

Overstrand Municipality

LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)

ERF 1548, 150 PIET RETIEF CRESCENT, SANDBAAI, OVERSTRAND MUNICIPALITY : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE : WRAP (obo CS BEZUIDENHOUT)

Reference number	1548 HSB (3466)	Application submission date	7 October 2016	Date report finalised	6 March 2017
PART A: AUTHOR DETAILS					
First name(s)	Helena Johanna				
Surname	Van der Stoep				
Job title	Senior Town and Regional Planner				
SACPLAN registration number	A/1708/2013				
Directorate/ Department	Infrastructure and Planning				
Contact details	028-3138900 hvdstoep@overstrand.gov.za				
PART B: APPLICANT DETAILS					
First name(s)	Cornelius Ferdinand				
Surname	Pienaar				
Company name	WRAP				
SACPLAN registration number	Tr.PlIn A/409/1985	Is the applicant authorised to submit this application	Yes		
Registered owner(s)	CS Bezuidenhout				
PART C: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erf 1548, Sandbaai				
Physical address	150 Piet Retief Crescent	Town/City	Sandbaai		
Current zoning	Residential Zone I : Single Residential	Extent (m ² /ha)	1655m ²	Are there existing buildings on the property?	Yes
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Residential	Title Deed number & date	T66404/1995		
Any restrictive title conditions applicable	Yes	If Yes, list condition number(s)	B.2. (a); (b); (c); and (d)		
Any third party conditions applicable?	No	If Yes, specify			
Any unauthorised land use/building work	No	If Yes, explain			

PART D: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)

Has pre-application consultation been undertaken?

No

If yes, provide a brief summary of the outcomes below.

PART E: LIST OF APPLICATIONS (TICK APPLICABLE)

Permanent departure

√

Removal, suspension or amendment of restrictive conditions

√

PART F: EXECUTIVE SUMMARY

An application has been received on 7 October 2016 from WRAP on behalf of CS Bezuidenhout for the removal of restrictive title deed conditions contained in Title Deed T66404/1995, and a subsequent departure to encroach the 4m eastern street building line partially with approximately 0,24m in order to accommodate the existing sunroom extension, as well as to enable the landowner to acquire the primary rights applicable to Residential Zone 1 erven as set out in the zoning scheme regulations.

PART G: BACKGROUND

Same as Part F above.

PART H: SUMMARY OF APPLICANTS MOTIVATION

Due to the comprehensiveness of the motivation report, only the main points of motivation are hereby conveyed. The detailed report is attached as Annexure C.

- The removal of the restrictive conditions will provide the property owner with future development scope that is in line with the parameters of the zoning in terms of the Overstrand Municipality Zoning Scheme.
- In addition to the removal of the restrictive condition, it is proposed that the 4m street building line in terms of the zoning scheme be departed from to accommodate the sunroom extension.
- The removal of the restrictive title deed condition will ensure that the property remains in harmony with the existing residential character of the town.
- The proposed removal of restrictions and departure is not in contradiction with the credible Spatial Development Framework agreed to by the relevant authorities.
- There are adequate services available on the property and there is no need for additional capacity.
- The proposal does not trigger any of the activities listed in the National Environmental Management Act and is therefore the best environmental option for the site.
- The proposal is not in contradiction with the credible municipal Integrated Development Plan and Spatial Development Framework agreed to by the relevant authorities.
- The subject property is ideally located in a residential area with Residential Zone 1 zoning and will not depart from the residential character prescribed in the subject zoning.
- The proposal will in no way impact on sensitive natural and cultural areas.
- The proposal will in no way result in unacceptable opportunity cost.
- The proposed removal of restrictions and departure will not result in any unacceptable cumulative impact.
- The proposal will result in minimal additional traffic impact to the subject property and on the street.
- Condition 2.(a) restricts the property to dwelling house purposes only. The removal of this condition will not exempt the erf from being subject to the zoning scheme conditions for Residential Zone 1 properties. The Overstrand Zoning Scheme is also a more recent tool used by the Municipality to regulate land use in comparison with this condition this justifies the removal.
- Although the application does not involve the subdivision of the property, it is proposed to remove Condition 2.(b) to provide the property owner with future development scope. The removal of this condition will not exempt the erf from the parameters of the zoning scheme which are more recent development guidelines and regulatory tools in comparison with this restrictive condition that reflects development imperatives that differ from the more modern

- ones which respond to the current challenges and opportunities in the urban landscape.
- Although the proposal does not include an additional dwelling unit or a departure the maximum coverage it is proposed that Condition 2.(c) be removed and the primary uses, consent uses in Residential Zone 1 of the zoning scheme be applicable on the subject property.
 - The removal of Condition 2.(d) will accommodate the sunroom extension that is 3,7661m from the street boundary.
 - The restrictive conditions do not have a beneficial financial or other value for the owner.
 - There are no personal benefits that will accrue in respect of the restrictive conditions.
 - The property owner will be able to regularize the existing sunroom extension and will also have more future development scope within the parameters of the zoning scheme.
 - The restrictive conditions remaining in place do not have any social benefit.
 - The removal of the restrictive conditions will result in the subject property enjoying the same development rights as other properties in the greater Hermanus that is Residential Zone 1 which reflect the modern zoning scheme with modern development imperatives.
 - The proposed removal of the restrictive conditions also promotes good planning as the property owner would not have to apply for the removal of the conditions if a need would arise in future and would reduce the regulatory burden of all parties involved in the value chain of the process.
 - The proposal is not in contradiction with any spatial initiatives and will not adversely depart from the spatial structure form envisaged by the competent authorities.
 - The proposal is well aligned with the 5 Planning Principles.
 - The proposed development is deemed to be viable and practical and will not adversely impact on the rights of other property owners.

PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising		Date published	Closing date for comments
Press	Yes	10 November 2016	20 January 2017
Gazette	Yes	10 November 2016	20 January 2017
Notices	Yes	10 November 2016	20 January 2017
Ward councillor	Yes	10 November 2016	20 January 2017
Site notice	Yes	10 November 2016	20 January 2017
Total valid comments	ONE (1)		
Was public participation undertaken in accordance with section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning			Yes

PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection has been received from the adjacent landowner Mr CJ Bresler of Erf 204. The points of objection are as follows:

1. The objector opposes the application and cannot approve it at Erf 1548 as the application is to make Erf 1548 a business property and he is staying in a residential area and will not allow his privacy to be disturbed.
2. Permission was never asked from the owner of Erf 204, to consolidate Erf 202 and 203. The owner built his house over Erven 202 and 203 and then applied to form a new consolidated Erf 1548. Condition 2.(a) cannot be removed as it will then not be used dwelling house purposes and will disturb the privacy of his property as a residential area.
3. Condition 2.(b) must stay as the subdivision of Erf 1548 will disturb his privacy. The owner of Erf 1548 did apply to consolidate Erven 202 and 203 and deliberately build his house in 1995 over these erven.

4. Condition 2.(c) must stay as it will disturb his privacy. The owner of Erf 1548 did know the title deeds when he bought Erven 202 and 203 but still continue to apply for the subdivision Erf 1548 without his permission – he did it to get a good sea view.
5. Condition 2.(d) cannot be approved as the title deed says it must be 4,72m from the street boundary and he as owner of Erf 204 did comply with the regulations. The owner of Erf 1548 did know these restrictions and could make provisions when he applied to consolidate Erf 1548 in 1995. This sudden changes and applications is to make the property suitable for business rights and to disturb the privacy of the residential area. He knows the owner wants to sell the property and the sunroom is just to make the property bigger for business rights.
6. The objector will not recommend or approve these changes and will go to the highest court if needed.

PART K: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments	Recommendation
Fire Department	24/01/2017	No objection.	Positive
Senior Manager : Hermanus Administration	15/11/2016	No objection.	Positive
Local Heritage	15/11/2016	Supported.	Positive
Building Control	13/11/2016	No objection – subject to SANS 10400.	Positive
Ward Councillor	14/11/2016	No comment.	-

PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Refer to Annexure F as well as Part M of this submission.

PART M: MUNICIPAL ASSESSMENT OF COMMENTS

It is the opinion that the applicant's comments on the points of objection accurately addressed the points of objection and can therefore also be read as the Departmental comment on the points of objection. In short it is evident that the objector misinterprets the motive for the application. It is clear from the objector's points of objection that he is under the impression that application is made to obtain business rights on the subject property and to have it subdivided. Application is only made to have all the relevant restrictive title conditions removed from the Title Deed in order to be in line with the primary land uses and development parameters as set out in the Overstrand Municipality Zoning Scheme, as well as to condone the existing street building line encroachment. The points of objection have limited, if any, relevance to the application and should be dismissed.

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

Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

(In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application. The objective relating to:

Spatial Justice: Not Applicable

Spatial sustainability:

The application is utilizing less resource consuming technology.

Efficiency:

The proposed application falls well within the guiding principles of spatial resilience since it is making use of mechanisms to ensure optimal development.

Good administration:

The application was circulated to the surrounding landowners to ensure that affected parties are involved and indicate whether their rights will be compromised.

Spatial Resilience:

Not applicable

(In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as SPLUMA.

(In)consistency with the IDP/Various levels of SDF's/Applicable policies

Consistent with the Zoning Scheme.

(In)consistency with guidelines prepared by the Provincial Minister

Not applicable

Impact on Municipal engineering services

There is no impact on municipal services.

Outcomes of investigations/applications i.t.o other legislation

Not applicable

Existing and proposed zoning comparisons and considerations

Not applicable.

The desirability of the proposal

The encroachment of the 4m street building line with approximately 0,24m to accommodate a section of the existing sunroom of the dwelling unit on the subject property is regarded too insignificant in nature to refuse the application.

The property has a splay corner where the encroachment occurs, but due to the fact that only a small section of the sunroom encroach the 4m street building line, and due to the insignificance thereof, it is the opinion that a minimal impact, if any at all, of the views of vehicle drivers will be obstructed (see aerial photo attached as Annexure C). As mentioned in Part M of this submission the objector's points of objection has basically no relevance to the application. However, in this regard it is felt important to mention that the encroachment is not even visible from the objector's dwelling should he have objected to the encroachment (refer to aerial photo again). It is thus the opinion that due to the insignificant nature of the encroachment, that no rights of surrounding property owners will be affected nor will it be to the detriment of the surrounding built environment.

The application for the removal of the restrictive title deed conditions will not be to the detriment of the area in question, since numerous similar applications have been approved in the past already, and it will further ensure that the land use rights as set out in the Zoning Scheme will be aligned.

In view of the above the application is regarded as being desirable from a planning perspective.

PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS (REFER TO ROR GUIDELINE)**The financial or other value of the rights**

The removal of the relevant conditions will indirectly have a beneficial financial impact for the landowner, since the removal of the restrictive clauses will ensure that the rights on the property will be in line with the applicable zoning scheme land uses that are more favourable than the existing restrictions in the title deed.

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

The applicant will be the sole beneficiary of the removal of the restrictive condition.

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

Whether the restrictive condition remains intact or being removed from the Title Deed, it will have no social benefit.

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

No.

PART P: SUMMARY OF EVALUATION

The application for the removal of the restrictive conditions and building line encroachment is regarded as being desirable from a planning perspective and is recommended for approval as set out in the recommendation of this submission.

PART Q: RECOMMENDATION

1. that in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016, the application for the removal of title deed conditions B.2. (a); (b); (c); and (d) as contained Title Deed T66404/1995, **be approved**;
2. that subsequently, in terms of Section 16(2)(b) of the above By-Law, the application for departure to partially encroach the 4m eastern street building line with approximately 0,24m in order to accommodate the existing sunroom, **be approved**, subject to the following conditions:
 - (a) that the approval be strictly in accordance with the layout plans PLAN1548SB/MARCH2017/1 and 2 (attached as Annexure B) which was submitted with the application;
 - (b) that all other applicable development parameters of the Zoning Scheme be complied with, and
 - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation.
3. that the applicant and objector be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditional approvals.

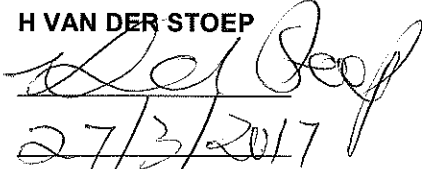
PART R: REASONS FOR RECOMMENDATION

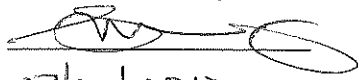
- the application has followed due procedure;
- the objection bears no relevance to the application;
- none of the municipal services will be needed;
- the proposed development is in line with the approval parameters in terms of the Overstrand Zoning Scheme; and
- the application will not be to the detriment to the development and the adjacent erven.

