

4.3

**ERF 234, 20 PORTER DRIVE, ROOIELS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND
DEPARTURE: A VON MALTITZ ON BEHALF OF A VON MALTITZ & L KAESTNER**

234 KRE (4308/2022)

H van der Stoep
5 January 2024

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 9 December 2022 from A von Malitz on behalf of A von Maltitz & L Kaestner for the following:

- ❖ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Planning, 2020 for the removal of restrictive title deed conditions F.4.(d) and G.(b) as contained in Title Deed T44343/2021 of the property to accommodate the proposed new dwelling.

The restrictive title deed conditions read as follows:

"F. SUBJECT to the following conditions contained in the said Deed of Transfer Number T1609/1964 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance 33 of 1934 reading as follows;

4. *This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose.*

(d) No buildings or structure except the boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the rear of 1,57 metres of the lateral boundary common to any adjoining erf provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation may be erected within the above prescribed rear space, and provided further that a garage may be erected up to such street line if the opinion of the local authority of the erf is such to make that necessary.

G. SUBJECT to the following conditions contained in said Deed of Transfer Number T1609/1964 imposed by the Transferor Company as being in favour of the registered owner of any erf in the Township;

- (b) No wood and iron buildings of any description, shall be erected on this erf, nor shall corrugated iron be used for roofing purposes."*

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Planning, 2020 to relax the street building line from 4m to $\pm 2,97$ m to accommodate the proposed new dwelling on the property.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C. The Title Deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The property measures 943m² in extent and located in Rooi Els Township. The property is zoned Residential Zone 1: Single Residential and is surrounded by residential erven.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

CONTEXTUAL INFORMATION:

DEVELOPMENT PROPOSAL

- The application for the relaxation of the street building line from 4m to 2,97m to allow a new dwelling.
- The design of the house was specifically designed to reduce the footprint of the house and building operations on the delicate fynbos and mountain landscape.
- The house has been positioned on the southern side of the plot away from the most sensitive fynbos and stream running down the northern side of the plot.
- Further the house has been positioned in such a way to leave the large granite boulder in the centre of the plot intact.
- The access was chosen from Oceanview Road, as access from Porter Drive would have a much larger impact because of excavations on the steep slope to build a driveway.
- With reference to the footpath between Erven 234 and 243, the path is zoned as Road and thus cannot be seen as a common boundary.
- The slope of the path is extremely steep starting at a 10-degree angle and increases to 17 degrees and is thus unlikely to build a road in future.
- A precedent has already been set with departure on similar lanes in Rooi Els between Erven 248 & 276 and 218 & 219.

ACCESS

Access will be obtained from Oceanview Road.

SERVICES

No additional services will be required. The erf has access to Municipal services.

REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

The aforementioned restrictive conditions do not allow any structure or building on the property over the building lines, except with the approval of the Administrator and needs to be removed.

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 value of condition G.(b) was historically intended to prevent low quality houses from being built, but with the enhancement of wood and iron materials over time, these materials can now complement and increase value of structures that are mainly built with brick, as well as help to integrate the structure into the surrounding environment.

The removal of the restrictive condition F.4.(b) intends to allow for the best positioning of the house to permit the minimum impact on the natural environment.

There is no financial or other value to the conditions enjoyed by other persons.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

The personal benefit accumulated to the homeowners in the Rooi Els Village is insignificant insofar as the title deed conditions are concerned. Surrounding property owners are still protected by the policies in place for the area. The removal of the restrictive conditions will limit the impact on the natural environment by placing the house in a position with minimum impact, which will benefit the overall community in its vision to conserve the natural splendour of Rooi Els.

The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.

The owners gain the benefit of preserving the most sensitive and unique natural feature of the site, including the large boulder in the centre of the plot.

The social benefit of the restrictive condition remaining in place.

It is doubtful that the retention of the conditions would have any significant social benefit.

The social benefit of the removal of the restrictive condition.

The removal of the restrictive conditions will allow the owners to position the house with minimum negative impact to the natural environment.

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 conditions will not remove the rights completely as the Zoning Scheme Regulations will still provide control and guide the way the property is both used and developed.

The existing footpath to the south of the property will not be affected by the removal of the restrictive conditions or the rest of the application.

CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:

- **Spatial Justice:** Compliant
- **Spatial Sustainability:** Compliant
- **Spatial Efficiency:** Compliant
- **Spatial Resilience:** Compliant
- **Good Administration:** Compliant

POLICY DOCUMENTS:

The natural features of the terrain will be preserved. The zoning and primary land use of the subject property will remain unchanged.

The proposal is compatible with the existing built character of the area.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	19 May 2023	23 June 2023
Government Gazette	Yes	19 May 2023	23 June 2023
Registered notices	Yes	19 May 2023	23 June 2023
Internal departments	Yes	19 May 2023	23 June 2023
Ward Councillor	Yes	19 May 2023	23 June 2023
Total comments	ONE (1)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
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

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Control	22/05/2023	No objection. Building plan application must comply with all applicable law.
Engineering Services	30/05/2023	See Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

The application was duly advertised in the local newspaper and Government Gazette. Registered letters were also sent out to all owners of Rooi Els and the Rooi Els Ratepayers Association. A notice board was also placed on-site by the applicant's consultant.

One (1) letter of objection was received from the Rooiels Ratepayers Association, and the applicant was provided with an opportunity to respond to the objections. See Annexures E and F respectively.

The objections, the applicant's reply and the Municipal Town Planners response thereon can be summarized as follows:

The objections are depicted in a summarized version under headings of similar nature.

OBJECTION

1. *We object to the application in its entirety.*

APPLICANT'S RESPONSE

Noted.

TOWN PLANNER'S RESPONSE

Noted.

