



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

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**1 AUGUST 2024 (JUL 2024 CYCLE)  
VIRTUAL  
10:00**

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

**25 July 2024**

**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, 1 August 2024 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. Mr H Olivier (Town Planner)
9. Secretariat

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**1 August 2024  
(July 2024 Cycle)**

**I N D E X**

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

<b>4.1</b>	<b>ERF 193, 2 SCHOOL STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: MESSRS WRAP PROJECT OFFICE ON BEHALF OF JC &amp; NL WALKER</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 27 June 2024**
- 4. ITEM FOR CONSIDERATION**
  - 4.1 ERF 193, 2 SCHOOL STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: MESSRS WRAP PROJECT OFFICE ON BEHALF OF JC & NL WALKER**

Report attached

## 4.1

**ERF 193, 2 SCHOOL STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND  
SUBDIVISION: MESSRS WRAP PROJECT OFFICE ON BEHALF OF JC & NL WALKER**

193 HFH (4379/2023)

H Olivier

21 June 2024

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application has been received on 3 May 2023 from Messrs WRAP on behalf of JC and NL Walker in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 193, Fisherhaven for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** 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 conditions E.4.(a), E.4.(b), E.4.(c) and E.4.(d) as contained in Title Deed T53094/2021 applicable to Erf 193, Fisherhaven to accommodate the proposed development.

The restrictive title deed conditions read as follows:

*“E. **SUBJECT FURTHER** to the following conditions imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934 when approving the establishment of Fisherhaven Township, contained in the said Deed of Transfer No. 9841, dated the 3<sup>rd</sup> May 1972, namely:*

*4. This erf shall be subject to the following further conditions, provided especially that where in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may 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 buildings as are ordinarily required to be used therewith;*

*(c) not more than 30% of the area thereof shall be built upon;*

*(d) no buildings or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres the street line which forms a boundary of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3,05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consideration of any two or more erven, this condition shall apply to the consolidated area as one erf;”*

- ❖ **Subdivision** in terms of Section 16(2)(d) of the By-Law to subdivide Erf 193, Fisherhaven into 2 portions, namely: Portion A (approximately 762,5m<sup>2</sup>) and a Remainder (approximately 762,5m<sup>2</sup>).

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

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

The erf measures 1525m<sup>2</sup> in extent and is vacant. The erf is located in a residential area and is zoned Residential Zone I.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

- ❖ The property is larger than surrounding erven and the owner wants to subdivide the property to create additional housing opportunities.
- ❖ The restrictive conditions prohibit the property to be utilized to its full potential.
- ❖ The Title Deed restrictions is more restrictive than the Land Use Scheme.
- ❖ The subdivision will create two erven each approximately 762,5m<sup>2</sup> in extend.
- ❖ The erven can also each accommodate a second dwelling.
- ❖ Large population growth has been experienced in Fisherhaven from 2001. Smaller more affordable properties should be welcomed.
- ❖ The MSDF indicate an additional 1165 dwelling units will be required between 2019 to 2031, the application will help to address the future need.
- ❖ The property is surrounded by other residential erven.
- ❖ The erven will connect to the existing water and electricity network.
- ❖ The Overstrand Municipality Engineering Services Branch confirmed an additional conservancy tank can be serviced and accommodated.
- ❖ Both erven will obtain access from School Street.
- ❖ The application is desirable as it would provide affordable housing, could lead to an increase in property values, the size of the two new erven will be in line with the size of surrounding properties, it will not have an impact on safety and health, it is not a heritage site, will have no impact on the biophysical environment, and will not have an impact on traffic, parking and access.
- ❖ All proposed structures will have to comply with the Land Use Scheme regulations, and will not impact views, sunlight, or the character of the area.
- ❖ The application has no impact on the environment and is in line with the Environmental Protection Overlay Zone (EMOZ).
- ❖ The property falls in a Landscapes HPOZ in terms of the Heritage Protection Overlay Zone (HPOZ), but due to the low impact of the application, no further heritage studies were done.

❖ **Municipal SDF**

The SDF promotes development within the Urban Edge, and this application complies with the SDF.