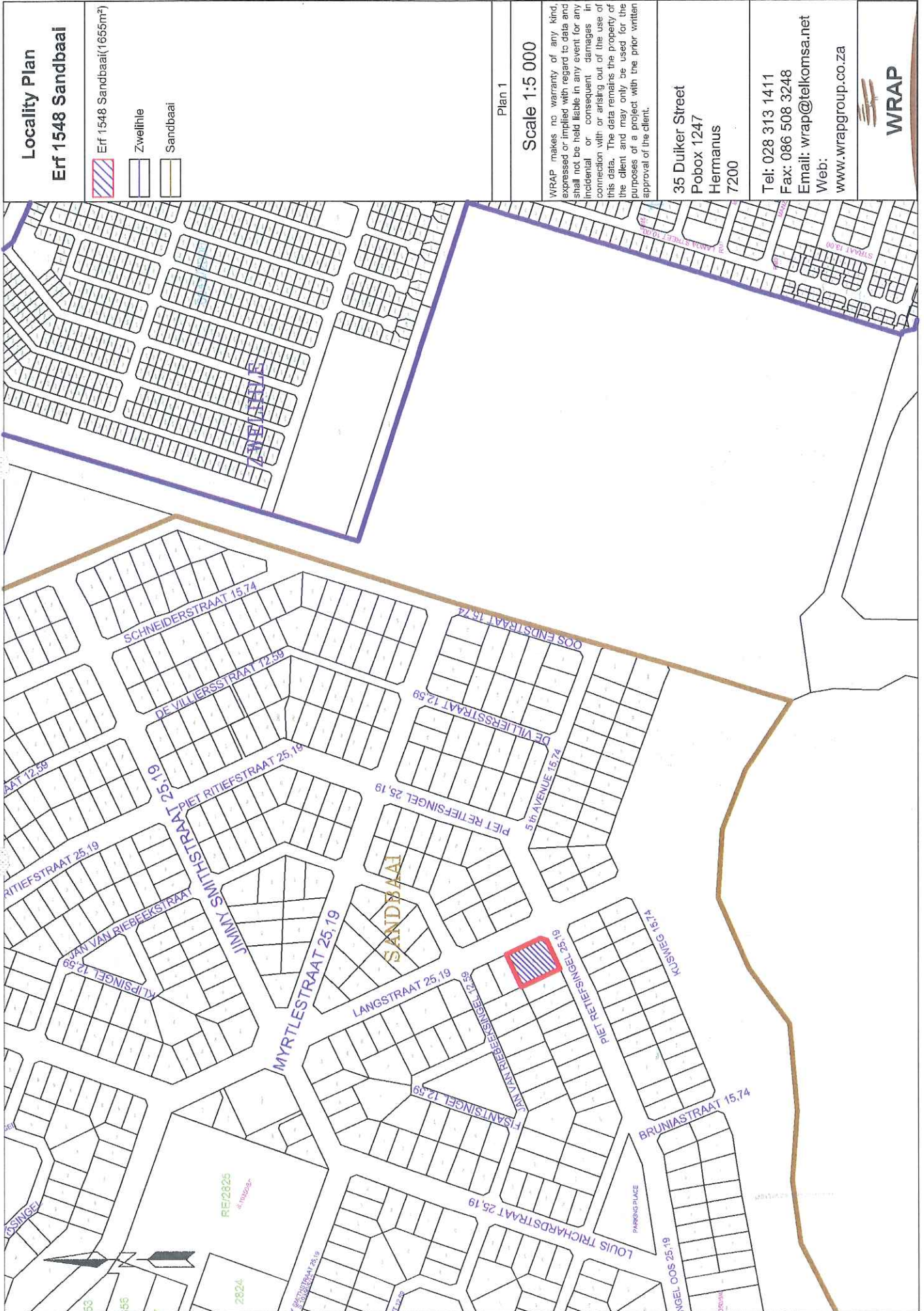
PART S: ANNEXURES

Annexure A: Locality plan
 Annexure B: Layout Plan
 Annexure C: Aerial Photo
 Annexure D: Motivation
 Annexure E: Objection
 Annexure F: Applicant's comment on objection

PART T: SIGNATURES

Author name: **H VAN DER STOEP**
 Author signature: 
 Date: 27/3/2017

Registered planner name : sw vd Merve
 SACPLAN registration number: A/1850/2014
 Registered planner signature : 
 Date: 27/3/2017

