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**ERF 3199, 4 PEARL DRIVE, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE
TOWN & REGIONAL PLANNERS ON BEHALF OF NA ERASMUS**

3199 KBB (4731/2024)

H van der Stoep
3 February 2025

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 1 August 2024 from Plan Active Town & Regional Planners on behalf of NA Erasmus on Erf 3199, Betty's Bay for the following:

- ❖ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed condition C.(i)(5)(d) as contained in Title Deed T6358/2021 of the property to accommodate the proposed development that encroaches the street building line.

The restrictive title deed condition read as follows:

"C. To the following conditions contained in the said Deed of Transfer Number 17598/68:-

(i) Imposed by the Administrator of the Province of the Cape of Good Hope when approving of the establishment of Sunny Seas Township in terms of the provisions of Ordinance No. 33 of 1934, as amended:

(5) This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Township Boards 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:

(d) No building or structure or any portion thereof 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 in height measured from the floor to the wall plate and no portion erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;"

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the street building line from 4m to 2,09m (north-western corner) and 2,12m (north-eastern corner) respectively to accommodate the existing foundation of proposed development on the property.

- ❖ **Determination of an Administrative Penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised building line encroachments as mentioned above.

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

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. The building plan was approved in June 2022.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications.

The foundation and ground floor of the new dwelling were constructed over the Title Deed and Land Use Scheme Regulations' street building lines. In addition, the design of the dwelling does not allow the first floor and roof (yet to be constructed) to be stepped back to comply with the applicable street building lines.

4. SUMMARY OF APPLICANT'S MOTIVATION

CONTEXTUAL INFORMATION

Description:

Zoning of Erf:	Residential 1
Area in extent:	2066m ²
Title Deed Number:	T6358/2021

DEVELOPMENT PROPOSAL

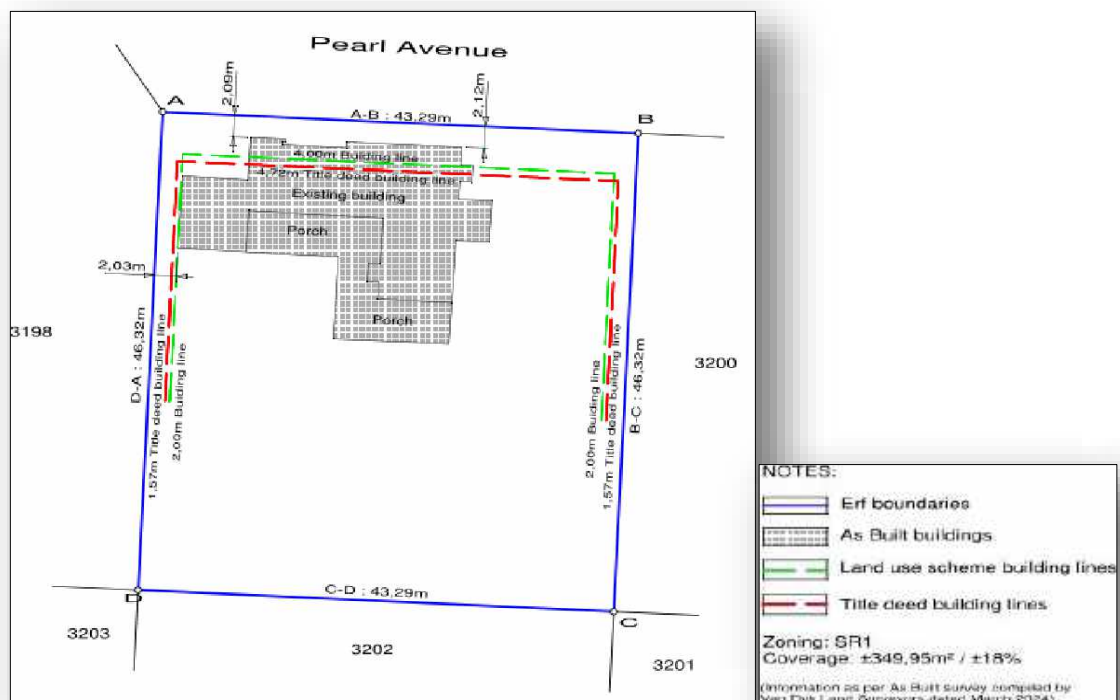
DEPARTURES:

It is proposed to retain the as-built dwelling (foundation and ground floor level) that encroach the 4m street building line. In addition, due to the configuration of the levels and floor layouts, the future first-floor storey and roof construction cannot be stepped back to comply with the 4m street building line and will therefore also encroach the building line. The walls and the staircase cannot align between the ground and first floor levels if the first floor is not constructed over the 4m street building line in future.

To accommodate the as-built structure and proposed additions (first floor and roof) an application is submitted for a departure to:

- Relax the street building line from 4m to 2,09m (north-western corner) and 2,12m (north-eastern corner) respectively to accommodate the as-built dwelling foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line.

The total extent of the as-built foundation / ground floor level is $\pm 245,85\text{m}^2$ with a $\pm 104,1\text{m}^2$ porch (total footprint as-built is $\pm 349,95\text{m}^2$). The section of the dwelling that encroaches the Land Use Scheme Regulations' building line is $\pm 33,43\text{m}^2$ in extent ($\pm 9,55\%$ of total building footprint) and $\pm 48,08\text{m}^2$ ($\pm 13,74\%$ of total building footprint) encroach the 4,72m Title Deed street building line. The new foundations are within the allowed Land Use Scheme's lateral building lines of 2m and the Title Deed lateral building lines of 1,57m - built at 2,03m from the western boundary line. Refer to the encroachment plan attached and included below:



The following should be noted when considering the as-built structures:

- It was never the intention of the landowner to construct the as-built dwelling in its current position. The approved building plan clearly shows the intent that the building was to be positioned at least 6m from the street erf boundary.
- Unfortunately, the first floor (to be constructed) cannot be stepped back to the respective street building lines as explained in previous sections of this report. The blueprint of the dwelling will remain as per the approved building plans – only the position on the property changes as per the as-built mistake.
- The materials used and the design of the dwelling are aesthetically pleasing.

- The as-built foundation and ground floor structure forms the basis of the dwelling on the subject property, thus, to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client.

The proposed application has a low to no impact on the character and property values of the surrounding properties. The existing structure on the subject property does not create an infringement to any passing traffic or public activity due to the low impact use of the structures. It is submitted that the massing and height of the existing structure are compatible with the character of the area, regardless of the departure being applied for.

The zoning of Erf 3199 Bettys Bay will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all the structures on the subject property will comply with the permissible height requirements for SR1 zoned properties (as per the approved building plans).

It is submitted that the existing structure is compatible with the character of the area, does not impact negatively on the rights of anyone else and that no good reason exists for not approving this application. When considering the proposed building line deviation, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

Conclusion

The following should be noted when considering the potential of the site:

- The position of the dwelling on erf 3199 Bettys Bay does not have a negative impact on neighbours' views towards the ocean and mountain.
- The massing and scale of the as-built structures are compatible with the area.
- Except for the street building line deviation, all other land use parameters are met.
- The as-built foundation and ground floor structure forms the basis of the dwelling on the subject property thus to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client. The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and removal of restrictive title deed conditions.

The following factors confirm the potential of the property to accommodate the proposed building line deviations:

- Good quality materials were / will be used for the construction of the dwelling;
- The development will keep to the approved blueprint of the dwelling, only at a position closer to the street boundary;
- The dwelling will add value to the property and the area.

ACCESS

Access to erf 3199 Bettys Bay will remain unchanged and will be from Peal Avenue.

SERVICES

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

REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:**Title deed no. T6358/2021, pages 3-4, paragraph C.(i) (5)(d):**

"C. To the following conditions contained in the said Deed of Transfer Number 17598/68:-

(i) Imposed by the Administrator of the Province of the Cape of Good Hope when approving of the establishment of Sunny Seas Township in terms of the provisions of Ordinance No. 33 of 1934, as amended:

(5) This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Township Boards 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:

(d) No building or structure or any portion thereof 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 in height measured from the floor to the wall plate and no portion erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;"

The aforementioned restrictive condition does 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 removal of the restrictive conditions intends to increase the use rights of the property to allow the dwelling to encroach the 4,72m street building line and to allow any future development on the property in line with the Land Use Restrictions stipulated in the Overstrand Land Use Scheme Regulations (2020) for SR1 zoned properties. The value of the rights is vested in the owner of the property. The condition was registered by the Administrator when the township was developed and neither the administrator nor the registered owners of the township enjoy any financial or other value. The removal of the condition will consequently have no impact on the favoured parties. Property owners not seeking the encroachment of the as-built dwelling and the completion thereof over the street building line will favour the restrictive Title Deed condition since the condition impede the development of the dwelling at its current position. The street and rear building line conditions are more restrictive than the Land Use Scheme Regulations' building lines. In addition, the stricter Title Deed building lines shrinks the development area of the subject property.

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

The conditions were imposed by the Administrator for the benefit of the Sunny Seas Township, Bettys Bay. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property. The holder (Overstrand Municipality) has efficient scheme regulations to guide development for SR1 zoned erven in Bettys Bay.

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

The removal of a restrictive title deed condition will bring about personal benefits to the landowner since it will allow her to retain the as-built dwelling foundation and ground floor and continue building work to complete the dwelling (both ground and first floor) on the 2,09m and 2,12m street building line once the application is finalized.

The 4,72m street building line and 3,15m rear boundary building lines as stipulated in the Title Deed are more restrictive than the Land Use Scheme building lines. To remove the Title Deed's street and common boundary building lines will allow the property owner to retain the as-built dwelling footprint and construct the dwelling on the position as per the attached encroachment plan. Any future development / additions can also be done according to the Land Use Scheme development parameters, instead of being bound by the more restrictive Title Deed building lines.

The social benefit of the restrictive condition remaining in place.

The social benefit if the Title Deed conditions were to remain unchanged and enforced on erf 3199 Bettys Bay would be that the character of Pearl Avenue will remain unchanged. Other than the aforementioned, the social benefit is considered minimal if the condition was to remain in place. If the condition remains unchanged, the owner must adhere to the stricter Title Deed street and rear boundary building lines. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's rear boundary and street building lines are more restrictive than the scheme regulations' building lines. To keep the 4,72m title deed street building line and the 3,15m rear boundary building line will have no benefit to the property owner since it takes away developable land and restricts the development of the dwelling at the as-built foundation / ground floor position.

The social benefit of the removal of the restrictive condition.

The removal of the restrictive Title Deed condition will allow the scheme regulations' building lines to set the rules for future development of erf 3199 Bettys Bay. It will also allow our client to retain the as-built structure and complete the dwelling in its current position on site. The social benefit will therefore only be to the landowner of erf 3199 Bettys Bay.

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 condition will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the future structures within the scheme regulations' building lines. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area.

CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:

o **Spatial Justice**

The impact on the biophysical environment will be low as the subject property has been in existence since 1949. The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Sunny Seas (Bettys Bay) Township. The proposed application is in character with the existing area where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

o **Spatial Sustainability**

The proposed departure and removal of a restrictive title deed condition will have a low impact on the visual elements of the subject property and surroundings. The encroachment of the street building line has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The dwelling (once complete) will merge well with the surrounding built environment. The development does neither trigger any listed activities in terms of NEMA nor is it positioned with Overstrand Municipality's EMOZ.

o **Spatial Efficiency**

It proves to be efficient to accommodate the existing structure and its proposed uses by approving the proposed departure and removal of a restrictive title deed condition of erf 3199 Bettys Bay instead of demolishing the structures, that will have great time and cost implications to our client.

o **Spatial Resilience**

N/A

o **Good Administration**

The land use application will follow due process as stipulated in the relevant Municipality's By-Law and related Provincial and National Land Use Planning legislation.

POLICY DOCUMENTS:

Overstrand Wide Development Framework, 2020, earmarks the area where erf 3199 Betty's Bay is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential).

Overstrand Growth Management Strategy, 2010, specifies that erf 3199 Betty's Bay forms part of Planning Unit no. 7. This planning unit stipulates that the density status quo should remain.

Heritage Value

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for the departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 3199 Bettys Bay is not situated within the Heritage Protection Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme (2020).

Biophysical Environment

The proposed application does not trigger any listed activities in terms of the National Environmental Management Act, 1998.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:

The nature, duration, gravity and extent of the contravention

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. Only the foundation remained following the devastating veld fires in 2019. Our client bought the subject property in 2021.

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors. A topographical survey was compiled indicating the contours and foundation that remained on the site following the Betty's Bay fires (copy attached). The building plans were compiled accordingly, and our client submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the relevant street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications. Our client, the landowner, was unaware of the deviation until the building inspector intervened. It was clear that there was an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

Van Dyk Land Surveyors were instructed to undertake an As Built survey to determine to extent of the encroachment. The as-built survey dated March 2024 confirmed the transgressions over the street building line.

The conduct of the person involved in the contravention

The building contractor did not adhere to the approved building plans, specifically regarding the position of the dwelling in relation to the street building line. Our client, the landowner, was unaware of the deviation until the building inspector intervened. From our client's side it was clear that there was an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans

Whether the unlawful conduct was stopped

The owner was unaware of the encroachment until she received the notice from the building inspector (refer to the email dated 15 February 2024). All construction was ceased immediately. The unlawful structures cannot be demolished since it is such a large extent of the new dwelling that was already constructed and since it will imply a whole new configuration of the layout. To demolish this section of the dwelling will place a great financial burden on our client who was unaware of the erroneous construction work. The owner now attempts to rectify the contravention by submitting the administration penalty application and subsequent departure application in order to legalise the As Built structures on the subject property

A report by a quantity surveyor in matters of unauthorised building/construction

The landowner confirmed that the construction cost for the section of the dwelling over the street building line was ±R150 000,00.

Whether a person involved in the contravention ha previously contravened this By-law or previous planning law29

To the best of our knowledge the owner has never contravene the By-law.

Conclusion:

The owner never hesitated to immediately give instructions to the consultants to assist in the matter of rectifying the contravention by submitting a complete (and fully motivated) departure, and removal of restrictive title deed conditions application, and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	29 August 2024	4 October 2024
Government Gazette	Yes	30 August 2024	4 October 2024
Email notices & site notice	Yes	29 August 2024	4 October 2024
Internal departments	Yes	29 August 2024	4 October 2024
Ward Councillor	Yes	29 August 2024	4 October 2024
Total comments	15		
Total letters of support	1		
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	29/08/2024	No objection. Building plan application must comply with all applicable law including fire safety regulation distances.
Engineering Services	30/10/2024	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. E-mail notifications of registered letters were also sent out to all owners of the Sunny Seas Township and the Betty's Bay Ratepayers Association. A notice board was also placed on-site by the applicant's consultant.

Fifteen (15) letters of objection were received forthcoming the public participation process. One (1) support letter was also received.

The applicant was provided with an opportunity to respond to the objections. See Annexures E and F respectively.

- ✚ **C Roberts**
- ✚ **A Bester**
- ✚ **G Irvine**
- ✚ **L Otto & P Von Alleman**
- ✚ **G van de Venter**
- ✚ **PK van der Westhuizen**
- ✚ **W Stapelberg**
- ✚ **WJ Zybrands**
- ✚ **MC & LM Clausen**
- ✚ **I Rohwer**
- ✚ **M Drögemöller**
- ✚ **R Moore on behalf of the shareholders of Fomogipa CC**
- ✚ **E Watts**
- ✚ **R Spaggiari**
- ✚ **R Wilding**
- ✚ **J Patel (support letter)**

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

OBJECTION

- 1. The encroachment of the building into the road reserve poses a safety risk, particularly as the property is located on a sharp bend. The comments and objections mention that the house is positioned in the road reserve, and this creates concerns about traffic and accidents.***

APPLICANT'S RESPONSE

There seems to be some confusion with regards to two separate applications that were submitted by our office. Two separate applications in Bettys Bay were sent out almost simultaneously by our office, which is causing confusion among the immediate property owners. The other application was for erf 3196 Bettys Bay, situated on the corner of Rockway Drive and Pearl Drive.

The dwelling structure on Erf 3199 is not built in the road reserve – it merely encroaches the applicable title deed and land use scheme building lines. Concerns about traffic and accidents are considered irrelevant since the dwelling will not encroach onto the road reserve. The garage is positioned at least 6 meters from the erf boundary and further from the road kerb, confirming compliance with the building line requirement of a minimum of 5 meters from the kerb.

TOWN PLANNER'S RESPONSE

Noted and agreed with applicant.

OBJECTION

- 2. The owner, project manager, and builder must be held accountable for not adhering to municipal regulations. It is not the community's or the municipality's responsibility to amend title deeds due to oversight. The owner and her agents have failed to construct the dwelling according to approved building plans, leading to a flawed attempt to gain retrospective approval. One of the objectors emphasizes that the owner is responsible for the actions of her agents and builders and that she must accept full responsibility for not adhering to the approved building plans, which include encroaching on building lines.***

APPLICANT'S RESPONSE

We agree that the owner, project manager, and builder should have adhered strictly to municipal regulations and that they cannot expect leniency in the form of altered title deed restrictions. However, the as-built structure still has a 2m street building line and does not encroach onto municipal land / the road reserve. The owner was not aware of the encroachment until notified by the building inspector on 15 February 2024. Upon receiving the notice, all construction activities were immediately ceased.

Demolishing the already constructed sections of the dwelling is not feasible due to the extensive nature of the work completed. Such action would require a complete reconfiguration of the layout and impose a significant financial burden on the owner, who was unaware of the construction issues. The owner is now taking steps to rectify the situation by submitting an application for an administrative penalty, departure and removal of restrictive title deed conditions to legalize the constructed structures on the property.

We recognize that the owner is responsible for the actions of her representatives. The municipality will assess its own obligations and liability in this matter and ensure that proper procedures are followed.

TOWN PLANNER'S RESPONSE

Both parties' comments are noted.

OBJECTION

3. An objector argues that the local authority shares liability for not issuing a timely cease order, which has implications for any future applications based on convenience and the costs of demolition.

APPLICANT'S RESPONSE

We recognize the concerns raised about the Municipality's responsibility in ensuring compliance with building regulations, including the timely issuance of cease orders. We cannot speak on behalf of the municipality, but past experiences have shown that the Municipality is committed to upholding all building regulations and ensuring that construction adheres to approved plans and title deed conditions. While oversight may occasionally occur, this does not absolve property owners of their responsibility to comply with existing regulations.

It is important to note that the Municipality acts within the framework of established processes. The decision to issue a cease order is influenced by various factors, including the nature of the transgression, the potential for safety hazards, and available resources. Each case is evaluated individually to determine the appropriate course of action.

TOWN PLANNER'S RESPONSE

It is clear that the general public does not understand the Municipality roll terms of town planning applications and building plans.

During construction work, the owner / building contractor has to requests various inspections to be conducted by the building inspector. The inspection for the foundations was not requested. In this case, the building inspector received a complaint in September 2023 indicating that the foundation was dug too close to the street. A site visit was conducted and was found that the foundation was poured, and brickwork has commenced. The contractor indicated that it would be rectified.

Towards the end of September 2023 another complaint was lodged and that walls were brought up. Another site visit was conducted, and a stop order was issued.

In February 2024, the building inspector after returning from leave conducted a routine inspection and found that building work has continued at the rear of the premises. A site inspection was requested with the owner and the issues were discussed and she indicated that the contractor has not informed her of any of the issues.

The Land Surveyor was appointed to survey the as built structure and found that there are transgressions. The application is the result thereof.

OBJECTION

- 4. It was evident, even to a layperson, that either the road reserve or the building foundations were incorrectly placed. The objectors express concern that the foundations were laid over six months ago, and residents should have been notified of the construction much earlier, particularly before any wall construction commenced. Regular site visits would have ensured compliance with approved plans. If proper oversight had been maintained, the building line violations would likely have been addressed before significant construction occurred. It is hard to believe that the project manager did not visit the site after the foundation was laid to ensure that it was sound and complaint with the National Building Standards 1040 (SANS 10400).***

APPLICANT'S RESPONSE

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors, resulting in a topographical survey that outlined the contours and remaining foundations after the Betty's Bay fires. Building plans, which strictly adhered to these contours and established building lines, were approved on 6 June 2022.

Unfortunately, the building contractor deviated from these approved plans, specifically regarding the positioning of the dwelling in relation to the street building lines. Our client, the landowner, was unaware of this encroachment until the building inspector raised the issue. In response to the concerns raised, our client commissioned an as-built survey from Van Dyk Land Surveyors, conducted in March 2024. This survey confirmed that the foundation and ground floor of the new dwelling encroached upon both the title deed and scheme regulations' street building lines. It is important to note that the landowner does not reside in Betty's Bay and acted in good faith by appointing a construction team to ensure compliance with all relevant regulations. The approved building plans clearly stated that no building lines were to be encroached. Our client is committed to rectifying this situation

TOWN PLANNER'S RESPONSE

The building department in Kleinmond is responsible for all areas from Rooi Els to Arabella and farms. The regular visits as indicated, is just not possible. The notice was served to stop building work

OBJECTION

- 5. The qualifications of the appointed contractors and consultants involved in the construction of the dwelling are questioned and they are labelled as incompetent.***

APPLICANT'S RESPONSE

It appears there were shortcomings in ensuring adherence to the building boundaries. We concur that a more proactive approach by the landowner, specifically in engaging competent professionals to oversee the construction process, could have mitigated these issues and would have helped align the construction with the approved building plans and prevented deviations from the stipulated requirements.

TOWN PLANNER'S RESPONSE

Noted.

OBJECTION

6. *The building operations continued until a cease order was finally issued, despite multiple attempts by objectors to contact the building inspector regarding the issues. The illegal building activities have been reported multiple times to the Kleinmond building and planning department by the objector and other residents, yet no action was taken. The building inspector did indicate non-compliance. The responsible parties, including the project manager and contractor, must address this issue, and the landowner has the right to seek remedies against them if necessary. The homeowner failed to address the non-compliance issue raised by the building inspector, raising questions about whether they or the project manager have adequate insurance to cover the costs of their errors. They assert that if the owner, Mrs. Erasmus, chose an incompetent builder, she should bear the consequences without the community having to accommodate the deviation.*

APPLICANT'S RESPONSE

We regret the lack of response from the building inspector; however, we cannot comment on behalf of the municipality.

Demolishing the already constructed sections of the dwelling is not feasible due to the extensive nature of the work completed. Such action would require a complete reconfiguration of the layout and impose a significant financial burden on the owner, who was unaware of the construction issues. The owner is now taking steps to rectify the situation by submitting an application for an administrative penalty, departure and removal of restrictive title deed conditions to legalize the constructed structures on the property.

TOWN PLANNER'S RESPONSE

The objector is incorrect to indicate that the building inspector did not respond to the complaint. See point 6 in this regard. The building inspector is responsible for a specific area and therefore it is required that the owners building contractors request inspections as the building progress to ensure compliance. However, its owner has a responsibility towards compliance

The competence of the building contractor is noted, but the objector can report him at the NHBRC.

OBJECTION

- 7. There is scepticism about the municipality's commitment to enforcing its building regulations. The objections emphasize the importance of consistent enforcement to prevent setting a precedent that allows homeowners to disregard rules. The continued construction despite clear infringements indicates a failure in planning, inspections, and enforcement by municipal personnel. There are concerns that this situation may indicate a wider issue of unreported construction breaches throughout the area, affecting all properties in Betty's Bay**

APPLICANT'S RESPONSE

Based on previous experiences, the municipality is dedicated to maintaining these standards and takes the enforcement of building regulations very seriously. The municipality will thoroughly assess the circumstances surrounding this application to ensure that appropriate actions are taken. We acknowledge the significant concerns regarding oversight and enforcement of building regulations in this case.

TOWN PLANNER'S RESPONSE

The municipality is responsible for the approval of the building plan and the requested inspections. In this case, the foundation inspection was not requested. The objector alerted the building inspector, which he responded to. Feedback was given to the objector in this regard.