❖ **Overstrand Municipal Spatial Growth Management Strategy, 2010 (OGMS)**

This document is a guideline document utilized by the Town Planning Department. The OGMS propose densification on 20% of the properties in Fisherhaven with subdivision. The owner has a much larger property than surrounding properties, and therefore subdivision is proposed.

## ❖ The application is in line with the SPLUMA and LUPA Planning Principles as follows:

**Spatial Justice**

The application will not contribute to spatial injustices.

**Spatial Sustainability**

Will provide infill densification with a sustainable method to create new properties without requiring additional land.

**Efficiency**

It will maximise the usage of the property and provide accommodation for 4 families.

**Spatial Resilience**

The application is not in conflict with spatial planning policies and the Overstrand Municipality Regulations.

**Good Administration**

The municipality followed a good consultative process and public participation process.

**REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS**

## ❖ The owner wants to construct a main dwelling and second dwelling, and the restrictive conditions prohibit this. The restrictive conditions were inserted to protect the residential character, but the new policies make provision for higher density development in the whole Hermanus area to address housing needs.

**Evaluation in terms of Section 39.(5)(a) - (f) of the By-Law is as follows:**

- (a) No person or entity will be affected financially by the removal of these restrictive title deed conditions.
- (b) No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
- (c) The property owner will be gaining from the removal of the restrictive condition as it will allow them to utilize her property to its full extent.
- (d) These restrictive conditions do not have a social benefit.
- (e) There is no specific beneficiary of these condition. And no person or entity will be affected if these conditions are removed.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	<b>Yes</b>	19 January 2024	23 February 2024
Gazette	<b>Yes</b>	19 January 2024	23 February 2024
E-mails to registered property owners / Site notice	<b>Yes</b>	19 January 2024	23 February 2024
Internal departments	<b>Yes</b>	16 October 2023	24 November 2023
Ward councillor	<b>Yes</b>	16 October 2023	24 November 2023
Total comments	<b>FIVE (5)</b>		
Total letters of support	<b>ONE (1)</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 (if no, elaborate below):			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			<b>Yes</b>






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


Name	Date received	Summary of comments
<b>Fire Department</b>	22/01/2024	No objection.
<b>Building Control</b>	16/10/2023	No objection.
<b>Engineering Services</b>	29/01/2023	See Annexure F.
<b>Cape Nature</b>	04/06/2024	See Annexure G.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

E-mails were sent out to all registered property owners in Fisherhaven during the public participation process.

Five (5) letters of objection and one (1) letter of support were received during this period and is listed below:

-  S Schoombie
-  Friends of the Botriver Estuary & Environs
-  G Lombard
-  L Davies
-  C & B van Blerk

 WM Coop – Support letter

The letters are attached as Annexure D.

The applicant was provided with an opportunity to respond to the objections, and their comments is attached as Annexure E.

The objections, the applicant's response and the Municipal Town Planner's response can be summarised as follows:

**OBJECTION 1 - NEGATIVE IMPACT ON NEIGHBOURHOOD**

- ***Will have a negative impact on the semi-rural setting.***
- ***High density will impact the ambience of the village.***

**APPLICANT'S RESPONSE**

*"The comments are noted.*

*The owners are however not proposing to have a negative impact on the surrounding neighbourhood. The desire to maintain the area's unique character and tranquillity is paramount, and we share the commitment to preserve the appeal of Fisherhaven.*

*A single subdivision is not expected to drastically affect the entire Fisherhaven area or have a negative effect on the surrounding area.*

*The owner's intention is not to disrupt the existing low-density, semi-rural setting of the neighbourhood. His aim is to enhance the property in a manner that respects and compliments the surrounding environment while meeting the needs of current and future residents.*

*Preserving the status of Fisherhaven as a tourism destination is vital. The proposed amendments are aligned with this objective, seeking to enhance residential capacity without compromising the area's natural beauty and tranquillity. Responsible development can co-exist with promoting Fisherhaven as a tourism destination, and the owner is committed to ensure that any changes made contribute positively to this goal.*

*Concerns about increased traffic and density are acknowledged. The owner is dedicated to implementing measures to mitigate any potential negative impacts on the neighbourhood in order to strike a balance between meeting the needs of residents and preserving the unique charm of Fisherhaven."*

**TOWN PLANNER'S RESPONSE**

At this stage Fisherhaven has the character of larger residential erven. The OGMS indicates that there could be an increase of 20% in the number of residential units, with a total increase of 136 units. It also recommends a total density of up to 10 units per hectare for this area.