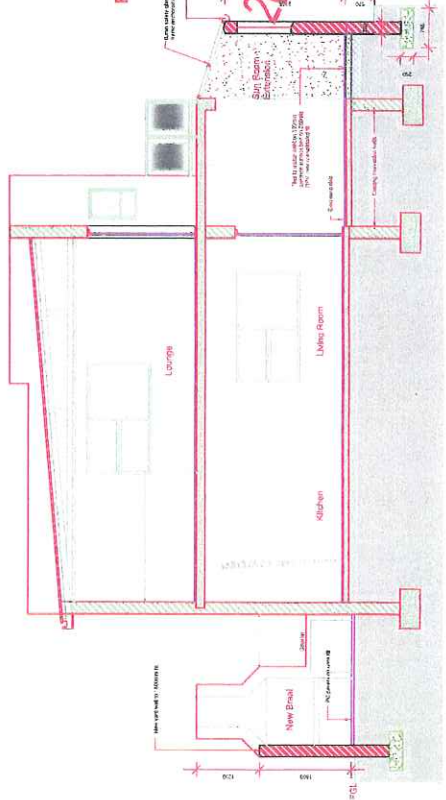
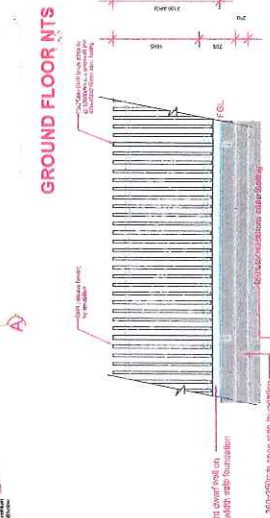
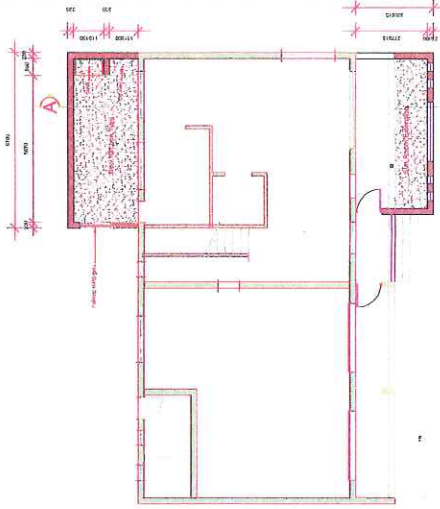
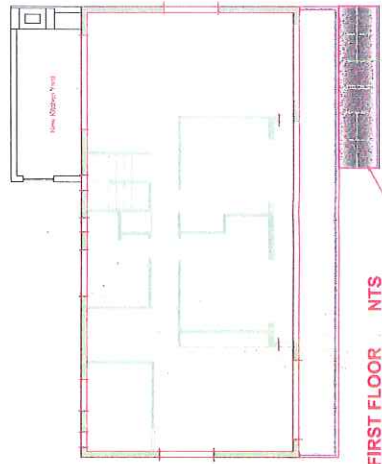
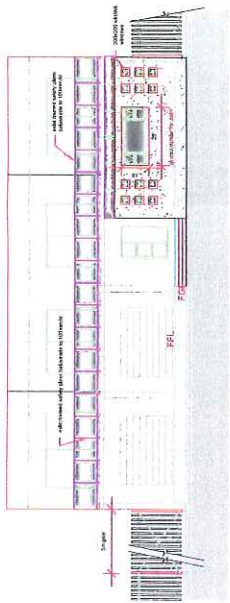
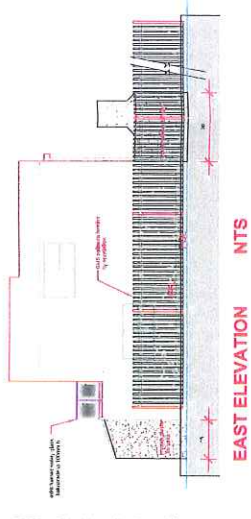
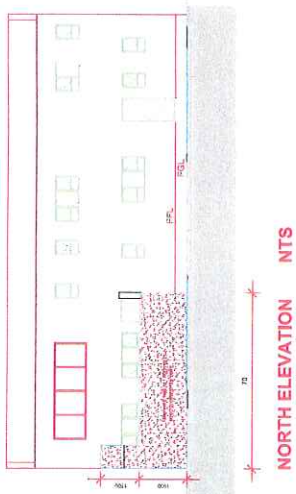


AREA CALCCS




Existing Building	1665.00m ²
Ground Floor	82.00m ²
First Floor	139.30m ²
New Sun Room Extension	18.77m ²
Total	2105.07m²

Coverage = 148.07% = 14657%

Block = 252.37% = 16657%



Site Development Plan
Erf 1548 Sandbaai

-  Erf 1548 Sandbaai(1655m²)
-  Zoning Scheme building line
-  4.72m Title Deed Building line