The accusation that the building department does not enforce the National Building Regulations is thus uncalled for. It is clear that the objector does not have insight in the roles and responsibilities with regard to the functioning of the building plan process, the general public is quick to assume that the municipality has to take responsibility of anything and everything that happens. The owners have a responsibility as adults to adhere to the approved building plan to ensure compliance.

OBJECTION

- 8. There is strong opposition to the idea of the municipality altering title deed restrictions at this early stage of construction. The community expects the owner, project manager, and builder to take responsibility for any errors and to comply with municipal regulations.**

APPLICANT'S RESPONSE

It is proposed to retain the as-built dwelling, including the foundation and ground floor level, which encroach upon the 4m street building line. Additionally, due to the current layout and floor configurations, the future first-floor level and roof construction cannot be set back to meet the 4m street building line and will also encroach on this boundary. The walls and staircase cannot align between the ground and first floor levels unless the first floor is constructed over the 4m street building line in the future.

The application proposes to address the unlawful as-built encroachment and future construction / completion of the new dwelling over the street building line. To adhere to the municipal and title deed development parameters, the as-built structure would need to be demolished. However, this is not a feasible option from a financial standpoint, as outlined in earlier sections of this document.

TOWN PLANNER'S RESPONSE

Noted and is in agreement with the objector.

OBJECTION

9. The homeowner is criticized for not designing the new building within the property's perimeter, especially if they intended to utilize the existing foundation from a previous structure. The owner's claim of ignorance regarding the illegal actions of her contractor is deemed irrelevant; the owner is vicariously liable. Financial harm to the owner is viewed as recoverable from the contractor, making it a weak argument.

APPLICANT'S RESPONSE

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors, resulting in a topographical survey that outlined the contours and remaining foundations after the Betty's Bay fires. Building plans, which strictly adhered to these contours and established building lines, were approved on 6 June 2022.

Unfortunately, the building contractor deviated from these approved plans, specifically regarding the positioning of the dwelling in relation to the street building lines. Our client, the landowner, was unaware of this encroachment until the building inspector raised the issue. It should be noted that the as-built structure is still within the property's boundaries and does not encroach onto municipal land / the road reserve. The financial concerns are addressed in the previous sections of this document.

TOWN PLANNER'S RESPONSE

Noted and agreed with objector.

OBJECTION

10. An objector cites violations of title deeds, municipal bylaws, and the National Building Regulations, which mandate the demolition of illegally constructed buildings.

APPLICANT'S RESPONSE

The violations of title deed, municipal bylaws, and National Building Regulations will be thoroughly examined by the municipality. Demolishing the structure would result in substantial financial losses. Therefore, an application for an administrative penalty has been included - to enable our client to retain the structure that encroaches on the building lines (not the erf boundaries) rather than facing the costs of demolition.

TOWN PLANNER'S RESPONSE

Noted, however demolition of a building is not as simple as the objector makes it out to be. The municipal court cannot enforce demolition of a building, and the matter must be dealt with by the Magistrate Court. An application to the Court needs to be lodged to enforce a decision.

OBJECTION

- 11. Approval of the application would negatively affect property values in the area due to the unsightly nature of the illegal construction, especially as it is located on a bend. The proposed changes would negatively affect the visual appeal of the area, potentially leading to decreased property values. An objector highlights the natural beauty and rural character of Betty's Bay, stating that approval of this application would detract from the serene and tranquil environment that attracted them to the area.**

APPLICANT'S RESPONSE

The concerns regarding potential decrease in property values are acknowledged. However, the following points should be considered when assessing the impact on property values and the character of the area:

- The placement of the dwelling on erf 3199 Bettys Bay does not negatively affect neighbours' views of the ocean and mountains.
- The massing and scale of the as-built structures are in line with the surrounding area.
- All land use parameters are met, except for the deviation from the street building line.
- The existing foundation and ground floor structure are essential to the dwelling; demolishing or partially demolishing it to comply with the street building lines would impose significant costs and delays on our client.

Additionally, the scale of the surrounding built environment and the minimal impact on the streetscape should be taken into account when considering the potential for the property to accommodate the proposed building line deviations. The following factors further support the property's suitability for this application:

- High-quality materials were used and will continue to be used for the construction of the dwelling.
- The development adheres to the approved blueprint, with the only change being its position closer to the street boundary.

The application does not propose to change the zoning or land use of the subject property and therefore the proposal (dwelling house with outbuilding) is compatible with the surrounding land uses.

TOWN PLANNER'S RESPONSE

The possible decrease in value has not been proven by the objectors. The applicant does indicate that various factors need to be considered with regard to property value, which is correct. However, the character and surrounding developed erven should also be considered and none of the developed properties are built or constructed on the 2m street building line. This may affect the property values of the area.

OBJECTION

12. The approval of the application will set an undesirable precedent for future developments. Allowing the relaxation of title deed conditions would encourage other landowners to disregard local regulations and title deed requirements in their own developments. Granting approval for non-compliance would foster a culture of non-accountability and disregard for municipal regulations, negatively impacting the community.

APPLICANT'S RESPONSE

We are confident that the municipality is committed to upholding regulations consistently to maintain the integrity of the community and takes seriously the implications of this case for future applications. Each application is assessed on its own merits, and any precedents set will be carefully considered in light of maintaining compliance with building regulations and safeguarding community standards.

TOWN PLANNER'S RESPONSE

The removal of restrictive conditions is evaluated with due cognisance of the land use scheme parameters. The application erf has a 4,72m title deed street building line in lieu of the 4m street building line of the land use scheme. The rear title deed building line is 3m vis a vie the 2m rear building line of the land use scheme and lateral building line in terms of the title deed is 1,57m and 2m in terms of the land use scheme. The difference between the title deed restriction and land use scheme in total is approximately 0,86m. The title deed further allows a non-habitable outbuilding within the rear space. In terms of the land use scheme, only a garage with neighbours' consent may be allowed within the rear space but restricts any other non-habitable space within the rear building line, except through an application.

Therefore, one always considers and weighs the conditions with the land use scheme development parameters to establish the impact of such removal of a restrictive condition. It is clear that the title deed is more lenient pertaining the lateral building lines, whilst the land use scheme is more restrictive due to privacy, view corridors etc. It is from this view that applications are evaluated not only on merit, but also taking into consideration the character of the surrounding area.

OBJECTION

13. There is disbelief regarding the proposal of a fine as a solution, viewed as insufficient to address the seriousness of the violations.

APPLICANT'S RESPONSE

While the municipality strives to enforce regulations rigorously, it's important to recognize that the Land Use Planning By-Law allows for administrative penalty applications to address unlawful building work and land uses. The municipality evaluates the appropriateness of any proposed measures based on the specific circumstances. Handling unlawful structures through administrative penalty applications is a recognized practice.

TOWN PLANNER'S RESPONSE

Noted.

OBJECTION

- 14. *Questions are raised about the record of inspections, the adequacy of notifications to residents, and why proper procedures were not followed to inform all affected parties.***

APPLICANT'S RESPONSE

The building plans, which fully complied with the established contours and building lines, were approved on 6 June 2022. Public participation is not required for building plan approvals when no deviations are proposed. However, deviations from the approved plan arose during construction and needed to be addressed through a land use application, which is the subject of this submission. This application included a notice in the newspaper, ±348 notifications to adjacent property owners, and a notice board on-site. All public participation requirements for the land use application were followed meticulously, and all immediate property owners identified by the municipality received notice of the proposed application.

TOWN PLANNER'S RESPONSE

The building inspector followed due procedure with regard to notification. See point 6 of the comments and response. The distribution of the land use application was followed as required by the Municipality.

OBJECTION

- 15. *The lack of verge parking has already begun to affect traffic in the area.***

APPLICANT'S RESPONSE

Access to erf 3199 Betty's Bay will remain unchanged, with entry continuing from Pearl Avenue. According to the Overstrand Municipality Land Use Scheme (2020), a minimum of two parking bays is required for a dwelling. The proposed new dwelling will feature a double garage, providing adequate parking for the main residence.

Given this, the proposed main dwelling on erf 3199 Betty's Bay complies with the minimum parking requirements for properties zoned SR1. The property will continue to function primarily for single residential purposes, ensuring that the impact on traffic flow in the area will remain consistent.

TOWN PLANNER'S RESPONSE

The building plan does indicate the required 2 parking bays. Reference to vehicle obstruction may be due to construction of the dwelling.

OBJECTION**16. Encroachment on Municipal Infrastructure:**

Eskom: Building over electrical routes poses severe safety risks and could disrupt services for residents on Pearl Drive.

APPLICANT'S RESPONSE

The existing structures on the property have been designed and positioned in compliance with Eskom's safety requirements, and no further building or alteration will occur over any electrical routes. The current layout will not pose any safety risks or disruptions to services for residents on Pearl Drive.

TOWN PLANNER'S RESPONSE

The applicant must comply with Eskom rules and regulation to obtain electricity connection.

OBJECTION**16. Encroachment on Municipal Infrastructure:**

Water Supply: The construction could disrupt the municipal water supply, particularly as the water meter is already improperly positioned against the building.

APPLICANT'S RESPONSE

The positioning of the water meter, though noted to be close to the building, does not impede the functionality or operation of the municipal water supply. The existing water connection and meter have been installed in line with municipal regulations, and there are no planned alterations to these systems. No disruption to the water supply is anticipated due to the as-built structures, and the current setup will remain fully functional.

TOWN PLANNER'S RESPONSE

The municipal Operational Department is mandated to ensure compliance.

OBJECTION**16. Encroachment on Municipal Infrastructure:**

Fibre Optic Lines: Construction near fibre optic lines risks damaging essential services for neighbouring properties.

APPLICANT'S RESPONSE

The proposed construction does not interfere with any fibre optic lines, nor does it risk damaging these essential services.

In summary: all services on the subject property are already in place, and the as-built structures will not impact the scale or usage of the existing services. There is no expectation of additional loading or demand on the municipal infrastructure. Furthermore, all services will continue to be provided in accordance with the municipality's engineering guidelines, ensuring compliance with all relevant standards. The application will not adversely affect municipal infrastructure, and the existing services will remain fully operational without disruption.

TOWN PLANNER'S RESPONSE

Should fibre optic lines be disrupted or damage, it remains the responsibility of the owner for rectification.

OBJECTION

- 17. *The approved building plans, which were referenced in the Motivation Report, were not attached, raising concerns about compliance with building limits.***

APPLICANT'S RESPONSE

A copy of the approved building plans was submitted as part of the land use application; however, it was not included in the notices distributed during the public participation process. As stated in the notice, the full application was available for inspection at the municipality's offices, and any enquiries, including requests for the building plans, could have been directed to the town planning department.

TOWN PLANNER'S RESPONSE

The approved building plan is compliant with the title deed conditions and the land use scheme. An as-built plan can only be submitted once the land use application is finalized.

OBJECTION

- 18. *Impact of Construction:***

The location of the dwelling on a busy corner road means that large windows will be exposed to debris from passing vehicles.

APPLICANT'S RESPONSE

We find this concern unrelated to the land use application and believe it should be dismissed.

TOWN PLANNER'S RESPONSE

This aspect is to the detriment of the owner's problem and not applicable to the application.

OBJECTION**18. Impact of Construction:**

Residents will experience increased noise and light pollution due to proximity to the road, compromising the area's natural ambiance.

APPLICANT'S RESPONSE

While we understand concerns about noise and light pollution, it's important to note that the dwelling is positioned 2m from the street boundary, well outside the road reserve. This setback helps mitigate any potential disruptions, still allowing for a buffer that preserves the natural ambiance of the area. Additionally, it will be in our client's best interest to minimizing noise impact, ensuring that residents can still enjoy a peaceful environment.

TOWN PLANNER'S RESPONSE

Noted, should the building be approved on the 2m street building line, light and noise pollution may have an impact on the surrounding area.

OBJECTION**18. Impact of Construction:**

Maintenance activities for the road may damage the dwelling, leading to potential liability claims against the municipality.

APPLICANT'S RESPONSE

Concerns regarding maintenance activities for the road potentially damaging the dwelling are valid and represent a risk for our client given the dwelling's proximity to the road. Clear communication and coordination between the municipality and the property owner to mitigate risks and ensure that appropriate measures are taken to protect the dwelling is key, if and when activities in the road occur. Our client is committed to working collaboratively with the municipality to address these concerns and find mutually beneficial solutions.

TOWN PLANNER'S RESPONSE

This aspect will be dealt with by the owner and the Operational department of the Municipality.

OBJECTION**18. Impact of Construction:**

The visual impact of a double-story structure close to the road contrasts with other properties that are set back, affecting the overall character of the area.

APPLICANT'S RESPONSE

The placement of the dwelling on erf 3199 does not negatively affect neighbours' views of the ocean and mountains. The massing and scale of the as-built structures are in line with the surrounding area. All land use parameters are met, except for the deviation from the street building line.

Additionally, high-quality materials were used and will continue to be used for the construction of the dwelling. The development adheres to the approved blueprint, with the only change being its position closer to the street boundary.

Lastly, Ms. Kausar (owner of erf 3420 Bettys Bay) approves the requested deviation from building line restrictions for the existing structure on erf 3199. Her approval is explicitly limited to the current structure and does not extend to any future developments that may arise from this deviation

TOWN PLANNER'S RESPONSE

In agreement with the objection, the placement of the dwelling in close proximity of the street will impact on the street view and character of the area. No other building in the immediate area is built in such close proximity of the street.

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

The application will not contribute to past apartheid development trends.

The Consultant does indicate that past approval similar to this application has been approved; however no proof in this regard has been submitted and thus not spatially biased. The latter is not correct, since the immediate surroundings do not reflect habitable (dwellings) 2m from the street boundary, thus contribute to spatial biased.

Spatial Sustainability

The building does not impede on natural resources or high potential agricultural land.

The impact of a dwelling in close proximity will contribute to visual street scape and cannot be determined as low as indicated by the consultant.

Efficiency

The cost implication for the applicant should a demolition order be issued is duly noted. However, it remains the responsibility of the owner to ensure that construction takes place as per approved building plan and cannot be ignored.

Spatial Resilience

The building was approved and is in accordance with the National Building Regulations and SANS requirements to limit the impact of climate change.

Good Administration

The Consultant followed due procedure 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 are provided by the Municipality.

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 Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

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 to be gained by the community of Sunny Seas should the restrictive condition be removed.

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

The owner and applicant will gain a benefit in that it does not need to demolish the existing structure.

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

The owner will accrue financial benefit in that the structure does not need to be demolished and rebuilt.

The social benefit of the restrictive condition remaining in place

The social benefit should the condition remain in place that the status quo remain in place.

The social benefit of the removal of the restrictive condition

The benefit is that the Land Use Scheme parameters are applicable. There is only a 0,72m difference between the title deed restriction and the land use scheme which will little impact on the character or street view of Pearl Road.

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 condition will only remove the rights in terms of the street building line. It should be noted that the title deed restriction on the lateral building lines of 1,57m are more lenient than the land use scheme with the difference of 1,43m. Taken this into consideration the removal of the restrictive condition will not remove any rights of beneficiaries in Sunny Seas.

12. THE DESIRABILITY OF THE PROPOSAL

DESIRABILITY:

The original residential dwelling was destroyed during the 2019 fires. This structure was built in accordance with the title deed and land use scheme development parameters. In 2021 the applicant bought the property and submitted a building plan which was approved. The approved building plan does comply with the title deed and land use scheme parameters.

During the construction phase, it was realized that the contractor determined the location of the building incorrectly. A notice was served by the Building Department to stop work and appoint a Land Surveyor to determine the correct placing of the building. The transgression is only applicable to the street building line.

The application is to legalize the existing structure, at ground level, but also request that the first floor be allowed to transgress the street building line. The motivation by the consultant indicate that it will be structural impossible to set back the first floor. This aspect has not been verified by an engineer and Architect.

It is correct that there may be financial consideration and recognises that the owner does not reside in area and that the building contractor did make a mistake. However, there are rules and regulations that need to be abide by, which remains the responsibility of the owner.

The dwelling on a 2, 09m from the street boundary of the erf will have a detrimental impact on the street view and character of Pearl Road. Developed erven located along Pearl Road is set back to comply with the title deed and land use parameters. The application requests that not only the ground floor but also the first floor be accommodated at 2,09m and 2,12m from the street boundary. The street view will be compromised by the proposed dwelling at that distance from the street boundary.

The Municipality does not view habitable spaces on street boundaries favourably. The applicant did mention that the municipality has approved buildings closer to the street boundary in the past but fails to mention that these buildings were built more than 20 years ago and forms part of the specific character of the immediate area.

The present application is for a new construction that does not comply with the foundations of the previous foundations of the burnt building. The property was surveyed, and the approved plan was not executed accordingly. The objectors did inform the Municipality, and the building inspector did a site visit and informed the contractor of the incorrect set out of the building of which the latter indicated will be rectified. The contractor ignored the advice and proceeded and was stopped once it became clear that no rectification took place. The contracted did not request the foundation inspection, should this be done, the mistake would have been addressed at an early stage with little financial implications

The consultant did indicate that the owner does acknowledge the mistake and responsibility in this regard, but request leniency due to the fact that the contractor did not inform her of the discussions that took place. Due cognisance is taken of the predicament of the owner, but she can recuperate her losses from the contractor to rectify the situation.

The municipality acknowledges the owner truthfulness of accepting responsibility of the building contractors incorrect lay out of the building and the effort to rectify the situation with an application. However, the owner did appoint the contractor and needs to hold him responsible for the financial loss incurred by her, which is not the responsibility of the municipality to carry the loss incurred by approving the application.

CONCLUSION:

Building lines are there for a reason in order to;

Ensuring Safety and Accessibility

One of the primary purposes of building lines is to ensure the safety and accessibility of properties. Setbacks provide space for emergency services, pedestrian walkways, and vehicular access, contributing to the overall safety and functionality of the built environment.

Preserving Aesthetic Appeal and Privacy

Building lines also play a role in preserving the aesthetic appeal of neighbourhoods and ensuring privacy between properties. By establishing uniform setbacks, building lines help create a cohesive and visually pleasing streetscape while providing adequate space between structures for light, ventilation, and privacy.

This is also called a setback. Its purpose is to avoid crowding the street and make the neighbourhood look nicer and more consistent.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:***The nature, duration, gravity and extent of the contravention:***

The extent of the transgression as proposed by the applicant relates to 33,43m² over land use scheme building line of 4m and 48,08m² over the title deed building line of 4,72m.

The building work was immediately ceased once the applicant was informed of the transgression.

The conduct of the person involved in the contravention

The owner immediately responded to the notification of the transgression.

Whether the unlawful conduct was stopped

The unlawful conduct was immediately stopped.

A report by a quantity surveyor in matters of unauthorised building/construction

The actual construction cost of R150 000 was submitted by the applicant.

Whether a person involved in the contravention has previously contravened this By-law or previous planning law

No

ADMINISTRATIVE PENALTY:

The administrative penalty is calculated as follows:

Budget 2025/2026 - Formal Structure – habitable (even larger than 150m²) per m²
- R20 253

Transgression: 14,65m²

Total value: R20253x 14,65m² = R296 706,45

5% of 296 706,45 = R14 835,32

Total administrative penalty: R14 835,32

The transgression over the title deed and land use scheme of 4,72m and 4m are not recommended for approval. Thus, the penalty be determined will only be applicable to the 0,72m transgression of the title deed street building line

IN CONCLUSION:

The determination of 5% of the total value was used since the owner immediately stopped any building activity on receipt of the notice and has subsequently submitted an application to rectify the situation.

The removal of restrictive condition is recommended for approval since the land use scheme has a stricter lateral building line and the difference of 0,72m between the title deed condition and the land use scheme will have little impact on the street view.

It is recommended that the ground floor be set back to the 4m street building line and the first floor be approved on the 4m street building line.

13. RECOMMENDATION

1. that the objections be noted.
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 3199 Betty's Bay for the removal of restrictive title deed condition C.(i)(5)(d) as contained in Title Deed T6358/2021 of the property to accommodate the encroachments of the existing structures on the property, **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 3199 Betty's Bay for a departure of the title deed street building line from 4,72m to 4m
 - a) to accommodate the dwelling
 - b) As Built dwelling's foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line;

be approved, in terms of the provisions of Section 61 of the By-law;

4. 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 3199 Betty's Bay for the following departures:
 - a) accommodate the dwelling and
 - b) as-built dwelling's foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line
 - **Title Deed** street building line from 4,72m to 2,09m and 2,12m respectively;
 - **Land Use Scheme** street building line from 4m to 2,09m and 2,12m respectively;

not be approved, in terms of the provisions of Section 61 of the By-Law.
5. that the above approvals in Points 2 and 3 be subject to the following conditions:
 - (a) that this approval is not an approval in terms of any other legislation;
 - (b) that a **revised** building plan be submitted indicating the dwelling on the 4m street building line;
 - (c) that a **revised** building plan 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;
 - (d) that the amended title deed be submitted for record purposes to the Municipality;
 - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (g) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with, and
 - (h) that all the conditions in the Services Report (attached as Annexure G), be complied with.
6. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 3199, Betty's Bay for the unauthorized building line encroachments as stipulated above, **be imposed**, and that an administrative penalty fee of **R14 835,32** be payable within sixty (60) days of this decision.
7. that the applicant and objectors 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 RECOMMENDATIONPOINT 2

- ❖ The title deed condition building line restrictions are more restrictive in terms of the street and rear building lines, but more lenient in terms of the lateral building lines.
- ❖ The difference between the building lines of the title deed conditions and the land use scheme are approximately 1m in total and thus would have very little impact on the overall allowable development of the erf.
- ❖ The street line difference of 0,72m versus 4m will have little impact on the street view or character of the immediate surroundings.
- ❖ The lateral building lines of 1,57m of the title deed is more lenient than the 2m of the land use scheme, whilst the rear building line of 3,15m of the title deed is more restrictive than the land use scheme.
- ❖ Thus, to enable developments of residential erven to be more uniform in terms of development parameters, the discrepancies between the title deed restrictions and the land use scheme are even out with the removal of the one condition that deals with the building lines. All the other conditions remain in place.

POINT 3

- ❖ The 0,72m difference between the Title deed and the land use scheme will have little impact on the street vie and character of the immediate surroundings.

POINT 4

- ❖ The application to legalize the existing transgression of the ground floor and the proposed first floor on 2,09m and 2,12m respectively, will definitely have an impact on the street view and character of the area.
- ❖ No other building is located so close to the street boundary.
- ❖ The proposed dwelling so close to the street, double storey will impact in terms of noise and light pollution
- ❖ The contractor was notified of the transgression and proceeded with the building, ignoring the approved building plan.
- ❖ The financial implications can be recovered from the contractor by the owner.

15. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Site Development Plan & Survey plan indicating transgressions
- Annexure D: Title Deed T6358/2021
- Annexure E: Objections & one (1) support letter received
- Annexure F: Applicant's response to the objections received
- Annexure G: Services Report

SIGNATURE

REGISTERED PLANNER

Name: **H VAN DER STOEP**

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

Signature: _____

Date: _____



PIAn Active
Stads- en Streeksbeplanners
Town & Regional Planners

Property Description:
**ERF 3199
BETTYS BAY**

Scale: NTS
Drawing Nr: betty3199L.dwg
Date: JULY 2024

All distances approximate and subject to survey.
COPY RIGHT RESERVED

Plan Description:
LOCALITY MAP



**DETERMINATION OF AN ADMINISTRATIVE PENALTY,
PROPOSED DEPARTURE & REMOVAL OF A
RESTRICTIVE TITLE DEED CONDITION**

REMAINDER ERF 3199 BETTY'S BAY

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Mrs N.A. Erasmus, the owner of erf 3199 Betty's Bay, to apply for the administrative penalty, departure and the removal of a restrictive title deed condition of the subject property.

