

Mandri Viljoen

ALL AREAS AND DISTANCES ARE SUBJECT TO SURVEYING



C. K. RUMBOLL & VENNOTE  
TOWN PLANNERS  
PROFESSIONAL SURVEYORS

Tel: 022 - 4821845  
Fax: 022 - 4871661  
Email: planning1@rumboll.co.za

DATE:  
SEPTEMBER 2022

AUTHORITY:  
SWARTLAND MUNICIPALITY

REF:  
DAR/12749/ZNMV

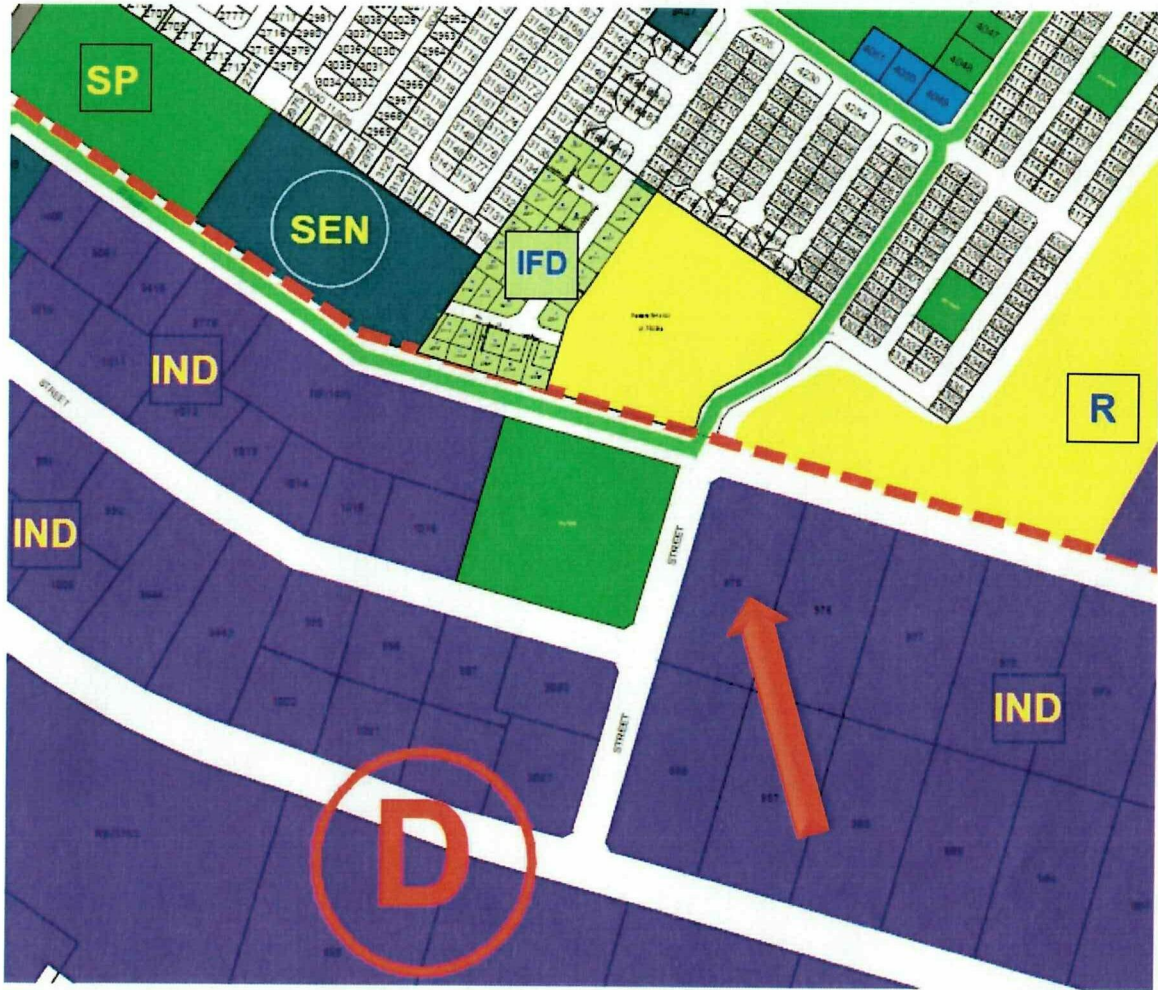


**Annexure D**

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Darling Land Use Proposals Map

