



**MEETING OF THE  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**30 JANUARY 2025  
VIRTUAL  
10:00**

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

23 January 2025

**TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

**CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

**NOTICE IS HEREBY GIVEN** that the **Municipal Planning Tribunal (MPT)** will go into session virtually on **Thursday, 30 January 2025** at **10:00** to consider the attached agenda.

**H JANSER (MS)**  
**CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

**Distribution:**

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr H Blignaut (Member)
4. Ms R Louw (Member)
5. Mr R Kuchar (Authorised Official)
6. Mr S van der Merwe (Senior Town Planner)
7. Ms H van der Stoep (Senior Town Planner)
8. Secretariat

# MUNICIPAL PLANNING TRIBUNAL (MPT)

30 January 2025

## I N D E X

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

<b>4.1</b>	<b>ERF 1029, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, RELAXATION OF THE TITLE DEED STREET BUILDING LINE AND DETERMINATION OF ADMINISTRATIVE PENALTY: FVS TOWN AND REGIONAL PLANNERS ON BEHALF OF W &amp; R VALENTE</b>	<b>1</b>
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- 1. OPENING**
  
- 2. APPLICATIONS FOR LEAVE OF ABSENCE**
  
- 3. CONFIRMATION OF MINUTES**
- 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 28 November 2024**
  
- 4. ITEMS FOR CONSIDERATION**
- 4.1 ERF 1029, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR DEPARTURE, RELAXATION OF THE TITLE DEED  
STREET BUILDING LINE AND DETERMINATION OF ADMINISTRATIVE  
PENALTY: FVS TOWN AND REGIONAL PLANNERS ON BEHALF OF W  
& R VALENTE**

Report attached

## 4.1

**ERF 1029, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, RELAXATION OF THE TITLE DEED STREET BUILDING LINE AND DETERMINATION OF ADMINISTRATIVE PENALTY: FVS TOWN AND REGIONAL PLANNERS ON BEHALF OF W & R VALENTE**

**1029 KPRB (4112/2022)**

**H van der Stoep**

**11 November 2024**

**(028) 313 8900**

**Hermanus Administration**

## 1. EXECUTIVE SUMMARY

An application was received on 11 April 2022 from FVS Town and Regional Planners on behalf of W & R Valente on Erf 1029, Pringle Bay in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
  - to relax the lateral building line from 2m to 0m to accommodate an existing carport;
  - to relax the lateral building line from 2m to 0m to permit a change of use from garage to staff quarters, and
  - to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters.
- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to exceed the 9m length or third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters.
- ❖ **Relaxation** of Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:
  - to relax the lateral building line from 1,5m to 0m to accommodate an existing carport, and
  - to relax the lateral building line from 1,5m to 0m to permit a change of use from garage to staff quarters.
- ❖ **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 to accommodate the unauthorised transgressions as stipulated above.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Letter from the applicant in support of the application is attached as Annexure B, while the 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

Erf 1029 is situated within Extension 3 of Pringle Bay. The subject property measure 720m<sup>2</sup> in extent. The property has an approved existing dwelling and garage. The application is for a carport, constructed without building plans or planning approval.

### 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- ❖ The architectural style of the application is consistent with that of a residential dwelling.
- ❖ The proposal is not out of character of the surrounding area.
- ❖ The proposal adds value to the dwelling.
- ❖ It has no detrimental impact of the abutting neighbours' dwellings.
- ❖ It does not detract from view corridors.
- ❖ No complaints have been received.
- ❖ No additional municipal services are required.

#### DETERMINATION OF THE ADMINISTRATIVE PENALTY

##### **(a) nature, duration, gravity and extent of the contravention**

The additions include the conversion of the existing garage into a staff quarter and the carport. The carport was constructed before the new owners took occupation. From aerial imagery, it can be argued that the carport has been on the property since 2016.

##### **The extent of the additions is as follows:**

Staff Quarters:	3,56m <sup>2</sup>
Carport:	<u>3,72m<sup>2</sup></u>
<b>Total:</b>	<b><u>7,28m<sup>2</sup></u></b>

##### **(b) The conduct of the person involved in the contravention:**

The property was purchased with the carport already constructed. The owners were not duly informed of all the issues and processes relating to the way forward. The owners did address the situation once notified of the situation and should not be held accountable.

##### **(c) Whether the unlawful conduct was stopped:**

The building work was already completed.

##### **(d) A report by a quantity surveyor in matters of unauthorised building/construction:**

Should the Overstrand Municipality find it necessary to determine an administrative penalty, a report to the effect will be submitted.

**(e) Whether a person involved in the contravention has previously contravened this By-law or previous planning law.**

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

**PLANNING PRINCIPALS**

- o Spatial Justice: Comply
- o Spatial sustainability: Comply
- o Efficiency: Comply
- o Spatial resilience: Comply
- o Good administration: Comply

**FORWARD PLANNING**

**Overstrand Municipality Spatial Development Framework, 2020:**

The proposal is in line with the SDF.

**Overstrand Integrated Development Plan, 2020:**

The proposal promotes social development and creates a safe and healthy environment.

**Overstrand Growth Management Strategy, 2010:**

The proposal does not entail densification and is in line with the document.

**Overstrand Municipality Amended By-law on Municipal Land Use Planning, 2020:**

The proposal is not considered to be a deviation of the General criteria for consideration of applications.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Internal Departments	<b>Yes</b>	20 June 2023	20 July 2023
Ward councillor	<b>Yes</b>	20 June 2023	20 July 2023
Notices	<b>Yes</b>	20 June 2023	20 July 2023
Total comments	<b>ONE (1)</b>		
Total letters of support	<b>N/A</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly?			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>

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

Name	Date received	Summary of comments
N/A		

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection was received from the Pringle Bay Ratepayers Association, and the applicant was provided with an opportunity to respond to the comments. See Annexures D and E, respectively.

 **OBJECTION:** Advertisement requirements

***An application for the removal of restrictive conditions is applicable and should have been advertised in local newspaper and registered notices been send.***

### APPLICANT'S RESPONSE

It is our advice to our clients that the application is not for the removal of the restrictive title deed condition, but rather for a relaxation of the prescribed building lines in the applicable title deed. This advice is because the title deed expressly gives the Municipality the authority to grant their consent to an amendment to the building lines set out in the title deed.

*“No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5 metres to the street line which forms a boundary of this erf, nor within 3 metres of the rear, or 1.5 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority -”*

We also draw your attention to the extract from the Provincial Department of Environmental Affairs and Development Planning, below:

Attention is also being drawn to Section 39 of the Western Cape Land Use Planning Act, 2014 (“LUPA”) now delegates the decision-making process with regard to the relaxation of Title Deed conditions to municipalities. It is stated in Section 39 (4) that *“any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restriction in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval of the relevant municipality”*. As these restrictions were imposed by the Administrator, LUPA now delegates the decision-making authority in relation to such restrictive title conditions to the relevant municipality.

Attention should be given to the precise wording of the title deed. Specific reference is made to the “*shall except with the consent of the Administrator*”. Therefore, the local municipality, in this case, Overstrand Municipality, has the power to grant its consent to the proposed building or structure. The Overstrand Municipality therefore has the delegated power to handle this application in a manner which it deems fit and to its standard.

Where the title deed restriction expressly confers the power on the Administrator to grant consent in terms of that title deed restriction, the Municipality, as successor to the Administrator, holds such power. In that case, an application must be made in terms of Section 16 of the By-Law for such municipal consent. The minimum requirements of Section 39(1) of LUPA do not apply to **consent, approval, or relaxation** in terms of a restrictive condition. This type of application is instead subject to the general participation requirements set out in the By-Law.