OBJECTION

2. *There is ample room available on the erf to situate their proposed dwelling.*

APPLICANT'S RESPONSE

While there are other options for positioning of the proposed dwelling, the application was made to position the dwelling in the most optimal position.

TOWN PLANNER'S RESPONSE

The property is 943m² in extent which render ample available space for a dwelling should there not be environmental aspects that needs to be taken into consideration. Thus, instead of the owner levelling the property and build within the confines of the building lines, the proposal is to accommodate the natural environment. The ample space which is referred by the objector will have the consequence that the spatial character of the natural environment is destroyed.

 **OBJECTION**

- 3. By careful demarcation of areas that should not be trodden on during building process, they may be able to conserve the rest of their erf to be in line with conserving the spatial character of the village.***

APPLICANT'S RESPONSE

In reference to the vision of the RERA Constitution (2008) which states the association's vision for Rooiels is *"the creation and maintenance of an ecologically well-balanced area in which indigenous flora, fauna marine life and humans can coexist and thrive in harmony"* and the proposed revised RERA Constitution objective *"5.1. To promote and implement Rooiels Vision"*. Based on the objectives and vision of the RERA constitution, prioritising spatial planning over conservation seems at odds with Rooiels vision.

The point of demarcation during the building process to conserve vegetation is noted and already part of the applicant's plans. The objection however seems to not have considered that the position of the proposed dwelling is primarily covered by Rhus Crenata, while other parts especially the area around the "water runoff" on the northern side of the erf is rich in Berzelia, Ericas and Leucodendra. These would be sacrificed if the proposed building is moved.

In terms of spatial character, there is a precedent set by multiple Rooiels dwellings that do not seem in holding of this professed aim by RERA. There is a precedent set by buildings that have been built close to each other even where a footpath separates these erven. The applicant's motivation is focused on the erf's southern boundary, where movement of the dwelling by less than two metres will still leave a gap of greater than seven metres to the dwelling to Erf 243, providing ample space for the footpath and not impacting spatial character.

TOWN PLANNER'S RESPONSE

It is impossible to expect construction machinery to move between demarcated areas as in this case. There is an area which forms a small stream, a boulder and various plant species, thus due to the distribution of the natural flora and topographical elements, the applicant had to make a decision on which area is more important to conserve.

 **OBJECTION**

- 4. Compliance of the building lines is essential for maintaining the spatial character of Rooiels. The Planning Department is on record for previously not allowing a relaxation of a street building line in a previous Rooiels application.**

APPLICANT'S RESPONSE

See reference to comments to Point 3.

The proposed relaxation of the boundary and modest size of the proposed dwelling will not have a significant impact on the immediately adjoining pathway, neighbour and surrounding area. The reason for a formal application process is that the footpath is legally classified as a street. The path is clearly not a street due to the steep incline. The relaxation of the "street" building line in this case, has been clearly clarified in the motivation as being a building line adjacent to a footpath. As there is a pedestrian footpath between Erven 234 and 243, the view from any real street will show a larger spatial gap compared to other neighbours without the pedestrian passage, building along common boundary building lines. The closest being on the southern boundary of more than 7 metres and more than 15 metres to any other dwellings.

With reference to other applications, every application should be evaluated on its own merit.

TOWN PLANNER'S RESPONSE

Important is the context of when the Municipality do take a decision not to approve the relaxation of building lines, no decision is generic of nature. Important to note that the street building line applicable is the fact that the pedestrian path is zoned Transport Zone 2. It is not a traditional street for vehicle movement.

The General Plan for Rooi Els, dated 1947, indicates a lane of 15 feet. The lanes are dealt with as street in terms of the Title Deed and Zoning Scheme but does not have the same impact as a street for vehicle movement and in this context the Planning Department do take this into consideration when evaluating applications.

 **OBJECTION**

- 5. The title deed restriction only specifying a strict exemption of only the street building line for a garage, makes it clear that a high value that is placed on compliance with building lines.**

APPLICANT'S RESPONSE

Noted and does not dispute the high value placed on compliance with the title deed building lines. That is the reason why a formal process has been followed.

TOWN PLANNER'S RESPONSE

The value of building lines is not in dispute; however, one must take due cognisance that no zoning scheme was applicable for the area in 1947 and thus these development parameters were incorporated in Conditions of Establishments.

Over the years building lines were always part of the Land Use Scheme of the Overstrand but has evolved with the times. However, in this case, the Lane (footpath) with no vehicle movements and or parking of vehicles cannot hinder pedestrian movement, vehicle movement and or manoeuvring space, and thus viewed more leniently. It is thus important to view approval or relaxation of street building lines by the Municipality in its correct context. RERA has a very generic view, which ignores site specifics and application specifics. The building will still comply with the Land Use Scheme 2m lateral building line, which is more restrictive than the 1,57m Title Deed lateral building line, should the Lane not have been there. The character of the area will not be impacted on taking into consideration that the built structures of the areas vary from 1,57m (Title Deed) to 2m (Land Use Scheme) lateral building lines.

 **OBJECTION**

- 6. *The removal of the conditions is not necessary since the house can be placed within the building lines.***

APPLICANT'S RESPONSE

The application has been made for positioning the dwelling in the most optimal position.

TOWN PLANNER'S RESPONSE

The removal of the restrictive condition is necessary should the environmental conditions be taken into consideration.

 **OBJECTION**

- 7. *The wood and iron clause has been considered by the OM Appeal Authority.***

APPLICANT'S RESPONSE

The condition can remain the Municipality should confirm the statement by RERA.

TOWN PLANNER'S RESPONSE

The wood and iron refer to solely wooden and or iron structure, however if it is a combination of building material such as mortar, iron or wood, the clause is not applicable. All built dwellings have some wood or iron elements in the dwelling such as wooden roof trusses for example. If it is interpreted that there cannot be any wood or iron in dwellings, all buildings in Rooi Els is transgressing the clause. The corrugated iron roof refers to a roof profile and thus should the two syllables not be applicable in the roof element the clause cannot be made applicable. Thus, the clause will be applicable should the applicant intend to erect a wendy house or steel structure for storage purposes.