In recent years no subdivisions were allowed due to that lack of sewerage infrastructure. A fair number of removals of restrictive title deed condition applications were approved to allow for second dwellings, increased coverage per erf up to 50% and building line relaxations.

The concerns of residents that the character of the area could be impacted, does have some validity. After an investigation it was found that approximately 100 erven within Fisherhaven are larger than 1500m<sup>2</sup>. If all erven within Fisherhaven is subdivided which are larger than 1500m<sup>2</sup>, approximately 100 new erven will be created. This is also if service capacity is available for such additional ones to support such subdivisions at time of application, and such development will happen over time. It is thus very difficult to say that one application for subdivision and removal of restrictive conditions will impact the character of the whole town.

If the adjacent erven next to Erf 193 is considered, Erf 181 measures 778m<sup>2</sup>, and Erven 182, 183 and 192 measures 872m<sup>2</sup> in extend. The two proposed erven will each measure approximately 762,5m<sup>2</sup> in extend, which is in line with the size of Erf 181. The surrounding property owners could also apply to remove the no second dwelling clause, and due to the fact that similar applications were approved by the Municipality, it in all probability will be supported. It is therefore difficult to proof that the application will lead to a negative impact on the character of Fisherhaven.

### **OBJECTION 2- MISLEADING APPLICATION**

***Plot is bigger than average, but only 125m<sup>2</sup> more, and not large enough to be subdivided.***

#### **APPLICANT'S RESPONSE**

*"The objector confirmed that the property is larger than the average erven in Fisherhaven. The owner bought the property to subdivide due to its size and being a corner property. The location of the property is also advantageous as it is located close to the estuary and water's edge which adds value to the proposed development."*

#### **TOWN PLANNER'S RESPONSE**

The average erf size of 1400m<sup>2</sup> was quoted from the former Greater Hermanus Spatial Development Strategy, 2000. It is not clear how this value was calculated, but percentage wise only approximate 14% of erven is larger than 1500m<sup>2</sup>. The immediately surrounding erven is mostly 872m<sup>2</sup> in extend.

It is however not clear if the applicant's comments can be considered to be misleading.

**OBJECTION 3 - POLICY ALIGNMENT**

***Densification can be reached by developing vacant land in terms of Overstrand Growth Management Strategy (OGMS).***

***The Municipal Spatial Development Framework (MSDF) also states Fisherhaven must be developed as tourist destination. High density housing will spoil the tranquil setting.***

**APPLICANT'S RESPONSE**

*"The comment is noted, but the motivational report indicates the methods how the application aligns with the applicable policies and legislation."*

**TOWN PLANNER'S RESPONSE**

The applicant did motivate the application in terms of the OGMS, 2010 and the MSDF, 2020.

The OMGS, 2010 is a guideline document and the erf falls in a densification area for up to 10 units per ha in terms of this document. One of the OMGS, 2010 interventions is to 'provide a greater range of holiday accommodation', and also "to promote appropriate incremental densification within the existing residential character". The application is thus in line with these aims.

The MSDF, 2020 do earmark Fisherhaven/Hawston as tourist destinations. It also promotes high residential growth areas on vacant land next to Hawston and Fisherhaven. It however also clearly stipulates that the OGMS provides strategic detail to the proposals in the MSDF.

The fact is the policy plans do make provision for some form of densification within the residential areas and should the scale of an application be considered to be appropriate; it can be supported.

It is also very unlikely that a subdivision application will have a negative impact on tourism, it would rather provide for possible additional holiday accommodation.

**OBJECTION 4 – SERVICES**

- ***The MSDF motivates the sewer network requires extension.***
- ***The Eskom bulk electrical network will have to be upgraded with further development.***
- ***Title Deed restrictions must not be lifted without infrastructure upgrades.***

**APPLICANT'S RESPONSE**

The sewage will be contained in closed conservancy tanks serviced by the municipality. The sewage system in the area can only be upgraded once the municipality has the required funds. As stated in the application, it should also be noted that the property owner will be required to pay a bulk services contribution levy that can be utilised by the Overstrand Municipality to upgrade any service requirements in the area.