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. Our client bought the subject property in 2021 and submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications. Our client, the landowner, was unaware of the deviation until the building inspector intervened. There was clearly an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

The foundation and ground floor of the new dwelling were constructed over the title deed and land use scheme regulations' street building lines. In addition, the design of the dwelling does not allow the first floor and roof (yet to be constructed) to be stepped

back to comply with the applicable street building lines. This application proposes to address the unlawful As Built encroachment and future construction / completion of the new dwelling over the street building line.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an **administrative penalty**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for **the departure** of erf 3199 Bettys Bay;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **removal of a restrictive title deed condition** of erf 3199 Bettys Bay.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 3199 Bettys Bay is situated at 4 Pearl Avenue, Sunny Seas, Betty's Bay. Refer to the locality plan attached. Erf 3199 Betty's Bay is 2006m² in extent and is held by title deed no. T6358/2021.

The subject property gently slopes in a southerly direction and is characterized by an unfinished dwelling structure.

3.2 ZONING

Erf 3199 Betty's Bay has the following land use rights:

ERF NUMBER	ZONING
Erf 3199 Bettys Bay	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

3.3 LAND USE

There is an unfinished dwelling structure on the subject property. There is an approved building plan for the subject property to construct a double storey dwelling with double garage on the subject property (copy attached).

Land uses that surround the subject property are single residential dwellings, vacant erven and public roads.

3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 3199 Betty's Bay to accommodate the existing As Built sections of the dwelling (foundation and ground floor level) in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
2. The **departure** of erf 3199 Bettys Bay in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
 - relax the street building line from 4m to 2,09m (north-western corner)

- and 2,12m (north-eastern corner) respectively to accommodate the As Built dwelling's foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line;
3. The **removal of a restrictive title deed condition** of erf 3199 Betty's Bay in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove condition C.(i) (5)(d) on pages 3-4 of title deed no. T6358/2021 to:
- Accommodate the As Built foundation and ground floor of the new dwelling as well as future construction (first floor and roof) that will encroach the 4,72m title deed street building line.

The potential of the subject property is discussed in detail in *Section 3.5 Potential of the property*.

There was an existing dwelling on the subject property that was destroyed in the devastating veld fires in 2019. Our client bought the subject property in 2021 and submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the land use scheme and title deed street building lines.

This application proposes to address the unlawful As Built dwelling and the proposed first floor and roof (future completion of the dwelling) that encroaches the title deed and land use scheme regulations' street building lines.

Detail of the proposed application for consideration:

3.4.1 Rectification of contravention

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a

demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

As the application is for the rectification of a contravention of the By-Law (As Built dwelling foundation and ground floor) an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The nature, duration, gravity and extent of the contravention**

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. Only the foundation remained following the devastating veld fires in 2019. Our client bought the subject property in 2021.

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors. A topographical survey was compiled indicating the contours and foundation that remained on the site following the Betty's Bay fires (copy attached). The building plans were compiled accordingly, and our client submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the relevant street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications. Our client, the landowner, was unaware of the deviation until the building inspector intervened. It was clear that there was an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

Van Dyk Land Surveyors were instructed to undertake an As Built survey to determine to extent of the encroachment. The As Built survey dated March 2024 confirmed that

the foundation and ground floor of the new dwelling was constructed over both the title deed and scheme regulations' street building lines.

It is unclear why the positioning of the new building during construction was incorrect. Our client (the landowner) does not reside in Betty's Bay and in good faith appointed the relevant consultants and the construction team to undertake the project in line with all land use scheme and title deed requirements. The approved building plan clearly shows that no building lines were to be encroached.

The architect confirmed that the dwelling's main wall in the front should have been set back 2,043m from the street land use scheme building line of 4m, i.e. 6,043m away from the street boundary line - all according to and indicated on the final approved set of drawings. The dwelling was however constructed on the 2,09m and 2,12m street building line. The total extent of the As Built foundation / ground floor level is $\pm 245,85\text{m}^2$ with a $\pm 104,1\text{m}^2$ porch (total footprint As Built is $\pm 349,95\text{m}^2$). The section of the dwelling that encroaches the land use scheme regulations' building line is $\pm 33,43\text{m}^2$ in extent ($\pm 9,55\%$ of total building footprint) and $\pm 48,08\text{m}^2$ ($\pm 13,74\%$ of total building footprint) encroach the 4,72m title deed street building line. The new foundations are within the allowed land use scheme's lateral building lines of 2m and the title deed lateral building lines of 1,57m - built at 2,03m from the western boundary line. Refer to the encroachment plan attached. A departure and removal of restrictive title deed conditions application is submitted simultaneously to address the encroachments.

The unlawful construction is considered a future habitable area that encroaches the relevant street building lines. It is of utmost importance to our client that the structures be retained.

- **The conduct of the person involved in the contravention**

The building contractor did not adhere to the approved building plans, specifically regarding the position of the dwelling in relation to the street building line. Our client, the landowner, was unaware of the deviation until the building inspector intervened. From our client's side it was clear that there was an oversight and miscommunication

between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

- **Whether the unlawful conduct was stopped**

The owner was unaware of the encroachment until she received the notice from the building inspector (refer to the email dated 15 February 2024). All construction was ceased immediately. The unlawful structures cannot be demolished since it is such a large extent of the new dwelling that was already constructed and since it will imply a whole new configuration of the layout. To demolish this section of the dwelling will place a great financial burden on our client who was unaware of the erroneous construction work. The owner now attempts to rectify the contravention by submitting the administration penalty application and subsequent departure application in order to legalise the As Built structures on the subject property.

- **A report by a quantity surveyor in matters of unauthorised building / construction**

The landowner confirmed that the construction cost for the section of the dwelling over the street building line was ±R150 000.00.

- **Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law**

To the best knowledge of the applicant and as confirmed by the landowner, she has never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the fraudulent activity undertaken by the building contractor and not our client per se.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures.

The owner never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictive title deed conditions application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

3.4.2 Departure

It is proposed to retain the As Built dwelling (foundation and ground floor level) that encroach the 4m street building line. In addition, due to the configuration of the levels and floor layouts, the future first-floor storey and roof construction cannot be stepped back to comply with the 4m street building line and will therefore also encroach the building line. The walls and the staircase cannot align between the ground and first floor levels if the first floor is not constructed over the 4m street building line in future.

To accommodate the As Built structure and proposed additions (first floor and roof) an application is submitted for a departure to:

- o Relax the street building line from 4m to 2,09m (north-western corner) and 2,12m (north-eastern corner) respectively to accommodate the As Built dwelling foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line.

The total extent of the As Built foundation / ground floor level is $\pm 245,85\text{m}^2$ with a $\pm 104,1\text{m}^2$ porch (total footprint As Built is $\pm 349,95\text{m}^2$). The section of the dwelling that encroaches the land use scheme regulations' building line is $\pm 33,43\text{m}^2$ in extent ($\pm 9,55\%$ of total building footprint) and $\pm 48,08\text{m}^2$ ($\pm 13,74\%$ of total building footprint) encroach the 4,72m title deed street building line. The new foundations are within the allowed land use scheme's lateral building lines of 2m and the title deed lateral building lines of 1,57m - built at 2,03m from the western boundary line. Refer to the encroachment plan attached and included below:

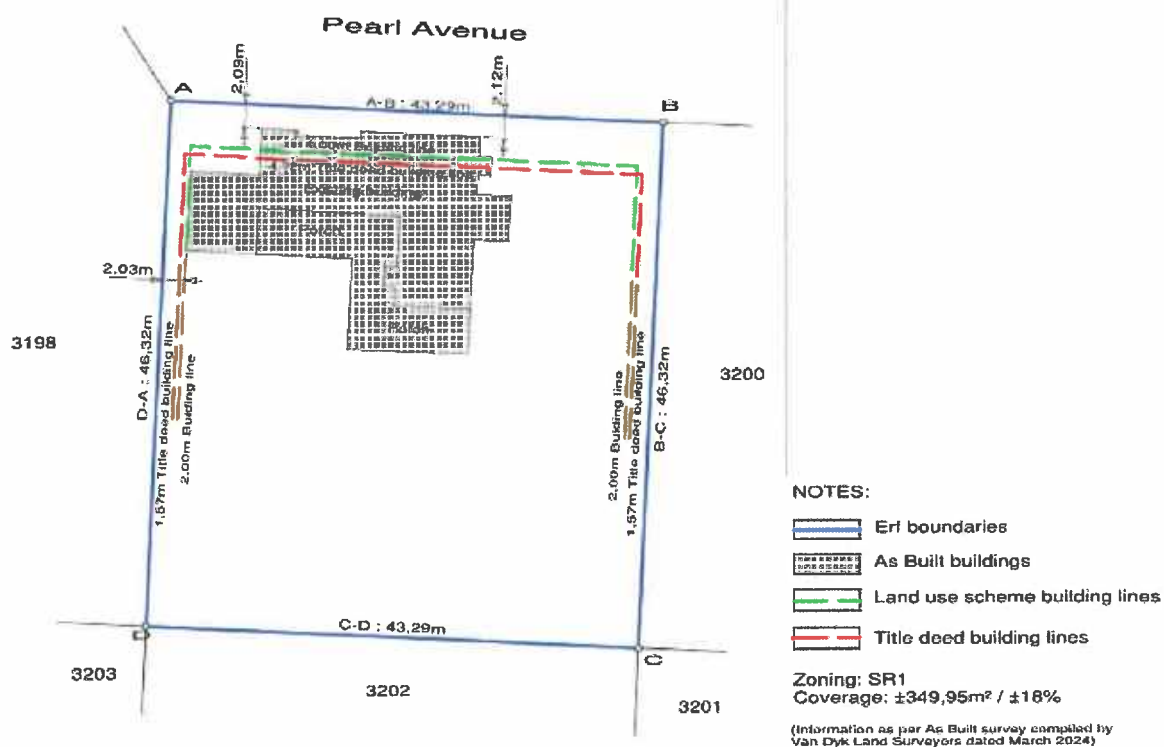


Image 1: Encroachment plan

The structures are visible from neighbouring erven. The position of the dwelling on erf 3199 Bettys Bay does however not have a negative impact on neighbours' views towards the ocean and mountain.

The following should be noted when considering the As Built structures:

- It was never the intention of the landowner to construct the As Built dwelling in its current position. The approved building plan clearly shows the intent that the building was to be positioned at least 6m from the street erf boundary.
- Unfortunately, the first floor (to be constructed) cannot be stepped back to the respective street building lines as explained in previous sections of this report. The blueprint of the dwelling will remain as per the approved building plans – only the position on the property changes as per the As Built mistake.
- The materials used and the design of the dwelling are aesthetically pleasing.
- The As Built foundation and ground floor structure forms the basis of the dwelling on the subject property, thus to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client.

The proposed application has a low to no impact on the character and property values of the surrounding properties. The existing structure on the subject property does not create an infringement to any passing traffic or public activity due the low impact use of the structures. It is submitted that the massing and height of the existing structure are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 3199 Bettys Bay will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all the structures on the subject property will comply with the permissible height requirements for SR1 zoned properties (as per the approved building plans). The building and use thereof that encroach the applicable street building lines, as indicated on the encroachment plan, already exist and the application addresses existing structures that encroach the building line and the future first floor addition that must be constructed on the same street building line. The impact on the adjacent property owners and the passers-by will be marginally higher than if these structures were set back and constructed outside of the relevant building lines.

The area schedule and coverage for the subject property as per the approved building plans are as follows (take note, the As Built footprints and extent were used to determine the encroachment):

AREAS:	
GROUND FLOOR	169,38 m ²
FIRST FLOOR	119,24 m ²
GARAGE	36,58 m ²
COVERED FRT VERANDA	7,22 m ²
COVERED BCK VERANDA	101,34 m ²
OPEN BALCONY	99,14 m ²
TOTAL AREA:	325,20 m²
FOOTPRINT	314,52 m ²
SITE AREA	2006 m ²
COVERAGE	15,68%

The total coverage of 15,68% (or As Built foundation footprint of 349,95m² / ±18%) does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing structure is compatible with the character of the area, does not impact negatively on the rights of anyone else and that no good reason exists for not approving this application. When considering the proposed building line deviation, the

point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure of erf 3199 Betty's Bay is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.5 THE POTENTIAL OF THE PROPERTY

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, second dwelling, guest house and home occupation uses). The proposed departure and removal of restrictive title deed conditions will not hinder any possible future land use applications on erf 3199 Bettys Bay.

The subject property has the potential and allows for the deviations being applied for. The existing structure meet the lateral building lines, coverage and maximum of 8m height requirement for SR1 zoned properties as depicted on the encroachment plan and approved building plans.

The following should be noted when considering the potential of the site:

- The position of the dwelling on erf 3199 Bettys Bay does not have a negative impact on neighbours' views towards the ocean and mountain.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the street building line deviation, all other land use parameters are met.
- The As Built foundation and ground floor structure forms the basis of the dwelling on the subject property thus to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client.

The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and removal of restrictive title deed conditions. The following factors confirm the potential of the property to accommodate the proposed building line deviations:

- Good quality materials were / will be used for the construction of the dwelling;
- The development will keep to the approved blueprint of the dwelling, only at a position closer to the street boundary;
- The dwelling will add value to the property and the area.

3.6 ECONOMIC IMPACT

The proposed departure and removal of restrictive title deed conditions are to accommodate the As Built dwelling and future completion thereof. The approval of the encroachment will allow the owner to legalise the existing structures on the subject property and continue the construction work to the dwelling. This will also favour the resale of the property in the future.

The approval of the existing structure in its current position will save our client the cost of demolishing the structure. The proposed building line deviation and removal of the restrictive title deed condition will have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed application will have no impact on the social status quo of the area. The building line deviation and removal of restrictive title deed condition will however allow the owner to keep the As Built structure on the subject property.

No negative impact on the social wellbeing of the surrounding community is anticipated. It is submitted that the proposed development and completion of the dwelling in its current position on site is compatible with the character of the area and does not impact negatively on the rights of anyone else.

3.8 COMPATIBILITY WITH SURROUNDING LAND USES

The subject property is situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. There are also a few vacant erven in the immediate vicinity. The scale of the structures on erf 3199 Bettys Bay (and the proposed uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures that encroach the street building lines will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will remain for residential purposes.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

All services on the subject property already exist. The As Built structures will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed departure and removal of restrictive title deed condition will have no

impact on the general safety and wellbeing of the surrounding community. It is anticipated that one family will occupy the subject property once the development is complete.

Since the proposed departure and removal of a restrictive title deed condition are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

3.11 IMPACT ON HERITAGE

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for the departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 3199 Bettys Bay is not situated within the Heritage Protection Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed departure will not have a negative impact on the heritage value of the Betty's Bay area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure and removal of a restrictive title deed condition do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Management Overlay Zone (2020).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 3199 Bettys Bay will remain unchanged and will be from Peal Avenue. Refer to the encroachment plan. No new access points are proposed.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house (main dwelling). The new dwelling will be developed with a double garage that will provide parking for the main dwelling.

Considering the above the proposed main dwelling on erf 3199 Bettys Bay therefore complies with the minimum parking requirements for SR1 zoned properties.

The subject property will continue to be used primarily for single residential purposes and therefore the impact on the traffic flow in the area will remain unchanged.

3.14 TITLE DEED

Title Deed No. T6358/2021 has restrictive title deed conditions that need to be removed to accommodate the encroachment of the dwelling over the street building lines on the subject property. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl of Van Zyl Kruger Attorneys attached.

There is a bond registered against erf 3199 Bettys Bay. The bondholder's consent dated 23 July 2024 is attached.

It is proposed to remove the following restrictive title deed condition registered by the Administrator (now the Overstrand Municipality) to accommodate the new dwelling that will encroach the 4,72m title deed street building line on erf 3199 Bettys Bay:

Title deed no. T6358/2021, pages 3-4, paragraph C.(i) (5)(d):

"C. To the following conditions contained in the said Deed of Transfer Number 17598/68:-

(i) Imposed by the Administrator of the Province of the Cape of Good Hope when approving of the establishment of Sunny Seas Township in terms of the provisions of Ordinance No. 33 of 1934, as amended:

(5) This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Township Boards 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:

(d) No building or structure or any portion thereof 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 in height measured from the floor to the wall plate and no portion erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;"

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 restrictive condition":

- ***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 removal of the restrictive conditions intends to increase the use rights of the property to allow the dwelling to encroach the 4,72 street building line and to allow any future development on the property in line with the land use restrictions stipulated in the Overstrand Land Use Scheme Regulations (2020) for SR1 zoned properties. The value of the rights is vested in the owner of the property. The condition was registered by the Administrator when the township was developed and neither the administrator nor the registered owners of the township enjoy any financial or other

value. The removal of the condition will consequently have no impact on the favoured parties. Property owners not seeking the encroachment of the As Built dwelling and the completion thereof over the street building line will favour the restrictive title deed condition since the condition impede the development of the dwelling at its current position. The street and rear building line conditions are more restrictive than the land use scheme regulations' building lines. In addition, the stricter title deed building lines shrinks the development area of the subject property.

- ***The personal benefits which accrue to the holder of rights in terms of the restrictive conditions***

The conditions were imposed by the Administrator for the benefit of the Sunny Seas Township, Bettys Bay. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property. The holder (Overstrand Municipality) has efficient scheme regulations to guide development for SR1 zoned erven in Bettys Bay.

- ***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed***

The removal of a restrictive title deed condition will bring about personal benefits to the landowner since it will allow her to retain the As Built dwelling foundation and ground floor and continue building work to complete the dwelling (both ground and first floor) on the 2,09m and 2,12m street building line once the application is finalized.

The 4,72m street building line and 3,15m rear boundary building lines as stipulated in the title deed are more restrictive than the land use scheme building lines. To remove the title deed's street and common boundary building lines will allow the property owner to retain the As Built dwelling footprint and construct the dwelling on the position as per the attached encroachment plan. Any future development / additions can also be done according to the land use scheme development parameters, instead of being bound by the more restrictive title deed building lines.

- ***The social benefit of the restrictive conditions remaining in place in its existing form***

The social benefit if the title deed conditions were to remain unchanged and enforced on erf 3199 Bettys Bay would be that the character of Pearl Avenue will remain

unchanged. Other than the aforementioned, the social benefit is considered minimal if the condition was to remain in place. If the condition remains unchanged, the owner must adhere to the stricter title deed street and rear boundary building lines. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's rear boundary and street building lines are more restrictive than the scheme regulations' building lines. To keep the 4,72m title deed street building line and the 3,15m rear boundary building line will have no benefit to the property owner since it takes away developable land and restricts the development of the dwelling at the As Built foundation / ground floor position.

- ***The social benefit of the removal or amendment of the restrictive conditions***

The removal of the restrictive title deed condition will allow the scheme regulations' building lines to set the rules for future development of erf 3199 Bettys Bay. It will also allow our client to retain the As Built structure and complete the dwelling in its current position on site. The social benefit will therefore only be to the landowner of erf 3199 Bettys Bay.

- ***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 condition will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the future structures within the scheme regulations' building lines. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The ***Overstrand Spatial Development Framework (2020)*** earmarks the area where erf 3199 Betty's Bay is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of a restrictive title deed

condition on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 3199 Betty's Bay forms part of Planning Unit no. 7. This planning unit stipulates that the density status quo should remain. A main dwelling will be developed on the subject property and therefore no densification is proposed with this application. The land use application for the subject property therefore falls within the existing planning for the Betty's Bay (East) area.

The proposal will promote land development in a location that is sustainable. The proposed departure and removal of a restrictive title deed condition are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

There is no impact on the overall density of Sunny Seas / Bettys Bay east and therefore the proposed application still promotes a low-density residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

3.16 PLANNING PRINCIPLES

The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1949. The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Sunny Seas (Bettys Bay) Township. The proposed application is in character with the

existing area where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

Spatial sustainability: The proposed departure and removal of a restrictive title deed condition will have a low impact on the visual elements of the subject property and surroundings. It is submitted that the proposed application is compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the street building line has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The dwelling (once complete) will merge well with the surrounding built environment. The impact on the biophysical environment will also be kept to a minimum since the development does neither trigger any listed activities in terms of NEMA nor is it positioned with Overstrand Municipality's EMOZ.

Factors such as the good quality materials to be used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the larger extent of the erven in this extension, the existence of the As Built structure on the subject property, compliance with all other land use development parameters, etc. allow for the consideration and approval of the proposed deviations and removal of a restrictive title deed condition without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures is to an improved erf within an established residential area will not impact on urban sprawl, or upon a sensitive environment.

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The property is compatible with the character of the area and does not impact negatively on the rights of any adjacent property owners.

Efficiency: The subject property is easily accessible and conveniently located close to Bettys Bay CBD, Kleinmond and major routes. The massing and height of the property will be in line with the relevant land use scheme regulations. It proves to be resourceful to approve the As Built structure with the proposed use thereof since it is compatible with

the existing built environment and the way the dwelling was designed (and will ultimately be constructed) proofs to be aesthetically pleasing.

It proofs to be efficient to accommodate the existing structure and its proposed uses by approving the proposed departure and removal of a restrictive title deed condition of erf 3199 Bettys Bay instead of demolishing the structures, that will have great time and cost implications to our client.

The proposed departure and removal of a restrictive title deed condition proof to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

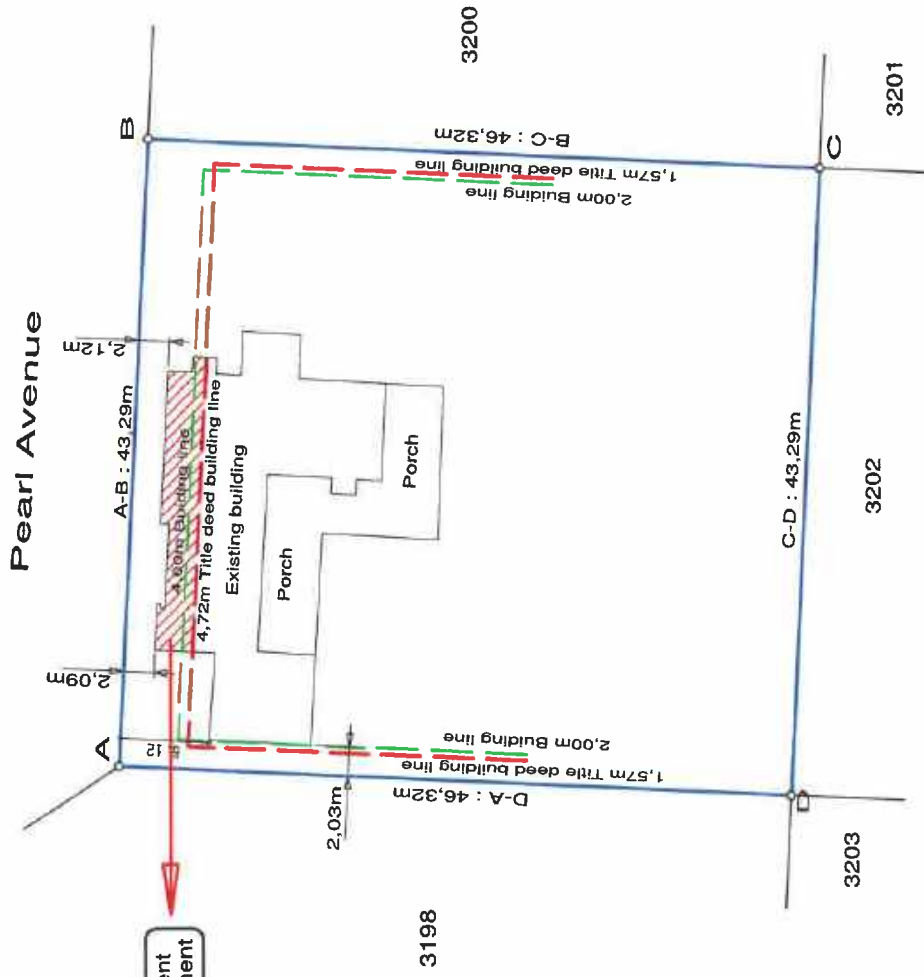
4. RECOMMENDATION

When this application is evaluated, it is important to take note of the following:

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The zoning and primary land use of the subject property will remain unchanged;
- The deviation from the applicable scheme regulations' street building line and the removal of the title deed building lines condition are to accommodate the As Built structure (inclusive of the first storey) only;

- The proposal is compatible with the existing built character of the area;
- Impact on the traffic will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.



