

17.

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF REMAINDER ERF 496 PRINGLE BAY, ADJACENT TO ERF 1762 PRINGLE BAY, TO MR COLQUHOUN**A Le Roux
December 2024****Divisional Manager: Property Management****(028) 316 5623****1. Executive Summary**

To obtain in principle approval for the direct alienation of a portion of Remainder Erf 496 Pringle Bay ($\pm 497\text{m}^2$ in extent) adjacent to Unregistered Erf 1762 Pringle Bay, situated in Buffels Road, Pringle Bay, to Mr. and Ms. A & JA Colquhoun. See the locality maps attached hereto marked **Annexures "A1" And "A2"**.

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

3. Compliance with Strategic Priorities

Provision of democratic, accountable, and ethical governance
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

None

5. Legal Requirements

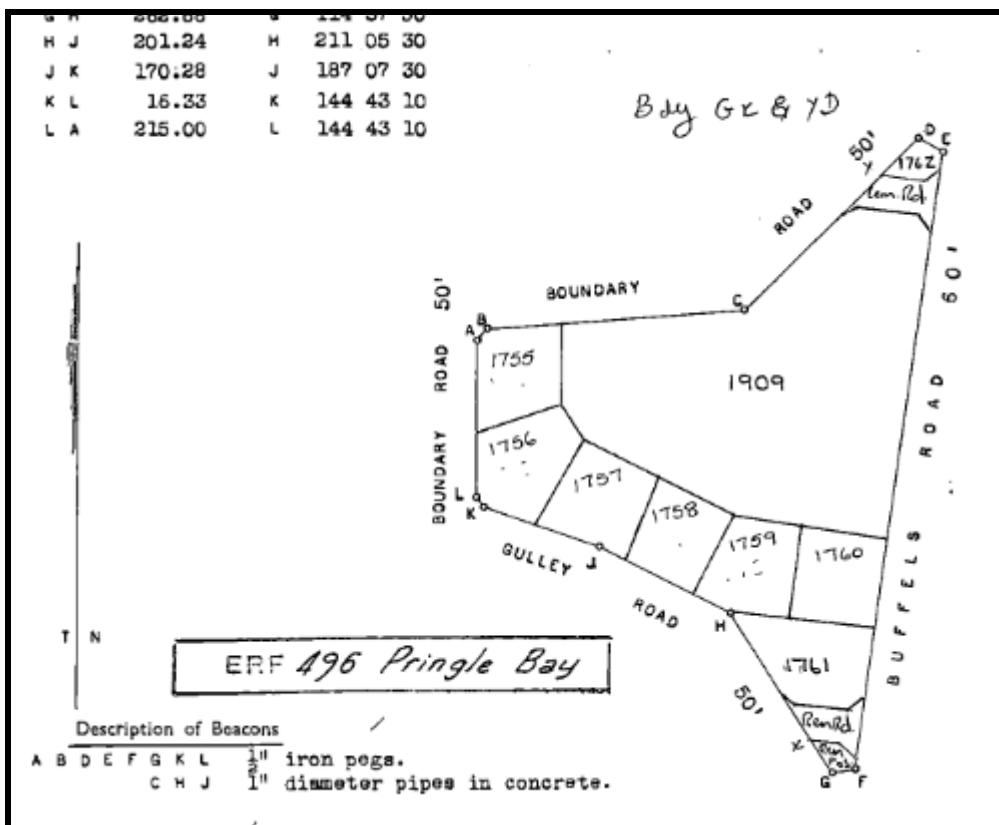
- Local Government: Municipal Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended.

6. Background/Discussion/Evaluation/Conclusion**Background/Discussion**

An application was received from Plan Active Town and Regional Planners on behalf of Mr. and Ms. A & JA Colquhoun, hereafter referred to as "the Applicants", to purchase a portion of Remainder Erf 496 Pringle Bay ($\pm 497\text{m}^2$ in extent), adjacent to Unregistered Erf 1762 Pringle Bay, situated in Buffels Road, Pringle Bay, hereafter referred to as "the Property".

Remainder Erf 496 Pringle Bay is situated at 302 Buffels Road, Pringle Bay. The subject property abuts Boundary Rod, Gulley Toad and Buffels Road. Unregistered Erf 1762 Pringle Bay is the most northern portion of Remainder Erf 496 Pringle Bay.