If more subdivisions are allowed, more funds will be available to ensure the Fisherhaven sewage system can be upgraded.

TOWN PLANNER'S RESPONSE

The Municipal waterborne sewer network in Fisherhaven must be extended. This is one of the main reasons why no subdivisions were approved in the last approximately 16 years. The Engineering Services Branch however indicated in that time that should a property owner be willing to link into the main sewer line at own cost, subdivisions would be supported.

The Engineering Services Branch indicated that at this stage there is some additional capacity to service conservancy tanks in Fisherhaven, and that they support the application subject thereto that the new erf has its own conservancy tank. Each owner who wants to apply for a subdivision in Fisherhaven will however have to obtain confirmation from the Engineering Branch prior to applying for subdivision, that sufficient capacity exists at that stage to consider a conservancy tank system.

The application was circulated to Eskom and no objection were received against the application.

The comments are noted regarding the Title Deed. Each application must however be considered on its own merit and changes to the environment must be taken into consideration.

**OBJECTION 5 - ENVIRONMENTAL CONCERNS**

- ***Relaxing building lines will result in the removal of more endangered fynbos.***
- ***There are two endangered fynbos types on erven, by allowing the application more fynbos will be removed.***
- ***If densification is allowed before the sewerage system is upgraded, it could create sewerage spillage into the Botriver Estuary, which is a UNESCO Biosphere Reserve and Heritage Site and RAMSAR site.***

APPLICANT'S RESPONSE

*"The comments have been noted. The site has however historically undergone transformation and has been systematically cleared as per the municipality's request. It is unlikely that any form of Fynbos vegetation remained on the site. Nevertheless, an environmental consultant has been appointed to ensure that no critically endangered types of Fynbos vegetation have been affected by the clearing activities."*

*"It is important to note that the owner was not aware of any important biodiversity present when he bought the property. To ensure that the property does not contain any significant flora, an environmental consultant was appointed to conduct a site visit and screening while submitting a listing notice application to the relevant authority."*

TOWN PLANNER'S RESPONSE

The application was forwarded to Cape Nature, and they indicated that the site was already transformed, and that a listing notice application was submitted to DEADP who indicated the site does not currently contain habitat which is conservation worthy.

The applicant did provide a letter from DEADP wherein it is clearly indicates that no environmental processes are triggered.

**OBJECTION 6 - CREATING A PRECEDENT**

- ***If the application is approved, more similar application will be made creating a precedent.***
- ***If a precedent is created it will impact the natural environment.***
- ***All property owners with erven larger than 1500m<sup>2</sup> will then be allowed to subdivide, this will increase the number of dwellings and traffic.***

APPLICANT'S RESPONSE

*"The application cannot establish a precedent, as town planning is inherently site-specific. The idea that approving this proposal would automatically justify approval for other applications is not considered a valid rationale. Each application is assessed independently, taking into account its unique site characteristics and merits, to ascertain its suitability for approval.*

*The Overstrand Municipality cannot be compelled to approve an application simply because the subdivision proposal for Erf 193 in Fisherhaven was allowed. The municipality is required to consider all factors that may influence their decision on an application."*

TOWN PLANNER'S RESPONSE

The applicant's response is supported. Each application is considered on its own merits.

The OGMS also makes provision for some form of infill densification (10 units per ha) to create an additional 140 erven. This is also a 14-year-old document, and higher forms of densification is promoted in provincial policies and is recommended in the MSDF.

The fact is that some form of densification is identified in forward planning documents, and it is also not foreseen that if 140 new erven will be created in Fisherhaven, that a major increase in traffic will be created.

**OBJECTION 7 - REAR BUILDING LINES**

***The 3,15m rear title deed building line ensures privacy between neighbours, and a double storey dwelling over such line will increase such impact.***

APPLICANT'S RESPONSE

*"This comment is noted and taken into careful consideration. It is important to highlight that the proposed development does not seek any departure from the established rear municipal building line. The owner is committed to adhere to the prescribed 2m building line, consistent with the zoning parameters for all single residential properties across the Overstrand Municipality. The application is submitted to remove the restrictive title deed condition that restricts any building work to 3,15m.*

*A 2m building line not only complies with the OMLUS but also adequately addresses concerns regarding privacy for all parties involved."*

TOWN PLANNER'S RESPONSE

The comments area noted.