±33,43m² scheme BL encroachment
±48,08m² title deed BL encroachment

NOTES:

- Erf boundaries
- As Built buildings
- Dwelling encroaching building lines
- Land use scheme building lines
- Title deed building lines

Zoning: SR1
Coverage: ±349,95m² / ±18%

(Information as per As Built survey compiled by Van Dyk Land Surveyors dated March 2024)

PLAN Stads- en Streeksbeplanners
Town & Regional Planners

All distances approximate and subject to survey.
COPY RIGHT RESERVED

Property Description:
**ERF 3199
BETTYS BAY**

Plan Description:
**ENCROACHMENT
PLAN**

Scale: 1:500
Drawing Nr: bettys3199encr.dwg
Date: JULY 2024



LEGEND

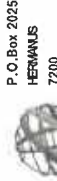
- Sewer Manhole
- Stormwater Manhole
- Valve
- Water Meter
- Lamp Post
- Electric Post
- Road sign
- Electrical distribution box
- Telephone Post
- Telkom manhole

Beacon Certificate:
 Beacon Description:
 A, B, C, D ... 12mm Iron peg
 Benchmark Description:
 BM1 ... 12mm Iron peg

[Handwritten signature]

L A van Dyk PLS 1069
 Professional Land Surveyor

VAN DYK & ASS. inc.



P.O.Box 2025
 HERMANUS
 7200
 SOUTH AFRICA
 VAN DYK & ASS. inc. TEL. (028) 313 0077
 LA SANDERS STR. E-MAIL : info@vandyksurvey.co.za

Stelsel: **Clark 1880 / Lo 19**

Hoogte Stelsel: **Local**

Skaal: **1 : 300**

Datum: **September 2021**

Klient: **Santie Willers**

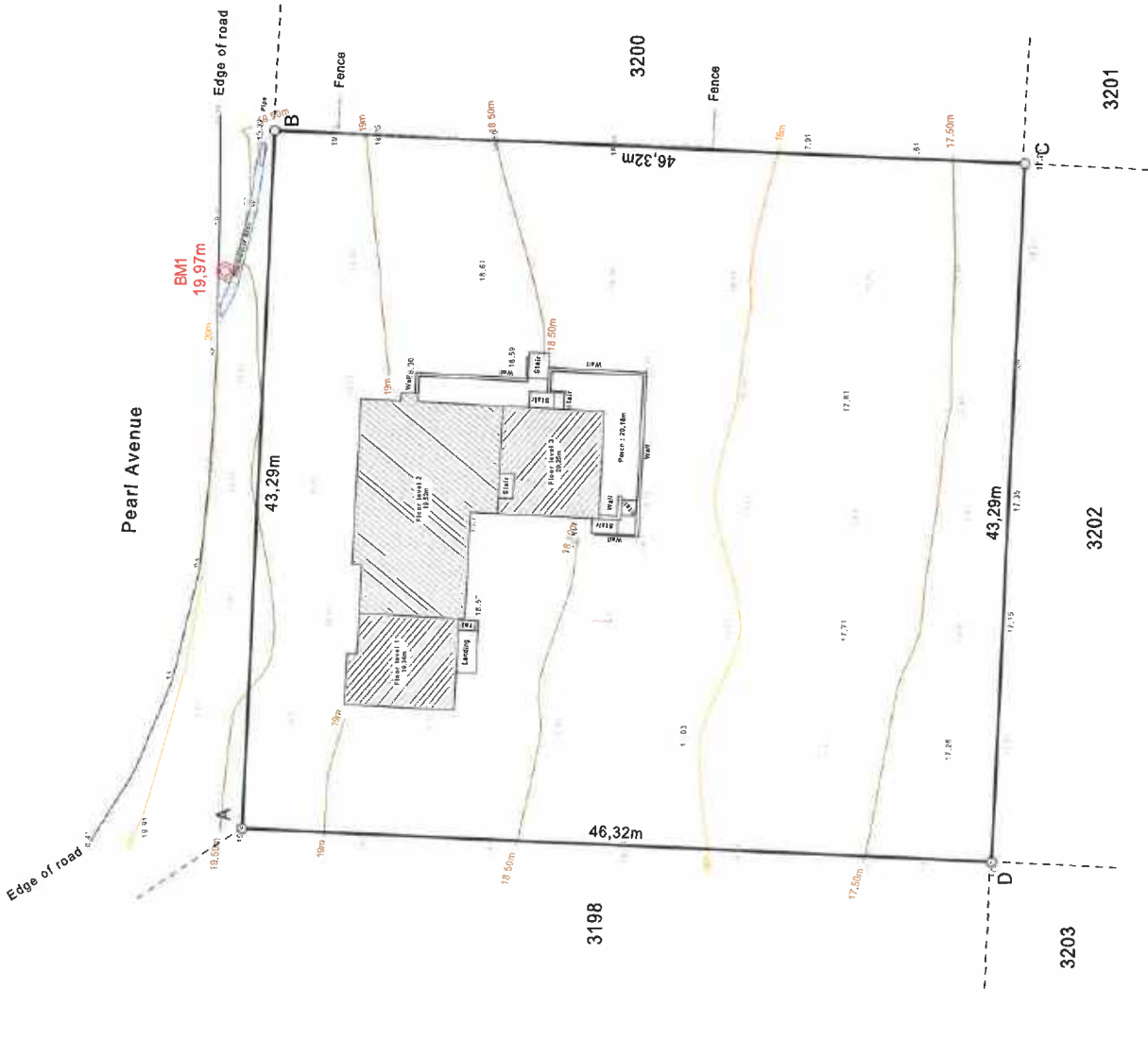
Projek Titel:
 Project Title:

**ERF 3199
 BETTY'S BAY**

Title:
 Title:
**TOPOGRAPHICAL
 SURVEY**

Tekening Nommer: **V21558**

Getekene deur: **DJP**
 Drawn by:
 Vel: **1** van **1**
 Sheet **1** of **1**



Beacon Certificate:

Beacon Description:
A,B ... 12mm Iron peg
C,D ... Not beacons

L A Van Dyk PLS 1069
Professional Land Surveyor

VAN DYK & ASS. inc.

P.O.Box 2025
HERMANUS
7200



SOUTH AFRICA
VAN DYK
LAND SURVEYORS
TEL. (028) 313 0077
E-MAIL : info@vandyksurvey.co.za

Stelsel: WGS84 / Lo 19

Hoogte Stelsel:
Height System:

Skaal: 1 : 300

Datum: March 2024

Klient: The Owner

Projek Titel:
Project Title:

ERF 3199
BETTY'S BAY

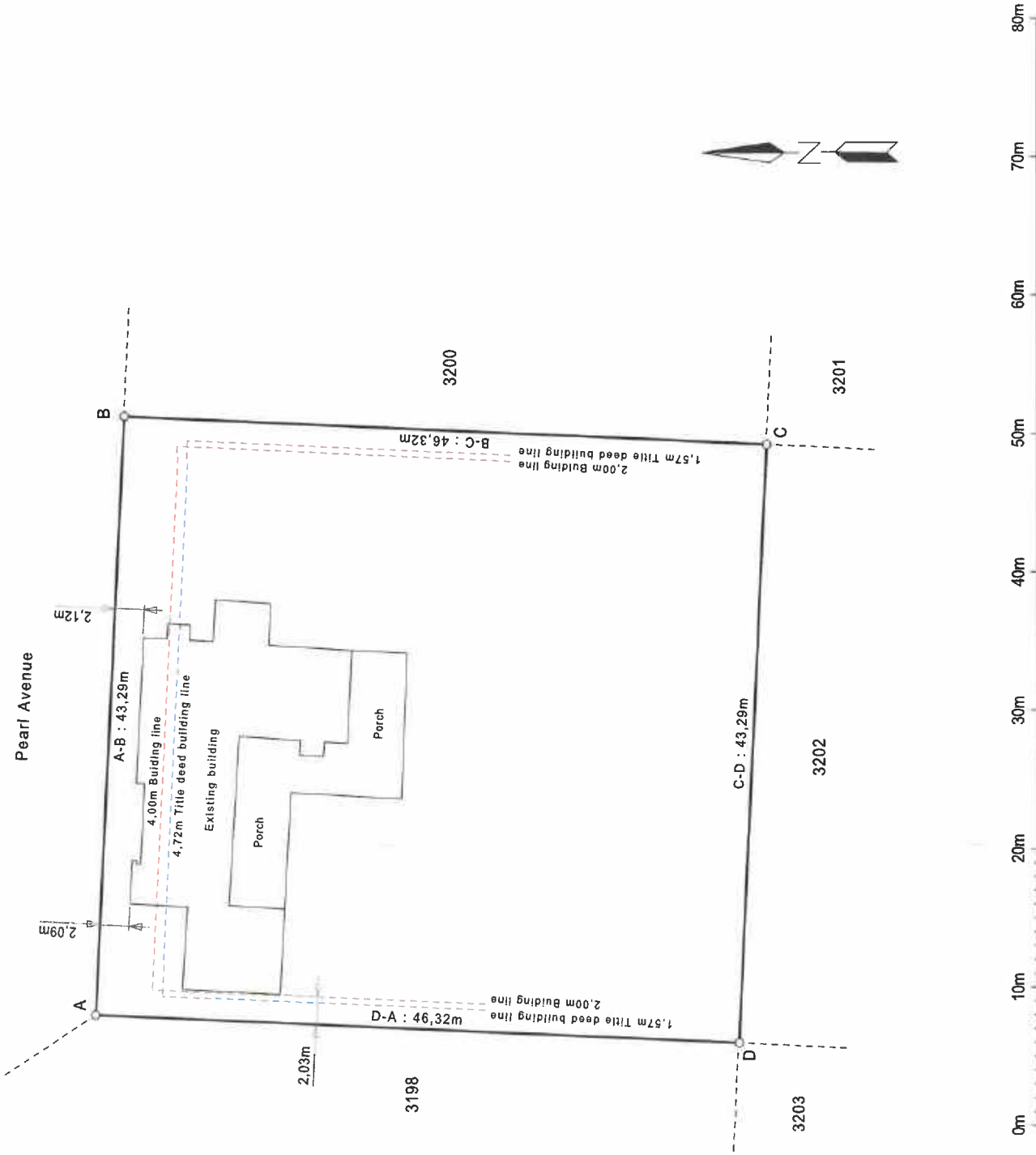
Titel:
Title:
**POSITIONING OF
EXISTING BUILDING**

Tekening Nummer: V24140

Geteken deur: DJP

Vol 1 van 1


Sheet 1 of 1



30

VAN ZYL KRUGER INC
 Avanti Building
 c/o Carl Cronje Dr & Bill Bezuidenhout
 Tyger Valley
 7530

Prepared by me


 CONVEYANCER
 SONJA JANSE VAN RENSBURG
 LPCM 98341
 DANIEL VAN ZYL 96216


Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 550 000,00	R. 673,00
Reason for exemption	Category Exemption	Exemption I to. Sec/Reg. Act/Proc.

VERBIND MORTGAGED

VIR FOR R 275 000,00

B 000003927 / 2021

12 FEB 2021


 REGISTRATEUR/REGISTRAR (3)

T00006358 2021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

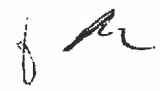
SONJA JANSE VAN RENSBURG (98341)

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

GAVIN ARTHUR WILEMAN
 Identity Number 700226 5171 08 1
 Unmarried

which said Power of Attorney was signed at CAPE TOWN on 8 DECEMBER 2020




 Lexis® Convey 17.2.15.7

And the appearer declared that his/her said principal had, on 28 October 2020, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

NICOLETTE ANTONETTE ERASMUS
Identity Number 750422 0201 08 5
Married out of community of property

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

ERF 3199 BETTYS BAY
IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON
PROVINCE OF WESTERN CAPE

IN EXTENT 2006 (TWO THOUSAND AND SIX) Square Metres

FIRST REGISTERED by Deed of Transfer Number T17598/1968 with Diagram Number 3595/1968 relating thereto and HELD by Deed of Transfer Number T39472/2018.

A. **SUBJECT TO** the conditions as contained in Deed of Transfer Number T34871/1969.

B. **SUBJECT FURTHER AND ENTITLED** to the benefit of the conditions referred to in the Servitude Endorsement as contained in Certificate of Consolidated Title Number T3720/1937 which endorsement reads as follows:

(1) Dated 24th June, 1940

"By Deed of Transfer No. 6068/40 dated 2/6/40 certain conditions relating to (a) non-subdivision for a period of 10 years: (b) prohibition of Petrol Station on land: (c) ... (d) wood and iron buildings: (e) slaughter poles, cattle kraals: (f) 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.

(2) Dated 22nd October, 1948:

"By D/T No. 24234 dated 22.10.48 certain conditions relating to water supply, type of business that may be carried on, prohibition of petrol station on land, slaughter poles, cattle kraals, wood and iron buildings, non-division, manufacture of brick and tiles, have been imposed, as will more fully appear on reference to the said Deed of Transfer.

(3) Dated 18th July, 1949:

"By D.T. No. 11915 dd. 18.7.1949 the remdr. Of the land hereunder is entitled to a right of way over Erf 487 Betty's Bay (ext. No. 1) and marked

A.E.D. on the diagram thereof.

Subject to conditions as will more fully appear on reference thereto."

(4) Dated 1st December, 1950:

"By Deed of Transfer No. 18877/50 dated this day certain conditions relating to water supply, type of business that may be carried on, planting trees, restriction of 5 years of certain type of trade, prohibition of Petrol Station, slaughter poles, cattle kraals, manufacture of bricks, tiles, ect., non-subdivision, have been imposed against and for the benefit of the remaining extent of the property hereby conveyed measuring 6959,0646 mgn. as will more fully appear on reference to the said Deed of Transfer."-

(5) Dated 28th August, 1951:

"By the Deed of Transfer No. 14934/51 dated 28.8.51 certain conditions relating inter alia to:- prohibition against erection of certain types of buildings; slaughter poles; cattle kraals; pigstys; cowsheds; manufacture of bricks, tiles, etc.; the value of erections; water supply arrangements, etc., have been imposed over the remainder of the land thereby conveyed in favour of the owner and successors in title to the remainder measuring 6952.868 mgn. held hereunder, as will more fully appear on reference to the said Deed of Transfer."

(6) Dated 28 August, 1951:

"By Deed of Transfer No. 14934/51 dated 28.8.51 certain conditions relating inter alia to:- arrangements re water supply; submission of plans for approval; fencing to be used; planting of trees; use of the land for Tea Garden or Room; approved re types of trade to be undertaken; erection of Petrol Service Station; and other certain types of buildings, slaughter poles; cattle kraals; pigstys; cowsheds; manufacture of bricks, tiles, etc. Subdivision without permission, etc. which conditions are imposed in favour of the owner and successors in title to the remainder measuring 6952.3880 mgn. Held hereunder, as will more fully appear on reference to said Deed of Transfer."

BUT, without rights to water referred to in (2) , (4) , (5) & (6) which are retained by Hangklip Beach Estates Limited as owner of the said township held by Certificate of Township Title No. 369 dated 18th January, 195, as stated in said certificate of Consolidated Title No. 3720, dated 17/4/1937.

C. To the following conditions contained in the said Deed of Transfer Number 17598/68:-

(i) Imposed by the Administrator of the Province of the Cape of Good Hope when approving of the establishment of Sunny Seas Township in terms of the provisions of Ordinance No. 33 of 1934, as amended:

- (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 No. 401 dated 17th October, 1935, and in the memorandum which accompanied the said regulations.

MF

- (2) The owner of this erf shall without compensation be obliged to allow electricity and water mains and the sewage and drainage including stormwater of any other erf or erven across this erf, if deemed necessary by the Local Authority and in such manner and positions 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, channels, 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) 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 property constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank service on 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 such Local Authority.
- (5) This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Township Boards 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 only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;
 - (c) not more than half the area thereof shall be built upon;
 - (d) No building or structure or any portion thereof 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 in height measured from the floor to the wall plate and no portion erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;
 - (e) In the event of the provisions of a Town Planning Scheme being made applicable to this erf which provisions are more restrictive than the provisions contained in the above then the provisions of such Scheme shall apply.

(ii) Imposed by Hangklip Beach Estates Limited as being applicable to all Erven in Sunny Seas Township as being in favour of the registered owner of any in the Township:

- (a) No wood and/or iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes.
- (b) No cattle, horses, sheep, goats, pigs or poultry shall be kept on this erf without of the Company.
- (c) 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 purposes 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).
- (d) No building (excluding outbuildings) shall be erected on this erf of a superficial area or less than 99 square Metres.
- (e) No noxious trade or noxious business shall be carried on this erf.
- (f) The transferee shall not camp overnight or light fires on the erf save with the written consent of the Company, nor shall he permit any other person so to do.
- (g) No garage or service station may be erected or carried on on this erf provided that this condition shall not apply to Erven Nos. 1-263.
- (h) Until a Local Authority takes over the supply of water for the Township the Company or its successors in title shall be allowed to levy a charge on erf-holders for the service of administering the water of the Township, which charge shall be subject to the approval of the Administration. This charge, however, shall not be levied until the erf-holder requests that the water be connected to his erf. The Company reserves the right, however, subject to the consent of the Administrator to install a system for measuring the consumption of water supplied and to make charges based upon such consumption.
- (i) That the Company or its successors in title shall make a charge of R10,00 (Ten Rand) for the connection of water to the nearest point on this erf.
- (j) The buildings, including all fences and garden or other gates, shall be of good design and sound construction and the plans, elevations and the specifications thereof must be lodged within an approved by the Company before tenders are called for, and no alterations in the plans, elevations and specifications when so approved shall be made without the consent in writing of the Company. The location of the buildings on the site shall not commence building operations until he has received the written approval of the Company to his plans, elevations and specifications. In the event of a breach of this Clause the Company shall have the right to interdict the buyer from proceeding with his building operations and shall have the option to repurchase the erf upon payment of the cost price thereof without compensation for improvements.

- (k) Outbuildings shall not be built prior to the erection of the main dwelling or buildings which shall be a complete building and not one partly built and intended for completion at a later date.
- (l) No hotel, boarding house, canteen, restaurant, bioscope, shop, factory, industry or any place of business or entertainment whatsoever shall be opened or conducted upon the Special Residential erven.
- (m) No canteen, restaurant bioscope, shop, factory, industry or any place of business or entertainment whatsoever (with the exception of boarding houses) shall be opened or conducted upon the General Residential erven.
- (n) No signs, advertisements, advertisements hoardings or other lettering shall be erected on this erf, nor shall any advertisements, signs or lettering be painted on any buildings, walls or fence erected or to be erected on the said erf and except with the written approval of the Company.
- (o) No debris, scrap or other unsightly material shall be deposited on the said erf nor shall the purchaser or his successors in title deposit or allow to be deposited any debris, scrap or other unsightly material on the said erf without the written consent of the Company first had and obtained.
- (p) In the foregoing conditions the expression "the Company" shall mean "The Hangklip Beach Estates, Limited, as owner of the remaining extent of the Township" and its successors in title to the whole of such remainder held under Certificate of Township Title No. 369 dated 18th January, 1956.

D. NOT ENTITLED to the conditions that reads as follows:

"as set out in Deed of Transfer dated 13th August, 1968, No. 17598, to the Benefit of the conditions referred to in Servitude Endorsement dated 1st December, 1959 appearing on the said Certificate of Township Title No. 369 dated 18th January, 1956 which conditions relate to the reservation of water rights, which rights have been reserved to the Transferor Hangklip Beach Estates Limited as owner of the remaining extent of the said Township of Sunny Seas held as aforesaid."

NK

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

GAVIN ARTHUR WILEMAN , Unmarried

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

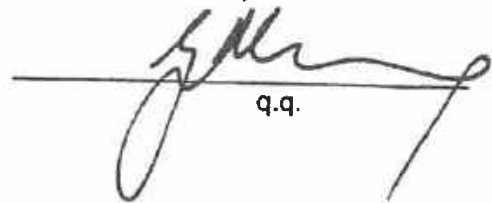
NICOLETTE ANTONETTE ERASMUS, Married as aforesaid

her Heirs, Executors, Administrators or Assigns, now is 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 R550 000,00 (FIVE HUNDRED AND FIFTY THOUSAND RAND) .

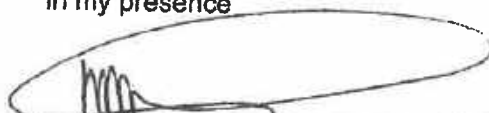
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

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

12 February 2021


q.q.

In my presence


REGISTRAR OF DEEDS



Annexure E 1/61

Dr DGI O'Neill: Municipal Manager Overstrand Municipality
 PO Box 20
 HERMANUS 7200
 4 October 2024

FILE NO. ET 3199 ✓
Bettysbaai
SCAN NO. Renato
COLLABORATOR NO. 2135348

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
07 OCT 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Dear Sir

Comments regarding removal of title deed restrictions for Erf 3199, Betty's Bay

Many thanks for the opportunity to comment on the Overstrand Municipality's proposal to address the unlawful encroachment of the partially built construction on the above-mentioned erf into the road reserve.

I find it unacceptable, especially at this early stage of the building construction, that the municipality is even considering to remove/change restrictions on the title deed of Erf 3199:

- The owner, project manager and builder need to take responsibility for their errors and rebuild according to municipal regulations. Do not expect the municipality and community to shrug, nod and say, "That's okay, we'll change the original title deeds for you." I might add, this would be at a penalty/fee that goes to the municipality, *not* to the community members that have to live with it.
- According to the motivation report on page 5, which states "It was clear that there was an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans", suggest that the landowner engaged a project manager to oversee the building stage. If the project manager undertook regular site visits, the building line violation would have been clearly apparent before construction advanced to its current state.

It is hard to believe that the project manager did not visit the site after the foundation was laid to ensure that it was sound and compliant with the National Building Standards 1040(SANS 10400). A foundation needs to be done right the first time, because if something goes wrong during or after construction, it's not easy to fix. Hence, it would have been obvious when inspecting the foundation that it was beyond the building line.

- Further to the motivation report on page 6, which states, "Our client (the landowner) does not reside in Betty's Bay and in good faith appointed the relevant consultants and the construction team to undertake the project in line with all land use scheme and title deed requirements", also suggests that the appointed consultants to oversee the building phase were incompetent. This is clearly apparent given that there were red-coloured pegs marking the Erf boundary. The contractor either misinterpreted the pegs to be the building boundary line or ignored them totally, but in either case there was no supervision to prevent building encroachment beyond the mandatory building line. Moreover, where does the landowner live? If it is Cape Town, the distance of travel to Bettys Bay is not that far for a site inspection in the presence of the building contractor and project manager.
- Given notice by the building inspector that she was not adhering to the plans, she should have addressed the problem with the project manager, contractor and/or the builders. Instead she opted for a legal alternative to change the title deed, thereby attempting to "bend the building regulations". In view that the consultants and contractor failed to ensure building compliance, the owner of Erf 3199 has the legal right to prosecute these parties to remedy the situation.
- Assuming the municipality has developed its building regulations in accordance with the National Building Regulations and Building Standards Act, why then is the municipality not willing to enforce them? As stipulated on the City of Cape Town website (<https://www.capetown.gov.za>) each

municipality or local authority is responsible for making sure that these standards (building) are adhered to. Hence, why have these standards if they are not going to be enforced? Would the building plans have been passed by the municipality with the building straddling well into the road reserve? I very much doubt it. Why then does the municipality accept a homeowner breaking the rules at this stage? This creates a precedence for homeowners to do as they please, beg ignorance when caught and be rewarded with removal of restrictions.

- Not only is it unacceptable that rules and regulations are seemingly allowed to be ignored and restrictions removed for no good reason, in this case the building encroaches into almost half of the road reserve in front of the house creating a hazard. This is especially true as Erf 3199 is situated on a sharp bend and the reserve dips down off Pearl Drive at that point. If a driver loses control of her/his vehicle on that bend, the reduced road reserve here makes injuries much more likely to the occupants of the vehicle and house.