If the title deed did not give the Administrator the express right to consent to the relaxation, as stated above, it would be necessary to make an application for the removal, amendment, or suspension of the restrictive title deed condition in terms of Section 16(2)(f) of the By-Law. In that case, the title deed would need to be amended, which is not the case in this matter.

#### TOWN PLANNER’S RESPONSE

Relaxation applications are in terms of the title Deed and not a removal of restrictive conditions and has a different public participation procedure vis a vie a removal of restriction application. Relaxations are reliant on the consent of the adjacent owners who it will affect. All the title deed restrictions remain in place and only that is requested is relaxed.

✚ **OBJECTION:** *Restrictive conditions on a title deed are placed for a specific reason and should not be considered lightly*

***It is not desirable that a title deed restriction be removed in order to legalise an illegal structure. The OM Municipal Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.***

#### APPLICANT’S RESPONSE

The restriction is not being removed and only a relaxation of the applicable restriction. It should be noted that the structures were erected buy the previous owners and the applicant seek to rectify the contravention.

#### TOWN PLANNER’S RESPONSE

An application submitted is evaluated on its own merit and the reference to other application must be seen in context, each situation has different circumstances. The Title Deed allows for the housing of vehicles on a 0m building line and therefore falls within the orbit of the Township Establishment Conditions. The specific reason of a Title Deed building line as indicated by the objector is al-ready addressed in the Title Deed. Thus the objection is not valid.

**✚ OBJECTION: Removal of illegal structure**

It would appear to be a resorted strategy in South Africa that an owner quickly builds and pleads that it cannot be removed due to cost implications. In this case it does not apply, the carport can easily, without much cost be removed.

**APPLICANT'S RESPONSE**

To expect the applicant to remove the structure and subsequently forfeit all fees paid for this application is unjust and will serve no purpose.

**TOWN PLANNER'S RESPONSE**

The illegal structure has been constructed during 2016 and no complaint in this regard has been submitted to this office. Unfortunately, the strategy as indicated by the Ratepayers is true and therefore the Municipality incorporated an administrative penalty in its Land Use Scheme.

In this case it is not necessary to remove the illegal structure since it is allowed for in terms of the Title Deed and the Land Use Scheme subject to height restrictions and neighbours consent. The latter has been obtained by the applicant.

**8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

See point 7 above.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

See point 7 above.

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

**10.1 Background**

The application is to rectify an existing situation.

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

The application is of a small scale and therefore the planning objectives applicable in terms of SPLUMA and LUPA cannot be adequately discussed.

The objectives relating to:

**Spatial Justice**

The building line departure will not perpetuate the spatial imbalances caused by the apartheid spatial planning.

**Spatial sustainability**

The building line departure will not in any way compromise on valuable agricultural land and environmentally sensitive areas.

**Efficiency**

Municipal services are not affected. The proposed carport and use change will optimize the utilisation of the available space efficiently and effectively.

**Spatial resilience**

The carport as proposed will comply with the National Building Regulations and enable the applicant to house the vehicles in a safe and secure environment.

**Good administration**

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

**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**

N/A

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

N/A

**10.6 Impact on Municipal engineering services**

No additional services are required.

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

N/A

**10.8 Existing and proposed zoning comparisons and considerations**

The property is zoned as Residential Zone 1, and the property will be utilized as such. In terms of the Land Use Scheme garages and carports may be constructed on the boundary with neighbours' consent. Staff quarters are allowed on the boundary in terms of the Title deed, e.g. outbuilding.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

N/A

**12. THE DESIRABILITY OF THE PROPOSAL**

The application is for the following and will be addressed as follows:

The departure applied for is to relax the Land Use Scheme lateral building line from 2m to 0m as well as an application to relax the Title Deed lateral building line from 1,5m to 0m to accommodate an existing carport.

The carport as indicated on the building plan submitted with the application is a wooden structure with a thatch roof. The roof was replaced in 2022 with roof sheeting similar to the roof of the dwelling house. The height of the carport in the motivation report indicates an 11m structure, which is not correct. According to the building plan submitted, the height of the carport is 6,010m.

In terms of the Land Use Scheme a garage or carport located on the lateral boundary is allowed with neighbour's consent and may not exceed the height of 3,5m. In terms of the Title Deed, structure housing vehicles are allowed on the boundary, but may not exceed 3m wall plate height. The owners replaced the thatch roof with sheet metal, knowing that the application has not been finalised. It should be noted that both the Land Use Scheme and the Title Deed makes provision for structures housing vehicles may be erected on the lateral boundary with neighbours consent as per the Overstrand Municipality land use process.

The height aspect has not been dealt with by the Consultant. There was no reason provided, why the carport needs the height of 6,010m. It is an excessive height on the boundary of the erf. It is found to not be desirable, and it is recommended that the carport roof be lowered to comply with the 3,5m height restriction and 40-degree angle as per the Land Use Scheme. The carport is supported, but to a height of 3,5m as per the Overstrand Land Use Scheme.

The departure is to relax the lateral building line from 2m and 1,5m to 0m to permit a change of use from garage to staff quarters and a departure to relax the rear building line from 2m and to 0,5m to permit a change of use from garage to staff quarters. It should be noted that the Title Deed does indicate a 3m rear building line; however with the consent of the Local Authority any outbuilding may be erected on the rear building line and thus does not require a relaxation of the rear building line.

The garage has been renovated and changed into a staff quarter by the previous owners. However, the structure is a second dwelling as was indicated in the original application. Second dwellings and or habitable spaces are not allowed so close to an erf boundary. This is to ensure privacy for the surrounding erven. The conversion of the garage in a staff quarter is not recommended for approval. It is proposed that the applicant revert back to a garage or store room.

The transgression of the 9m or a third of a boundary applicable to structures transgressing the building lines is recommended since it has been in existence since 2016.

#### **DETERMINATION OF THE ADMINISTRATIVE PENALTY:**

##### ***(a) nature, duration, gravity and extent of the contravention***

The additions include the conversion of the existing garage into a staff quarter and the carport. The carport was constructed before the new owners took occupation. From aerial imagery, it can be argued that the carport has been on the property since 2016.

The extent of the additions is as follows:

Staff Quarters:	3,56m <sup>2</sup>
Carport:	<u>3,72m<sup>2</sup></u>
<b>Total:</b>	<b><u>7,28m<sup>2</sup></u></b>

**(b) The conduct of the person involved in the contravention:**

The property was purchased with the carport already constructed. The owners were not duly informed of all the issues and processes relating to the way forward. The owners did address the situation once notified of the situation and should not be held accountable.

**(c) Whether the unlawful conduct was stopped:**

The building work was already completed.

**(d) A report by a quantity surveyor in matters of unauthorised building/construction:**

Should the Overstrand Municipality find it necessary to determine an administrative penalty, a report to the effect will be submitted.

Calculation of the administrative penalty:

Carport:	3,72m <sup>2</sup>
Budget (2024/2025):	R20 253 x 3,72m <sup>2</sup> = R75 341,16
5% penalty:	R75 341,16 = <b>R3 767,10</b>

Staff quarters:	3,56m <sup>2</sup>
Budget (2024/2025):	R20 253 x 3,56m <sup>2</sup> = R72 100,68
5% penalty:	R72 100,68 = <b>R3 605,03</b>

**Total penalty:** R3 605,03 + R3 767,10 = **R7 372,13**

**CONCLUSION:**

The applicant did buy the existing property with the transgression. Although the new owners are not responsible for the transgressions, it remains their responsibility to ensure compliance with all relevant legislation before purchasing a property.

**13. RECOMMENDATION**

1. that the objection be noted.