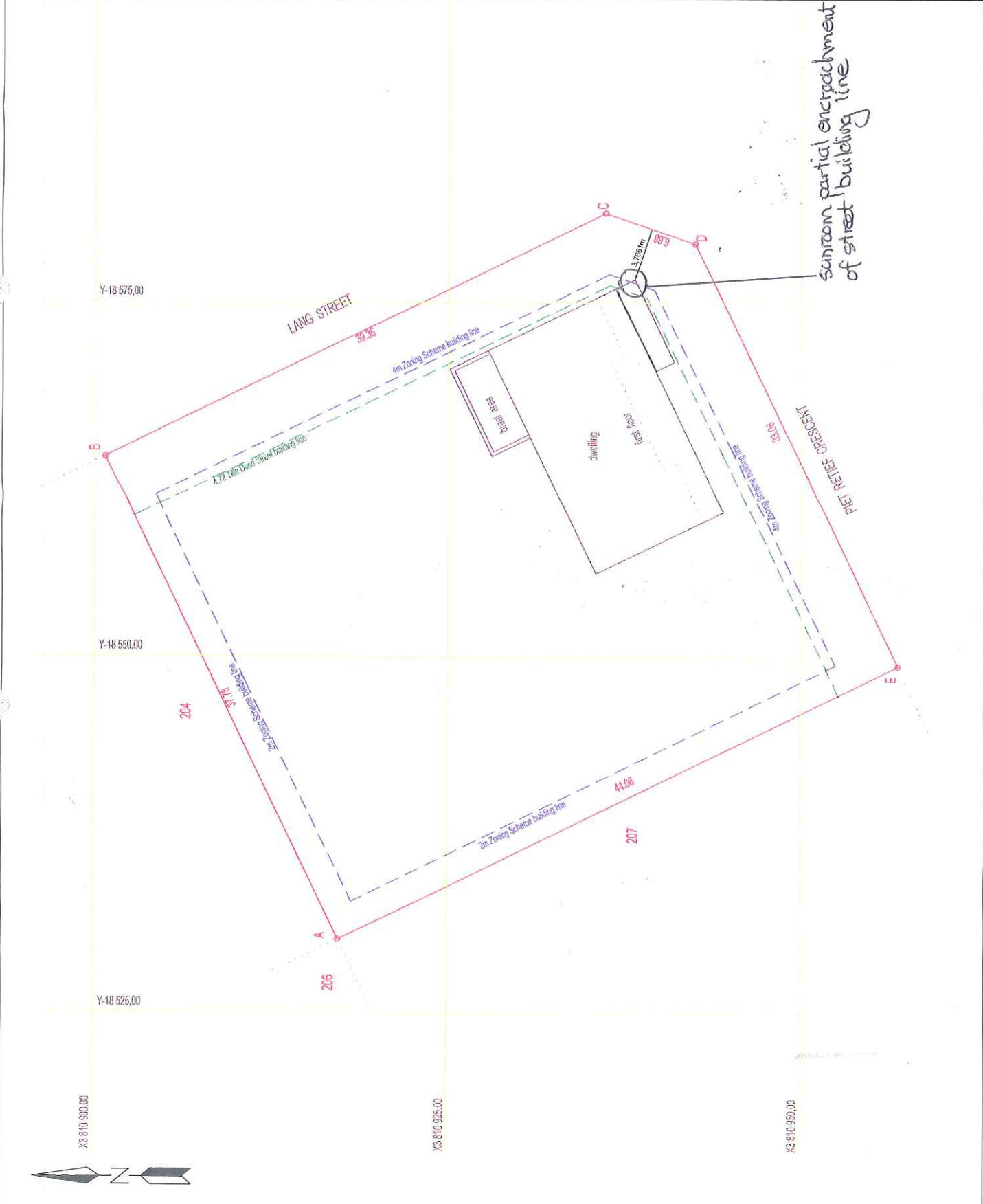
Plan 4

Scale 1: 250

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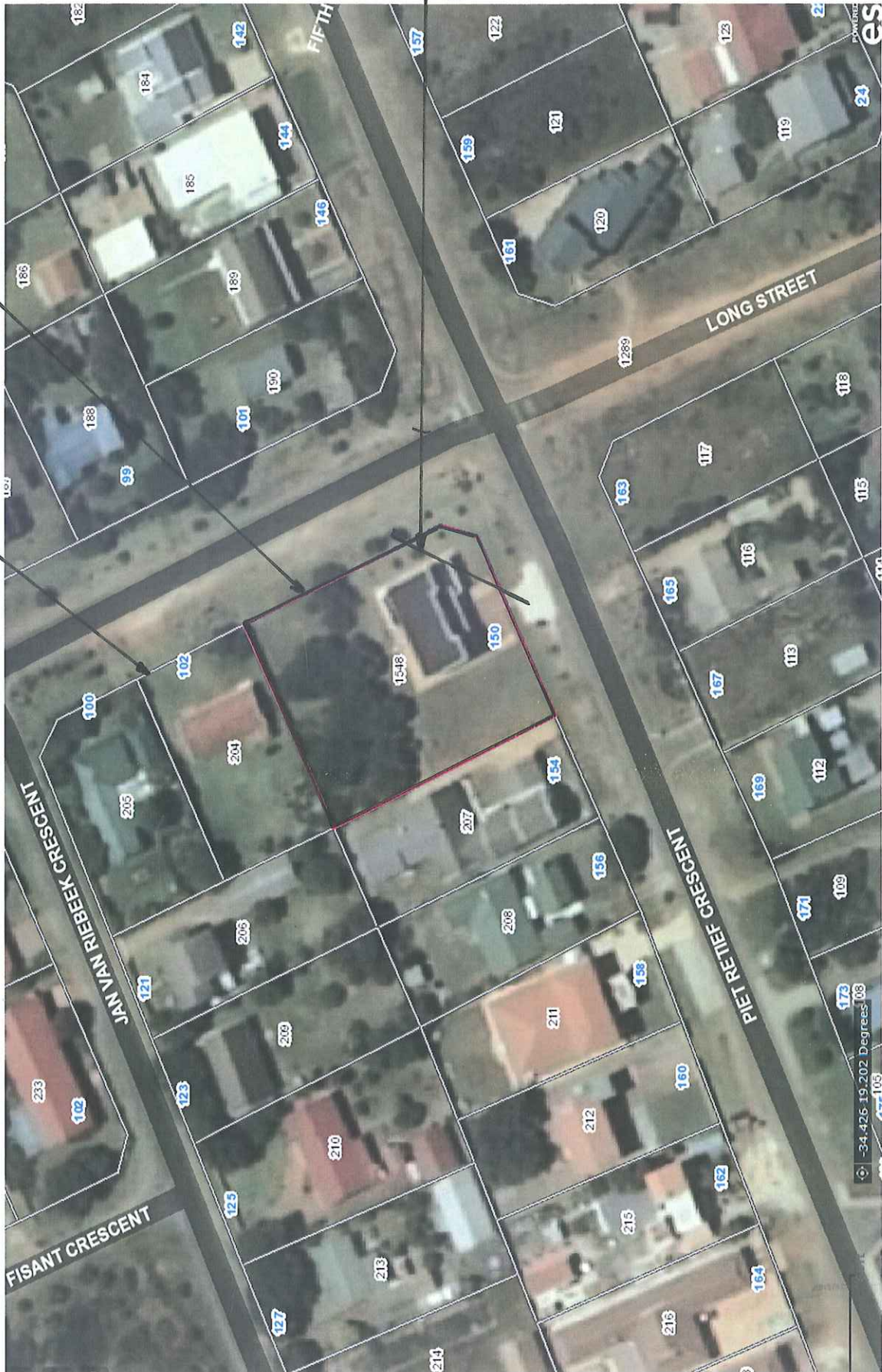
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APPROXIMATE
LINE OF
ENCROACHMENT.

OBJECTOR'S PROPERTY
APPLICATION PROPERTY



1. PRE-APPLICATION CONSULTATION

A pre-consultation meeting was not held as it was not deemed necessary as the proposed development is not contradicting any of the development frameworks.

2. PROPOSED DEVELOPMENT

Erf 1548 Sandbaai is zoned Residential Zone 1: Single Residential and is situated on the corner of Piet Retief Crescent and Long Street. The erf is 1655m² in extent and has a dwelling unit on it. The dwelling on the subject property is a double storey with a braai area.

The sunroom extension on the erf has been constructed 3.7661m from the street boundary line and contravenes a title deed restriction that stipulates that no building may be built closer to 4.72m of the street, without approval from the Administrator and also contravenes the street building line of 4.0m in terms of the Overstrand Municipality Zoning Scheme; 2013.