## Darling Land Use Proposals



DARLING LAND USE ZONES		Low Density Residential Uses	Medium Density Residential	High Density Residential Uses	Secondary Educational Uses	Institutional Uses	Professional Services	Business Uses	Secondary Business Uses	Churches	Institution	Guest houses	Authority	Sport/Recreational Facilities	Industries & Service Trade
D	Zone D is the industrial area of Darling with supportive social infrastructure. Support development of a public recreational node north of the station.							X	X				X	X 4	X

# CK RUMBOLL & VENNOTE / PARTNERS



PROFESIONELE LANDMETERS ~ ENGINEERING AND MINE SURVEYORS ~ STADS- EN STREEKBEPLANNERS ~ SECTIONAL TITLE CONSULTANTS

**DATUM/DATE:** 14 MARCH 2023

**VERW/REF:** DAR/12749/ZN/MV

## **PER REGISTERED POST**

PAUL LOUBSER  
P.O. BOX 116  
DARLING  
7345

### **HERSONERING VAN ERF 975, DARLING**

#### **REZONING OF ERF 975, DARLING**

Kennis geskied hiermee dat hierdie kantoor ingevolge Artikel 89(2) van die Swartland Munisipaliteit Grondgebruikbeplanning Verordening (PK 8226 of 25 Maart 2020) appel aangeteken het teen die besluit geneem deur die Munisipale Beplanningstribunaal op 8 Februarie 2023. Die doel van hierdie skrywe is om u in kennis te stel dat u die geleentheid gegun word om kommentaar te lewer op die appel binne 21 dae van kennisgewing van hierdie appel.

Die datum van kennisgewing ten opsigte van hierdie kennisgewing beteken die datum van registrasie van hierdie kennisgewing. Enige kommentaar moet op skrif gerig word aan die Die Munisipale Bestuurder, Swartland Munisipaliteit, Privaatsak X52, MALMESBURY, 7299.

Ons vertrou u vind die bogenoemde in orde.

Vriendelike groete

Zanelle Nortje/Mandri Viljoen  
**VIR CK RUMBOLL EN VENNOTE**

Notice is hereby given that this office has lodged an appeal in terms of Section 89(2) of the Swartland Municipality Land Use Planning By-Law (PG 8226 of 25 March 2020) against the decision as determined by the Municipal Planning Tribunal on 8 February 2023. The purpose of this letter is to inform you that an opportunity is provided to comment on the appeal within 21 days of notice of this appeal.

The date of notification in respect of this notice served is the date of the registration of this notice. Any comments must be directed, in writing, to The Municipal Manager, Swartland Municipality, Private Bag X52, MALMESBURY, 7299.

We trust you find the above to be in order.

Kind regards

Zanelle Nortje/Mandri Viljoen  
**For CK RUMBOLL AND PARTNERS**

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**VENNOTE / PARTNERS:**

IHJ Rumboll PRL (SA), BSc (Sury), M.I.P.L.S., AP Steyl PrL (SA), BSc (Sury), M.I.P.L.S.

---

ADDRESS/ ADRES: [planning1@rumboll.co.za](mailto:planning1@rumboll.co.za) / PO Box 211 / Rainierstr 16, Malmesbury, 7299

**MALMESBURY** (T) 0224821845 (F) 0224871661

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DATUM VAN AFLEVERING

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*box 11b Paul Louwer*

Issuing Officer / Uitreikingsteampie

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14 MAR 2023

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