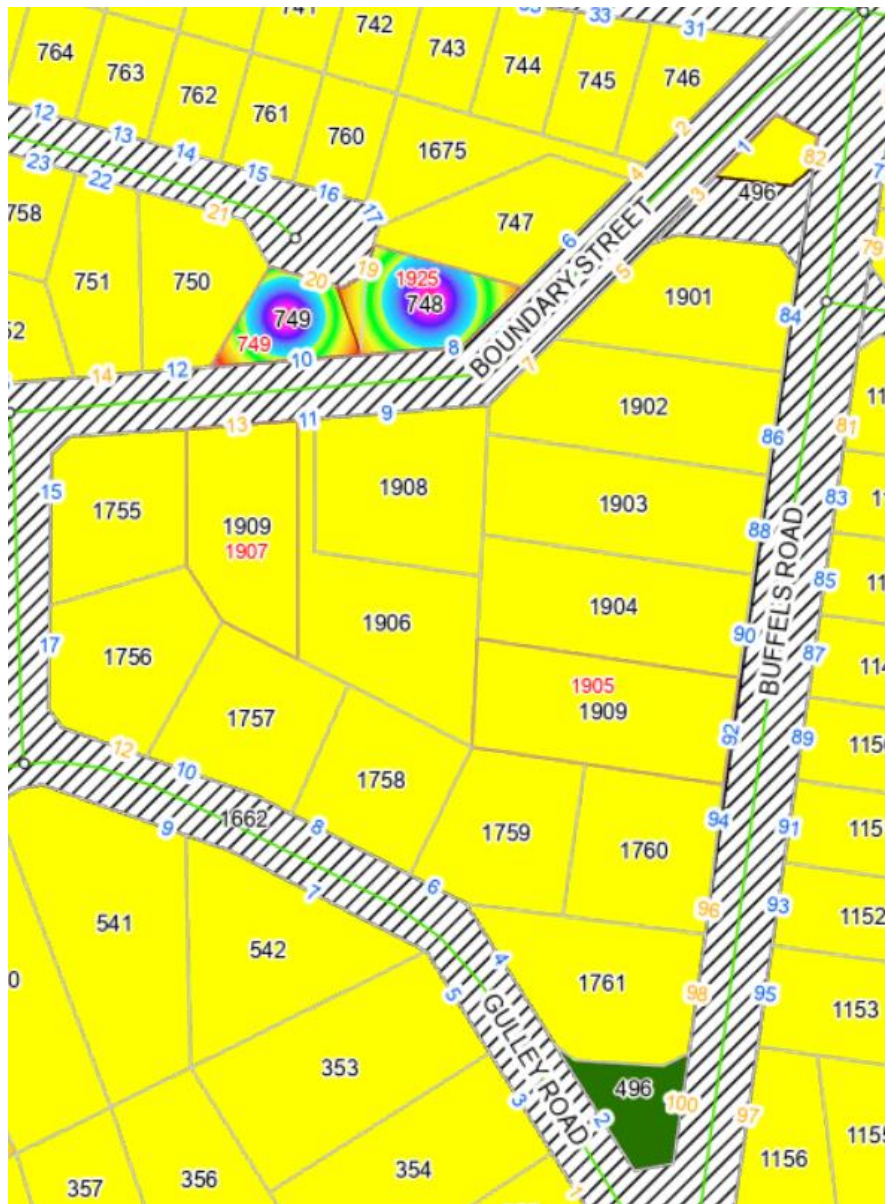
Erf 469 Pringle Bay was initially subdivided and rezoned in 1991 by the previous owner, Prinmill Properties CC (of whom JA Colquhoun was the sole director), to create residential erven 1755-1762, remainder roads and a remainder public open space. Erven 1755-1761 have since been registered and therefore the roads and public open space have also become vested ("vest"). The two portions of road depicted on the below extract from the SG Diagram and approved subdivision plan were not transferred to the municipality and currently remains part of Remainder erf 496 Pringle Bay. Erf 1762 is not registered in the Deeds Office yet.



The CC was disbanded, and the Applicants took transfer of the Remainder Erf 496 Pringle Bay on 6 September 2019.