To rectify the aforementioned, the following is proposed:

To apply for the removal of the following restrictive title deed condition in order to accommodate the sunroom extension:

- 2(d) *"Dat geen gebou op enigeen van die bogenoemde erwe binne 4.72 meter van enige grenslyn tussen gemelde erf en enige straat buite die land waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie."*

In addition, it is also proposed that the following restrictive title deed conditions be removed:

- 2 (a) *"Dat die hierbo beskrywe grond gebruik sal word slegs vir woningsdoeleindes;"*
- 2 (b) *"Dat die bogemelde erf of erwe nie onderverdeel sal word nie."*
- 2 (c) *"Dat nie meer dan een woonhuis met die nodige buitegebou en benodighede opgerig mag word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf bebou sal word nie;"*

The removal of the abovementioned restrictions will provide the property owner with future development scope that is in line with the parameters of the zoning in terms of the Overstrand Municipality Zoning Scheme.

In addition to the proposed removal of the abovementioned title deed restrictions, it is proposed that the street building line of 4 meters in terms of the Overstrand Municipality Zoning Scheme; 2013 be departed from to accommodate the sunroom extension.

In light of the above, Wright Approach Consultancy (WRAP) was appointed to prepare and submit application documentation to the relevant authority (Refer **Annexure A**).

Application is hereby made for the following:

- **Removal of title deed restrictions** 2(a), 2(b), 2(c) and 2(d) in title deed T66404/1995 of Erf 1548 Sandbaai in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Planning, 2015; and
- **Departure** of 3.7661m in lieu of the 4 meter street building line on Erf 1548 Sandbaai, to accommodate the sunroom extension in terms of Section 16(2)(b) of the Overstrand By-Law on Municipal Land Use Planning 2015.

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4. CHARACTER OF ENVIRONMENT

Erf 1548, Sandbaai is situated approximately 215 meters from the ocean and approximately 4.8km from the Hermanus Central Business District (CBD). The majority of the properties to the south in Sandbaai are zoned Residential Zone 1: Single Residential with some pockets of open space in between. The busiest road in Sandbaai is the Main Road which has local economic potential. The proposed removal of restrictive title deed condition and departure will therefore ensure that the property remains in harmony with this existing residential character of the town.

5. DESIRABILITY

In terms of Section 55 (b) and (c) Land Use Planning Act; 2014 an application can be refused based on it being undesirable. The measure to assess the desirability of the application is the consistency of the application with spatial development frameworks (SDF), applicable structure plans, the principles referred to in Chapter VI and guidelines issued by the Provincial Minister regarding the desirability of proposed development.

The proposed development needs to be desirable and consistent with the logic character of the town and add value to the owner and the community. The Department of Environmental Affairs and Development Planning (DEADP) published a Guideline on Need and Desirability as part of the EIA Guideline and Information Document Series. Although this application does not include an environmental authorization application, the desirability guidelines set out in the document are also applicable in planning.

In terms of the above, a number of questions need to be asked with regard to the need and desirability of a proposal, which include the following:

Need and desirability measure	Yes or No	Applicability to the subject property
Is the land use considered within the timeframe intended by the existing approved SDF agreed to by the relevant environmental authority?	Yes	The proposed removal of the title deed restrictions and departure is not in contradiction with the credible SDF agreed to by the relevant authorities.
Are the necessary services with adequate capacity currently available, or must additional capacity be created to cater for the development.	Yes	There are adequate services available on the subject property such as water, sewage, electricity and waste removal and there is no need for additional capacity.
Is this development the best practicable environmental option for this land/site?	Yes	The proposal does not trigger any of the activities listed in NEMA and is therefore the best environmental option for the site.
Would the approval of this application compromise the integrity of the existing approved and credible municipal IDP and SDF as agreed to by the relevant authorities?	No	The proposal is not in contradiction with the credible municipal IDP and SDF agreed to by the relevant authorities.
Do location factors favour this land use?	Yes	The subject property is ideally located in a residential area with Residential Zone 1: Single Residential zoning and will not depart from the residential character prescribed in the subject zoning.

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How will the activity or the land use associated with the activity applied for, impact on sensitive natural and cultural areas?	No	The proposal will not in any way impact on sensitive natural and cultural areas.
Will the proposed activity or the land use associated with the activity applied for, result in unacceptable opportunity costs?	No	The proposed development will not in any way result in unacceptable opportunity costs.
Will the proposed land use result in unacceptable cumulative impact.	No	The proposed removal of restrictive title deed conditions and departure will not result in any unacceptable cumulative impact.

6 SERVICES

There are adequate services available on the subject property such as water, electricity, sewage and waste removal. There is therefore no need for additional capacity to be created.

7. TRAFFIC IMPACT

The proposal will result in minimal additional traffic impact to the subject property and on the street.

8. TITLE DEED

The property details are the following:

Property Description	Extent	Ownership	Title Deed Number
Erf 1548 Sandbaai, Greater Hermanus, Caledon Division, Province of the Western Cape	1655m ²	Bezuidenhout Cathleen Shirley	T66404/1995

A copy of the title deed of the subject property is attached as **Annexure B**. A perusal of the title deed has revealed that the following title deed restriction exists on the subject property in favour of the Administrator that needs to be removed;

The restrictive condition proposed for removal.	Motivation for the removal
2 (a) "Dat die hierbokeskrywe grond gebruik sal word slegs vir woningsdoeleindes;"	This condition restricts the property to be used for dwelling house purposes only. The removal of this condition will not exempt the erf from being subject to the Overstrand Municipality Zoning Scheme conditions for Residential Zone 1: Single Residential like other properties. The Overstrand Municipality Zoning Scheme is also a more recent tool used by the Municipality to regulate land use in comparison with this title deed condition and this justifies the removal.
2 (b) "Dat die bogemelde erf of erwe nie	Although the application does not include

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<i>onderverdeel sal word nie."</i>	the subdivision of Erf 1548 Sandbaai, it is proposed that this condition be removed to provide the property owner with future development scope. The removal of the restrictive conditions will not exempt the erf from the parameters of the Overstrand Municipality Zoning Scheme, 2013 which are more recent development guidelines and regulatory tools in comparison with this title deed condition that reflects development imperatives that differ from the more modern ones which respond to the current challenges and opportunities in the urban landscape.
2 (c) <i>"Dat nie meer dan een woonhuis met die nodige buitegeboue en benodigdhede opgerig mag word op enigeen van die bogemelde erwe nie en dat nie meer dan helfte van die oppervlakte van elke erf bebou sal word nie,"</i>	Although the proposal does not include an additional dwelling unit or a departure from the maximum coverage it is proposed that the condition be removed and the primary uses, consent uses and development parameters in Residential Zone 1: Single Residential in the Overstrand Municipality Zoning Scheme; 2013 be applicable on the subject property.
2(d) <i>"Dat geen gebou op enigeen van die bogenoemde erwe binne 4.72 meter van enige grenslyn tussen gemelde erf en enige straat buite die waaraan sulke erf grens, opgerig sal word nie; genoemde ruimte mag gebruik word vir tuinery maar sal nie op gebou word nie."</i>	The property owner has built a sunroom extension that is 3.7661 meters from the street boundary of the property. The removal of this restrictive title deed condition will accommodate the sunroom extension.