2. that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:

- to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;
- to relax the lateral building line from 1,5m to 0m to permit a change of use from garage to staff quarters;

**be approved**, in terms 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 for a departure on Erf 1029, Pringle Bay for the following:

- to relax the lateral building line from 2m to 0m to accommodate an existing carport;

**be approved**, in terms 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 1029, Pringle Bay for a departure to exceed the 9m length or third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters, **be approved**, in terms of Section 61 of the By-Law.

5. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:

- to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters;

**not be approved** in terms of Section 61 of the By-Law

6. that the approvals in Points 2 - 4 above be subject to the following conditions:

- (a) that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;
- (b) that the staff quarters be changed to a garage or a store room
- (c) that the approval for the departure is only for the development over for the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;

- (d) that **revised** building plans indicating Condition (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with, and
  - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.
7. 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 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, **be imposed**, and that an administration penalty fee of **R7 372,13** be payable within ninety (90) days of the final decision.
  8. that the applicant be notified of its right of appeal (*against Paragraphs 2 – 6 above*) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

#### 14. REASONS FOR THE RECOMMENDATION

- The proposed application fits in with the character of the surrounding area and is desirable in terms of use, not height.
- There will be no impact on services.
- The proposal will have no negative impact on the environment.
- Garages or carports are allowed on the 0m lateral and rear building lines with neighbour's consent of which the owner obtained.
- The 5% penalty takes into consideration that the owners immediately appoint a consultant to address the illegal structure and use.

#### Reasons for non-approval:

- The height restriction of 3,5m restriction of the carport is due to the fact that the application did not address the need for a carport with a height of 6,010m.
- The application did not address the height restriction for housing of vehicles as per the Title Deed and the Land Use Scheme.
- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
- The buyers also replaced the roof of the illegal structure in 2022, which they knew were not on an approved building plan.
- The staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.

**15. ANNEXURES**

Annexure A: Locality Plan  
Annexure B: Motivation Letter  
Annexure C: Site Development Plan  
Annexure D: Title Deed T51882/2021  
Annexure E: Objection received  
Annexure F: Applicant's response

**SIGNATURES****REGISTERED PLANNER**

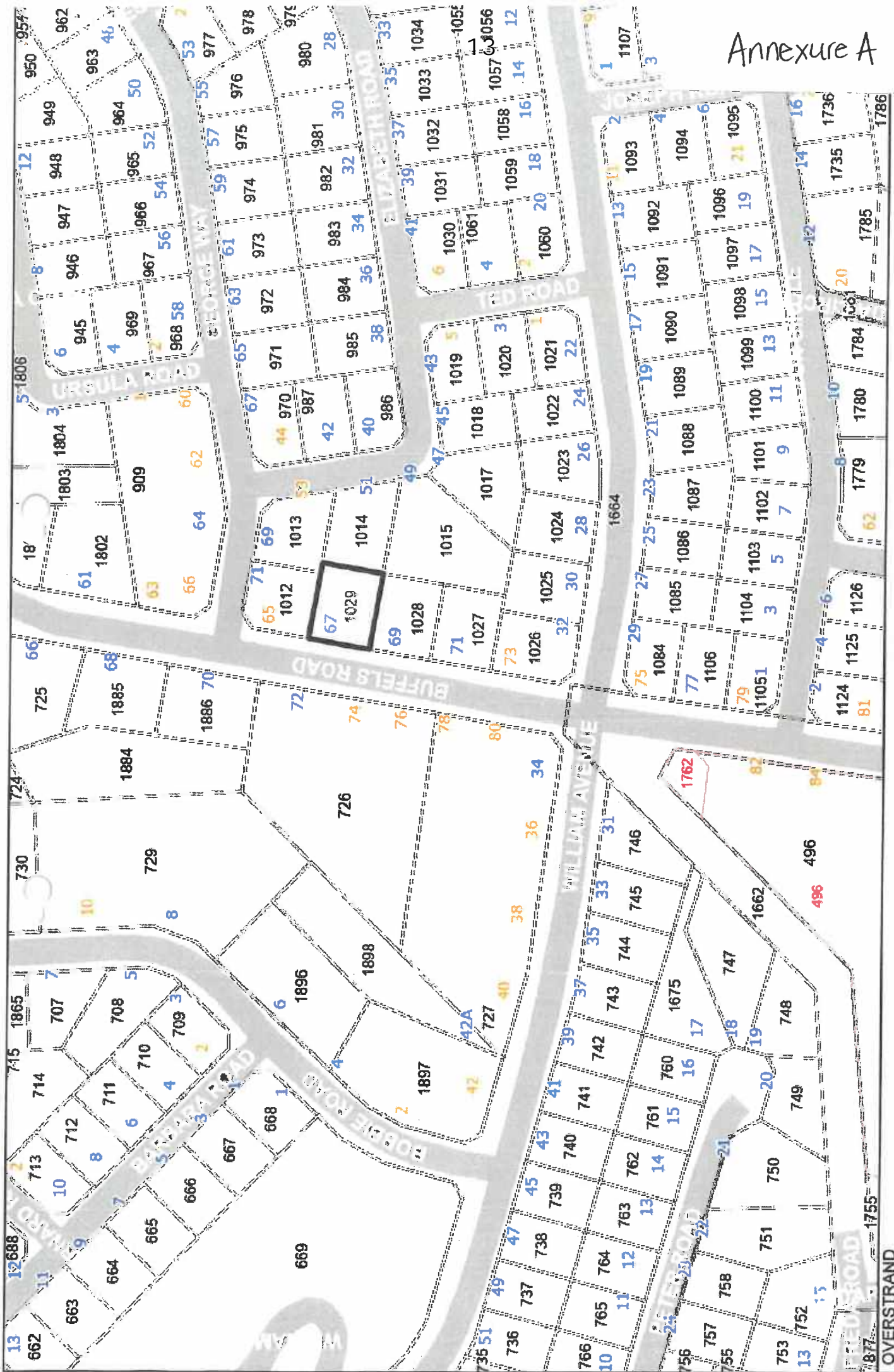
Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# Annexure A



Locality Map  
Erf 1029 Pringle Bay



Date:



Annexure B 1/13

FVS Town and Regional Planners  
PO Box 12, Postlink  
21 Third Street  
Kleinmond  
7195

April 2021

Town Planning  
Overstrand Municipality  
16 Paterson Street / PO Box 20  
Hermanus  
7200

Attention: Municipal Manager

**APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY, RELAXATION OF TITLE DEED CONDITIONS AND DEPARTURE FROM THE LAND USE SCHEME PARAMETERS IN TERMS OF SECTION 16 OF THE OVERSTRAND MUNICIPALITY LAND USE PLANNING BY-LAW, ON ERF 1029, PRINGLE BAY.**

**Client:** Rachelle & Wikus Valente  
**Consultants:** FVS Town and Regional Town Planners

**Author:**  
Jaco van Schalkwyk (C/8702/2018)

**Principal Planner:**  
Jan A Visagie (A/1080/1999)

FILE NO.	Erf 1029-KPRB ✓
SCAN NO.	KPRB 1029
COLLABORATOR NO.	2109643

Revision 4: July 2024



Town and Regional Planners

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Annexure A:	Application Form
Annexure B:	Power of Attorney
Annexure C:	Title Deed
Annexure D:	Locality Plan
Annexure E:	Site Development Plan (SDP)
Annexure F:	Surveyor General Diagram

## 1. INTRODUCTION

### 1.1. BACKGROUND INFORMATION

The property owners, Rachelle and Wikus Valente, recently bought the subject property in Pringle Bay. Upon receipt of the building plans, it was noted that not all the additions and alterations were indicated on the building plans. The owners subsequently contacted Innes Design Architecture to draft new plans for the formal submission to the Council. It was advised that FVS Town and Regional Planners be contacted to assist with the relaxation of the applicable building lines.