At this stage the erf is a corner plot, and it has no rear boundary, only lateral boundaries. The 2m land use scheme building lines and the 1,57m Title Deed building lines are thus applicable to neighbours, and the owner of Erf 193 can construct a double storey unit up to the 2m lateral building line. A 2m building line is thus applicable to the neighbour's property at this stage.

The subdivision would create a property with a 3,15m rear Title Deed building line next to the objector's property. The removal of the rear Title Deed building line would however not increase the impact on the neighbour should the property be developed in its existing state, as a rear building line was not applicable on such boundary.

**OBJECTION 8 - DENSITY**

- ***The subdivision is supported, but by constructing a second dwelling on each property would allow for four dwellings. This will create a densely populated site.***
- ***Higher density should not be allowed at this stage.***

APPLICANT'S RESPONSE

*There are numerous erven throughout the Overstrand, including Fisherhaven that are improved with two dwelling units. This is not considered out of the ordinary and is not expected to be a nuisance. Additionally, to continue above, no precedent can be created through this application as each application needs to be evaluated individually.*

*Additionally, as motivated throughout the application, the owner only wants to align with the allowed uses of the Overstrand Municipality Land Use Management Scheme, where a second dwelling is a primary right in terms of the zoning."*

TOWN PLANNER'S RESPONSE

The concerns and applicants' response are noted.

The Overstrand Land Use Scheme allows for a second dwelling of maximum 120m<sup>2</sup> as a primary right on Residential Zone 1 erven. This office has also received and approved a fair number of applications for Removal of Restrictive applications in Fisherhaven to remove the clause that prohibited second dwellings. It is therefore a reasonable request to construct a second dwelling on a Residential Zone 1 erf.

It might sound extreme to allow 4 dwelling units on a property that only has the right to develop one dwelling. It should however be seen in the local context. The owners of the adjacent erven which measures between 778m<sup>2</sup> and 872m<sup>2</sup> can apply to construct second dwellings, as it is a primary right in terms of the Land Use Scheme. The subdivision of Erf 193 would provide for two erven of approximately 762,5m<sup>2</sup> in extend, which is similar in size than adjacent erven. If the two new erven utilize the primary right in term of the Land Use Scheme, it would be similar to the adjacent erven with second dwellings.

The proposal for subdivision and to construct a second dwelling on each portion is in line with what was allowed on other erven within Fisherhaven.

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

See Paragraph 7 above.

## 9. MUNICIPAL ASSESSMENT OF COMMENTS

N/A

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

### 10.1 Background

N/A

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

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

The objectives relating to:

#### **Spatial Justice**

N/A

#### **Spatial Sustainability**

The proposal will promote the alleviation of urban sprawl, and therefore place less pressure on valuable agricultural and sensitive environmental land.

#### **Efficiency**

The additional erf and second dwellings will make use of existing services and road infrastructure, ensuring services and facilities are used efficiently.

**Spatial Resilience**

The application is in line with spatial planning policies which promotes a variety of residential opportunities and densification.

**Good Administration**

Procedure as determined by the Municipality has been followed and a good public participation process was followed.

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

The application is consistent with the planning principles.

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

Consistent since it remains Residential.

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

Same as Point 10.4. above.

**10.6 Impact on Municipal engineering services**

The area is fully serviced. At this stage the water borne sewerage have not been extended, but the Engineering Branch has indicated that at this stage some capacity exists to accommodate a conservancy tank on the new property. Each application will however be considered on its own merits to ensure that services capacity exists prior to submitting a planning application.

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

The Title Deed does contain restrictive conditions, and applications are being made to remove such conditions.

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

The application is in line with the Overstrand Spatial documents.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS*****The financial or other value of the rights***

There is no financial value of the rights.

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

The personal benefit for the applicant is to create an additional erf and two additional second dwellings which can be utilized as rental units for financial gain or the erf can be sold off for financial gain.

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

By removing the restriction that the erf may not be subdivided and that only one dwelling be allowed per erf, it enables the property owner to create an additional erf and a dwelling and second dwelling on each erf. This will provide an additional erf that can be sold off to potential buyers or create more rental housing opportunities to the community. It would also increase the property value of the land. It would further also lead to an additional increase in rates and taxes for the Municipality.