Historic overview

Erf 202 Sandbaai and Erf 203 Sandbaai were consolidated in 1995 to form the new consolidated erf 1548, Sandbaai.

Requirements for the amendment, suspension or removal of restrictive conditions:

Section 35(4) of the By-Law on Municipal Land Use Planning, 2015, outlines what the Municipality must consider in the removal, suspension or amendment of a restrictive condition. The following benchmarks must be considered:

(a) The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.	The restrictive condition does not have a beneficial financial or other value for the owner.
(b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition.	There are no personal benefits that will accrue in respect of the restrictive title deed conditions.
(c) The personal benefits which will accrue	The property owner will be able to

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to the person seeking the removal of the restrictive conditions, if removed.	regularise the existing sunroom extension and will also have more future development scope within the parameters set out in the Overstrand Municipality Zoning Scheme; 2013.
(d) The social benefit of the restrictive condition remaining in place.	The restrictive condition remaining in place does not have any social benefit.
(e) The social benefit of the removal or the restrictive condition.	The removal of the restrictive condition will not have any social benefit.
(f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.	The removal of the restrictive title deed conditions will result in the subject property enjoying the same development rights as other properties in the Greater Hermanus that are zoned Residential Zone 1: Single Residential which reflect the modern Zoning Scheme with modern development imperatives.

The removal of the restrictive title deed conditions will be to the benefit of the property owner and enable the owner to enjoy the same development rights as other properties with the same Residential Zone 1: Single Residential zoning in the Greater Hermanus.



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9. ZONING OVERLAY

This table below outlines how the development parameters of the subject zoning is aligned with the zoning and also where it deviates:

Residential Zone 1: Single Residential		Development proposal	Comply/deviate
Primary use	Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.	N/A	N/A
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	50%	158.07m ² = 9.55%	Comply
Street building line	4 metres to any street boundary provided that in the case of a corner site with an average depth of 20m or less has a 3m street building line.	3.7661m in lieu of 4m.	Deviate application for departure –
Side and Rear building line	Side and Rear building lines for erven greater than 400m ² are 2m.	Side = 15.1545m Side = 24.6697m	Comply
Height	8 m measured from the base level to the top of the roof.	7m	Comply
Parking	Parking and access shall be provided on the land unit in accordance with Section 17.1 of the Overstrand Municipality Zoning Scheme of November 2013.	2 garages	Comply

The table above illustrates that the proposal is for a departure from the building lines and all other development parameters on the subject property are complied with.

10. SPATIAL PLANNING INITIATIVES

Spatial planning initiatives that were considered for the purposes of this application include the Western Cape Provincial Spatial Development Framework and the Overstrand Municipal Spatial Development Framework and the Overstrand Municipal Growth Management Strategy.

None of these documents make reference to departure from building lines. The proposal to depart from the building line does not in any manner deviate from the urban structure that is envisaged in any of these documents.

11. PLANNING PRINCIPLES

The purpose of this section is to analyse the consistency of the application with the planning principles and also to provide a recommendation to the Municipality for the development.

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These spatial planning principles are in terms of Section 42 of the Spatial Planning and Land Use Management Act, 2013 and also Chapter VI of the Land Use Planning Act, 2014.

Below are the spatial principles and the consistency of the proposed development with these planning principles;

Planning principles	Consideration and impact
<p>Spatial Justice "Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land."</p>	<p>The proposed removal of restrictive title deed conditions and building line departure will not in any way contribute to perpetuating apartheid spatial development imbalances.</p>
<p>Spatial Sustainability "A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl."</p>	<p>The proposed development will not have any adverse impact on agricultural land, environmentally sensitive areas and cultural landscape and is proposed within the urban edge. The proposal can therefore be deemed to be spatially sustainable.</p>
<p>Efficiency "This also has to do with the manner in which the settlement itself is designed and functions which should reduce the need to travel long distances to access services, facilities and opportunities."</p>	<p>The subject property is approximately 2km from the Whale Coast Shopping Centre that is under construction in Sandbaai and will also result in reducing the need to travel long distances to access services, facilities and opportunities that are available in the Hermanus CBD.</p>
<p>Spatial Resilience "Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner."</p>	<p>The spatial plans and policies compiled by the Provincial Department of Environmental Affairs and Development Planning and the Overstrand Municipality all promote spatial resilience in land use management. The proposed removal of restrictive title deed conditions and building line departure is not in contradiction with any of these spatial plans and policies and this will result in the proposal being able to accommodate economic and environmental shocks in a timely and efficient manner.</p>
<p>Good Administration Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued.</p>	<p>The proposed development will promote consultative planning as the Municipality will advertise the proposal to the general public to allow the comments of the public to be taken into consideration. WRAP will also respond to the comments of the general public and take the comments into consideration in the planning of the project. All of the above measures ensure that a joint planning approach is pursued to the benefit of the property owner and the community.</p>

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The proposed development is therefore aligned with the core planning principles as outlined in SPLUMA, LUPA and the "Motivation Guideline Report" compiled by the Overstrand Municipality Town Planning Department. The proposed application can therefore be viewed as encompassing and promoting all planning principles and is desirable.

12. EVALUATION AND CONCLUSION

Herewith a synopsis of the site specific circumstances of Erf 1548, Sandbaai and the practicality and viability of the proposed removal of restrictive title deed conditions and building line departure:

The intention of the application is to apply for a removal of restrictive title deed conditions that relate to the following.