OBJECTION

8. Proof of notification to all owners in Rooi Els

APPLICANT'S RESPONSE

Notification was sent via registered mail to every property owner and in addition to RERA by e mail, dated 17/10/22. RERA declined to comment and or give input.

TOWN PLANNER'S RESPONSE

The application was distributed to all residents in Rooi Els.

OBJECTION

9. An OM Appeal decision has stated that "Restrictive conditions on a title deed are placed there for a specific reason and the removal of these conditions should not be considered lightly".

It seems that the applicant is applying out of convenience for them and for no real reason of conservation.

APPLICANT'S RESPONSE

RERA does not provide source and or context of the statement quoted. It is therefore unclear whether this OM decision has any relevance to this application.

We reject RERA's suggestion that the application is made purely out of convenience as baseless and even malicious. The applicants purchased the erf with the view of living in the biosphere and the convenience is based on conservation and placing the dwelling in such a way to get the most from the surrounding environment.

Placing the dwelling at the most eastern edge, maximising views, minimising impact of water flow down the mountain through the proposed dwelling, does not hide or obstruct the massive boulder and has the least impact on the flora on the erf. Keeping the boulder means pushing the dwelling by less than two metres towards the southern boundary.

Making the application has by no means been convenient, considering an extensive high effort high-cost application and notification process, that has run over many months. As outlined in our application we would like to preserve the natural boulders, natural run-off and the side of the property which has the most diverse flora in its natural state.

TOWN PLANNER'S RESPONSE

The removal of restrictive conditions is not taken lightly, and must be dealt with in detail in an application and distributed to all the owners in Rooi Els.

None of the owners of Rooiels had any objection to the application, except RERA. The applicant has extensively motivated why the conditions needs to be removed.

 **OBJECTION**

10. A request to not allow the removal of the title deed conditions or permit the departures.

APPLICANT'S RESPONSE

We are concerned that RERA has evaluated the application in very generic terms and not sufficiently considered the particulars of this application. The main point of the RERA objection seems to be the belief that we are impacting the spatial character of the village, and this suggestion is made without clear proof.

As noted in point 7 we are happy to keep title deed condition G.(b) if OM can provide written confirmation that the dwelling can contain steel and wood.

TOWN PLANNER'S RESPONSE

Noted.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (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 objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application is to minimise the impact on the environment and architecture and location can contribute to fostering biodiversity by creating habitat opportunities as part of new developments, protecting on-site habitats and seeking to link them with others further afield.

Efficiency

The design locality of the dwelling will ensure efficient use of the property taken into consideration environmental constraints.

Spatial Resilience

The structures will be approved in terms of National Building Regulations. The requirements of SANS will ensure resilience and energy efficiency of the structure.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

The application is in line with the SDF 2020.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal Engineering Services

Existing services provided by the Municipality will be used.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application of restrictive conditions can be accommodated in terms of the Overstrand Land Use Scheme.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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.

There is no financial value of the rights enjoyed by the applicant.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

The holder of the rights does not accrue any personal benefits.

The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.

The applicant will be able to legalize the existing structures on the property.

The social benefit of the restrictive condition remaining in place.

The benefit should the conditions remain in place is that the status quo remains.

The social benefit of the removal of the restrictive condition.

The social benefit is that should all the conditions be removed; the built structure will be more environmentally sensitive.

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 conditions will not remove any rights enjoyed by the beneficiaries.

12. THE DESIRABILITY OF THE PROPOSAL

The objections have been addressed extensively under Paragraph 7; however, a few aspects need to be addressed in more detail.

RERA constitution is based on the synergy between the environment and development. Both the aforementioned aspects are guided by legislation and policies applicable in the area. By ensuring that all sectors are aware of the value of biodiversity, and the opportunities and trade-offs varying between multiple policy options, plans or infrastructure choices, better informed decision—can be achieved.

The town of Rooi Els spatial character is closely link to the environment and the importance thereof for the inhabitants; however the built spatial character does not reflect this synergy due to technical and legislative requirements. It is thus unclear why RERA objects to the application that has made an effort to lessen the impact of the development located in an environmental sensitive area. The objection is generic and does not take into consideration the impact of the proposed dwelling should the applicant exercise his rights of a 50% development footprint, destruction of flora and a water body and a geological feature. The objection is not in line with modern environmental and planning principles with co-existing to obtain the best possible practice, which was not a priority in 1947 for the developers of Rooi Els.

The Lane is a footpath to ease pedestrian movement in the neighbourhood to the coast, which is not seen in the same light as a traditional street catering for motor vehicles. The proposed dwelling still complies with the lateral building lines of the Title Deed and Land Use Scheme of 2m and will have no impact on the pedestrian movement of the lane.

Rooi Els was never proclaimed as a gated development with Architectural guidelines and thus gave way to dwellings built at maximum height, coverage and design styles. There is thus no built spatial character in terms of the built environment in Rooi Els. The environmental spatial character is the main focus, which needs to be taken into consideration in view of existing rights of the erf development parameters. The town is still very much a rural coastal town with little commercial and low density, predominantly residential and tourist related, with the focus on the environmental well-being of its inhabitants. In evaluating the application, it is clear that the applicant has made an effort to adhere to the Precautionary principle to limit the impact on the environment.