The Applicants obtained approval in 2021 to subdivide the Remainder of Erf 462 Pringle Bay into ten residential erven and a further remainder. The latter consisted of public road, public place, unregistered Erf 1762 and Erf 1761 as indicated on the below locality map. Refer to the decision letter dated 9 November 2021 attached hereto as **"Annexure B"**. As mentioned, the public road and public place indicated below has already vested in the

Municipality and cannot merely be closed. Unfortunately, it must be transferred to the Municipality as part of the process.



With this subdivision, Unregistered Erf 1762 (portion of Erf 496), remained with a mere size of only 278m² in extent, it is not adequate to be developed for residential purposes in line with the other erven which are quite larger in size. It seems that with the subdivision of 1991, provision was made to close portion of Erf 1662 (Boundary Road) in order to alienate it to consolidate it with unregistered 1762. This however was never finalised and cannot be considered anymore.

The Applicants subsequently applied to purchase this portion of Remainder Erf 496, adjacent to unregistered Erf 1762, in order to consolidate it to form a larger more viable property. The road portion applied for was surveyed by Van Dyk Land Surveyors and is 497m² in extent. To acquire this portion of

unregistered (unbuilt) road, will allow the Applicant to consolidate the road portion with unregistered Erf 1762 Pringle Bay to create a residential zoned property of 775m² in extent.

Should the sale be considered, the Municipality will however register a restriction against the Property that no structures may be erected as the Property will be sold as a non-viable property. The Property will only be used for parking and gardening purposes. The Applicants have accepted this condition and will ensure that any building erected will only be on the portion representing unregistered erf 1762.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation cost, closure of public place (road), rezoning, subdivision and consolidation of the Property, transfer costs as well as the required advertisement in terms of the MFMA and Administration of Immovable Property Policy.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

The Applicant already paid the application fee.

Paragraph 7: “The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.”

Non-viable immovable property is defined in the relevant Policy as “a property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property.”

The Property is a portion of unbuild road not needed for road purposes and due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and thus it can be classified as a non-viable property. Non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to an adjoining property owner, subject to certain conditions.

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

- (a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;**
- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and**
- (c) has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in-principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.”**

- (a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.
- (b) HCB Property Valuations determined the market related value on 1 September 2024 at an amount of R250.00/m² (TWO HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property.
- (c) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

Paragraph 28: “All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation, or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”

The Applicant will be liable for the costs of the transaction which will include, but not be limited to, the application fee, valuation costs, removal of restrictive conditions (if any), land use planning approvals, public participation costs and transfer costs.

Paragraph 29: “Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.”

The Applicant will be liable for all cost in this regard should it be necessary. From the comments received, no services will be affected.

Paragraph 30: “Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 32: “Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold, and purposes permitted by town planning scheme regulations pertaining to such purposes.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 33: “The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 34: “A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 35: “Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.”

A condition to this effect will be included in the Deed of Sale.

B: Advertisement/Notification

The necessary advertisement in terms of the MFMA will be published after obtaining this in principle decision. The Applicants will be liable for this cost.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the Deeds Office. Subsequently the costs will entail, amongst others, the application costs, valuation costs, land use planning approvals, public participation costs, and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R250.00/m² (TWO HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Assistant Chief: Fire, Health & Safety: Mr E Solomons

"No objection"

Senior Town Planner: Ms. H van der Stoep

"No objection."

Senior Superintendent: Traffic Operations: Mr. P de Gruchy

"Traffic Department has no objection towards the application if the unbuild road will not be finished or needed, to service the remainder plots."

Principal Technologist Civil (Kleinmond): Mr. D van Rhodie

"Operational Services Kleinmond have no objection to the application."

Divisional Manager: Building Control: Mr. L Coetzee

"No objection. The building plan application (when submitted) must comply

with all applicable law.”

Environmental Officer (Kleinmond): Ms. T Zweig

“The EMS has no objection to this application, however the following should be noted and conveyed to the current owner and future buyers should the owner choose to sell the property. Due to the declared wetland on the property, a Water Use License Application via the Breede-Olifants Catchment Management Agency (BOCMA) must be applied in for in order to develop the property as per the National Water Act Regulations (2023).

The consolidation of the properties to one Single Residential zoned property may require that the owner submit the National Environmental Management Act Applicability List to DEA DP to determine if Environmental Authorization is required. This is dependent on whether any NEMA Environmental Impact Assessment (EIA) Regulation Listed Activities are triggered by the proposed residential development. For example, Listing Notice 3, Activity 19 refers to the clearance of >300 m² of Endangered vegetation. The applicant is welcome to contact the EMS directly if they have any queries.