### 1.2. APPLICATION PARTICULARS

Taking the aforesaid into consideration, the application is hereby made in terms of Section 16 of the Overstrand Municipality By-law on Municipal Land Use Planning (OMLUS) for the following:

- Section 16 (2) (b) - Permanent departure from the provisions of the zoning scheme
- Section 16 (2) (q) - Determination of an Administrative Penalty

### 1.3. PERMANENT DEPARTURE

- Relaxation of the side boundary building line 2m to 0m to permit the proposed carport and staff quarters (Zoning Scheme Building Line)
- Relaxation of the side boundary building line 1.5m to 0m to permit the proposed carport and staff quarters (Title Deed Building Line)
- Relaxation of the rear boundary building line 2m to 0.5m to permit the staff quarters (Zoning Scheme Building Line)
- Relaxation of the side boundary building line 1.5m to 0.5m to permit the staff quarters (Title Deed Building Line)
- Relaxation of the 9m (or one-third) over the boundary building line restriction with a total length of 11.34m (Section 16.1.1.c. (iii) of the OMLUS) to permit the carport.

Please note the following:

The total height of the carport is at 11.413m, however, where the height of the carport intersects with the 2m building line and the 1.5m title deed building line it is only at 7.337m and 6.837m respectively. The pitch of the carport roof does not exceed more than 40 degrees.

The garage was converted to a staff quarters. This is not a second dwelling and should not be regarded as a second dwelling. The staff quarters do not contain a kitchen and are only used in cases where family members visit the property. The owners do not reside in Pringle Bay as this is their holiday home. The only time that the staff quarters are to be used is when the owners are at the property. No windows face onto the neighbouring properties.

### 1.4. DETERMINATION OF AN ADMINISTRATIVE PENALTY

Application is hereby made in terms of Section 90 of the Overstrand Municipality Amended By-Law on Municipal Land Use Planning, 2020 for the determination of an administrative penalty. An administrative penalty is a direct contravention of the Overstrand Municipal Planning By-Law on Land Use Planning. The following measures must be addressed to the satisfaction of the Municipality to determine whether the imposition of an administrative penalty is applicable. The information required is stipulated as follows:

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

The administrative penalty application pertains to the additions and alterations to the existing dwelling. The additions include the conversion of the existing garage to a staff quarter (change of use of outbuilding to habitable space) and the carport. It is imperative to note that the carport was constructed before the new owners (current owners) took occupation. The previous owners have not submitted building plans for the construction of the carport, and it is thus difficult to determine the age of the structure. From aerial imagery, it can be argued that the carport has been on the property as early as 2016. The current owners only recently acquired the subject property (2021) after which they have compiled plans for all structures on the subject erf.

The extent of the additions are as follows:

Staff Quarters: 3.56m<sup>2</sup> (area over the building lines)

Carport: 3.72m<sup>2</sup> (area over the building lines)

**TOTAL: 7.28m<sup>2</sup> (1.01% of Erf 1029)**

**The conduct of the person (allegedly) involved in the contravention.**

The property owners admitted fault relating to the new additions (conversion of existing garage) but were not entirely advised on the process. As stated previously, the property was purchased with the carport already being constructed. The owners were not duly informed of all the issues, and processes relating to the way forward. The owners fully intend to rectify any wrongdoing through this land use application and subsequent procedures to follow. However, leeway should be given. In other words, the current owners should not be held accountable for the transgression conducted by previous owners. The fact that the current owners also submitted the land use application shortly after occupation should be taken into consideration.

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

This office believes that the services of a quantity surveyor are not required at this stage. Should the Council require such information, the relevant appointments will be made.

**Whether the unlawful conduct was stopped.**

No additional construction has been undertaken by the property owners since the submission of this application.

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

To our knowledge, the current owners have not been in contravention of this By-Law or any other previous planning law, except for this infringement. It should also be noted that no notice was given to the property owner, due to a lack of complaints from the surrounding property owners, or the community.

This office respectfully requests that a penalty be not imposed on the owners of Erf ~~1092~~<sup>1029</sup>, due to the following reasons:

- The property owner was not duly informed of the required processes to follow at the time of construction and has subsequently complied with all procedures that are deemed necessary to rectify the contravention. It is common knowledge that builders are not entirely up to date with all procedures and therefore do not provide their clients with all the necessary information.

- No complaints have been received from the abutting neighbours or the surrounding community.
- To the best of our knowledge, no previous contravention has been done by the property owners.
- The construction of the additions inevitably contributes to the existing dwelling and improves its resale value.
- The additions can be seen as fitting in with the surrounding area and that of a residential community. In other words, the additions are not out of character for the surrounding area.
- The owners bought the property voetstoots and should not be held accountable for the indiscretion conducted by the previous owners.

#### 1.5. NEED AND DESIRABILITY

The desirability of the application can be determined in the following aspects:

- The architectural style of the proposed additions is generally consistent with that of any residential dwelling.
- The proposal is not out of character of the surrounding erven in the sense that the use is consistent with a residential area.
- The proposal adds value to the dwelling.
- Approval of this application will not have a detrimental impact on the abutting neighbours in terms of privacy.
- The proposal will not lead to the "darkening" of the abutting neighbours' dwellings.
- It will not detract from any views of the abutting properties.
- It is not deemed that the proposal is in contravention of any heritage aspects.
- To date no complaints from the abutting neighbours have been received.
- Additional Municipal services capacity will not be required.
- The current owners of Erf 1029 bought the property as is.
- The application site is not within an environmentally protected area and will thus not trigger any listed activities in terms of NEMA.

From the above, it is clear that the proposal is not deemed to be out of character for that of the surrounding area and the greater Pringle Bay town. It is the opinion of this office that the proposal can thus be deemed desirable in terms of the aforesaid points. Additionally, due consideration should be given to Section 66 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning of 2020, and Section 49 of the Western Cape Land Use Planning Act of 2014. This office believes that the application is well motivated in terms of the legislation as provided for in this motivation report and is not deemed to impose an unusual risk to the surrounding community, due to the following reasons:

- The proposal is not deemed to impact negatively on the traffic flow of Buffels Road.
- No negative visual impact on the abutting neighbours.
- The extension is of the same architectural style as the existing dwelling.
- Vistas and other rights, such as privacy, remain intact.
- Proposal will add value to Erf 1029 and the surrounding area.
- No threat to the health and safety of the surrounding community is envisaged.
- The proposal is not deemed to lead to a loss of sunlight on the abutting neighbours.
- All supporting documents have been submitted as requested by the Council.

This office is thus of the opinion that the proposal can be deemed desirable.

## 2. PROPERTY DETAILS

Section 2 of this report consists of the details of the subject property, such as its locality and ownership details and the property.

### 2.1. OWNERSHIP DETAILS

A perusal of the title deed revealed that there are restrictive conditions registered, however, should not prohibit the approval of this land-use planning application.

Below are the details of the title deeds of the Properties.

Property Description	Erf 1029, Pringle Bay, in the Overstrand Municipality, Division of Caledon, Western Cape Province
Deed Number	T80759/2012
Ownership	Rachelle & Wikus Valente
Extent	720m <sup>2</sup>

Please refer to **Annexure C** for a complete copy of the Title Deed.

### 2.2. LOCALITY

The application site is situated on Buffels Road in the coastal town of Pringle Bay, in the Overberg District of the Western Cape Province. Pringle Bay is approximately 43km south-east of Hermanus on the southern coast of the Western Cape.

Pringle Bay originated as a fishing village (approximately around 1881) after a young man named Johannes Cornelis Wessels found an excellent fishing area in proximity of where current day Pringle Bay is. Soon after numerous families moved to this location as it provided a consistent food supply.

Please refer to **Annexure D** for the Locality Plan.