Conclusion

- The application for the removal of Condition G.(b) is not recommended for approval due the following reasons:
 - The plans submitted with the application indicate a brick-and-mortar building with elements of wood and iron. The condition is thus not applicable.
 - The iron corrugated roof as per the restrictive condition is null and void, corrugated roof plates are not manufactured today. The condition is not applicable.
 - The applicant's building plans do not indicate a wooden and or iron building, therefore there is no need to remove the condition.
- The application for the removal of Condition F.4.(d) is recommended for approval as per reasons stated under number 14: Reasons for recommendation.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 Erf 234, Rooiels for the removal of restrictive title deed condition G.(b) as contained in Title Deed T44343/2021 of the property to accommodate the proposed new dwelling, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
2. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 234, Rooiels for the removal of restrictive title deed condition F.4.(d) as contained in Title Deed T44343/2021 of the property to accommodate the proposed new dwelling, **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 234, Rooiels for a departure to relax the street building line from 4m to $\pm 2,97$ m to accommodate the proposed new dwelling on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;

4. that the approvals in Points 2 and 3 above be subject to the following conditions:
 - (a) that the approval be limited to the building/structures as per Plan dated 14 December 2022, submitted with this application;
 - (b) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
 - (c) that the amended title deed be submitted for record purposes to the Municipality;
 - (d) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (f) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with, and
 - (g) that all the conditions in the Services Report (attached as Annexure G), be complied with.

5. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

POINT 2 & 3

- The proposed development will have the least impact on the erf.
- The proposed development adheres to RERA Constitution and promote the principle of the protection of environmental spatial character of Rooi Els.
- The development adheres to the precautionary principle.
- None of the residents objected to the application.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plans
Annexure D:	Title Deed T44343/2021
Annexure E:	Objection received
Annexure F:	Applicant's response to the objection received
Annexure G:	Services Report

SIGNATURE

REGISTERED PLANNER

Name: **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature: _____

Date: _____

Annexure B 1/5

Application for the departure and the removal of restrictive title deed conditions

Site: Erf 234, Oceanview road, Rooi-Els

Applicants & Owners: Adrian von Maltitz & Lisa-Ann Kaestner

Date: 25 November 2022 (updated 1 March 2023)

Application

This application consists of the removal of title conditions as well as departures to the building setbacks as per the zoning scheme. The application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the departure from the Land Use Scheme Regulations' (2020) building lines of erf 234 Rooi-Els;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive title deed conditions of erf 234 Rooi-Els.

The departure: To relax the street building line on the southern boundary between erven 234 and 243 from 4,0m to 2,97m.

The title deed conditions: Removal of conditions F(4)(d) and G(b) on page 4 of title deed no T44343/2021 for the erf 234, Rooi-Els.

Title deed and street building line setback

With reference to the Schedule of By-law, Overstrand Municipality Land Use Scheme, 2020, it is stated under Residential Zone 1 that: The street building line of erven of 400 m² and greater is 4,0m.

With reference to the title deed T44343/2021 for the erf 234, Rooi-Els, it is stated that:

- F(4)(b): No building or structure except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation may be erected within the above prescribed rear space and provided further that a garage may be erected up to such street line, if in the opinion of the Local Authority the level of the erf is such as to make that necessary
- G(b): No wood and iron buildings of any description, shall be erected on this erf, nor shall corrugated iron be used for roofing purposes.

Motivation

The design of the house and building operations have been planned with specific instruction and objective to reduce the footprint of the house and building operations on the delicate Fynbos and mountain landscape. With the current design more than 70% of the existing plot will remain untouched by the house construction. As per the plans, the house has been positioned on the southern side of the plot away from the most sensitive Fynbos and water run-off (very visible during winter months) down the northern side of the plot. Further, the house has been positioned in such a way to leave the large granite boulder in the center of the plot intact. As a result, both the house and garage (main bedroom on top of garage) are transgressing the building lines. The access point was chosen as Oceanview road, as access from Porter drive would have much larger impact because of excavations on the steep slope to build a drive-way. All of these considerations were made to minimize the impact on nature, both Fynbos growth and the geography.

With reference to the footpath between erven 234 and 243. This path is currently zoned as a road, and as such cannot be deemed a common boundary with the neighbour on erf 243. We are however of the opinion that the slope of this path is extremely steep, starting with a slope of 10 degrees that increases to at least 17 degrees, and as a result is unlikely to be built as a road in the future. This also brings into question why this pathway was originally zoned as a road.

The precedent of relaxing the building line on similar footpaths exist in Rooi-Els between erven 248 and 276, as well as erven 218 and 219.

The plans have been presented to the neighbours on erf 243, Oceanview road, Mr & Mrs du Plessis.

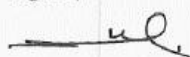
Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restructure condition" on a title deed:

- 1) The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.
 - The value of condition in clause G(b) was historically intended to prevent low quality houses from being built, but with the enhancement of wood and iron materials over time, these materials can now complement, enhance and increase the value of structures that are mainly built with brick, as well as help to integrate the structure into the surrounding environment.
 - The removal of the restrictive condition in clause F(4)(b) intends to allow for the best positioning of the house to permit the minimum impact on the natural environment.
 - There is no financial or other value to the conditions enjoyed by other persons.
- 2) The personal benefits which accrue to the holder of rights in terms of the restrictive conditions

- The personal benefit accumulated to the home owners in the Rooi-Els village is insignificant insofar as the title deed conditions are concerned. Surrounding property owners are still protected by the policies in place for the area such as the Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. The proposed removal of the restrictive title deed conditions will limit the impact on the natural environment by placing the house in a position with minimum impact, which will benefit the overall community in its vision to conserve the natural splendour of Rooi-Els.
- 3) The personal benefits which accrue to the person seeking the removal of the restrictive conditions, if they are removed
 - The owners gain the benefit of preserving the most sensitive and unique natural features of the site, including the large boulder in the center of the plot.
 - 4) The social benefit of the restrictive conditions remaining in place in its existing form
 - It is doubtful that the retention of the conditions would have any significant social benefit.
 - 5) The social benefit of the removal or amendment of the restrictive conditions
 - The removal of the restrictive title deed conditions will allow the owners to position the house with minimum negative impact to the natural environment, enhancing community social cohesion and supporting the village vision of a community united by our passion to conserve the natural splendour of Rooi-Els and share our appreciation of the environment with others.
 - 6) Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights
 - The removal of the restrictive conditions will not remove the rights completely as the Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, will still provide control and guide the way the property is both used and developed.
 - The existing footpath to the south of the property will not be affected by the removal of the restrictive conditions or the rest of this application, other than being moved slightly south where it has veered onto the property.