I trust that the Overstrand Municipality will make the correct decision in this case and not create a precedence for unlawfulness in our area.

Kind regards



Dr. Renato Iginò Spaggiari

Address: Erf 3214, 8 Nautilus Street (c/o Dolphin Drive), Betty's Bay



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Case No: 514/12

In the matter between

Reportable

MATTHEW ROBERT MICHAEL LESTER

APPELLANT

and

NDLAMBE MUNICIPALITY

FIRST RESPONDENT

HIGH DUNE HOUSE (PTY) LTD

SECOND RESPONDENT

Neutral citation: *Lester v Ndlambe Municipality* (514/12) [2013] ZASCA 95 (22 August 2013)

Coram: MTHIYANE DP, CACHALIA, THERON and MAJIEDT JJA, ZONDI AJA

Heard: 15 MAY 2013

Delivered: 22 AUGUST 2013

Summary: Local Government – demolition of a building erected without approved building plans – court not vested with any discretion where demolition applied for in terms of s 21 of the National Building Regulations and Building Standards Act 103 of 1977 – doctrine of legality requires courts to enforce statutory prohibitions the contravention of which constitutes a criminal offence

ORDER

On appeal from: Eastern Cape High Court, Grahamstown(Alkema J, sitting as court of first instance):

The appeal is dismissed with costs, including the costs of two counsel, where so employed.

JUDGMENT

MAJIEDT JA (MTHIYANE DP, CACHALIA and THERON JJA and ZONDI AJA concurring):

Introduction:

[1] This appeal concerns the demolition of a luxury home in Kenton-on-Sea (Kenton) on the Eastern Cape coast. The home belongs to the appellant, Professor Matthew Robert Michael Lester. The first respondent, the Ndlambe Municipality, under whose jurisdiction Kenton falls, applied for and was granted a demolition order in respect of the appellant's home by Alkema J in the Eastern Cape High Court, Grahamstown. The learned judge also dismissed the appellant's counter-application to allow him to alter the house and made costs orders in accordance with these outcomes. This appeal is with his leave.

[2] The second respondent, High Dune House (Pty) Ltd, is a private company, whose shareholders and directors are Mr and Mrs Haslam. Their holiday home is registered in the company's name and is adjacent to the appellant's residence. Mr Haslam has deposed to all the affidavits on the

company's behalf. For the sake of convenience I shall refer to the various parties as 'Ndlambe', 'Lester' and 'Haslam'. Ndlambe's seat as local authority is in the nearby town of Port Alfred.

The factual matrix:

[3] This case has a long, sorry history, which includes seven high court applications, including the one presently on appeal, extending over a period of more than a decade. All these applications culminated in orders against Lester, either by consent or by the court finding against him. As these applications form an integral part of the factual backdrop to this matter, I consider it necessary to recount them in some detail. The facts are largely undisputed. Most importantly, it is common cause that Lester's dwelling, which is the subject of this dispute, has been erected unlawfully, without any approved building plans as required by s 4(1) of the National Building Regulations and Building Standards Act 103 of 1977. I shall revert to this and other relevant provisions of the Act presently.

[4] Kenton is a quaint seaside village, on the coastal road between Port Elizabeth and East London, the R72. It is flanked by this road, two rivers and the Indian Ocean. Its inhabitants consist mostly of retirees, holidaymakers and a few permanent residents. Lester, a professor in tax law at Rhodes University in Grahamstown, (some 60 kilometres from Kenton by road), falls into the lastmentioned category. It is undisputed that the property is his primary residence. As stated, the Haslams' neighbouring property is their holiday home. It is located (as the company's name suggests) on the flat top of a dune, with Lester's property to the south, lower down the sloping dune. Lester acquired his property in 1997 from his mother and aunt, to whom it had been bequeathed by Lester's grandfather. The property initially provided basic holiday accommodation but, upon joining Rhodes University in 1998, Lester decided in 2001 to make Kenton his permanent home. This necessitated the construction of a bigger house higher up the slope of the dune. This is when the trouble started.

[5] Before the construction began, the Haslams had sweeping, panoramic views over the ocean from their dwelling, spanning from the west to the east. This changed when Lester began building. Lester first engaged the architectural services of Ms Pollos Purden to design a dwelling higher up from the existing rudimentary dwelling. She designed a single storey pitched roof house. Her building plans were approved by Ndlambe on 3 May 2002 (the Purden plans). The design envisaged a split level home. It has erroneously been described by some of the parties as a 'double-storeyed' home, though nothing turns on this issue. Lester commenced building operations on the Purden plans. Haslam obtained copies of the Purden plans from Ndlambe's officials, after he saw foundations being cast for the new dwelling. He made it plain to the officials at that early stage that he had an interest in the matter and that he required to be notified of Lester's building plans, prior to their approval. Haslam raised an objection to the construction of a second, separate dwelling higher up on the dune because it contravened Lester's title deed restriction which prohibited more than one dwelling on the same property. Lester was notified of this objection, but chose to continue building, pending a council decision.

[6] These events led to the first high court application in which Haslam applied for an interdict restraining Lester from continuing building operations, pending the outcome of review proceedings. The application was successful before Pickering J who interdicted Lester from building further pending approval of amended plans. Of significance is that Lester, in his answering affidavit, acknowledged that in the event of a successful review he would be obliged to demolish the existing structure for lack of approved plans. On Lester's instructions, Ms Purden amended the plans to convert the old building to a boathouse and outbuildings, thus overcoming the prohibition against the construction of more than one dwelling on the property. The amended Purden plans were approved on 8 November 2002. It is common cause that these plans remain unchallenged and valid. One would have

thought that Lester, in view of what had happened, would have contented himself with this situation and to have proceeded with the building on these plans. This was not to be. Due to a change in his personal circumstances, which entailed Lester having to create additional space for his frail mother in his new house, he discarded the Purden plans altogether, and appointed another architect, Mr Sam Pelissier, with a mandate to design a double-storey building, using the Purden plans' footprint.

[7] Pelissier fulfilled his mandate by designing a dome-shaped roof in place of the envisaged pitched roof of the Purden plans to cater for the wind, height and shade factors (the Pelissier plans). It is important to note that these plans varied significantly from the Purden plans in respect of the general architectural design. In particular it had a bigger roof which considerably increased the height of the building. The Pelissier plans were taken to the relevant Ndlambe officials in Port Alfred for approval by Lester himself on 17 July 2003. In Lester's own words, he "walked the officials of the various [Ndlambe] departments through the plans", resulting in them being approved on the same day. Neither Ndlambe nor Lester gave notice to Haslam of the new Pelissier plans despite being undeniably aware of Haslam's interest in the matter. So, when construction of the new dwelling commenced, Haslam, completely unaware of the changed circumstances, assumed that building was still proceeding under the unchallenged Purden plans of November 2002. When he realised that this was not so during October 2003 he launched the second application to have the Pelissier plans reviewed and set aside.

[8] Several grounds for review were advanced by Haslam in the second application amongst others the fact that Ndlambe had failed to appoint a building control officer whose tasks in terms of the Act included the furnishing of a report on Lester's building operation. Ndlambe conceded this omission and consented to an order before Jennett J on 25 June 2004, setting aside the approval of the Pelissier plans and referring them to Ndlambe for

reconsideration, following the appointment of a building control officer and upon notice to Haslam. Lester also consented to the order.

[9] Ndlambe approved the Pelissier plans again during November, subject to certain conditions, which included the change in the conditions in the title deed. This prompted Haslam to launch the third application on 24 February 2005, for the review and setting aside of the conditional approval of the plans. Several grounds were relied upon for the review, of which the principal ground was that Ndlambe had no authority to approve plans 'conditionally', and that its purported 'conditional approval' was *ultra vires* s 7 of the Act. Goliath AJ made an order by consent on 22 September 2005, setting aside the Pelissier plans yet again and referring them back to Ndlambe for fresh consideration.

[10] The Pelissier plans were approved by Ndlambe for the third time on 14 February 2006, after it had received submissions from all interested parties and after it held a hearing on 25 November 2005. And so the fourth application was made for a review of this latest approval on substantially the same grounds as in the previous application. Jones J made an order by consent between the parties on 29 June 2007, setting aside this approval. This time, Jones J did not remit the matter to Ndlambe, but issued a declarator to the effect that the Pelissier plans (of July 2003) 'be not approved'. Lester's counter-application was dismissed. In effect Jones J's order required the submission of new building plans, a fact which Ndlambe acknowledged by passing an important resolution on 31 March 2008. The relevant part reads: 'That it be noted that the building on Erf 20 [Lester's dwelling] exists without plans, no plans have subsequent to Jones J's by the owner of Erf 20 for approval.'

The fifth application, in which Haslam sought a mandamus to compel Ndlambe to make a decision following the judgment of Jones J, was withdrawn when Haslam became aware of the resolution. But he was not satisfied with the terms of the resolution and brought the sixth application for the reviewing and setting aside of the resolution and substituting it with an order directing Lester to submit, within one month, building plans that comply

with all the applicable statutory and zoning prescripts failing which Ndlambe would apply in terms of s 21 of the Act for the dwelling to be demolished.

[11] On 22 April 2010 Plasket J made an order by agreement between the parties. The order granted Haslam the relief set out in the preceding paragraph. The significance of this order was twofold:

- (a) Lester was placed on terms to submit plans within one month that complied with all statutory and zoning requirements; and that,
- (b) the spectre of a demolition order being sought in the event of non-compliance, loomed large.

It bears emphasis that Lester had consented to Plasket J's order. The whole sorry saga surrounding Lester's dwelling raised the ire of several members of the community, forcing Lester to decamp to Cape Town for a brief sojourn. It is not in issue however, that the dwelling in Kenton remained his primary residence.

[12] Lester sought to comply with the Plasket J order by submitting various sets of amended and revised plans to Ndlambe, none of which met with the latter's approval. The final revised plans envisaging the removal of the top floor and the domed roof to be replaced with a flat roof in order to achieve a reduction in overall height and size, were submitted on 15 September 2010. On 5 December 2010 Ndlambe adopted the recommendations of the building control officer and resolved in terms of s 7(1)(b) of the Act not to approve the final plans since they did not comply with the Plasket J order. Lester was notified of this outcome on 13 January 2011 and the demolition application followed on 21 January 2011. As I have mentioned, Lester instituted a counter-application to permit him to alter the dwelling so as to avoid the demolition order.

The judgment of the court below

[13] The central disputes between the parties in the court below concerned the questions:

- (a) whether the existence of the requisite jurisdictional facts *ipso facto* warrants a demolition order under the Act;
- (b) whether a court has any discretion at all in deciding whether or not to order demolition where there has been non-compliance with the relevant statutory provisions;
- (c) if such a discretion exists, whether it is a wide or narrow discretion; and
- (d) lastly, whether an alteration of the dwelling, as sought by Lester, should be ordered instead.

[14] Alkema J made the following principal findings:

- (a) Lester was no innocent victim of Ndlambe's incompetence;
- (b) Absent any internal appeals under s 9 of the Act or challenges by way of reviews under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) these decisions remain valid and legally binding until set aside on appeal or review;
- (c) Lester's property is, both judicially and administratively, an unlawful structure in terms of the Act, thus entitling Ndlambe to seek an order authorising it to have the dwelling demolished in terms of s 21 of the Act;
- (d) Whereas Ndlambe's case against Lester turns on s 4(1) read with s 21 of the Act, Haslam relies on both the common law principles of neighbour law and the statutory contraventions;
- (e) In all cases where a demolition order is sought, the court retains a discretion which has to be exercised judicially, ie in accordance with the disproportionality of prejudice test, bearing in mind the dictates of legal and public policy;

- (f) In applying the disproportionality of prejudice test, Lester's own conduct and the absence of any evidence that he would not be able to afford other housing, does not constitute sufficient prejudice, nor can he avail himself of the rights enshrined in s 26(3) of the Constitution;
- (g) Legal and public policy required the court to enforce the principle of legality and to uphold the rule of law by granting the demolition order.

[15] I do not propose dealing with all these findings. For the reasons that follow, I agree that the demolition order was warranted, but I am of the view that Alkema J chose an incorrect path in reaching his conclusion. He found firstly that neighbour law principles are applicable in this case and secondly that a court has a discretion in all demolitions sought under the Act. In this court Lester, understandably so, supported the finding that a court has a discretion, but contended that such discretion should have been exercised in his favour, by granting the counter-application for alteration of the dwelling. Lester's counsel relied for these submissions on s 26(3) of the Constitution and the common law's neighbour law principles for the existence of such a discretion. This discretion, contended counsel, was either a wide discretion, particularly if s 26(3) of the Constitution applies, or what he termed a 'residual discretion' which he contended emanates from the Act itself. I shall deal with these submissions separately by first examining the constitutional basis and then by considering whether neighbour law applies at all. Closely associated with the latter aspect is the question whether the statutory provisions themselves permit such a discretion, bearing in mind the principle of legality.

Does s 26(3) of the Constitution afford a court a discretion in demolition cases?

[16] Section 26 of the Constitution reads as follows:

'Housing

26 (1) Everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.'

(3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.'

It was submitted on behalf of Lester that the magistrate's authority (or in this instance that of the high court) to order a demolition under s 21 of the Act had to be read with s 26(3) of the Constitution, which requires 'all relevant circumstances' to be taken into account before making the order. This confers, so it was contended, a wide discretion on a magistrate when faced with such an application to consider all the relevant circumstances in this case before ordering the demolition of Lester's dwelling. For the reasons that follow, I consider this submission to be misplaced.

[17] Section 26(3) must not only be read in its historical context, ie as a bulwark against the forced removals, summary evictions and arbitrary demolitions of the shameful past dispensation, but also together with s 26(1) and (2), since s 26 must be read as a whole. Mokgoro J, writing for a unanimous court in *Jaftha v Schoeman; Van Rooyen v Stoltz*¹ emphasized that:

'(s)ection 26 must be seen as making that decisive break from the past. It emphasises the importance of adequate housing and in particular security of tenure in our new constitutional democracy.'²

The protection afforded in s 26(3) must therefore always, without exception, be read against the backdrop of the right to have access to adequate housing, enshrined in s 26(1). Thus where a person, facing a demolition order, does not adduce any evidence that he or she would not, in the event of his or her dwelling being demolished by order of a court, be able to afford alternative housing, s 26(1) is of no avail to him or her. Lester, as the court below correctly found in my view, is in precisely this position. Apart from alluding to the 'calamitous financial implications' which demolition of his dwelling (which he estimates to be worth around R8 million) would entail, he does not state anywhere in his papers that he would be rendered homeless and destitute by

¹ *Jaftha v Schoeman; Van Rooyen v Stoltz* 2005 (2) SA 140 (CC) para 28.

² *Ibid*, para 29.

the demolition.³ This court pointed out in *Standard Bank of South Africa Ltd v Saunderson*⁴ that what constitutes 'adequate housing' is always a factual enquiry and that executing a writ of execution in respect of a luxury home, which Lester's dwelling undeniably is, has no bearing on the right of access to adequate housing. And the fact that the dwelling sought to be demolished is the person's primary residence, as is the case here, does not detract from this principle. The cardinal question is whether demolition of Lester's property would infringe upon his right to access to adequate housing. The answer, on the papers before us, must be an emphatic 'no'. Lester's counsel contended that such an interpretation of s 26(3) would render the words '... an order of court made after considering all the relevant circumstances' nugatory. I disagree. Even taking into account 'relevant circumstances' (which the court below in any event did), the primary consideration is whether the right of access to adequate housing would be compromised by the demolition. That is the import and effect of the judgment in *Jafftha* and the plain, unambiguous meaning of s 26. I turn to consider the second submission, namely that the source of the discretion not to order a demolition is to be found in the statute and in the common law principles of neighbour law, which are based on principles of fairness and equity.

The statutory provisions and neighbour law as possible sources of a court's discretion

[18] Alkema J relied heavily on the case of *Benson v S A Mutual Life Assurance Society*⁵ as authority for his finding that he does have a discretion whether to order demolition or not. Lester's counsel has correctly conceded that *Benson* does not lend such support, since it concerned the discretionary remedy of specific performance in breach of contract instances. The passage relied upon (783C-E) in particular, is clearly about this aspect and not about a discretion concerning demolition orders. The judge below appears to have given recognition to this in his judgment granting leave to appeal to this court,

³Lester's counsel was driven to an oblique concession in this regard in the course of his argument.

⁴*Standard Bank of South Africa Ltd v Saunderson* 2006(2) SA 264 (SA) para 17.

⁵*Benson v S A Mutual life Assurance Society* 1986 (1) SA 776 (A) at 783C-E.

acknowledging that '[Benson] dealt with a discretion in cases of specific performance and not in demolition orders' and later on, that he had exercised his discretion 'on an extremely narrow, and perhaps novel basis'.

[19] A useful starting point, to my mind, in ascertaining whether there are other sources for such a discretion in demolition cases, is the statute itself. The Act's objective is to provide uniformity in the law relating to the erection of buildings in the area of jurisdiction of local authorities and to prescribe building standards. Section 4(1) reads as follows:

'(1) No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.'

Section 4(4) renders the contravention of s 4(1) a criminal offence with a penal sanction of a fine not exceeding R100 for each day on which the offender was engaged in erecting the (illegal) building. Section 9 makes provision for an appeal against decisions of local authorities. For present purposes the refusal to grant approval of building plans is appealable – such appeal is to a review board. Section 21 reads as follows:

'21. Order in respect of erection and demolition of buildings:

Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a magistrate shall have jurisdiction, on the application of any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorizing such local authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorization granted thereunder.'

[20] It is plain that s 21 must be read with ss 4(1) and 4(4) of the Act. As stated, it was common cause before Alkema J that Lester's property is an illegal structure having been erected without approved building plans. It was therefore at risk of demolition by order of court at the instance of Ndlambe. Both Ndlambe and Haslam (in particular) adopted the stance in the court below and again before us that a court has no discretion in the circumstances and

must order demolition under s 21 once illegality is established. Lester's counsel valiantly sought to persuade us that such a discretion is to be found in the section itself and if not, that the neighbour law principles should be 'imported' into the section. He contended that s 21 implicitly permits partial demolition in the present case, as sought by Lester in his counter-application. These submissions are devoid of merit. First and foremost a mere reading of the provision makes it plain that there is no warrant for reading such implicit discretion into it. What is more, s 4(4) read with s 4(1), creates a criminal offence with a penal sanction in the event of a building being erected without approved building plans, an aspect which militates strongly against such discretion. I shall revert to the provisions of s 4 under the next rubric in which I will discuss the applicability of neighbour law and the doctrine of legality. Counsel was unable to expound on the legal basis for and the modalities of the importation of neighbour law principles into the provisions contained in s 21. It comes as no surprise that there is a complete dearth of authority for this novel proposition. Counsel was unable to point us to such authority and I am not aware of any. The conclusion that the statutory provision itself does not lend itself to such a discretion is unassailable. The language of the provision gives a magistrate no latitude not to order the demolition once the jurisdictional fact, namely that the building was erected contrary to the Act, is established. During argument Lester's counsel contended that the provision must at a minimum be read to give a residual discretion to the magistrate. But he was unable to advance authority for this proposition and it too is devoid of merit. I turn to a consideration of neighbour law principles and the doctrine of legality.

The relevance of neighbour law and the role of the doctrine of legality

[21] Alkema J commenced his judgment by stating that this case 'involve issues of neighbour law, public law and administrative law'. Lester's counsel vigorously endorsed the view that neighbour law principles apply here, understandably so. But this is not a neighbour law case at all. The misconception in this regard stems from the Haslams' involvement in the case. To illustrate why this was misconceived, a brief history of how they

joined the fray is required. Haslam (and I am still referring to him here representing the second respondent company) was initially cited in Ndlambe's demolition application as one of several respondents with an interest in the matter. Haslam, however, successfully and without any opposition thereto, applied for joinder as second applicant with Ndlambe in the main application. He did so because he supported fully the relief sought by Ndlambe. More importantly, in so doing, Haslam did not rely on any neighbour law principles, nor did he seek any additional remedies based on neighbour law. Haslam made common cause with Ndlambe in seeking public law remedies, ie demolition in terms of s 21 of the Act and ancillary relief. In the supporting affidavit in the joinder application, Haslam pertinently states that 'High Dune (ie second respondent) has a legal interest in ensuring that Ndlambe takes all appropriate steps to remedy any failure by Lester to comply with all statutory zoning and other requirements'. Alkema J wrongly found that 'the issues raised by the joinder (of Haslam), on the other hand, are essentially matters of neighbour law, which is a branch of the law of obligations, and which call into play certain legal principles which do not arise as between Ndlambe and Lester, but became relevant between Haslam and Ndlambe.' As a consequence of this misconception, a significant part of the judgment of the court below deals with neighbour law principles and cases. I intend restricting myself to a few of them only, to illustrate why this is not a neighbour law case and to contrast it with the doctrine of legality.

[22] It is plain that Ndlambe approached the court below for a public law remedy, namely a s 21 demolition. It simply sought enforcement of a statutory right flowing from a statutory contravention, which also amounts to a criminal offence. And Haslam supported the relief sought by the council. Lester's counsel's submission appears to be that there is no reason not to apply the common law principles of neighbour law, which give courts a wide and equitable discretion to avoid granting a demolition order in respect of encroaching structures in the context of a public law remedy. Neighbour law has long recognized that in matters such as encroachment, courts have a discretion to award damages instead of ordering the removal of the offending

building or structure, the deciding factor being the disproportionality between removal of the encroachment measured against the damage or inconvenience suffered by a plaintiff. There is an interesting academic discourse on whether the English law influence of equity finds application in this discretionary power, but it need not be discussed at all in this instance⁶. In *Rand Waterraad v Bothma*⁷, Hattingh J undertook a detailed analysis of this discretion in encroachment cases. Numerous cases and the Roman and Roman Dutch authorities are collated in the judgment. *Brevitatis causa*, it will suffice to summarize the conclusions reached by Hattingh J at the end of his detailed discussion⁸ (loosely translated and condensed):

- (a) the *sui generis* nature of neighbourly relationships resulted in the development of legal rules based on equity in our common law;
- (b) the emphasis in neighbour law is always on the protection of the neighbourly relationship as such, rather than the individual interests of every neighbour separately;
- (c) neighbour law principles and precepts are aimed at attaining a just and equitable result and the correct application thereof ought always to lead to a result which satisfies one's sense of justice.

The law reports are replete with instances where the courts have held that such a discretion exists in neighbour law cases.⁹ It is easy to understand why neighbour law, which is premised on considerations of fairness, equity and justice, would afford courts a discretion on whether to order removal of the offending structure or whether to award damages. But it seems to me that a public law remedy such as a demolition order in terms of s 21, is a different matter altogether. Here it is common cause that the dwelling is an illegal structure and not a mere encroachment on a neighbour's property. Moreover, as stated, it constitutes a criminal offence under s4(4) of the Act.

⁶See, inter alia, J B Cilliers and C G van der Merwe 'The "year and a day rule" in South African Law: do our courts have a discretion to order damages instead of removal in the case of structural encroachments on neighbouring land?' (1994) *THRHR* 587 at 592.

⁷*Rand Waterraad v Bothma* 1997(3) SA 120 (O) at 130F-138G.

⁸Ibid, at 138D-G.

⁹See inter alia: *Hornby v Municipality of Roodepoort - Maraisburg and Arthur* 1918 AD 278 at 296 – 298 (in this dictum Solomon JA recognizes the existence of a discretion on principles of equity in English law, but appears to leave open the question whether those principles apply in our law as well); *Johannesburg Consolidated Investment Co Ltd v Mitchmor Investments (Pty) Ltd* 1971 (2) SA 397 (W) at 405-407.