### 2.3. CHARACTER OF THE SURROUNDING AREA

The application site is situated towards the central part of Pringle Bay in proximity to the Central Business District (CBD). The immediate surrounding erven is zoned as Single Residential Zone 1 and is thus a predominately residential area. Due to the high number of tourists that travel to, and through, the area it is regarded as understandable that numerous properties in the surrounding area are utilised as both residential erven and self-catering (or similar such as B&B, Lodge, or similar types of short-term holiday) accommodation.

Pringle Bay, including other towns in the area, is mainly sustained by the tourism trade and offers a wide variety of activities such as golfing, hiking, and other tourist-related activities such as fishing and kayaking. Pringle Bay is also popular for the Great White Sharks and Whale watching. The surrounding area is further stimulated by various economic activities associated with the normal functions of any town.

### 2.4. ZONING

Single Residential Zone 1 (SR1)



Town and Regional Planners

#### 2.5. IMPACT ON MUNICIPAL SERVICES

All services already exist, and the proposal will not require any additional services for the approval of this application. The proposal represents only additions and alterations to an existing dwelling in a developed residential area.

#### 2.6. ACCESS

Access to the application site will not be altered as is to remain the same, i.e., from Buffels Road.

### 3. LEGISLATION

Section 4 of this report consists of the applicable Legislation of this application.

#### 3.1. FORWARD PLANNING

##### Overstrand Municipality Spatial Development Framework (May 2020)

The proposal is not deemed to be in contravention with the Overstrand SDF as it is not in contradiction with the abovementioned statutory requirements of the SDF.

Further to the aforesaid is that the application site is in an urban development area, within the urban edge of Pringle Bay. The proposal is thus not in contravention with the SDF.

##### Overstrand Integrated Development Plan (May 2020)

The Overstrand Municipality Integrated Development Plan (IDP) is aimed towards addressing the development needs of our communities with clearly defined strategic objectives and performance indicators. These strategic objectives are as follows:

- The provision of democratic, accountable, and ethical governance
- The provision and maintenance of municipal services
- The encouragement of structured community participation in the matters of the municipality
- The creation and maintenance of a safe and healthy environment
- The promotion of tourism, economic and social development.

The IDP is crucial to take into consideration in any planning-related applications. It is the opinion of this office that the proposal promotes social development and creates a safe and healthy environment, not only for the property owner but also for the surrounding residents of the area.

##### Overstrand Municipal Growth Management Strategy (2010)

The Growth Management Strategy does not refer to individual erven, however, it does provide a guideline in terms of densification and additional community facilities. This proposal does not entail the densification of Erf 1029 and would thus not be in contradiction with the Growth Management Strategy. The proposal adds to the character and natural landscape of Pringle Bay as a holiday destination.

The application site is not within a Heritage Overlay Zone as defined in the Growth Management Strategy and will thus not constitute any heritage related aspects.

##### Overstrand Municipality Amended By-Law on Municipal Land Use Planning (2020)

It is important to consider Section 66 of the Overstrand Municipality Amended By-Law on Municipal Land Use Planning in terms of the "General criteria for consideration of applications":

The proposal is not considered to be a deviation from the aforesaid requirements, however, is substantially under any residential neighbourhood, and is not deemed to pose a significant threat to the abutting property.



Town and Regional Planners

**Planning Principles**

The Planning Principles of Chapter VI (Article 59) of the Land Use Planning Act (LUPA), Act 3 of 2014, and Chapter 2 (Article 7) of the Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013, (Spatial Justice, Spatial Sustainability, Efficiency, Resilience, and Good Administration) are not being negatively impacted by the application as it is situated in a well-established residential setting. The application further does not contain any aspects that will have a detrimentally negative impact on the immediate surrounding area in terms of loss of privacy or be regarded as against the character of the surrounding area.



Town and Regional Planners

#### 4. CONCLUSION

Considering the above information, the Council is respectfully requested to favourably consider the application for the following:

- Section 16 (2) (b) - Permanent departure from the provisions of the zoning scheme
  - Relaxation of the side boundary building line 2m to 0m to permit the proposed carport and staff quarters (Zoning Scheme Building Line)
  - Relaxation of the side boundary building line 1.5m to 0m to permit the proposed carport and staff quarters (Title Deed Building Line)
  - Relaxation of the rear boundary building line 2m to 0.5m to permit the staff quarters (Zoning Scheme Building Line)
  - Relaxation of the side boundary building line 1.5m to 0.5m to permit the staff quarters (Title Deed Building Line)
  - Relaxation of the 9m (or one-third) over the boundary building line restriction with a total length of 11.34m (Section 16.1.1.c. (iii) of the OMLUS) to permit the carport.
- Section 16 (2) (q) - Determination of an Administrative Penalty

##### 4.1. REASONS FOR APPROVAL

- *No additional Municipal Services will be required. The application site is already serviced and will thus not require the creation of additional service capacity. Please refer to Section 3.4 of this motivation report.*
- *The proposal is deemed desirable in terms of the Overstrand Municipality Land Use Scheme of 2020, as set out under Section 4 of this Motivation report.*
- *No negative impact is foreseen on the abutting neighbours in terms of privacy as the application site is surrounded by a boundary wall. "The carport is not deemed as a living space".*
- *In terms of privacy, the application does not allow for any windows or similar overlooking features that would negatively impact the privacy of abutting neighbours.*
- *The proposal is in line with any residential neighbourhood, and similar instances can be found throughout the town of Pringle Bay and its surrounds.*
- *The proposal is further deemed to add value to the application site as it will increase the resell value, keeping it in line with the surrounding erven.*
- *The proposal does not entail any habitable space on the common boundary and will thus not impact negatively on the abutting neighbours.*