The restrictive conditions applicable of 30% coverage limitation on the property and the Title Deed Building Line restrictions, are now controlled in terms of the Land Use Scheme. However, the removal of some building line restrictions would not allow the property owner too construct buildings closer to neighbours than in terms of the existing rights.

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

Application is made to only remove the restriction that the erf may not be subdivided, a second dwelling may not be erected on the property, some building line restrictions and a 30% coverage restriction.

## **12. THE DESIRABILITY OF THE PROPOSAL**

The property is vacant and measures approximately 1525m<sup>2</sup> in extent. The proposal is to subdivide the property into two portions each 762,5m<sup>2</sup> in extend, and construct a second dwelling on each of the portions.

The application includes the removal of restrictive conditions prohibiting subdivision of the property and the construction of more than one dwelling on a property.

At this stage, the Overstrand Municipality Land Use Scheme allow for second dwellings on properties, therefore the restrictive condition in the Title Deed prohibits the landowner to act on such rights.

In terms of the SDF, 2020 the area is identified for residential purposes. In terms of the Overstrand Municipality Growth Management Strategy, 2010 the area is earmarked for densification up to 10 units/ha. These policy/guideline documents promote densification to make maximum use of infrastructure and facilities. This application complies with such aims.

In the local context the one adjacent property is 778m<sup>2</sup> in extend and the others are 872m<sup>2</sup> in extend. The new proposed erven will be 762,5m<sup>2</sup> in extend, which is not out of line the sizes of surrounding erven. It is therefore foreseen that this part of the application will not have a negative impact on the character of the surrounding area or surrounding property owners.

The proposal is to erect second dwellings measuring 78m<sup>2</sup> and 72m<sup>2</sup> respectively in extent on the two new properties. The total coverage of all the buildings on the two properties is shown as 35% and 36% and would be over the 30% coverage restriction in the Title Deed. Application is then also made to remove the 30% coverage restriction to allow the 50% coverage restriction in terms of the Land Use Scheme.

Application is also made to remove the Title Deed restrictions for the 4,72m street building line, 1,57m lateral building line and 3,15m rear building line.

Objections were received against the application, and the objections and applicant's response thereon were discussed in detail under point 7. The objections relating to Environmental concerns, misleading statements and Policy alignment, density and precedent were discussed in detail under that point.

The concerns regarding character of the area, services and rear building line will be discussed further.

This office has approved Removal of Restriction applications on erven in Fisherhaven to allow second dwellings. This means there will be similar size erven than the proposed new portions which have a main and second dwelling. The only reason why not more similar applications have been received, is due to the cost to make such an application. It could at this stage be considered extreme to create 4 units in an area where only one dwelling units were allowed, but as indicated earlier, the surrounding erven can also apply for second dwellings, and it will have a similar impact. The fact is the Land Use Scheme makes provision for a second dwelling as a primary right, and second dwellings are part of the character of residential areas.

There are also concerns that the removal of the 30% coverage limitation and building lines could impact the character of an area. The Land Use Scheme allows for 50% coverage, and a fair number of properties in Fisherhaven have applied to remove/relax the 30% coverage limitation. The proposal is to have 35% and 36% coverage respectively on the two new erven, and therefore it is not foreseen that it would impact on the character of the area.

The removal of the 4,72m street building line can be supported, as the 4m Land Use Scheme building line will still be applicable, which sufficiently protect the character of the area. The removal of the 1,57m lateral Title Deed building line is also supported, as the 2m Land Use Scheme building line will still have to be complied with.

The objection of the one neighbour that a 3,15m rear Title Deed building line will ensure more privacy is noted. At this stage the property only has lateral and street building lines, and a 1,57m Title Deed building line and 2m Land Use Scheme building line would be applicable next to the objector's property. The subdivision would create a property with a 3,15m rear Title Deed building line next to the neighbour. The removal of the rear Title Deed building line would however not increase the impact on the neighbour should the property be developed in its existing state, as a rear building line is now not applicable on such boundary.