What we are proposing will preserve the natural features of the terrain to its maximum effect. The zoning and primary land use of the subject property will remain unchanged. The proposal is compatible with the existing built character of the area. The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013). We trust that you will find this motivation favourable.

Regards,



Adrian von Maltitz
2023-03-09



Lisa-Ann Kaestner

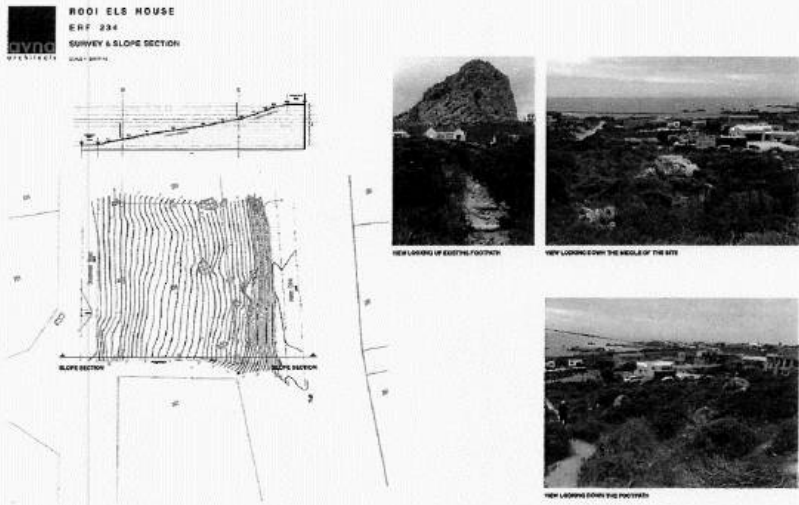


Figure 3: Survey and slope section; photos of the footpath

Annexure C 1/3



ROOI ELS HOUSE
 ERF 234
 SITE PLAN
 SCALE: 1:200 @ A1



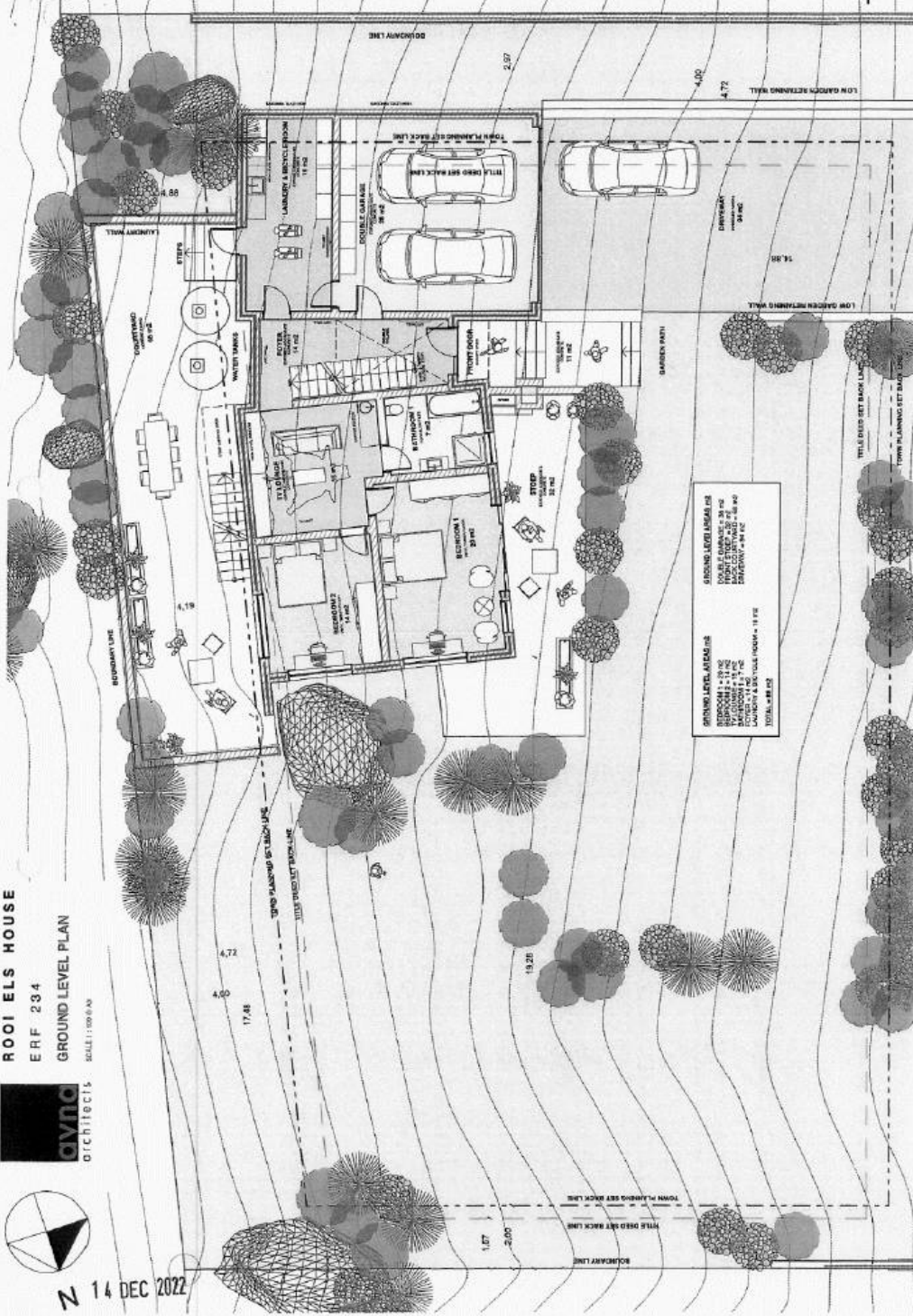
14 DEC 2022

ERF 234 - 1000 m²
 TOTAL AREA OF DEVELOPMENT = 2000 m²
 TOTAL AREA OF BUILDING = 1000 m²
 TOTAL AREA OF DRIVEWAY = 1000 m²
 TOTAL AREA OF LANDSCAPE = 1000 m²
 SITE PLAN FOR REROOI PROJECT - 2022