[23] Section 21 authorizes a magistrate, on the application of a local authority or the Minister, to order demolition of a building erected without any approval under the Act. This is undoubtedly a public law remedy. Alkema J questioned how a statutory breach which gives rise to the same claim under private law or public law can afford a court a discretion under private (neighbour) law, but not under public law. The answer is simply that the law cannot and does not countenance an ongoing illegality which is also a criminal offence. To do so, would be to subvert the doctrine of legality and to undermine the rule of law. In *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*¹⁰ the Full Court was seized with an appeal against the granting of an interdict in the Local Division in terms whereof the appellant company (qua respondent a quo) was restrained from using property which was zoned residential in terms of the Town Planning Scheme, for business purposes (offices). It was common cause that by using the property as offices, the appellant was committing an offence. The appellant's case was that the court should have suspended the interdict pending the final dismissal of his application to the Administrator for rezoning of the property. Harms J, writing for the Full Court, considered whether a court has a general discretion to grant or refuse an interdict. The learned judge pointed out that in the leading case on interdicts, *Setlogelo v Setlogelo*¹¹, this court granted a final interdict, having been satisfied that all the requisites for the granting of a final interdict had been met, without considering at all whether it should, in the exercise of a discretion, refuse the interdict. Harms J also referred to *Peri-Urban Areas Health Board v Sandhurst Gardens (Pty) Ltd*¹², where the court refused to suspend an interdict under similar circumstances because, as Clayden J put it: 'where the breach of law interdicted is a breach of a statute a stricter approach is adopted.'¹³ As Harms J correctly explains, what Clayden J meant to convey was not that there is a rule that a statutory right is stronger than a common law right, but simply that the statutory breach referred to is a breach

¹⁰*United Technical Equipment Co (Pty) Ltd v Johannesburg City Council* 1987(4) SA 343 (T).

¹¹*Setlogelo v Setlogelo* 1914 AD 221.

¹²*Peri-Urban Areas Health Board v Sandhurst Gardens (Pty) Ltd* 1965 (1) SA 683 (T).

¹³*Ibid.*, at 685A.

which is visited by criminal sanctions (as is the case here). The following dictum of Harms J is apposite: 'It follows from an analysis of these cases that discretion can, if at all, only arise under exceptional circumstances. Furthermore, I am not aware of any authority which would entitle the court to suspend the operation of an interdict where the wrong complained of amounts to a crime'¹⁴.

[24] Courts have a duty to ensure that the doctrine of legality is upheld and to grant recourse at the instance of public bodies charged with the duty of upholding the law. In *Standard Bank of South Africa Ltd v Swartland Municipality*¹⁵ Moosa J had to deal with an application that a demolition order, issued in the Malmesbury Magistrates' Court, be set aside and for Standard Bank, as mortgagee, to be joined. In stressing the courts' duty in enforcing demolition orders, the learned judge stated that:

'The unauthorised and illegal conduct of the third respondent (in unlawfully erecting a structure without approved plans) is contra boni mores and contrary to public policy, and cannot be condoned by the court. It militates against the doctrine of legality, which forms an important part of our legal system, and more especially since the Constitution became the supreme law of the country'¹⁶.

Moosa J referred to the oft quoted dictum of Chaskalson CJ in *Pharmaceutical Manufacturers of SA: In re Ex parte President of the Republic of South Africa and others*¹⁷, which bears repetition:

'The exercise of all public power must comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of that law'.

The doctrine of legality as part of the rule of law

¹⁴*United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*, supra, at 347F-H.

¹⁵*Standard Bank of South Africa Ltd v Swartland Municipality* 2010(5) SA 479 (WCC); see also *Standard Bank of South Africa Limited v Swartland Municipality* 2011 (5) SA 257 (SCA).

¹⁶*Ibid*, para 22.

¹⁷*Pharmaceutical Manufacturers of SA: In re Ex parte President of the Republic of South Africa* 2000 (2) SA 674 (CC) para 20. See also: *Minister of Justice and Constitutional Development v Chonco* 2010 (4) SA 82 (CC) para 27 and cases cited there.

[25] Wade and Forsyth correctly point out that in administrative law, the rule of law encapsulates, inter alia, the notion that 'government should be conducted within a framework of recognized rules and principles which restrict discretionary power'¹⁸ It is self-evident that this principle encompasses all three arms of government, ie the executive, the legislature and the judiciary. Equally obvious is that it applies to the three spheres of government, ie national, provincial and local government. Yvonne Burns explains that this doctrine ensures in the sphere of public law that '(a) the exercise of public power by the administration conforms to constitutional principles; (b) public authorities comply with specific duties and obligations in the exercise of their discretionary powers and (c) the state and its officials obey the law to ensure good and fair administration'.¹⁹

[26] Local government, like all other organs of state, has to exercise its powers within the bounds determined by the law and such powers are subject to constitutional scrutiny, including a review for legality. In *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC)²⁰ the court expounded on the doctrine of legality as an essential component of the rule of law as follows:

'These provisions [ie ss 174(3) and 175(4) of the Constitution] imply that a local government may only act within the powers lawfully conferred upon it. There is nothing startling in this proposition – it is a fundamental principle of the rule of law, recognized widely, that the exercise of public power is only legitimate where lawful. The rule of law – to the extent at least that it expresses this principle of legality – is generally understood to be a fundamental principle of constitutional law.'²¹ (footnote omitted).

The power to approach a court for a demolition order in s 21 is unquestionably a public power bestowed upon local authorities. As such, its exercise must conform to the doctrine of legality. Put differently, a failure to exercise that

¹⁸Wade and Forsyth *Administrative Law* 7ed (1994) 24.

¹⁹Y Burns 'A rights-based philosophy of administrative law and a culture of justification' (2002) 17 *SAPL*: 279 at 285.

²⁰ *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1999 (1) SA 374 (CC) para 40.

²¹*Ibid* para 56; see also para 58.

power where the exigencies of a particular case require it, would amount to undermining the legality principle which, as stated, is inextricably linked to the rule of law. See *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council and another* where the court held as follows:

‘(t)he doctrine of legality which requires that power should have a source in law, is applicable whenever public power is exercised Public power . . . can be validly exercised only if it is clearly sourced in law’²².

In *National Director of Public Prosecutions v Zuma*²³ Harms DP emphasized that the courts are similarly constrained by the doctrine of legality, ie to exercise only those powers bestowed upon them by the law.²⁴ The concomitant obligation to uphold the rule of law and, with it, the doctrine of legality, is self-evident. In this regard, the court below was constrained by that doctrine to enforce the law by issuing a demolition order once the jurisdictional facts for such an order were found to exist.

[27] I conclude by reverting to what Harms J said in *United Technical Equipment*, supra, with regard to the City Council’s obligations to enforce the law in the face of an ongoing illegality being perpetrated by the appellant company in that case:

‘The respondent has not only a statutory duty but also a moral duty to uphold the law and to see to due compliance with its town planning scheme. It would in general be wrong to whittle away the obligation of the respondent as a public authority to uphold the law. A lenient approach could be an open invitation to members of the public to follow the course adopted by the appellant, namely to use land illegally with a hope that the use will be legalise in due course and that pending finalisation the illegal use will be protected indirectly by the suspension of an interdict.’²⁵

Ndlambe is in exactly the same position as the respondent in the aforementioned case – it was statutorily and morally duty bound to approach the court below for a demolition order in order to uphold the law. The court a quo, in turn, had a concomitant duty to uphold the doctrine of legality, by

²² *AAA Investments (Pty) Ltd v Micro Finance Regulatory Council* 2007 (1) SA 343 (CC).

²³ *National Director of Public Prosecutions v Zuma* 2009 (2) SA 277 SCA 28.

²⁴ *Ibid* para 15.

²⁵ *United Technical Equipment Co (Pty) Ltd v Johannesburg City Council*, supra, at 348I-J.

refusing to countenance an ongoing statutory contravention and criminal offence.

Conclusion:

[28] As stated, Lester has erected an unlawful structure on his property – this fact is unchallenged and common cause. The jurisdictional basis for a demolition order in terms of s 21 has therefore been established. All administrative actions, such as the unanimous resolution of Ndlambe's full council on 5 December 2010 not to approve the final revised plans, remain valid and legally binding until set aside on review or appeal. Absent any challenge on appeal, internally in terms of s 9 of the Act to a review board, or on review in terms of PAJA to a competent court, that resolution had legal consequences. In *Camps Bay Ratepayers' Association and another v Harrison and the Municipality of Cape Town*, the Constitutional Court,²⁶ in referring with approval to *Oudekraal Estates (Pty) Ltd v City of Cape Town*²⁷ said that:

'[A]dministrative decisions are often built on the supposition that previous decisions were validly taken and unless that previous decision is challenged and set aside by a competent court, its substantive validity is accepted as a fact. Whether or not it was indeed valid is of no consequence. Applied to the present facts it meant that the approval of the February 2005 plans must be accepted as a fact. If the footprint issue was part of that approval, that decision must likewise be accepted as a fact unless and until it is validly challenged and set aside'.

See also: *Member of the Executive Council for Health, Eastern Cape v Kirland Investments*²⁸. I have already found that the court below erred in finding that it had a discretion whether or not to issue a demolition order. Absent such discretion, the court below simply had to uphold the rule of law, refuse to countenance an ongoing statutory contravention and enforce the provisions of the Act.

²⁶*Camps Bay Ratepayers and Residents' Association v Harrison* 2011 (4) SA 42 (CC) para 62.

²⁷*Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) para 31.

²⁸*Member of the Executive Council for Health, Eastern Cape v Kirland Investments (Pty) Ltd t/a Eye & Laser Institute* (473/12) [2013] ZASCA 58] (16 May 2013) para 20.

[29] I turn to the counter-application. It was conceded on Lester's behalf that in the event of this court finding that the court below was correct in ordering demolition as sought by Ndlambe, supported by Haslam, the counter-application would inevitably be doomed to failure. In the counter-application Lester sought an order that the dwelling be demolished partly only to the extent that its design would then accord with the plans submitted by him to Ndlambe on 18 May 2010, alternatively 13 December 2010. But Ndlambe's council has already considered these final revised plans and the accompanying representations and has rejected them. As stated, that resolution remained extant and legally binding as a valid administrative act, unless and until set aside by a competent court. Moreover, it is undisputed that the final 2010 plans still offend the existing building regulations because of the height of the roof. As pointed out above, an order for partial demolition as sought by Lester, would amount to the sanctioning of an ongoing illegality and criminal offence, in the face an existing valid administrative decision. This can never be countenanced by a court. The counter-application was therefore correctly dismissed by the court a quo.

[30] Alkema J made certain adverse findings against Lester, inter alia, as stated above, that he was not the mere innocent victim of Ndlambe's incompetence, as contended by counsel, and further that the learned judge had 'a sense, nothing more, that Lester may have orchestrated the situation in which he now finds himself'. In my view it is not necessary to come to any conclusion on these aspects. The common cause material facts suffice, namely that the structure was illegal and that Lester had, in the face of six preceding court orders against him, elected to continue building operations without approved plans. As stated (see para 6 above), Lester already acknowledged as early as 2002 during the first high court application before Pickering J, in his answering affidavit that, in the event of a successful review before the high court, he would be obliged to demolish the existing structure for lack of approved plans. And, as stated, the spectre of demolition loomed large in the order of Plasket J (see para 11 above).

[31] One is acutely aware of the financial calamity, inconvenience and disruption which the demolition of what is plainly and expansive, luxurious dwelling, and a primary residence to boot, would cause Lester. But the upholding of the doctrine of legality, a fundamental component of the rule of law, must inevitably trump such personal considerations. The appeal must therefore be dismissed with costs, including the costs of two counsel where so employed.

[32] In the result I make the following order:

The appeal is dismissed with costs, including the costs of two counsel, where so employed.

S A MAJIEDT
JUDGE OF APPEAL

APPEARANCES

- For Appellant: R G Buchanan SC
Instructed by:
DLA Cliffe Dekker Hofmeyer, Johannesburg
Webbers, Bloemfontein
- For 1st Respondent: I J Smuts SC
Instructed by:
Wheeldon Rushmere & Cole, Grahamstown
Symington & De Kok, Bloemfontein
- For 2nd Respondents: EAS Ford SC with TJM Paterson SC -
Instructed by:
Rushmere Noach Inc, Port Elizabeth
McIntyre & Van Der Post, Bloemfontein

Loretta Gillion

From: Spaggs < >
Sent: Friday, 04 October 2024 18:01
To: Loretta Gillion
Subject: Comments regarding removal of title deed restrictions for Erf 3199, Betty's Bay
Attachments: Comments.pdf

Good day,
Please find attached comments regarding the removal of title deed restrictions for Erf 3199, Betty's Bay.
With thanks and kind regards,
Dr Renato Spaggiari

Please note that all complaints must be submitted in writing on this form. Anonymous complaints will not be investigated. However, complainants should remain anonymous when the matter is investigated. This form must be accompanied by a sworn affidavit in relation to the activities witnessed on site, which may serve as evidence if the matter is referred to court.

COMPLAINANT'S INFORMATION (To be completed in full - compulsory)

Name & surname: **RICHARD WILDING** Erf nr: **3270**

Residential address: **41 BETTYS BAY**

Postal address: **3270 DOLPHIN DR., BETTYS BAY**
(TP - A STREET HOLD STREET)

Contact details: Cell: _____ Home: _____

E-mail address: _____

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03 OCT 2024
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OVERSTRAND MUNICIPAL

All correspondence regarding any progress of your complaint will be sent via email (preferred) or registered post. Please provide at least one telephone number on which the Municipality will be able to reach you.

Signature: *R/Wilding* Date: **2/10/24**

ALLEGED CONTRAVENTION

Name & surname of offending party: **UNKNOWN**

Address where activity is taking place: **PEARL STREET BETTYS BAY**

Erf number: **3199 Bettys Bay**

Description of alleged contravention: **THE HOUSE IS STILL UNDER CONSTRUCTION. IT'S BUILT TOO CLOSE TO THE ROAD. OUTSIDE BUILDING WITHIN APPROX 2mtr of ROAD.**

When the alleged activity was first noticed / frequency of activity: **DURING CONSTRUCTION THIS BUILDING.**

Impact of activity on you / surroundings: **SHOULD CONFORM TO BUILDING REGULATIONS IF AGREED BY PLANNING THEN OTHER BUILDS WILL HAVE THE SAME RIGHTS TO IGNORE BUILD LINES.**

Note: You may attach further information such as photos, letters and/or petitions to this complaint form. Please indicate if you have added additional information to this complaint form by marking the appropriate box below.

Yes No

For noise nuisance and other general law enforcement complaints please contact the SAIV department on 028 - 313 8900

FILE NO. **Ef 3199-KBB**

COLLABORATOR NO. **2133357**

TP
03 OCT 2024

Alene Theart

From: Richard Wilding <[redacted]>
Sent: Wednesday, 02 October 2024 16:39
To: Alene Theart
Subject: Re: Complaint form
Attachments: 20241002_163531.jpg

Dear Ms Theart

Please find attached completed complaint form.

Kind regards Richard Wilding

Sent from [Outlook for Android](#)

From: Alene Theart <atheart@overstrand.gov.za>
Sent: Tuesday, October 1, 2024 12:45:10 PM
To:
Subject: Complaint form

Good day

Hereto attached for your attention, is the Complaint form as requested.
Please send completed form back to me for further processing.

Kind regards,

Alene Theart

Reception

Town and Spatial Planning

Overstrand Municipality

0283138900

atheart@overstrand.gov.za



**Overstrand
Municipality**

A: 1 Magnolia Street,
Hermanus, 7200

P: P.O Box 20, Hermanus,
7200

T: +27 (0)28 313 8000 | **F:**
+27 (0)28 312 1894

E:

enquiries@overstrand.gov.za

W: www.overstrand.gov.za

Alene Theart: "To be a centre of excellence for the community"

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118
TP. D. Aheak
(H. ud Skoop)

29/61

FILE NO.	Erf 3199 ✓
SCAN NO.	Bethiesbaai
COLLABORATOR NO.	Carole
	2135369

Dr DGI O'Neill
Municipal Manager Overstrand Municipality
PO Box 20
HERMANUS 7200

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
07 OCT 2024
DOCUMENT CONTROL

Dear Sir

Comments regarding Erf 3199, Betty's Bay (4 Pearl Avenue, Sunnyside)

Many thanks for the opportunity to comment on the Overstrand Municipality's proposal to address the unlawful encroachment of the partially built construction on the above-mentioned erf into the road reserve.

I find it unacceptable, especially at this early stage of the building construction, that the municipality is even considering to remove/change restrictions on the title deed of Erf 3199:

- The owner, project manager and builder need to take responsibility for their errors and rebuild according to municipal regulations. Fix it. Do not expect the municipality and community to shrug, nod and say, "That's okay, we'll change the original title deeds for you." I might add, this would be at a penalty/fee that goes to the municipality, *not* to the community members that have to live with it.
- If the homeowner had wanted to take advantage of the existing foundation of the house that burnt down in January 2019, she should have ensured that the new building was designed around that and within the perimeter of the property.
- Given notice by the building inspector that she was not adhering to the plans, she should have addressed the problem with the project manager, contractor and/or the builders. Do they (and/or the homeowner) not have insurance to help them deal with the incurred costs of such a gross error?
- Assuming the municipality has developed its building regulations and stipulated the size of the street building line based on sound reasoning, why then is the municipality not willing to enforce them? Why have them if they are not going to be enforced? Would the building plans have been passed by the municipality with the building straddling well into the road reserve? I very much doubt it. Why then does the municipality accept a homeowner breaking the rules at this stage? This creates a precedence for homeowners to do as they please, beg ignorance when caught and be rewarded with removal of restrictions.
- Not only is it unacceptable that rules and regulations are seemingly allowed to be ignored and restrictions removed for no good reason, in this case the building encroaches into almost half of the road reserve in front of the house creating a hazard. This is especially true as Erf 3199 is situated on a sharp bend and the reserve dips down off Pearl Drive at that point. If a driver loses control of her/his

vehicle on that bend, the reduced road reserve here makes injuries much more likely to the occupants of the vehicle and to the occupants of the house.

I trust that the Overstrand Municipality will make the correct decision in this case and not create a precedence for unlawfulness in our area.

Kind regards



Carole Roberts
4 October 2024

Address: Erf 3213
8 Nautilus Street
Sunnyseas
Betty's Bay

Email:
Mobile:

Loretta Gillion

From: Carole Roberts < >
Sent: Friday, 04 October 2024 15:33
To: Loretta Gillion
Cc: Dr Dean O'Neill
Subject: Notice 131/2024: Erf 3199, 4 Pearl Drive, Betty's Bay
Attachments: OM_comments Erf 3199_CRoberts.pdf

Dear Loretta

Please find attached my written comments regarding the municipality's proposal for removal of restrictive title deed conditions for the above-mentioned property.

I am grateful that you will see they get due consideration.

Many thanks and kind regards

Carole

Carole Roberts
Project Support Services

E-mail:
carole@project-support.co.za

1/191

TP. N. Theart 121
(H. van Schoop)

FILE NO.	3199	32/61
	Bellisbaai ✓	
SCAN NO.	Alfred	
COLLABORATOR NO.	2135358	

Loretta Gillion

From: Alfred Bester <[redacted]>
Sent: Friday, 04 October 2024 16:04
To: Loretta Gillion
Cc: Natasha
Subject: OVERSTRAND MUNICIPALITY ERF 3199, 4 PEARL DRIVE, BETTY'S BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF NA ERASMUS

Attachments: Bester v Ndlambe Municipality (514 of 12) [2013] ZASCA 95 doctrine of legality applied to buidling without approved plans.pdf

OVERSTRAND MUNICIPALITEIT
 REKORDBEHEER
 07 OCT 2024
 DOCUMENT CONTROL
 OVERSTRAND MUNICIPALITEIT

Dear Sir,

I refer to the above matter and confirm that I represent the interests of The Wavecrest Trust which is the registered owner of Erf 3218 Dolphin Drive, Sunny Seas, Betty's Bay. The said trust is an affected and interested party to this application by Plan Active on behalf of the owner of Erf 3199, Betty's Bay following the owner/her agent her builder deliberately failed to construct the dwelling according to the approved building plans culminating in this belated and fatally flawed attempt to retrospectively have the construction approved. The trust objects to the application on the following grounds and reserves the right to amplify and expand on its objections and reasons at any further stage and at any forum should the need arise:

1. When the digging of the foundations was commenced, it was patently clear (even to a lay person) that either the road reserve and road is incorrectly placed, or the foundations of the dwelling are over the building line. The writer personally contacted the builder and the building inspector and advised them of this.
2. Once the foundations concrete was cast, the writer again left several messages with the building inspector who failed to return any of the writer's calls.
3. The building operations only ceased once the statutory cease building order was belatedly issued.
4. The owner is liable for the actions of her agent/representative/builder.
5. The local authority carries vicarious liability for not issuing a timeous cease order enabling an application for condonation based on the balance of convenience and the costs of demolition and reconstruction. Should the application succeed, same will be irrational and fail to take notice of *Lester vs Ndlambe Municipality* dealing with the doctrine of legality without approved plans which applies four squarely where an owner/agent/builder deliberately builds over a building line (see attachment). I also draw your attention to *Law v Knysna Local Municipality, Case No 20124/19*. The judge expressed the opinion that section 23 "... cannot be interpreted to afford a municipality an exemption from liability where it was under a legal duty, at common law, to take certain steps in order to prevent harm or loss from occurring and failed to do so."
6. The illegal encroachment is in contravention of the title deed, the Overstrand Municipality's by-law on Land Use Planning as well as the National Building

2024/10/04

Regulations (NBR). Section 21 of the NBR *inter alia* provides for the demolition of an illegally erected building and it is submitted that the peremptory nature of this provision precludes a discretionary power of the Municipality.

7. Any approval will cause a diminution of property values in the area as the illegal building is on a bend and will be unsightly.
8. A highly unwanted precedent will be created.

We therefore recommend that the application fail in every respect and that a suitable demolition order be issued.

The trust reserves the right to make further representations at any juncture.

We await your urgent advices.

Yours sincerely,

ALFRED BESTER

DIRECTOR
FPSA® TEP

T
C
E



www.legacyfiduciaryservices.co.za

Legacy House, Block Y, Greenford Office Estate
Punters Way, Kenilworth, 7708, P.O Box 36218, Glosderry, 7702

Legacy Fiduciary Services and Estate Planners SA (Pty) Ltd Reg No. 2010/009506/07 | an Authorised Financial Services Provider under FSB Licence No. 42238 and its wholly owned subsidiary Legacy Fiduciary Services Private Trust Ltd | Reg No. 1937/009516/06 with representation in Durban, Johannesburg and Port Elizabeth.

Directors:

****Showkat Alie Mukadam** BComm (Hons) Taxation (UCT) CA (SA) FPSA® ****Chris Murphy** BProc FPSA® TEP ****Charles Evison** BA LLB FPSA® ****Alfred Bester** FPSA® TEP ***Wanda Visser** BJuris FPSA®

**Director of Legacy Fiduciary Services and Estate Planners SA and Legacy Fiduciary Services Private Trust (Pty) Ltd

*Director of Legacy Fiduciary Services Private Trust (Pty) Ltd Only

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TP - A Theart
(Huld Stoep)

REKORDBEHEER

04 OCT 2024

34/61

Loretta Gillion

DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

From: Glenda Irvine < >
Sent: Friday, 04 October 2024 11:05
To: Loretta Gillion
Subject: Objection to proposals re Erf 3199 (4 Pearl Drive) Sunny Seas: Betty's Bay

Objection to proposals re Erf 3199 (4 Pearl Drive) Sunny Seas: Betty's Bay

Submitted by G J Irvine: 3179 (6) Rockway: Sunny Seas: Betty's Bay.

To Whom it May Concern

FILE NO. Erf 3199 - KBB
SCAN NO. KBB 3199
2135087
COLLABORATOR NO.

I fully endorse the objections as submitted by Mr A Bester, Mr M Clausen, Mr W Zeibrandt and Mr D Horne.

Furthermore:-

- The fact that construction has continued despite the other infringements as identified by the above parties speaks to the abject failure of all personnel involved in planning, inspections and enforcement.
 - In my opinion, it is an indictment on the department that instead of following procedure, the pleas for leniency are put forward strongly inferring that the request for relaxation of restrictions is due to the non-compliance of the builder and the 'innocence' of the owner.
 - How on earth can a foundation that is 2 metres over the boundary not be noticed? Seriously?
 - The excuse that the configuration of the construction now be counted as reason to declare a departure from the legislated conditions is also beyond the pale.