**FIGURES:**

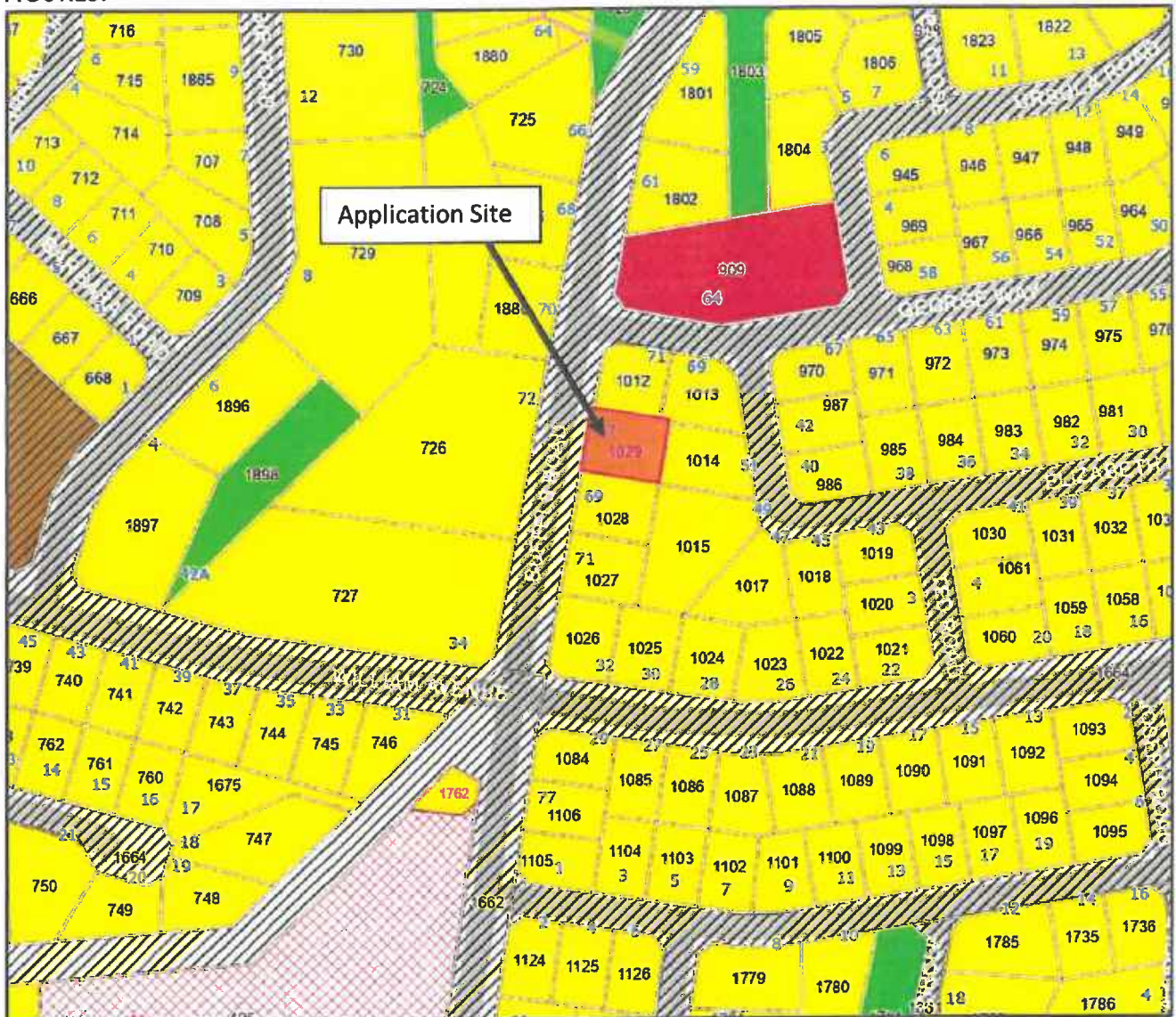


Figure 1: Surrounding Zonings (Overstrand Public Viewer, April 2022)

The figure above should provide the reader with a relative understanding of the surrounding area. Figure 1 provides the reader with a simple zoning extract, while Figure 2 provides the reader with an aerial photograph of the application site and surrounding properties.



Figure 2: Aerial Photograph of application site and surrounding area (Cape Farm Mapper, April 2022)

## PHOTOS OF THE SITE

This office took photos during a site visit at the application site. The photos are for information purposes to assist the reader and to provide a feel for the proposed applications. Please see the photos on the following pages.



Photo 1



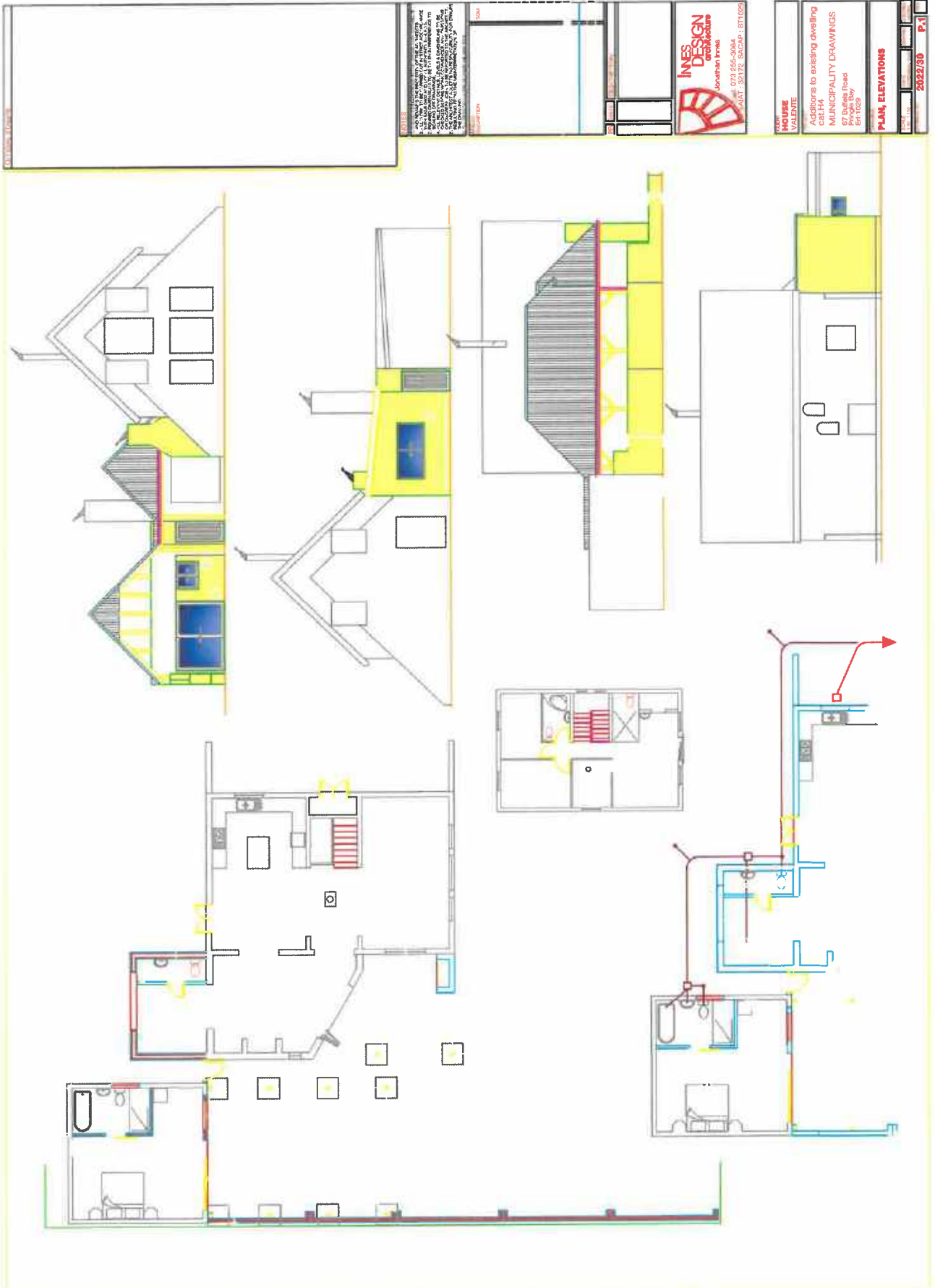
Photo 2



Photo 3



Photo 4





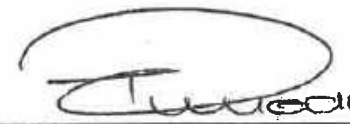


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COPY

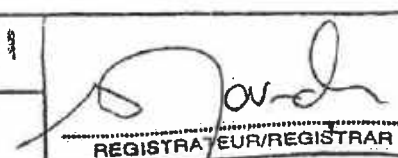
Prepared by me

PULLOCK ATTORNEYS  
NO. 5, THE HAMPTONS  
440 DIAGONAL ROAD  
PRINGLE BAY  
7196

  
CONVEYANCER  
TRACY PULLOCK  
(96590)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 2.250.000,00	R. 1.718,00
Reason for exemption	Category Exemption	Exemption i t o. Sec/Reg..... Act/Proc.....