ROOI ELS HOUSE
ERF 234
GROUND LEVEL PLAN
SCALE: 1:500 @ A2



14 DEC 2022



Annexure D 1/6

313

Field's Attorneys
40 Upper Clarens Road
Fresnaye
Sea Point
8005

Prepared by me


CONVEYANCER
ROMY TAC STRAUSS (19627)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 1450,000,00	R. 1285,00
Reason for exemption	Category Exemption	Exemption i l o. Sec/Reg..... Act/Proc.....

T000044343 / 2021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

PETRUS JOHANNES CILLIÉ (81207)

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney granted to him by

ROOI ELS INVESTMENT CC
Registration Number CK1996/031550/23

which said Power of Attorney was signed at CAPE TOWN on 19 July 2021

14 DEC 2022

Lexis® Convey 18.0.4.3



And the appearer declared that his said principal had, on 5 July 2021, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **LISA-ANN KAESTNER**
Identity Number 761202 0009 085
Unmarried
2. **ADRIAN VON MALTITZ**
Identity Number 760613 5126 081
Unmarried

their Heirs, Executors, Administrators or Assigns, in full and free property

ERF 234 ROOI ELS
SITUATE IN THE MUNICIPALITY OF HANGKLIP/KLEINMOND
DIVISION OF CALEDON
WESTERN CAPE PROVINCE

IN EXTENT 1098 (ONE THOUSAND AND NINETY EIGHT) Square metres

FIRST REGISTERED by Deed of Transfer Number T1609/1994 with diagram Number 7507/63 relating thereto and held by Deed of Transfer Number T83429/1996.

SUBJECT:

- A. **SUBJECT** to the conditions referred to in Certificate of Township Title Number T13367/1948.
- B. **SUBJECT** to the reservation in favour of the State of all rights to mines of gold, silver and precious stones mentioned in Section 4 of the Proclamation of Sir John Cradock dated 6th August 1813, and
- C. **ENTITLED** to the benefit of the conditions referred to in the Servitude Endorsement dated 24th June 1940 on Certificate of Consolidated Title Number T.3720/1937 which endorsement reads as follows:

"By Deed of Transfer Number 6068/40 dated 24/6/40 certain conditions relating to

(a) (b) prohibition of Petrol Station on land (c)
 (d) Wood and Iron buildings (e) Slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder, as will more fully appear on reference to the said Deed of Transfer."
- D. **SUBJECT** to the following conditions contained in certain Deed of Grant in favour of A J Louw made on 30th April 1839 (Stellenbosch quitrents Volume 12 Number 18) which conditions read as follows;

"On condition that all roads and thoroughfares running over this land shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order of Government. That the road and thoroughfare leading to the Waaygat Bay shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay, and be allowed, without hindrance, to fish there, and be bound (according to the existing laws of this settlement) to have brought into such state of cultivation as it is capable of; the land thus granted being further subject to all such duties and regulations as are either already, or shall in future be established in respect of land granted under similar tenure."

- E. **ENTITLED** to the benefits of the Servitude reference whereto is made in the Endorsement dated 8th April 1949 on said Certificate of Township Title Number T.13367/1948 which said Endorsement reads as follows;

"Registration of Servitude

By Notarial Deed Number 107/49 dated 10th March 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such local authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to Erfholders and Local Authority; (b) delivery of the said water to the above-mentioned Township by means of a pipeline indicated on the servitude Diagram Number 8589/48 by the letters a,b,c,d,e,f,g,h,j,k,l,m,n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works (d) aqueducts (e) purification works and reservoirs; (f) access to and egress from the present or future headworks, site, pipeline, reservoirs and purification works over the remainder of the Farm Hangklip held under Cert. Of Cons. Title Number 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto."

- F. **SUBJECT** to the following conditions contained in said Deed of Transfer Number T1609/1964 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance 33 of 1934 reading as follows;

1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice Number 401 dated 17th October 1935, and in the memorandum which accompanied the said regulations.
2. The owner of this erf shall, without compensation be obliged to allow the sewage and drainage, including stormwater of any other erf or erven to be conveyed across this erf if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time, in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
3. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank, owing to difference between the levels of the street, as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.

4. This erf shall be subject to the following further conditions, provided especially where, in the opinion of the administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose.

- (a) It shall not be subdivided;
- (b) It shall be used for residential purposes only, but no building other than one dwelling together with such outbuildings as are ordinarily required to be used therewith shall be erected thereon;
- (c) Not more than half of the area thereof shall be built upon;
- (d) No building or structure except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation may be erected within the above prescribed rear space and provided further that a garage may be erected up to such street line, if in the opinion of the Local Authority the level of the erf is such as to make that necessary;
- (e) Pending the establishment of a Local Authority for this Township the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf, the owner shall without compensation, be obliged to remove it after three months' written notice served upon him by such Local Authority.