The objections with regards to availability of services are noted, and it was addressed in this report. The waterborne sewerage has not been extended yet, but the Engineering Branch indicated that there is some capacity at this stage to accommodate some conservancy tanks. Each application will however be considered case by case and on merit to ensure capacity exist.

The application can therefore be supported.

### 13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 193, Fisherhaven for the removal of restrictive title conditions E.4.(a), E.4.(b), E.4.(c) and E.4.(d) as contained in Title Deed T53094/2021 of the property in order to remove conditions relating to no subdivision, limitation on second dwellings, building lines and coverage, **be approved**, in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16.(2)(d) of the Overstrand Municipality Amendment By-Law on to subdivide Erf 193, Fisherhaven into two (2) portions, namely: Portion A (approximately 762,5m<sup>2</sup>) and a Remainder (approximately 762,5m<sup>2</sup>), **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the approvals in 1 and 2 above is in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
  - (a) that this approval is only for the subdivision as indicated on Subdivision Plan number 22/102(001) dated 27 February 2023, submitted with the application;
  - (b) that this approval is only for the removal of restriction and subdivision and not an approval in terms of any other legislation;
  - (c) that building plans be submitted for all new buildings to the Building Control Department for approval, and that all conditions of the Building Control and Fire Departments be complied with at that stage;
  - (d) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (e) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with; and
  - (f) that all the conditions in the Services Report (attached as Annexure F), be complied with.
4. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above approval.

**14. REASONS FOR RECOMMENDATION**

- ❖ The application has followed due procedure.
- ❖ The existing municipal services can accommodate the additional erf and additional dwellings and the application is supported by the Engineering Branch.
- ❖ The subdivision of the erf is in line with the Overstrand Growth Management Strategy, 2010 which earmark this area with a density up to 10 units/ha.
- ❖ The size of the new proposed erven will be in line with the sizes of surrounding properties, and it is not foreseen that the character of the area will be impacted on.
- ❖ The restrictive condition prohibits the property to be developed to its full potential, as the land use scheme allows for second dwellings as a primary right, already stipulates building lines and a 50% coverage.
- ❖ The proposed construction of a second dwelling are in line with the land use scheme, as the second dwelling will be smaller than 120m<sup>2</sup> in extend.
- ❖ It is not foreseen that the application will have a negative impact on the character of the area.
- ❖ The applicant sufficiently addressed the objections, and the objections does not proof the application not to be desirable.
- ❖ The application is in line with the General Principles of LUPA and SPLUMA, as the densification of areas within the urban edge will ensure valuable agricultural and environmentally sensitive land is not developed and create sustainable development. The development is also efficient as existing services will be utilized.
- ❖ The application is desirable.

**15. ANNEXURES**

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T53094/2021
Annexure E:	Objections received
Annexure F:	Applicant's response to objections
Annexure G:	Services Report
Annexure H:	Comment: Western Cape Government: EADP (Environmental)
Annexure I:	Comment: Cape Nature