It is my opinion that the above reflects badly on the Municipality and is indicative of poor management and a display of incompetence and inefficiency of staff to carry out their duties in accordance with Municipal regulations.

An additional concern is raised wondering whether the authorities will take heed and instigate an investigation to establish how many other constructional breaches have either slipped under the radar or been passed.

- It is absolutely ridiculous to suggest that a fine be imposed – in other words, a smack on the wrist is deemed appropriate as apparently there is nobody prepared to take the hard line and acknowledge that the Municipality has failed utterly to manage the situation from its conception as mandated by their own rules and regulations.
 - By condoning this breach, it is being made obvious that :-
 - A. Money talks
 - B. Anything goes re building regulations and boundaries
 - That no consideration whatsoever has been given to the fact that if concession is granted in this particular occurrence, a precedent will be set ensuring A and B above are acceptable practices.
- As stated above, the question is now raised that given the ineptitude of the personnel appointed to do inspections, that there could be considerable other breaches of all regulations related to building standards throughout Ward 10.
- It is not only the immediate neighbours affected – this applies to every property in Betty's Bay.

Issues raised:

- Where is the record of the first inspection?
 - If there is no record – why not?
 - If there is a record then why was constructions not halted immediately?

There have already been court cases as well as considerable chatter about buyers uncovering slipshod workmanship, non-compliant structures, dangerous juxtaposition of water and electrical conduits,

4.0.1.2024

inadequate safety precautions plus plus plus. The Municipality must be aware of these issues plus reports of possible underhand dealings re construction and deviations from plan yet despite this, still sees fit to appeal for leniency? This in itself is a deplorable action and gives the impression that gross maladministration is an acceptable practice by the Overstrand Municipality.

The conciliatory tone of the accompanying correspondence pleading clemency for this breach implies that:

- A fine is in order (*a fait accompli*?)
- Essentially the residents should suck it up and
- The limited number of notifications is also questionable (I did not receive the notice?)
 - Given that all Sunny Seas residents should have received registered mail according to Title Deed conditions, why have the email addresses of all Sunny Seas residents and owners not been put into a separate folder for notifications?

I would appreciate acknowledgement of this, my objection, which I trust will be recorded on behalf of every resident and home owner in W10.

Yours sincerely,
Glenda Irvine.

TP-A Theart
(Huld Stoep)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
03 OCT 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Loretta Gillion

From: Schalk Engelbrecht < >
Sent: Wednesday, 02 October 2024 12:54
To: Loretta Gillion
Subject: ERF 3199, 4 PEARL DRIVE, BETTY'S BAY: OBJECTION TO TITLE DEED CHANGES AND DEPARTURES
Attachments: Overstrand Municipality Objection Sep 2024.pdf

Good day

The transgression of the prescribed building lines (in accordance with local building regulations & title deed requirements) was brought to the attention of the relevant departments of Overstrand Municipality. Several local residents will testify to this.

We hereby oppose the relaxation and/or amendment of the relevant title deed conditions for the following reasons:

1. Such relaxations will encourage other landowners to ignore local regulations and even title deed requirements when building or putting up fixed improvements on their properties.
2. It will set a precedent.
3. Aesthetically, this will have a negative influence on the immediate area with accompanying negative influence on property values.
4. The owner, even knowing that regulations and conditions were being violated, continued with the illegal construction.
5. No verge parking. This has already affected traffic.
6. Building on a bend and encroaching on a public road will endanger pedestrian and vehicle traffic.

Our formal and signed letter of objection is attached hereto.

Regards

Lizette Otto & Petro Von Alleman

 Sent with Mailsuite · [Unsubscribe](#)



FILE NO. ERF 3199-KBB
SCAN NO.
COLLABORATOR NO. 2133356

AP

Overstrand Municipality
16 Paterson Street
Hermanus
Per email: loretta@overstrand.gov.za

ERF 3199: APPLICATION FOR TITLE DEED CHANGES – OBJECTION

Good day

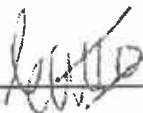
We are the owners of the following property:
Erf 3195 Pearl Drive, Betty's Bay

The transgression of the prescribed building lines (in accordance with local building regulations & title deed requirements) was brought to the attention of the relevant departments of Overstrand Municipality. Several local residents will testify to this. We hereby oppose the relaxation and/or amendment of the relevant title deed conditions for the following reasons:

1. Such relaxations will encourage other landowners to ignore local regulations and even title deed requirements when building or putting up fixed improvements on their properties.
2. It will set a precedent.
3. Aesthetically, this will have a negative influence on the immediate area with accompanying negative influence on property values.
4. The owner, even knowing that regulations and conditions were being violated, continued with the illegal construction.
5. No verge parking. This has already affected traffic.
6. Building on a bend and encroaching on a public road will endanger pedestrian and vehicle traffic.

Signed on this 30TH day of September 2024


Petro Von Alleman


Lizette Otto

TP-A Theart
(Hild Stoop)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
02 OCT 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

38/61

Loretta Gillion

From: Gardiol < >
Sent: Tuesday, 01 October 2024 11:04
To: Loretta Gillion
Subject: Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures
Importance: High

To whom it may Concern

Dear Sir / Madame

Kindly note that I add my support to Mr. Clausen in objecting to the Title Deeds changes and departures, as stated by him hereby below.

I trust this is in order.

Best,

Mrs. Gardiol van de Venter

Dolphin Drive 3216, Sunny Seas, Betty's Bay.

FILE NO. Erf 3199 - KBB
SCAN NO.
COLLABORATOR NO.
2133023

Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

The illegal building activity on this erf was brought to the attention of the Kleinmond building and planning department on many occasions by myself as well as numerous local residents.

From the start it was blatantly obvious that the foundations in relation to the perimeter pegs and road were incorrect.

Only after a written complaint on the noncompliance, (No ablution facilities ,water and litter)

Concerns:

Building is encroaching on municipal infrastructure

1. Eskom.

Building over or incorporating electrical route on municipal property can result in serious injury or death and disrupt Pearl Drive residents

2. Water.

Municipal water feed for Pearl Drive can be disrupted by building, already water meter for erf 3199 is mounted against property building.

3. Fibre.

Building over or close to fibre that can be damaged affecting neighbouring clients.

4. Parking.

No verge parking. This has already affected traffic.

5. Safety.

Building on a bend and encroaching on public road will endanger pedestrian traffic

The application must be refused and my objection and reasons are as follows:

Considering that the Overstand Planning Department, Overstand building inspector, site engineer, builder (the latter who lives and has been building for many years in the Overstand) and the owners were unaware of the "error" and claim ignorance is not acceptable. Residents have complained from the time when the building commenced about the "House on the road". Pleas to the building inspector and municipality were ignored.

Build and plea ignorance/condonation is an apparent method used to bypass municipal regulations.

To acced to the fatally flawed application to accommodate an illegal structure will set a dangerous precedent.

This will encourage landowners to illegally build, claim ignorance and continue.

This illegal structure will negatively affect property values.

The applicant was at all times aware of the fact that the building line was transgressed.

Owner:

Mr MC Clausen

Erf Number: 3200 , 6 Pearl Drive

Bettys Bay

7141

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
30 SEP 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP - A Theart
(Huld Steep)

Loretta Gillion

From: Werda Van Der Westhuizen <>
Sent: Saturday, 28 September 2024 09:22
To: Loretta Gillion
Subject: Fwd: Objection: Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

----- Forwarded message -----

From: Mark Clausen <>
Date: Fri, 27 Sep 2024, 6:14 pm
Subject: Objection: Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures
To: <>

Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

The illegal building activity on this erf was brought to the attention of the Kleinmond building and planning department on many occasions by myself as well as numerous local residents.

From the start it was blatantly obvious that the foundations in relation to the perimeter pegs and road were incorrect.

Only after a written complaint on the noncompliance, (No ablution facilities ,water and litter)

Concerns:

Building is encroaching on municipal infrastructure

1. Eskom.

Building over or incorporating electrical route on municipal property can result in serious injury or death and disrupt Pearl Drive residents

2. Water.

Municipal water feed for Pearl Drive can be disrupted by building, already water meter for erf 3199 is mounted against property building.

3. Fibre.

Building over or close to fibre that can be damaged affecting neighbouring clients.

4. Parking.

No verge parking. This has already affected traffic.

5. Safety.

FILE NO. Erf 3199 - KBB
SCAN NO.
COLLABORATOR NO.
2131224

TP 30 SEP 2024

Building on a bend and encroaching on public road will endanger pedestrian traffic

The application must be refused and my objection and reasons are as follows:

Considering that the Overstand Planning Department, Overstand building inspector, site engineer, builder (the latter who lives and has been building for many years in the Overstand) and the owners were unaware of the "error" and claim ignorance is not acceptable. Residents have complained from the time when the building commenced about the "House on the road". Pleas to the building inspector and municipality were ignored.

Build and plea ignorance/condonation is an apparent method used to bypass municipal regulations.

To acced to the fatally flawed application to accommodate an illegal structure will set a dangerous precedent.

This will encourage landowners to illegally build, claim ignorance and continue.

This illegal structure will negatively affect property values.

The applicant was at all times aware of the fact that the building line was transgressed.

Owner:

Mr PK Van Der Westhuizen

Erf Number: 3212 , 28 Albertyn Road

Bettys Bay

7141

Loretta Gillion

From: Wernher Stapelberg < >
Sent: Sunday, 29 September 2024 09:40
To: Loretta Gillion
Subject: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - Response by CW Stapelberg

Hi

I am CW Stapelberg, permanent resident at 3379 Mermaid St, Sunny Seas, Betty's Bay. Marcelle Stapelberg is the my wife and owner of this property. We submit this response to the Notice received via email on 26 August 2024 jointly.

I studied the documents submitted via email and noticed that the approved building plans stated as approved 6 June 2022 and mentioned as attached to the Motivation Report is not present or attached. I assume that these will show that the building limits of the new proposed dwelling was not exceeded on plan.

Also note as i walk past ERF 3199 on average every second day, I have indicated on more than one occasion to the builders on site that they were exceeding the building limits. This was at the beginning of construction when the the foundations were dug. They indicated that they had approval, which is now proven to be a lie.

In regards of the Motivation Report, I found that ill investigated and not representative of the impacts of the dwelling extending more than 2m over the building limit. A visit to site will show the following:

1. Due to dwelling being on a corner on a gravel road, the large low windows of the dwelling will be subject to stones from the road as traffic passes. It is one of the higher traffic roads in Sunny Seas.
2. In terms of living in the dwelling basically on the road, occupants will be subject to noise and lights from vehicles, which is not the biosphere and open experience that the area is known and loved for.
3. Maintenance of road servitude like cutting of grass will be right next to the dwelling and again the windows will highly likely sustain damage which will most likely result in claims against the municipality.
4. The roof overhand and the second story of the house being so close to road will impact the area as you have this on-street double story vs all other dwellings set further back from the street. One of the reasons why the building exists in first place.
5. As home owner or builder stating that you did not know and am sorry unfortunately does not work, not for such a massive breach of a building limit. You are responsible and must deal with the consequences as per laws.

It is due to the above and the extend of the transgression that I and M Stapelberg, permanent residences in Sunny Seas reject the granting of extension of the building limits on ERF 3199 of more than 2mm closer to the Pearl Street.

I trust that this response will be logged in opposition to the request to change the restrictions.

Regards

Wernher Stapelberg



OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
27 SEP 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

ERF 3199 Betty's Bay

TP - A Theart
(H vld Stoop)

1. Introduction

I, Werner J Zybrands, am the registered owner of erf 3418, Betty's Bay, being 12 Albertyn Drive, Sunny Seas, Betty's Bay. In that capacity I have been identified as a potential interested and affected party regarding the application (in summarised format) by Plan Active Town and Regional Planners:

- To determine an administrative penalty;
- To obtain a departure; and
- To have a restricted title condition removed

all the above in order to legalise an encroachment by the owner of erf 3199.

2. Background

The background to the application is set out in Plan Active's application document and is thus not repeated here.

The nub of the matter is that the owner and/or her agents failed to construct a dwelling on the subject property in accordance with the municipal approved building plan and now endeavours to legalise the existing and further planned structure.

3. Approach

It is conceded that I am not directly affected by the retention, alteration or demolition of the structure on the subject property. However, as a property owner of a fairly high value property with concomitant property rates obligations, I do have a vested interest that the neighbourhood should be maintained and developed in an orderly and legally compliant manner in order to prevent any deleterious effect on the value of my property.

It is submitted that the approval of the application would create an unwanted precedent and could set the tone for other future similar illegal activities being condoned and/or approved *ex post facto*.

27 SEP 2024

FILE NO. Erf 3199-KBB
SCAN NO.
COLLABORATOR NO.
2128594

4. Evaluation

Having perused all documents in support of the application it would appear that it is common cause that there is an approved building plan, that the current structure does not comply with the said plan and that an instruction has been issued that the building operations cease pending the outcome of the application in question.

The owner alleges that she was unaware of the illegality committed by her contractor. This argument is irrelevant as she, as an owner/employer, is vicariously liable for the actions of her employee.

The argument that the owner could suffer financial harm if the illegally erected structures were to be demolished, is also fallacious as she should be able to recover all such pecuniary losses from her building contractor irrespective whether the contractor is covered by public indemnity insurance or not.

The encroachment over the building line is significant (about 50%) and was not necessitated by any extraneous circumstances or of necessity as there is more than ample space available on the remainder of the property.

Rumour has it that the building contractor proceeded with building operations in spite of having been made aware of the illegality of his building activity. Should this in fact be the case it exacerbates and compounds the nature of the illegality. Even if this were not to be the case it doesn't serve as any mitigation for the transgression which must have been knowingly committed by the building contractor and the owner's alleged ignorance does not absolve the building contractor as agent of the owner.

It is furthermore quite plausible that at some stage or another during the course of the illegal building activities the Municipality's Building Inspector would have noticed this illegality and have cautioned the contractor to desist from further building activities.

If, in the alternative, the Building Inspector failed to issue such instruction, it would constitute a gross dereliction of his duty. Section 23 of the NBR which provides for an exemption from liability to a municipality for failing to perform its statutory duties was, albeit by way of an *obiter dictum*, dealt with by Judge Sher in the case of *Law v Knysna Local Municipality*, Case No 20124/19. The

learned judge expressed the opinion that section 23 “.. cannot be interpreted to afford a municipality an exemption from liability where it was under a legal duty, at common law, to take certain steps in order to prevent harm or loss from occurring and failed to do so.”

It is submitted that, should that be the case, the Municipality’s approval of the application would be *ultra vires* as it would be exonerating its own omission to perform its duties imposed by the NBR.

The doctrine of legality is well established in our law and this means that the rule of law must prevail. The illegal encroachment is in contravention of the title deed, the Overstrand Municipality’s by-law on Land Use Planning as well as the National Building Regulations (NBR). Section 21 of the NBR *inter alia* provides for the demolition of an illegally erected building and it is submitted that the peremptory nature of this provision precludes a discretionary power of the Municipality.

5. Recommended

That for the aforesaid reasons the application of Plan Active be declined in all respects and that the owner be instructed to demolish the illegal structure.

WZybrands

W J Zybrands

Loretta Gillion

From: Werner Zybrands <
Sent: Thursday, 26 September 2024 19:59
To: Loretta Gillion
Subject: Erf 3199, Betty's Bay
Attachments: ERF 3199 Betty's Bay Encroachment.docx

Dear Ms Gillion

Municipal Notice No 131/2024 refers. This notice concerns an application by Plan Active on behalf of the owner of erf 3199, Betty's Bay for the removal of restrictive title deed conditions, departure and determination of an administrative penalty.

My comments and objection thereto are set out in my attached document.

Please acknowledge receipt hereof.

Kind regards

--

Werner Zybrands



Virus-free. www.avq.com

137

4861

TP - A Theart
(Huid Stoop)

REKORDBEHEER

27 SEP 2024

Loretta Gillion

DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

From: Mark Clausen <
Sent: Thursday, 26 September 2024 18:50
To: Loretta Gillion; Mark
Subject: Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

The illegal building activity on this erf was brought to the attention of the Kleinmond building and planning department on many occasions by myself as well as numerous local residents.

From the start it was blatantly obvious that the foundations in relation to the perimeter pegs and road were incorrect.

Only after a written complaint on the noncompliance, (No ablution facilities ,water and litter)

Concerns:

Building is encroaching on municipal infrastructure

1. Eskom.

Building over or incorporating electrical route on municipal property can result in serious injury or death and disrupt Pearl Drive residents

2. Water.

Municipal water feed for Pearl Drive can be disrupted by building, already water meter for erf 3199 is mounted against property building.

3. Fibre.

Building over or close to fibre that can be damaged affecting neighbouring clients.

4. Parking.

No verge parking. This has already affected traffic.

5. Safety.

Building on a bend and encroaching on public road will endanger pedestrian traffic

The application must be refused and my objection and reasons are as follows:

Considering that the Overstand Planning Department, Overstand building inspector, site engineer, builder (the latter who lives and has been building for many years in the Overstand) and the owners were unaware of the "error" and claim ignorance is not acceptable. Residents have complained from the time when the building commenced about the "House on the road". Pleas to the building inspector and municipality were ignored.

FILE NO.	Erf 3199-KBB
SCAN NO.	2128585
COLLABORATOR NO.	

27 SEP 2024

Build and plea ignorance/condonation is an apparent method used to bypass municipal regulations.

To acced to the fatally flawed application to accommodate an illegal structure will set a dangerous precedent.

This will encourage landowners to illegally build, claim ignorance and continue.

This illegal structure will negatively affect property values.

The applicant was at all times aware of the fact that the building line was transgressed.

Owner:

Mrs LM Clausen

Erf Number: 3200 , 6 Pearl Drive

Bettys Bay

7141

Loretta Gillion

From: Mark Clausen <[redacted]>
Sent: Thursday, 26 September 2024 18:25
To: Loretta Gillion; Mark Clausen
Subject: Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

Erf 3199, 4 Pearl Drive, Bettys Bay objection to Title Deeds changes and departures

The illegal building activity on this erf was brought to the attention of the Kleinmond building and planning department on many occasions by myself as well as numerous local residents.

From the start it was blatantly obvious that the foundations in relation to the perimeter pegs and road were incorrect.

Only after a written complaint on the noncompliance, (No ablution facilities ,water and litter)

Concerns:

Building is encroaching on municipal infrastructure

1. Eskom.

Building over or incorporating electrical route on municipal property can result in serious injury or death and disrupt Pearl Drive residents

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Municipal water feed for Pearl Drive can be disrupted by building, already water meter for erf 3199 is mounted against property building.

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No verge parking. This has already affected traffic.

5. Safety.

Building on a bend and encroaching on public road will endanger pedestrian traffic

The application must be refused and my objection and reasons are as follows:

Considering that the Overstand Planning Department, Overstand building inspector, site engineer, builder (the latter who lives and has been building for many years in the Overstand) and the owners were unaware of the "error" and claim ignorance is not acceptable. Residents have complained from the time when the building commenced about the "House on the road". Pleas to the building inspector and municipality were ignored.

Build and plea ignorance/condonation is an apparent method used to bypass municipal regulations.

To accede to the fatally flawed application to accommodate an illegal structure will set a dangerous precedent.

This will encourage landowners to illegally build, claim ignorance and continue.

This illegal structure will negatively affect property values.

The applicant was at all times aware of the fact that the building line was transgressed.

Owner:

Mr MC Clausen

Erf Number: 3200 , 6 Pearl Drive

Bettys Bay

7141



9 Steynsrust Road
Somerset West
7130

Municipal Manager
Overstrand Municipality 16
Paterson Street Hermanus
7200

*TP - D. Heat
(H. ud Skoop)*

18 September 2024

To whom it may concern,

RE: ERF 3199, BETTY'S BAY: PUBLIC PARTICIPATION BY POTENTIALLY AFFECTED PROPERTY OWNER

Thank you for the opportunity to submit comments, objections, or representations in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

The following details are provided as per the requirements of the Overstrand Municipal Notice:

Name: Ingrid Rohwer
Address: 9 Steynsrust Road
 Somerset West
 7130
Contact Details: e-mail address: _____
 Cell number: _____
Interest in Application: Owner of Erf 3201 Betty's Bay
Reason for Comments: Affected Property Owner

As the owner of Erf 3201 Betty's Bay, I object to the approval in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

FILE NO.	<i>Erf 3199</i>
	<i>Bettysbaai</i>
SCAN NO.	
COLLABORATOR NO.	<i>2125646</i>

TP 23 SEP 2024

The reason for my objection to grant approval in respect of the application are as follows:

- There were approved plans which the owner should have been obliged to adhere to and supervise. The fact that the builder did not follow instructions and rules is no valid excuse to deviate from the set norms or plans.
- Allowing this application to be approved would set a precedent and undermine the general law and order which we should all abide by. If home owners are not held accountable for their actions, this will not deter others from ignoring the rules.
- The reason we invested in this property in the first place was due to the rural setting and feel in Betty's Bay, as well as its proximity to nature and the beautiful surrounds. A failure to adhere to the building norms will change the atmosphere in the area and decrease our property value.

Thank you for your consideration.

Yours sincerely,

Ingrid Rohwer
(Owner Erf 3201 Betty's Bay)

Loretta Gillion

From: Ingrid Rohwer < >
Sent: Wednesday, 18 September 2024 18:18
To: Loretta Gillion
Subject: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner
Attachments: Erf 3201_Public Participation by Affected Property Owner_2024.pdf

Dear Loretta,

Thank you for the opportunity to submit comments, objections, or representations in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

The following details are provided as per the requirements of the Overstand Municipal Notice:

Name:

Ingrid Rohwer

Address:

9 Steynsrust Road, Somerset West, 7130

Contact Details:

e-mail address:

Cell number:

Interest in Application:

Owner of Erf 3201 Betty's Bay

Reason for Comments:

Affected Property Owner

As the owner of Erf 3201 Betty's Bay, attached please find my written objection to the approval in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

Thank you in advance,

Yours sincerely,

Ingrid Rohwer

(Owner Erf 3201 Betty's Bay)



TP- A Theart
(H vld Stoep)

14 Papenboom Grove
Newlands
7700

Municipal Manager
Overstrand Municipality
16 Paterson Street
Hermanus
7200

13 September 2024

To whom it may concern,

RE: ERF 3199, BETTY'S BAY: PUBLIC PARTICIPATION BY POTENTIALLY AFFECTED PROPERTY OWNER

Thank you for the opportunity to submit comments, objections, or representations in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

The following details are provided as per the requirements of the Overstrand Municipal Notice:

Name: Monica Drögemöller
Address: 14 Papenboom Grove
 Newlands
 7700

Contact Details: e-mail address: _____
 Cell number: _____

Interest in Application: Owner of Erf 3198 Betty's Bay
Reason for Comments: Affected Property Owner

As the owner of Erf 3198 Betty's Bay, I object to the approval in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

FILE NO.	Erf 3199-KBB ✓
SCAN NO.	KBB 3199
COLLABORATOR NO.	2121383

The reason for my objection to grant approval in respect of the application are as follows:

Approved Building Plan – No Building Lines to be Encroached

- Irrespective of where the owner resides, the owner needs to accept full responsibility and accountability for the execution of the approved building plans for which no building lines are to be encroached. Full responsibility and accountability are achieved through inclusion of the necessary clauses in the contract between the owner and building contractor and defining **RACI** (**R**esponsible, **A**ccountable, **C**onsulted, and **I**nformed) which is a useful tool for clarifying roles and responsibilities within a project. A robust contract between the owner and building contractor would incur no loss to the owner in the instance where the building contractor did not adhere to the project execution in accordance with the approved building plans. The latter i.e. the building contractor would incur any costs in relation to rectifying any errors due to non-adherence to the approved building plans and would encourage the adoption of a “right first time” culture to be instilled in the building contractor.
- Approval of the application for non-adherence to the approved building plans, sets a precedent for owners and building contractors not to adhere to Municipality approved building plans and to define “As Built Structures”/“Unlawful construction”/“Fraudulent activity” as a mistake rather than having robust contracts in place clearly defining responsibility and accountability in executing building of structures in accordance with Municipality approved building plans.
- Approval of the application for non-adherence to the Municipality approved building plans, encourages the culture of non-accountability, lack of responsibility and non-compliance to be further entrenched and embedded in the country.
- In view of the natural beauty, rural feel and pristine aesthetics of the Betty’s Bay area immersed in nature, I specifically purchased Erf 3198 Betty’s Bay, and therefore object to approval of the application for non-adherence to the Municipality approved building plans as this contributes to changing the overall serene and tranquil character of Betty’s Bay.