G. SUBJECT to the following conditions contained in said Deed of Transfer Number T1609/1964 imposed by the Transferor Company as being in favour of the registered owner of any erf in the Township;

- (b) No wood and iron buildings of any description, shall be erected on this erf, nor shall corrugated iron be used for roofing purposes.
- (c) No slaughter poles, cattle kraals, pig-sties or cowsheds shall be erected or carried on by any person whomsoever on this erf.
- (d) Save with the consent in writing of the Company and of any Local Authority, the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes to dig or quarry any earth, gravel, lime or stone thereon.
- (e) No building (excluding outbuildings) shall be erected on this erf of a superficial area of less than 99 square metres.
- (f) No noxious trade or noxious business shall be carried on on this erf.

- (g) The Transferee shall not camp overnight or light fires on the erf, save with the written consent of the Company.



WHEREFORE the said Appearer, renouncing all rights and title which the said

ROOI ELS INVESTMENT CC
Registration Number CK1996/031550/23

heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

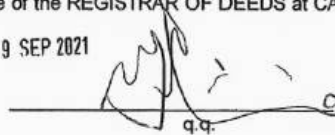
1. **LISA-ANN KAESTNER , Unmarried**
2. **ADRIAN VON MALTITZ, Unmarried**

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R1 450 000,00 (ONE MILLION FOUR HUNDRED AND FIFTY THOUSAND RAND) .

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

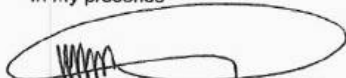
THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on

- 9 SEP 2021



q.q.

In my presence



REGISTRAR OF DEEDS

Annexure E 1/2



Rooiels Ratepayers' Association / Rooiels Belastingbetalersvereniging

Town Planning Department

rera.chair@rooiels.org.za

Overstrand Municipality

loretta@overstrand.gov.za

8 June 2023

FILE NO. Erf 234
Rooiels ✓
SCAN NO.
KRE 234
COLLABORATOR NO.
1868027

ERF 234, OCEAN VIEW STREET ROOIELS: APPLICATION FOR REMOVAL OF TITLE DEED CONDITIONS AND DEPARTURES

Please note that the OM notice incorrectly refers to Porter Drive as the address.

1. We object to the application in its entirety.
2. There is ample room available on the erf for the applicants to situate their proposed dwelling, free from obstacles such as large rocks, without having to apply for the removal of the building line title deed condition and for permission for departures.
3. By careful demarcation of areas that should not be trodden on during the building process, they may be able to conserve the rest of their erf in its natural state.

However laudable the specific professed conservation aims of the applicants may be, the larger aims of the Rooiels community in conserving the spatial character of our village override the aims of the applicants.

4. Compliance with the building lines is essential for maintaining the spatial character of Rooiels.

The OM Planning Department is on record, thank you, for previously not allowing a relaxation of a street building line in a previous Rooiels application where there was enough space, such as the present, on the erf to fit the buildings.

5. It should also be pointed out that the title deed condition, by specifying a strict exemption of only the street building line to make it possible for a garage to be situated in exceptional circumstances, makes it clear that a high value is placed on compliance with the building lines.

6. It would also appear as if removal of the title deed condition in respect of building lines is not necessary, as the house can be situated within the title deed building lines.

7. The title deed condition in respect of buildings from wood and iron has been considered a few years before by the OM Appeal Authority. *elSmil*

The OM Appeal Authority agreed with the appellants that in current times the restriction will still be applicable to informal houses and that it should be retained. The Appeal Authority did however remove the reference to the corrugated iron roof restriction in the light of modern available materials. They also accepted that the reference is to the wood-and-iron houses that were built on mining camps, and now as informal houses.

- 9 JUN 2023

Rooiels had, many years ago, obtained a legal opinion by an advocate to this effect to allow modern officially quality-approved pre-fabricated houses without having to remove the title deed condition.

8. We wonder whether proper notice of the application for the removal of the title deed conditions has been given.

In this regard we wish to draw the attention that for the removal of title deed conditions, notice should be given to all erf owners in Rooiels and not only to the neighbours.

Failure to comply will make the removal of any title deed condition in this application appealable.

9. "Restrictive conditions on a title deed are placed there for a specific reason and the removal of these conditions should not be considered lightly." This is what was said in a previous OM Appeal Decision.

It would appear as if the applicants are applying out of convenience for them and for no real reason of conservation. In the process they are apparently not giving due consideration to the importance of building lines and title deed conditions for maintaining the spatial character of Rooiels.

10. REQUEST PLEASE

We therefore please request the OM not to allow the removal of the title deed conditions or permit the departures.

Yours faithfully,



Eldie Brink

Secretary Rooiels Ratepayers' Association.



Town Planning Department
Overstrand Municipality (OM)
loretta@overstrand.gov.za
4 July 2023

TP- n/ theak
(H. ud Skoop)

Annexure F 1/3

FILE NO.	OF 234
	Rooi Els
SCAN NO.	
	03
COLLABORATOR NO.	
	1877598

In reply to the objection from the Rooiels Ratepayers Association (RERA) to the application for Erf 234 in Rooiels for the removal of title deed conditions and departures. Our reply is structured in response to the numbered points in the objection and the objecting party is referred to as RERA in the rest of this response. The Overstrand Municipality will be referred to by the acronym OM. We would like to start by noting that the tone of the objection is quite antagonizing and even condescending. While the applicants have strived towards a more neutral tone in their reply, there might be areas of the response that mimic the RERA tone.

Point 1

Noted

Point 2

While there are other options for positioning of the proposed dwelling, the application was made to position the dwelling in the most optimal position.

Point 3

In reference to the vision of the RERA constitution (2008) which states "the association's vision for RooiEls is the creation and maintenance of an ecologically well-balanced area in which indigenous flora, fauna, marine life and humans can coexist and thrive in harmony" and the proposed revised 2022 RERA constitution objective "5.1. To promote and implement the Rooiels Vision". Based on the objectives and vision of the RERA constitution, prioritising spatial planning over conservation seems at odds with the Rooiels vision.