DATA / VERIFY  
21-10-2021  
LITHA VUYO MADAMA

<b>VERBIND</b>	<b>MORTGAGED</b>
VIR FOR R. 1.980.000,00	
<b>B</b> 000029224 / 2021	 REGISTRAR
2021-10-20	

DATA / CAPTURE  
21-10-2021  
GEBENTSHENG LEEUW

T 000051882 / 2021

### DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT  
JACOBUS PETRUS VAN ZYL

LPCM 79800



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

**PETER THOMAS BRIN**  
Identity Number 561001 5124 085  
and  
**JOHANNA VICTORIA BRIN (previously Van Huyssteen)**  
Identity Number 530803 0111 084  
Married in community of property to each other

which said Power of Attorney was signed at Pringle Bay on 02 September 2021

- 5 MAY 2022

And the appearer declared that his/her said principal had, on 02 September 2021, 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:

1. **WIKUS VALENTE**  
Identity Number 850928 5122 083  
Married out of community of property
2. **RACHELLE VALENTE**  
Identity Number 850706 0023 088  
Married out of community of property

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

ERF 1029 PRINGLE BAY  
in the Overstrand Municipality  
Division Caledon  
Province Western Cape

IN EXTENT 720 (SEVEN HUNDRED AND TWENTY) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T34409/1979 with General Plan TP 8158 relating thereto and held by Deed of Transfer Number T80759/2012

- I. IN SO FAR as the figure g.h.j.k. on General Plan TP 8158 is concerned.
  - A. SUBJECT to the conditions referred to in Deed of Transfer No T14827/1970.
- II. IN SO FAR as the figure e.g.k.l on General Plan TP 8158 is concerned.
  - B. SUBJECT to the conditions referred to in Deed of Transfer No T14826/1970.
- III. IN SO FAR as the whole property is concerned.
  - C. SUBJECT FURTHER to the following conditions, imposed by the Administrator of the Province of Good Hope when approving of PRINGLE BAY TOWNSHIP NO 3, in terms of Ordinance no 33/1934, as amended, and contained in Deed of Transfer no T34409/1979:
    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 Notice No. 623 dated 14 August 1970.
    2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf, any provisions thereof which are more restrictive than any conditions of title applicable to this erf shall take precedence. Furthermore, nothing in these conditions shall be construed as overriding the

provisions of section 146 of Ordinance No.15 of 1952 as amended.

3. The owner of this erf shall without compensation be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or erven inside or outside this Township to be conveyed across this erf, if deemed necessary by the Local Authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
4. The owner of this erf shall be obliged, without compensation, to receive such material or permit such 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.
5. No building on this erf shall be used or converted to use for any purpose other than permitted in terms of these conditions.
6.
  - (a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the Local Authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the Local Authority may permit such other buildings as are permitted by the Scheme, subject to the conditions and restrictions stipulated by the Scheme.
  - (b) No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5 metres to the street line which forms a boundary of this erf, nor within 3 metres of the rear or 1.5 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority-
    - (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3 metres in height measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side for a distance of 12 metres measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12 metres shall be measured from the point furthest from the street abutting the erf;



- (ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
- (c) On consolidation of this erf or any portion thereof with an abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.
- (d) In the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf.

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

**PETER THOMAS BRIN and JOHANNA VICTORIA BRIN (PREVIOUSLY VAN HUYSTEEN), Married as aforesaid**

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

1. **WIKUS VALENTE, Married as aforesaid**
2. **RACHELLE VALENTE, Married as aforesaid**

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 280 000,00 (TWO MILLION TWO HUNDRED AND EIGHTY 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

20 OCT 2021

q.q.

In my presence

REGISTRAR OF DEEDS



**PRINGLE BAY RATEPAYERS' ASSOCIATION**  
**PRINGLEBAAI BELASTINGBETALERSVERENIGING**

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

www.pringlebayratepayers.co.za

P O Box 409, Pringle Bay, 7196 / Posbus 409, Pringlebaal, 7196

Chairman / Voorsitter: chairman@pringlebayratepayers.co.za / Tel: 083 556 3345

TP. N. Theart  
(W. van Strop)

19 July 2023

The Municipal Manager  
 OVERSTRAND MUNICIPALITY  
 PO BOX 20  
 HERMANUS  
 7200



PER EMAIL: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

**SUBJECT: ERF 1029, BUFFELS ROAD PRINGLE BAY: OBJECTION TO THE APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND DEPARTURE FROM THE LAND USE PARAMETERS.**

**PREAMBLE**

I, the undersigned, ALBERT WILLEM VORSTER (Identity no. 611004 5027 084) in my representative capacity as Vice Chairman of the PRINGLE BAY RATEPAYERS' ASSOCIATION (hereafter referred to as PBRA, being a separate legal entity having a constitution, in terms of which it has a right, inter alia, to sue and to be sued), on behalf of our members who have granted a mandate to the PBRA to, amongst others, oppose consent use applications and changes to title deed restrictions, hereby wishes to submit comments on behalf of the PBRA regarding the application.

**1. ORGANISATION**

The Pringle Bay Ratepayers' Association (PBRA) was started in the late 1960s by the first residents of Pringle Bay to represent the interests of ratepayers and residents. Today it is a registered Non-Profit, Public Benefit Organisation.

Our primary functions are to liaise with the Overstrand Municipality, with whom we enjoy a close relationship and to support local environmental conservation. We represent the community on the local Ward Committee and other consultative bodies. We maintain close contact with local authorities and service providers, particularly on matters affecting ratepayers and residents.

The PBRA represents the ratepayers within the declared Urban Edge. This currently constitutes approximately 1,800 properties (erven) of which approximately 1,200 are developed (thus having a habitable structure erected on it either for residential or business purposes).

FILE NO.	1029 ✓
	Pringle Bay
SCAN NO.	KPRB 1029
COLLABORATOR NO.	1887006

20 JUL 2023



## 2. ADVERTISING REQUIREMENTS AND NOTICE TO ALL ERF OWNERS IN THE DEVELOPMENT HAVE NOT BEEN COMPLIED WITH

2.1. The OM town planning department has apparently acted under the mistaken belief that this is not an application for the removal of a restrictive title deed condition. However, the application document clearly states in its preamble and in paragraphs 3.1 and 3.4 that it is an application for the removal of a restrictive title deed condition.

2.2. On 4 July 2023 we emailed the planning department as follows:

*"Please be so kind to inform us whether this application for amongst others, removal of restrictive title deed condition (Clause 6(b)(i) of the Title Deed), has been advertised in the local media and secondly has been advertised on the OM's website (<https://www.overstrand.gov.za/en/documents/town-planning/land-use-planning-applications>)? We fail to locate the Notice on your website hence this request to determine whether we are up to date with the process of searching for information on your website and secondly for the need to inform the public about such applications. Furthermore, we also fail to identify whether this application has been advertised in for instance "The Overstrand Herald."*

2.3. The answering email of 7 July 2023 from the planning department reads as follows:

*"Kindly note that this specific application is for a **relaxation** of the title deed condition(s). Neighbour's consent letters are provided.*

*Application made for the **removal** of restrictive title deed conditions has to be advertised in the local newspapers and registered notices sent.*

*Hope you find the above in order."*

2.4. Per the answering email in 2.3 above the OM planning department:

2.4.1. Clearly states that: *"Application made for the **removal** of restrictive title deed conditions **has to be advertised** in the local newspapers and registered notices sent."* (Our emphasis)

2.4.2. Is therefore clearly under a mistaken belief that no application for the removal of a title deed restriction is involved here, hence the failure to advertise and give notice to the other erf owners in the development.

2.5. **We submit that the application is unlawful due to non-compliance and should be referred back to the applicant.**

## 3. OBJECTION: "RESTRICTIVE CONDITIONS ON A TITLE DEED ARE PLACED THERE FOR A SPECIFIC REASON AND THE REMOVAL OF THESE CONDITIONS SHOULD NOT BE CONSIDERED LIGHTLY."

3.1. This is what was said in a previous OM Appeal Decision.

*"The building lines and height restriction per the title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay."*



- 3.2. We submit that it is especially not desirable that a title deed restriction be removed in order to legalise an illegal structure.
- 3.3. Furthermore, the OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.

#### 4. **OBJECTION: REMOVAL OF ILLEGAL STRUCTURE.**

- 4.1. We request the OM to require the removal of the illegal carport structure.