Thanking you in anticipation.

Yours sincerely,



Monica Drögemöller

(Owner Erf 3198 Betty’s Bay)

Loretta Gillion

From: monica drogemoller < >
Sent: Friday, 13 September 2024 19:05
To: Loretta Gillion
Subject: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner
Attachments: Erf 3199_Public Participation by Affected Property Owner.pdf

Dear Loretta,

Thank you for the opportunity to submit comments, objections, or representations in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

The following details are provided as per the requirements of the Overstand Municipal Notice:

Name:

Monica Drögemöller

Address:

14 Papenenboom Grove, Newlands 7700

Contact Details:

e-mail address:

Cell number:

Interest in Application:

Owner of Erf 3198 Betty's Bay

Reason for Comments:

Affected Property Owner

As the owner of Erf 3198 Betty's Bay, attached please find my written objection to the approval in respect of the application for the administrative penalty, departure and the removal of a restrictive title deed condition of Erf 3199 Betty's Bay.

Thanking you in anticipation.

Yours sincerely,

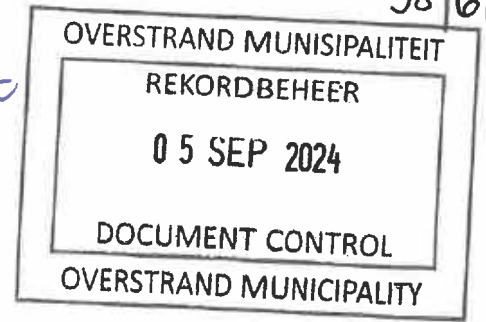
Monica Drögemöller

(Owner Erf 3198 Betty's Bay)

TP-A Theart
(LH vld Stoep)

At: Loretta

Overstrand Municipality



Re: Objection re Erf 3199, 4 Pearl Drive, Bettys Bay

We, the shareholders of the property Erf 3183, Clarens Drive, Bettys Bay would like to lodge our objection in respect of the proposed building currently under construction on Erf 3199, 4 Pearl Drive, Bettys Bay.

We do not agree to the removal of the restrictive title deed restrictions and the application in terms of S 16 (2) (f) restrictions contained in the Title Deed T 6358/2021. The objection as a result of the building being constructed contrary to the Title Deed conditions.

The owner, building contractor and building inspector should be aware of these restrictions in terms of the Title Deed and town building regulations. The foundations were laid over 6 months ago and this notice should have been sent to residents much earlier and before the wall construction was commenced?

Yours faithfully

R Moore on behalf of the shareholders of Fomogipa cc.

Erf 3183, Clarens Drive, Bettys Bay.

3 September 2024

FILE NO.	Erf 3199-KBB
SCAN NO.	
COLLABORATOR NO.	2116116

Loretta Gillion

From: Rob & Lorraine Moore <
Sent: Tuesday, 03 September 2024 10:31
To: Loretta Gillion
Subject: FW: Objection iro Erf 3199 4 Pearl Drive, Bettys Bay
Attachments: Objection to building erf 3199 Bettys Bay.docx

Dear Loretta

Please find attached an objection to the development on Erf 3199, sent by the shareholder/owners of Erf 3183 Clarens Drive Bettys Bay.

Please confirm receipt.

Thanks

Yours faithfully

RC Moore on behalf of the shareholders of Fomogipa CC.

 Virus-free. www.avast.com

149

TP - A Theart
(H. vld Stoop)

REKORDBEHEER

29 AUG 2024

60/61

Loretta Gillion

DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

From: Eric Norman Watts < >
Sent: Tuesday, 27 August 2024 11:28
To: Loretta Gillion
Subject: Fwd: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner

My comments regarding proposed relaxation of Building Regulations rules.

Begin forwarded message:

From: Eric Norman Watts < >
Date: 27 August 2024 at 10:05:58 BST
To: Natasha <natasha@planactive.co.za>
Subject: Re: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner

I object to Overstrand Municipality's proposal. What is the point of other individuals complying with the rules and regulations if you're going to allow such a deviation. The bottom line is if Mrs Erasmus wants to employ an idiot builder then it's down to her. The remainder of the community shouldn't have to excuse either one of them for deviation from their submitted plans. Clearly the municipality is seeking a soft option and as far as I'm concerned this is unacceptable. Rules are rules and they should be adhered to.

Eric Watts.

On 26 Aug 2024, at 11:51, Natasha <natasha@planactive.co.za> wrote:

To whom it may concern

You are regarded as a potentially affected property owner.

Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) requires that notice must be given, and Section 49 allows for a period of not less than 30 days from the date on which notice was given to affected persons to submit comments, objections, or representations in respect of a land use planning applications. Council, during a meeting held on 30 November 2023, resolved that such notice be given via e-mail in accordance with the provisions of the Electronic Communications and Transactions Act, 25 of 2002. Due to ongoing difficulties in service delivery experienced by the South African Post Office, and as per the aforesaid Council resolution, **NO** registered mail/letters will be forwarded in the interim period.

FILE NO.	Erf 3199 - KBB ✓
SCAN NO.	Watts
	2110899
COLLABORATOR NO.	

29 AUG 2024

150

TP - A Theurb
(H vld Stoep)

REKORDBEHEER

28 AUG 2024

61/61

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

Loretta Gillion

From: Jaimin Patel <...>
Sent: Tuesday, 27 August 2024 18:32
To: Loretta Gillion
Cc: Mother Dearest ♡
Subject: Fwd: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner
Attachments: Notice.pdf; Locality plan 3199 BB.pdf; motivation report 3199 BB.pdf; Encroachment plan.pdf

Dear Loretta,

I refer to the attached public participation notice of relaxation of the building line on ERF 3199.

I confirm I am the representative of Ms Roshni Kausar, the owner of ERF 3420 Betty's Bay.

Kindly note that Ms Kausar **approves** of the requested deviation from the building line restrictions, granted that no other developments in the future may benefit from such deviation on ERF 3199. For the avoidance of doubt, Ms Kausar's approval is to the existing structure that is already there and not to any new development which may stem from this deviation in future.

Do not hesitate to contact me should you have any further queries or concerns.

Kind regards,
Jaimin Patel

Begin forwarded message:

From: Roshni Kausar <roshni@lami.co.za>
Subject: FW: Erf 3199, Betty's Bay: PUBLIC PARTICIPATION - You are regarded as a potentially affected property owner
Date: Aug 26, 2024 at 1:04 PM
To: Jaimin Patel <jamestmt@icloud.com>

We will have to read through and object where necessary boy , we are erf 3420

Thank you , Be Safe.

Kind regards.

Roshni

28 AUG 2024

FILE NO. Erf 3199 - KBB ✓
SCAN NO. KBB 3199
COLLABORATOR NO.
2110243



TOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200

Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:

planactive@hermanus.co.za

za

Website:

www.planactive.co.za

Our reference: PA24023/ML

Your reference: 3199 KBB

Application ID: 4731/2024

8 November 2024

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
08 NOV 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP-A Theart
(Hvd Stoep)

FOR ATTENTION: MRS HANNEEN VAN DER STOEP

Sir

DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: ERF 3199 BETTY'S BAY

- N.A. ERASMUS

Reference is made to our application dated 1 August 2024 and your email dated 17 October 2024 with sixteen (16) objections attached thereto.

Herewith the summary of the objections / comments received and our response:

1. ***The encroachment of the building into the road reserve poses a safety risk, particularly as the property is located on a sharp bend. The comments and objections mention that the house is positioned in the road reserve and this creates concerns about traffic and accidents.***

There seems to be some confusion with regards to two separate applications that were submitted by our office. Two separate applications in Bettys Bay were sent out almost simultaneously by our office, which is causing confusion among the immediate property owners. The other application was for erf 3196 Bettys Bay, situated on the corner of Rockway Drive and Pearl Drive. The location in relation to erf 3199 Bettys Bay can be seen below:

FILE NO. Er 3199-KBB
SCAN NO.
COLLABORATOR NO. 2196807

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr.10908; SACPLAN Tch.Pln B/8250/2014
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009

TP

8 NOV 2024



The dwelling structure on erf 3199 is not built in the road reserve – it merely encroaches the applicable title deed and land use scheme building lines. Concerns about traffic and accidents are considered irrelevant since the dwelling will not encroach onto the road reserve. The garage is positioned at least 6 meters from the erf boundary and further from the road kerb, confirming compliance with the building line requirement of a minimum of 5 meters from the kerb.

2. ***The owner, project manager, and builder must be held accountable for not adhering to municipal regulations. It is not the community's or the municipality's responsibility to amend title deeds due to oversight. The owner and her agents have failed to construct the dwelling according to approved building plans, leading to a flawed attempt to gain retrospective approval. One of the objectors emphasizes that the owner is responsible for the actions of her agents and builders and that she must accept full responsibility for not adhering to the approved building plans, which include encroaching on building lines.***

We agree that the owner, project manager, and builder should have adhered strictly to municipal regulations and that they cannot expect leniency in the form of altered title deed restrictions. However, the As Built structure still has a 2m street building line and does not encroach onto municipal land / the road reserve. The owner was not aware of the encroachment until notified by the building inspector on 15 February 2024. Upon receiving the notice, all construction activities were immediately ceased.

Demolishing the already constructed sections of the dwelling is not feasible due to the extensive nature of the work completed. Such action would require a complete reconfiguration of the layout and impose a significant financial burden on the owner, who was unaware of the construction issues. The owner is now taking steps to rectify the situation by submitting an application for an administrative penalty, departure and removal of restrictive title deed conditions to legalize the constructed structures on the property.

We recognize that the owner is responsible for the actions of her representatives. The municipality will assess its own obligations and liability in this matter and ensure that proper procedures are followed.

3. ***An objector argues that the local authority shares liability for not issuing a timely cease order, which has implications for any future applications based on convenience and the costs of demolition.***

We recognize the concerns raised about the municipality's responsibility in ensuring compliance with building regulations, including the timely issuance of cease orders. We cannot speak on behalf of the municipality, but past experiences have shown that the municipality is committed to upholding all building regulations and ensuring that construction adheres to approved plans and title deed conditions. While oversight may occasionally occur, this does not absolve property owners of their responsibility to comply with existing regulations.

It is important to note that the municipality acts within the framework of established processes. The decision to issue a cease order is influenced by various factors, including the nature of the transgression, the potential for safety hazards, and available resources. Each case is evaluated individually to determine the appropriate course of action.

4. ***It was evident, even to a layperson, that either the road reserve or the building foundations were incorrectly placed. The objectors express concern that the foundations were laid over six months ago, and residents should have been notified of the construction much earlier, particularly before any wall construction commenced. Regular site visits would have ensured compliance with approved plans. If proper oversight had been maintained, the building line violations would likely have been addressed before significant construction occurred. It is hard to believe that the project manager did not visit the site after the foundation was laid to ensure that it was sound and compliant with the National Building Standards 1040 (SANS 10400).***

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors, resulting in a topographical survey that outlined the contours and remaining foundations after the Betty's Bay fires. Building plans, which strictly adhered to these contours and established building lines, were approved on 6 June 2022.

Unfortunately, the building contractor deviated from these approved plans, specifically regarding the positioning of the dwelling in relation to the street building lines. Our client, the landowner, was unaware of this encroachment until the building inspector raised the issue. In response to the concerns raised, our client commissioned an As Built survey from Van Dyk Land Surveyors, conducted in March 2024. This survey confirmed that the foundation and ground floor of the new dwelling encroached upon both the title deed and scheme regulations' street building lines.

It is important to note that the landowner does not reside in Betty's Bay and acted in good faith by appointing a construction team to ensure compliance with all relevant regulations. The approved building plans clearly stated that no building lines were to be encroached.

Our client is committed to rectifying this situation.

5. The qualifications of the appointed contractors and consultants involved in the construction of the dwelling are questioned and they are labelled as incompetent.

It appears there were shortcomings in ensuring adherence to the building boundaries. We concur that a more proactive approach by the landowner, specifically in engaging competent professionals to oversee the construction process, could have mitigated these issues and would have helped align the construction with the approved building plans and prevented deviations from the stipulated requirements.

6. The building operations continued until a cease order was finally issued, despite multiple attempts by objectors to contact the building inspector regarding the issues. The illegal building activities have been reported multiple times to the Kleinmond building and planning department by the objector and other residents, yet no action was taken. The building inspector did indicate non-compliance. The responsible parties, including the project manager and contractor, must address this issue, and the landowner has the right to seek remedies against them if necessary. The homeowner failed to address the non-compliance issue raised by the building inspector, raising questions about whether they or the project manager have adequate insurance to cover the costs of their errors. They assert that if the owner, Mrs. Erasmus, chose an incompetent builder, she should bear the consequences without the community having to accommodate the deviation.

We regret the lack of response from the building inspector; however we cannot comment on behalf of the municipality.

Demolishing the already constructed sections of the dwelling is not feasible due to the extensive nature of the work completed. Such action would require a complete reconfiguration of the layout and impose a significant financial burden on the owner, who was unaware of the construction issues. The owner is now taking steps to rectify the situation by submitting an application for an administrative penalty, departure and removal of restrictive title deed conditions to legalize the constructed structures on the property.

7. There is skepticism about the municipality's commitment to enforcing its building regulations. The objections emphasize the importance of consistent enforcement to prevent setting a precedent that allows homeowners to disregard rules. The continued construction despite clear infringements indicates a failure in planning, inspections, and enforcement by municipal personnel. There are concerns that this situation may indicate a wider issue of unreported construction breaches throughout the area, affecting all properties in Betty's Bay.

Based on previous experiences, the municipality is dedicated to maintaining these standards and takes the enforcement of building regulations very seriously. The municipality will thoroughly assess the circumstances surrounding this application to ensure that appropriate actions are taken. We acknowledge the significant concerns regarding oversight and enforcement of building regulations in this case.

8. There is strong opposition to the idea of the municipality altering title deed restrictions at this early stage of construction. The community expects the owner, project manager, and builder to take responsibility for any errors and to comply with municipal regulations.

It is proposed to retain the As Built dwelling, including the foundation and ground floor level, which encroach upon the 4m street building line. Additionally, due to the current layout and floor configurations, the future first-floor level and roof construction cannot be set back to meet the 4m street building line and will also encroach on this boundary. The walls and staircase cannot align between the ground and first floor levels unless the first floor is constructed over the 4m street building line in the future.

The application proposes to address the unlawful As Built encroachment and future construction / completion of the new dwelling over the street building line. To adhere to the municipal and title deed development parameters, the As Built structure would need to be demolished. However, this is not a feasible option from a financial standpoint, as outlined in earlier sections of this document.

9. The homeowner is criticized for not designing the new building within the property's perimeter, especially if they intended to utilize the existing foundation from a previous structure. The owner's claim of ignorance regarding the illegal actions of her contractor is deemed irrelevant; the owner is vicariously liable. Financial harm to the owner is viewed as recoverable from the contractor, making it a weak argument.

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors, resulting in a topographical survey that outlined the contours and remaining foundations after the Betty's Bay fires. Building plans, which strictly adhered to these contours and established building lines, were approved on 6 June 2022.

Unfortunately, the building contractor deviated from these approved plans, specifically regarding the positioning of the dwelling in relation to the street building lines. Our client, the landowner, was unaware of this encroachment until the building inspector raised the issue. It should be noted that the As Built structure is still within the property's boundaries and does not encroach onto municipal land / the road reserve. The financial concerns are addressed in the previous sections of this document.

10. An objector cites violations of title deeds, municipal bylaws, and the National Building Regulations, which mandate the demolition of illegally constructed buildings.

The violations of title deed, municipal bylaws, and National Building Regulations will be thoroughly examined by the municipality. Demolishing the structure would result in substantial financial losses. Therefore, an application for an administrative penalty has been included - to enable our client to retain the structure that encroaches on the building lines (not the erf boundaries) rather than facing the costs of demolition.

11. Approval of the application would negatively affect property values in the area due to the unsightly nature of the illegal construction, especially as it is located on a bend. The proposed changes would negatively affect the visual appeal of the area, potentially leading to decreased property values. An objector highlights the natural beauty and rural character of Betty's Bay, stating that approval of this application would detract from the serene and tranquil environment that attracted them to the area.

The concerns regarding potential decrease in property values are acknowledged. However, the following points should be considered when assessing the impact on property values and the character of the area:

- The placement of the dwelling on erf 3199 Bettys Bay does not negatively affect neighbours' views of the ocean and mountains.
- The massing and scale of the As Built structures are in line with the surrounding area.
- All land use parameters are met, except for the deviation from the street building line.
- The existing foundation and ground floor structure are essential to the dwelling; demolishing or partially demolishing it to comply with the street building lines would impose significant costs and delays on our client.

Additionally, the scale of the surrounding built environment and the minimal impact on the streetscape should be taken into account when considering the potential for the property to accommodate the proposed building line deviations. The following factors further support the property's suitability for this application:

- High-quality materials were used and will continue to be used for the construction of the dwelling.
- The development adheres to the approved blueprint, with the only change being its position closer to the street boundary.

The application does not propose to change the zoning or land use of the subject property and therefore the proposal (dwelling house with outbuilding) is compatible with the surrounding land uses.

12. The approval of the application will set an undesirable precedent for future developments. Allowing the relaxation of title deed conditions would encourage other landowners to disregard local regulations and title deed requirements in their own developments. Granting approval for non-compliance would foster a culture of non-accountability and disregard for municipal regulations, negatively impacting the community.

We are confident that the municipality is committed to upholding regulations consistently to maintain the integrity of the community and takes seriously the implications of this case for future applications. Each application is assessed on its own merits, and any precedents set will be carefully considered in light of maintaining compliance with building regulations and safeguarding community standards.

13. There is disbelief regarding the proposal of a fine as a solution, viewed as insufficient to address the seriousness of the violations.

While the municipality strives to enforce regulations rigorously, it's important to recognize that the Land Use Planning By-Law allows for administrative penalty applications to address unlawful building work and land uses. The municipality evaluates the appropriateness of any proposed measures based on the specific circumstances. Handling unlawful structures through administrative penalty applications is a recognized practice.

14. Questions are raised about the record of inspections, the adequacy of notifications to residents, and why proper procedures were not followed to inform all affected parties.

The building plans, which fully complied with the established contours and building lines, were approved on 6 June 2022. Public participation is not required for building plan approvals when no

deviations are proposed. However, deviations from the approved plan arose during construction and needed to be addressed through a land use application, which is the subject of this submission. This application included a notice in the newspaper, ±348 notifications to adjacent property owners, and a notice board on-site. All public participation requirements for the land use application were followed meticulously, and all immediate property owners identified by the municipality received notice of the proposed application.

15. The lack of verge parking has already begun to affect traffic in the area.

Access to erf 3199 Betty's Bay will remain unchanged, with entry continuing from Pearl Avenue. According to the Overstrand Municipality Land Use Scheme (2020), a minimum of two parking bays is required for a dwelling. The proposed new dwelling will feature a double garage, providing adequate parking for the main residence.

Given this, the proposed main dwelling on erf 3199 Betty's Bay complies with the minimum parking requirements for properties zoned SR1. The property will continue to function primarily for single residential purposes, ensuring that the impact on traffic flow in the area will remain consistent.

16. Encroachment on Municipal Infrastructure:

- **Eskom: Building over electrical routes poses severe safety risks and could disrupt services for residents on Pearl Drive.**

The existing structures on the property have been designed and positioned in compliance with Eskom's safety requirements, and no further building or alteration will occur over any electrical routes. The current layout will not pose any safety risks or disruptions to services for residents on Pearl Drive.

- **Water Supply: The construction could disrupt the municipal water supply, particularly as the water meter is already improperly positioned against the building.**

The positioning of the water meter, though noted to be close to the building, does not impede the functionality or operation of the municipal water supply. The existing water connection and meter have been installed in line with municipal regulations, and there are no planned alterations to these systems. No disruption to the water supply is anticipated due to the As Built structures, and the current setup will remain fully functional.

- **Fibre Optic Lines: Construction near fibre optic lines risks damaging essential services for neighboring properties.**

The proposed construction does not interfere with any fibre optic lines, nor does it risk damaging these essential services.

In summary: all services on the subject property are already in place, and the As Built structures will not impact the scale or usage of the existing services. There is no expectation of additional loading or demand on the municipal infrastructure. Furthermore, all services will continue to be provided in accordance with the municipality's engineering guidelines, ensuring compliance with all relevant standards. The application will not adversely affect municipal infrastructure, and the existing services will remain fully operational without disruption.

17. The approved building plans, which were referenced in the Motivation Report, were not attached, raising concerns about compliance with building limits.

A copy of the approved building plans was submitted as part of the land use application; however, it was not included in the notices distributed during the public participation process. As stated in the notice, the full application was available for inspection at the municipality's offices, and any enquiries, including requests for the building plans, could have been directed to the town planning department.

18. Impact of Construction:

- **The location of the dwelling on a busy corner road means that large windows will be exposed to debris from passing vehicles.**

We find this concern unrelated to the land use application and believe it should be dismissed.

- **Residents will experience increased noise and light pollution due to proximity to the road, compromising the area's natural ambiance.**

While we understand concerns about noise and light pollution, it's important to note that the dwelling is positioned 2m from the street boundary, well outside the road reserve. This setback helps mitigate any potential disruptions, still allowing for a buffer that preserves the natural ambiance of the area. Additionally, it will be in our client's best interest to minimizing noise impact, ensuring that residents can still enjoy a peaceful environment.

- **Maintenance activities for the road may damage the dwelling, leading to potential liability claims against the municipality.**

Concerns regarding maintenance activities for the road potentially damaging the dwelling are valid and represent a risk for our client given the dwelling's proximity to the road. Clear communication and coordination between the municipality and the property owner to mitigate risks and ensure that appropriate measures are taken to protect the dwelling is key if and when activities in the road occur. Our client is committed to working collaboratively with the municipality to address these concerns and find mutually beneficial solutions.

- **The visual impact of a double-story structure close to the road contrasts with other properties that are set back, affecting the overall character of the area.**

The placement of the dwelling on erf 3199 does not negatively affect neighbours' views of the ocean and mountains. The massing and scale of the As Built structures are in line with the surrounding area. All land use parameters are met, except for the deviation from the street building line.

Additionally, high-quality materials were used and will continue to be used for the construction of the dwelling. The development adheres to the approved blueprint, with the only change being its position closer to the street boundary.

Lastly, **Ms. Kausar (owner of erf 3420 Bettys Bay) approves** the requested deviation from building line restrictions for the existing structure on erf 3199. Her approval is explicitly limited to the current structure and does not extend to any future developments that may arise from this deviation.

We trust that you find the above in order.

Yours faithfully



**M. LERM Pr. Pln. (A/158/2009)
PLAN ACTIVE**

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, DEPARTURE & DETERMINATION OF AN
ADMINISTRATIVE PENALTY: ERF 3199, BETTY'S BAY (4731/2024)**

Electricity	:	Eskom Area
Water	:	Refer to conditions
Sewer	:	Refer to conditions
Stormwater	:	Refer to conditions
Roads and traffic	:	Refer to conditions

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 owner's cost;
2. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
3. that, should any 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 Principal Technologist: Kleinmond for written approval;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that no reservation of on-street parking be allowed.
6. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
7. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.



**RICARDO ANDREW
PRINCIPAL TECHNOLOGIST:
DEVELOPMENT CONTROL**

30/10/2024
DATE