- The restrictive condition that outlines that the property may only be used for residential purposes. Once removed, the subject property will be subject to the primary rights and consent uses of Residential Zone 1: Single Residential in the Overstrand Municipality Zoning Scheme which is a more recent regulatory tool used by the Municipality to enforce the current Municipal development imperatives.
- The restrictive condition which stipulates that the erf may not be subdivided - the removal of this condition will still make Erf 1548, Sandbaai subject to the Overstrand Municipality Zoning Scheme; 2013.
- The restrictive condition which stipulates that not more than one dwelling unit be built and that not more than 50% of the Erf size be built upon - the removal of this restrictive condition will still result in the subject property being subject to the development parameters of the Overstrand Municipality Zoning Scheme; 2013.
- The restrictive title deed condition which outlines that no building be constructed within 4.72m from the street boundary - the removal of this restrictive would allow for the sunroom extension to be accommodated.

The proposed removal of these restrictive conditions also promotes good planning as the property owner would not have to apply for the removal of the above restrictive title deed conditions if a need would arise in the future and that would reduce the regulatory burden of all parties involved in the value chain of the process. The intention of the application is also to apply for a building line departure of 3.7661m in lieu of 4m in order to accommodate the sunroom extension.

The proposal is also not in contradiction with any of the spatial planning initiatives and will not adversely depart from the spatial structure form envisaged by the competent authorities.

The proposal is also well aligned with the 5 Planning Principles in the following manner:

- The proposal won't perpetuate apartheid spatial imbalances.
- The proposal is within the urban edge and will not adversely impact viable agricultural land and heritage sensitive areas.
- Erf 1548, Sandbaai is well located 2km from the Whale Coast Shopping Centre which is under construction and 4.8km from the Hermanus CBD and reduces the need to travel long distances to access services.
- The proposal does not contradict any of the spatial development frameworks and will enable the proposal to accommodate economic and environmental shocks in a timely and efficient manner.


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- A joint planning approach is pursued through the public participation process to the benefit of the property owner and the community

Based on the above the proposed development is deemed to be viable and practical and will not adversely impact on the rights of other property owners.

The Municipal Manager

P.O. Box 20

Overstrand

Hermanus



TR A Theart
C H Olivier)

ERF 1548, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE FROM BUILDING LINES

1. Your Munisipal Notice No, 151/2016 refers.
2. I am the owner of erf 204 Mr C.J. Bresler, Longstr 102. Sandbaai, Hermanus. I am apposing this application and cannot approve it at erf 1548 and have the following objections. This application is to make erf 1548 a bussiness property. I am staying in a residential area and will not allowed to disturbed my privacy.
3. Par 2 (a) Permission was never asked from the owner of erf 204 in 1995 to consolidated erf 202 and erf 203. The owner build his house over erf 202 and erf 203. He apply then to form a new consolidated erf 1548. Par 2 (a) cannot be removed as it will then not been used for dwelling house purposes and will disturb the privacy of my property as a residential area.
4. Par 2 (b) must stay as the subdivision of erf 1548 Sandbaai, will lead to disturb my privacy as the owner of erf 204. The owner of erf 1548, did apply to cosolidate erf 202 and erf 203 and build his house in 1995 diliberitly over erf 202 and erf 203.
5. Par 2 (c) must stay as it will lead to disturb my privacy at erf 204. The owner of erf 1548 did know the title deads, when he bought the property erf 202 and erf 203 but still continue to apply for the subdivision of erf 1548 without my permission. He did it to get a good sea view.
6. Par 2 (d) Cannot be approved as the title deads said it must be 4.72 from the street boundary and I as an owner of erf 204 did comply with the regulations. The owner of erf 1548 did know these restrictions and could make provisions when he apply to consolidated erf 1548 in 1995. This sudden changes and applications, is to make the property suitable for bussiness rights and to disturb the privacy of the residential area. I know the owner want to sold the property and the sunroom is just to make the property bigger for bussiness rights.
7. Therefore I will not recommend and not approved these changes and will go to the highest court if needed.

Regards. Mr C.J. Bresler cel 0827856033

Owner of Erf 204 Sandbaai

FILE NO:	EL 1548-SB
SCAN NO:	11
COLLABORATOR NO:	972605

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Town and
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Planning

Municipal
Legislation
and Procedures

Local Economic
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Technical
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Wright Approach
Investments 136 CC

Reg No
CK 2002/060745/23

Our Reference: 16/78
Your Reference: 1548 HSB (3466)

25 January 2017

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Sir

**ERF 1548 SANDBAAI: PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS AND DEPARTURE**

Objections to the application on the abovementioned property were received from:

1. Mr. CJ Bresler, owner of Erf 204, Sandbaai

The objections will be listed in bold and the response will follow directly thereafter

1. **"This application is to make Erf 1548 a business property. I am staying in a residential area and will not allow my property to be disturbed"**

The application is only for the removal of the title deed restriction 2(a), 2(b), 2(c) and 2(d) and a building line departure. The application does not provide for any business zoning for the property. The property is currently zoned Residential Zone 1: Single Residential and the applicant is not allowed to use the property for any commercial purposes without applying for the rezoning of the property. There are no commercial activities on the property and there is no intention for any commercial activities applied for and the residential character of the area will not be disturbed.

2. **Permission was never asked from the owner of Erf 204, Sandbaai in 1995 to consolidate Erven 202 and 203, Sandbaai.**

In terms of planning legislation that was applicable prior to the implementation of SPLUMA, a consolidation application was not required to go through a public participation process. It was registered with the Surveyor General and in the Deeds Office. The permission to consolidate Erven 202 and 203 therefore followed all prescribed processes at the time of registration.

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FILE NO:	EL 154838
SCAN NO:	07
COLLABORATOR NO:	989667

TP 26 JAN 2017

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by commenting on the application. Permission is granted by a competent decision making body such as the Municipality after taking into consideration the comments from the public.

6. "Paragraph 2(d) cannot be approved as the title deed said it must be 4.72m from the street boundary and as an owner of Erf 204 did comply with the regulations"

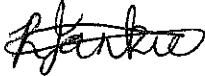
The purpose of this application is to remove this building line restriction in the title deed and relax the building line in terms of the Overstrand Municipality Zoning Scheme, 2013 which the applicant is permitted to apply for.

Nothing prevents the objector from applying for the removal of his title deed restrictions in the future if he wants to.

Conclusion

The objections and concerns raised by the objector were all addressed in the application.

Yours faithfully



**REA JANKIE
TOWN PLANNER
(C.PIn C/7873/2014)**