It would appear to be a resorted to strategy in South African that an owner quickly builds an illegal structure and then pleads that it cannot be removed due to the costs involved and the extent of the built structure.

In the present case that does not apply – the illegal carport can easily, without much cost, be removed.

- 4.2. We have not investigated the possibility of further illegal structures on the erf. That should be dealt with in a new application.

#### 5. **CONCLUSION**

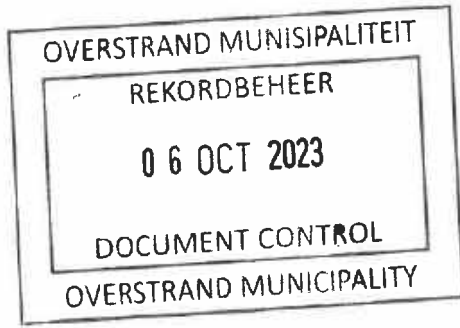
We request that the Overstrand Municipality reject this application and, on any re-application to the planning department or to the building control department, order the removal of all the illegal structures.

We sincerely request that you will please be so kind as to acknowledge receipt of our objection and to take the necessary steps outlined above.

Kind regards

---

**AW Vorster**  
Vice Chair: PBRA  
Obo: Pringle Bay Ratepayers' Association



37

TP. N. Theart  
(H. J. de Sloop)

Annexure F 1/4

FVS Town and Regional Planners

175 5<sup>th</sup> Avenue

Kleinmond

7195

Overstrand Municipality

16 Paterson Street

Hermanus

7200

FILE NO.	ERF 1029
	Pringle Bay ✓
SCAN NO.	KPRB 1029
COLLABORATOR NO.	1927532

6 October 2023

For attention: Loretta Gillion ([loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za))

**ERF 1029, PRINGLE BAY: APPLICATION FOR RELAXATION OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE FROM THE LAND USE PARAMETERS**

We refer to your letter of 19 July 2023, in relation to Erf 1029 (the "erf") which is owned by our clients, Wikus and Rachelle Valente ("our clients"). We respond to your letter below.

***ADVERTISING REQUIREMENTS AND NOTICE TO ALL ERF OWNERS IN THE DEVELOPMENT HAVE NOT BEEN COMPLIED WITH***

The Pringle Bay Ratepayers' Association (hereafter referred to as PBRA) has expressed their concern that the submitted application is to be amended from a relaxation of the title deed conditions to the removal of restrictive title deed conditions, which will subsequently lead to the publishing of a notice on the Overstrand Municipality website and notice to every property owner within the Pringle Bay development. This matter was brought forward to the Overstrand Municipality on 7 July 2023.

**Comment:**

It is our advice to our clients that the application is not for the removal of the restrictive title deed condition, but rather for a relaxation of the prescribed building lines in the applicable title deed. This advice is because the title deed **expressly** gives the Municipality the authority to grant their **consent** to an amendment to the building lines set out in the title deed.

As per the submitted title deed, we are referring to Clause 6. (b) which reads as follows:

TP  
06 OCT 2023

*"No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5 metres to the street line which forms a boundary of this erf, nor within 3 metres of the rear, or 1.5 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority -"*

We also draw your attention to the extract from the Provincial Department of Environmental Affairs and Development Planning, below:

- Prior to 1 July 2015, the Provincial Department of Environmental Affairs and Development Planning granted consent for the relaxation of title deed conditions imposed by the former Administrator of the Cape. With the commencement of the national Spatial Planning and Land Use Management Act (Act 16 of 2013) (SPLUMA) and the provincial Western Cape Land Use Planning Act (Act 3 of 2014) (LUPA), the municipality is regarded as the Administrator and has become the competent authority to decide on this matter (the Authorised Official).

Attention is also being drawn to Section 39 of the Western Cape Land Use Planning Act, 2014 ("LUPA") now delegates the decision-making process with regard to the relaxation of Title Deed conditions to municipalities. It is stated in Section 39 (4) that *"any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restriction in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval of the relevant municipality"*. As these restrictions were imposed by the Administrator, LUPA now delegates the decision-making authority in relation to such restrictive title conditions to the relevant municipality.

Attention should be given to the precise wording of the title deed. Specific reference is made to the "shall except with the consent of the Administrator". Therefore, the local municipality, in this case, Overstrand Municipality, has the power to grant its consent to the proposed building or structure. The Overstrand Municipality therefore has the delegated power to handle this application in a manner which it deems fit and to its standard.

Where the title deed restriction expressly confers the power on the Administrator to grant consent in terms of that title deed restriction, the Municipality, as successor to the Administrator, holds such power. In that case, an application must be made in terms of section 16 of the By-Law for such municipal consent. The minimum requirements of section 39(1) of LUPA do not apply to consent, approval, or relaxation in terms of a restrictive condition. This type of application is instead subject to the general participation requirements set out in the By-Law.

If the title deed did not give the Administrator the express right to consent to the relaxation, as stated above, it would be necessary to make an application for the removal, amendment, or suspension of

the restrictive title deed condition in terms of Section 16(2)(f) of the By-Law. In that case, the title deed would need to be amended, which is not the case in this matter.

The original restrictions were placed within the title deeds of the erven within this portion of the township by the Administrator in 1981, over 40 years ago, when approving the original development of Pringle Bay Extension No. 3. They were imposed as development controls at a time when no other such controls existed. The Overstrand Municipality is now seen to be the custodian of these restrictive conditions. The restrictions are now more restrictive than the Municipality's applicable development controls and forward planning policies and can therefore be seen to be outdated. The subsequent introduction of various spatial policies and municipal zoning schemes has negated the need to duplicate such management systems in the title deeds of the properties.

***RESTRICTIVE CONDITIONS ON A TITLE DEED ARE PLACED THERE FOR A SPECIFIC REASON AND THE REMOVAL OF THESE CONDITIONS SHOULD NOT BE CONSIDERED LIGHTLY.***

The restrictive condition is not to be removed, as stated in the previous section, the application merely consists of a relaxation of the applicable restrictive condition.

It is also imperative to note that the structure over the prescribed building lines, and title deed building lines were not of the consequence to our clients. The structure was erected by the previous owners, and also without the prior consent of the Local Authority. Our clients merely seek to rectify the contravention of the previous owners by applying for the required departures and by allowing this process to proceed as per the normal Council submission process.

***REMOVAL OF ILLEGAL STRUCTURE***

PBRA has stated that the structure is to be removed and can be done so with little costs involved.

As stated before, the structure was not erected by our clients and was done by the previous owners. Our clients merely adopted the "issues" that came with the property. It is to be noted that the previous owners constructed the structure with little to no knowledge of the consequences it may hold in the future. We strongly advise all potential clients, and those involved with properties (builders, real estate agents, architects, etc.) to first seek the advice of a Town Planner, to ensure that issues such as this one can keep from reoccurring.

Our clients, upon being informed of the transgression on their property, immediately contacted us to seek advice and how to proceed with this, in order to rectify the wrongdoing of the past owners. Our clients have been patient during this process and have not argued against the processes to follow, and have done so accordingly, by appointing us and a professional draughtsperson.

To expect of our clients to remove the structure, and subsequently forfeit all fees paid for this application is unjust and will serve no purpose. This application has been submitted to rectify the wrongdoing and should thus not be penalised to the extent that it would lead to an enormous loss of monies paid.

It is our opinion that a contravention has been committed, however, our clients are not at fault for this contravention. The application should thus be dealt with in a manner that seeks to rectify the contravention and should be scrutinised based on its merit.

We sincerely request the Council take the opinion of this office in favourable consideration, by allowing this application to proceed as per normal process and to base its decision on the facts presented in this document.

Yours Sincerely



Jaco van Schalkwyk

FVS Town and Regional Planners