The WULA and NEMA Applicability Checklist processes will be required for the approval of building plans.”

10. Annexures

Annexures A1 & A2:	Locality Maps
Annexure B (Pages 1 & 2):	Decision letter from Overstrand Municipality dated 9 November 2021

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 496 Pringle Bay (adjacent to Unregistered Erf 1762 Pringle Bay) situated in Buffels Road, Pringle Bay (±497m² in extent), to the owners of the adjoining property, Unregistered Erf 1762 Pringle Bay, at an amount of R250.00/m² (TWO HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded), to consolidate it with Unregistered Erf 1762 Pringle Bay, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 496 Pringle Bay can be classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed at the cost of the Applicants due to the non-viability of the Property;
4. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 496 Pringle Bay must be consolidated with the adjoining property, being Unregistered Erf 1762 Pringle Bay;

5. that no structures of any kind may be erected on the said portion of Remainder Erf 496 Pringle Bay, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Remainder Erf 496 Pringle Bay be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision, consolidation, as well as any environmental and related approvals;
7. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by the Applicant/purchaser, and
8. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:

M BEKKER

TARGET DATE FOR IMPLEMENTATION:

16 APRIL 2025

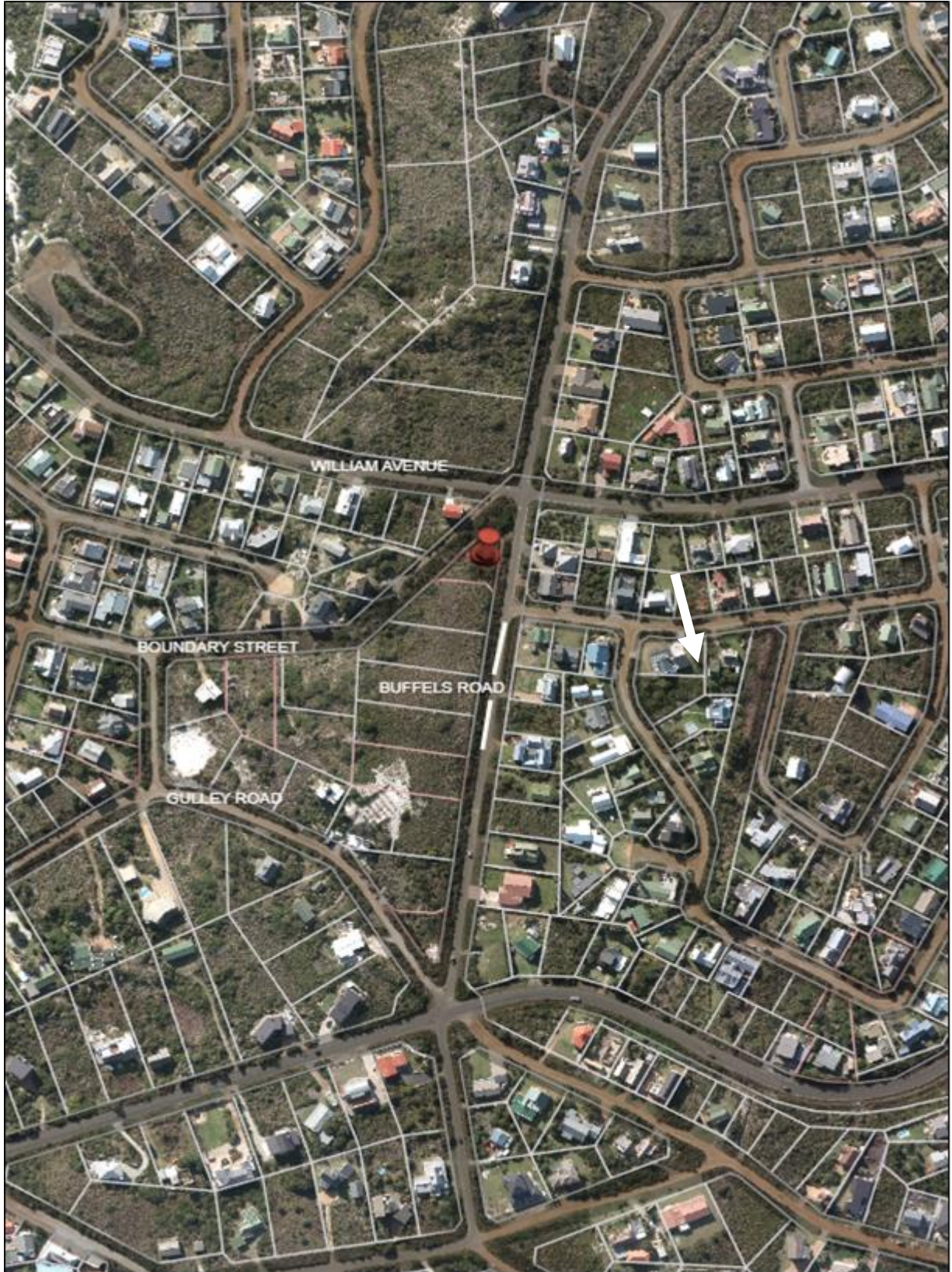
TARGET DATE TO INFORM APPLICANT:

16 APRIL 2025

TARGET DATE TO INFORM OBJECTOR:

N/A





OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

ENQUIRIES | NAVRAE: Ms. H van der Stoep (Senior Town Planner)
FILE REF | LEËRVERW: 496 KPRB
APP ID AANSOEK ID: 3486/2019
DATE | DATUM: 9 November 2021



Plan Active
M Lerm
PO Box 296
HERMANUS
7200

REGISTERED MAIL

merike.planactive@gmail.com

Dear Madam

DECISION LETTER TO APPLICANT

REMAINDER ERF 496, 2 GULLEY ROAD, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, REZONING AND SUBDIVISION: MESSRS PLAN ACTIVE ON BEHALF OF A AND JA COLQUHOUN

1. The application received on 1 November 2019 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Authorised Official on 3 November 2021.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

RESOLVED

1. *that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Land Use Planning, 2015 (By-Law) for the removal of restrictive title deed Conditions 2.(d) and 5.(b) as contained in Title Deed T37359/2019 applicable to Erf 496, Pringle Bay to permit the proposed application, **be approved** in terms of the provisions of Section 61 of the By-Law;*
2. *that the application in terms of Section 16(2)(a) of the By-Law to rezone Erf 496, Pringle Bay from Undetermined Zone to Subdivisional Area Zone (SA), **be approved** in terms of the provisions of Section 61 of the By-Law;*
3. *that the application in terms of Section 16(2)(d) of the By-Law to subdivide Remainder Erf 496, Pringle Bay into eight (8) Residential Zone 1 : Single Residential (SR1) portions and a Remainder. The Remainder portion to consist of existing two (2) Residential Zone 1: Single Residential (SR1) portions, a road portion (Transport Zone 2 : Road and Parking) and a public open space portion (Open Space Zone 2 : Public Open Space), **be approved** in terms of the provisions of Section 61 of the By-Law;*
4. *that the application in terms of Section 22.(2) of the By-Law for the rezoning to a Subdivisional Area Zone (SA), **be approved** in terms of the provisions of Section 61 of the By-Law,*

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: locetta@overstrand.gov.za
PO Box 20 | **HERMANUS** 7200
www.overstrand.gov.za

5. that the approvals in Points 1., 2., 3. and 4. be subject to the following conditions:
- (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan *pringle496re-s2.drw*, dated July 2019 as submitted with the application;
 - (b) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (d) that the conditions in the Services Report (attached as Annexure F), be complied with;
6. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 regarding the above conditions of approval.

4. Reasons for the above decision are as follows:

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ The proposed application fits in with the character of the surrounding area and is desirable.
- ❖ The development will also be sustainable as it will be integrated and make use of the space.
- ❖ The proposed development will not impact the natural environment.
- ❖ The proposed development will not negatively impact the surrounding property owners.

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3351-00).

5.2 The appeal form is available at request or alternatively on the Municipal website (www.overstrand.gov.za).

5.3 Contact details are as follows:

Physical address : 16 Paterson Street, Hermanus, 7200
 Postal address : PO Box 20, Hermanus, 7200
 E-mail address : loretta@overstrand.gov.za

6. Kindly note that the rights are still not in place until the prescribed 21 days of registration of this letter have passed and it is confirmed by our offices that there has been no appeal received against the proposal.

Yours faithfully



S MÜLLER
 DIRECTOR : INFRASTRUCTURE AND PLANNING