The point about demarcation during the building process to conserve vegetation is noted and was already part of the applicants plans. The objection however seems to not have considered that the proposed dwelling position is primarily covered by Rhus Crenata, while other parts, especially the area around the "water runoff" on the northern side of the erf is rich in Berzelia, Ericas and Leucodendra. These would be sacrificed if we were to move the proposed dwelling to the other side of the large boulders.

In terms of spatial character, there is a precedent set by multiple Rooiels dwellings that do not seem in holding with this professed aim by RERA. Recently built structures are incredibly large, there are multiple examples of dwellings that are built very close to each other, and as per the applicants original motivation, there is a precedent set by buildings that have been built close to each other even where a footpath separates these erven. The applicants motivation is focused on the erf's southern boundary, where a movement of the dwelling by less than two meters will still leave a gap of greater than seven meters to the dwelling on erf 243, providing ample space for the footpath and not impacting spatial character.

04 JUL 2023

Point 4

See reference to comments to Point 3 related to the competing interests of conservation and the spatial character of Rooiels.

The proposed relaxation of the boundary and modest size of the proposed dwelling will not have a significant impact on the immediately adjoining pathway, neighbour and surrounding area. The reason for a formal application process is that the footpath is legally classified as a street. This path is clearly not a street, and as described in the original motivation, it is not feasible to build an actual street for cars along this footpath because of the steep incline. The relaxation of the "street" building line in this case, has been clearly clarified in the motivation as being a building line adjacent to a footpath. For all intents and purposes this southern boundary is really more of a common boundary with the neighbour. Moving the dwelling less than two meters closer to this path will not affect the spatial planning and character of the Rooiels township. As there is a pedestrian footpath between erf 234 and erf 243 (adjoining neighbours erf), the view from any of the "real" streets will show a large spatial gap compared to other neighbours without the pedestrian passage, building along common boundary building lines. Even more so, considering the modest size of the proposed dwelling, the distance to other dwellings will be significant. The closest being on the southern boundary of more than seven meters, and more than 15 meters to any other dwellings in all other directions.

We note the reference to other applications, but believe every application should be evaluated on its own merit.

Point 5

Noted. We do not dispute the high value placed on compliance with title deed building lines. That is why the applicants have properly considered these, and formally followed the OM application process.

Point 6

As noted in response to point 2, the application has been made for positioning the dwelling in the most optimal position.

Point 7

We are happy for the title deed condition in respect of buildings from wood and iron to remain, if OM can confirm the written statements made by RERA. The applicants have not had this confirmation in writing to date.

Point 8

The notification was sent via registered mail to every property owner in Rooiels, at great expense and effort, in line with the guidelines provided by OM. In addition, the proposal was sent to the RERA chair by email on 2022/10/17 prior to the application being sent to OM. RERA declined to comment or offer any input on the application at that time.

Point 9

RERA do not provide the source or context of the statement quoted. It is therefore unclear whether this OM decision has any relevance to this application.

We reject RERA's suggestion that the application is purely made out of convenience as baseless and even malicious, suggesting that our concerns for conservation are fabricated for convenience. The applicants purchased the erf with the view of living in a biosphere, surrounded by fynbos, wild animals and getting the best positioning within the surrounding environment. The applicants convenience is based on conservation, and placing the dwelling in such a way to get the most from the surrounding environment. This does admittedly include maximising views of the surrounds, ironically because of the negative spatial character and planning of buildings on the western side. Placing the dwelling at the most eastern edge, maximises views, minimizes impact of water flow down the mountain through the proposed dwelling, does not hide or obstruct the massive boulder and has the least impact on the flora on the erf. Keeping the boulder, means pushing the dwelling by less than two meters towards the southern boundary.

Making the application has by no means been convenient, considering an extensive, high effort, high cost application and notification process, that has run over many months.

We have carefully noted the regulations and have made the application in good faith to build a home that is in line with the Rooiels vision. As outlined in our application we would like to preserve the natural boulders, natural water run-off and the side of the property which has the most diverse flora in its natural state.

It is frankly quite surprising and disappointing to see all the other examples in the Rooiels village of dwellings being erected with no to very little consideration for conservation or spatial planning. These include massive structures, fences over boulders, massive excavations, buildings right in the centre of wetlands, extensive clearing of fynbos etc. Other structures do not seem to conform to the Rooiels vision, even if they perhaps fit within building lines.

Point 10

We are concerned that RERA have evaluated the application in very generic terms, and not sufficiently considered the particulars of this application. One could argue that it is convenient for RERA to object in such a generic way to parties that have followed the formal application process, rather than properly evaluating the specific merits of the application, and even more importantly RERA could expend energy on much more concerning developments within Rooiels.

The main point of the RERA objection seems to be the belief that we are impacting the spatial character of the village, and this suggestion is made without clear proof. As per the response to the previous points, we have made it clear that we do not believe it to be true that we will impact the spatial character of Rooiels. We therefore request OM to allow the removal of the title deed conditions and permit the departures. As noted in point 7, we are happy to keep title deed condition G(b) if OM can provide written confirmation that the dwelling can contain steel and wood.

Regards

Adrian von Maltitz

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITIONS
& DEPARTURE: ERF 234, ROOIELS (4308/2022)**

Stormwater (SW) : In order
Electricity : Eskom Area
Water : In order
Sewer : In order
Roads and traffic : In order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the developer's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigates and determine the limitations of the site in terms of drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
5. that any additional and / or extended vehicle entrance will be for the owner's account;
6. that, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Kleinmond) for written approval;
7. that stormwater be allowed to discharge through Erf 234, Rooiels, unobstructed.

p.p. R. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

30/05/2023
DATE