**SIGNATURES****AUTHOR:**

Name: **HENK OLIVIER**

SACPLAN Reg No: **B/8128/2004**

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

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

**REGISTERED PLANNER**

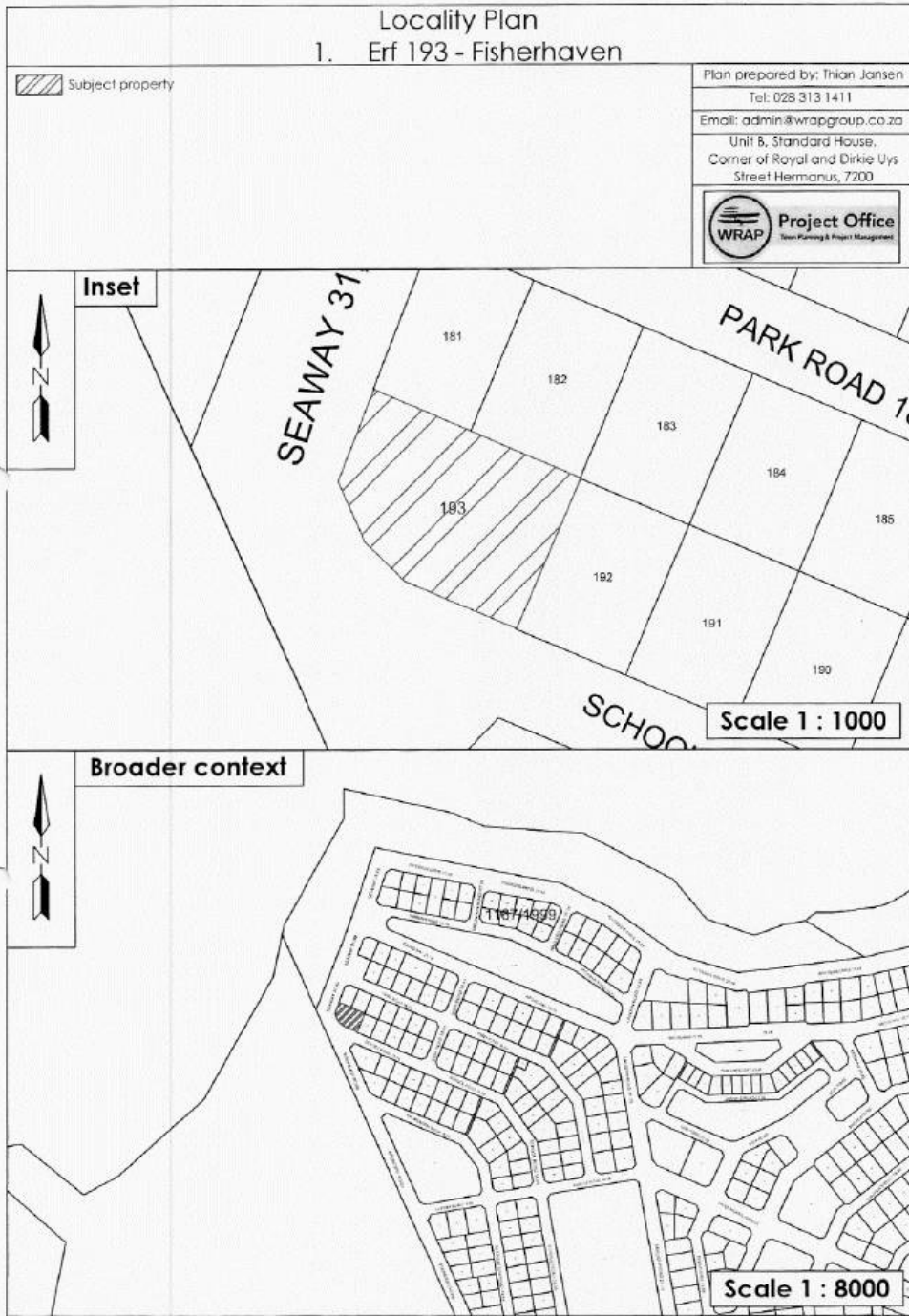
Name: **H VAN DER STOEP**

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

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

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

# Annexure A





## MOTIVATION

## 1. ABBREVIATIONS

<b>OM</b>	Overstrand Municipality
<b>OMLUS</b>	Overstrand Municipality Land Use Scheme, 2020
<b>BY-LAW</b>	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
<b>PSDF</b>	Western Cape Provincial Spatial Development Framework, 2014
<b>LUPA</b>	Western Cape Land Use Planning Act, 2014.
<b>MSDF</b>	Overstrand Spatial Development Framework, 2020
<b>SR1</b>	Residential Zone 1: Single Residential

## 2. PROPERTY DETAILS

<b>Consultant</b>	WRAP Project Office
<b>Erf Number</b>	Erf 193 Fisherhaven
<b>Extent</b>	1525m <sup>2</sup>
<b>Zoning</b>	Residential Zone 1: Single Residential

## 3. BACKGROUND AND INTENT

Erf 193 Fisherhaven, hereafter referred to as the subject property, is situated in the School Street, Fisherhaven (refer **Plan 1 – Locality Plan**). The property owners have appointed WRAP Project Office to submit this land use application on their behalf (refer **Annexure A – Power of Attorney**).

The property owners bought the property in 2021 with the intention to develop it for themselves, but as the property is larger than the standard erf size in Fisherhaven, they first want to subdivide the property to increase the potential value of the property and create additional housing opportunities.

The title deed of the subject property has several title deed conditions that are restricting the proposed intention for the property. To ensure compliance with the OMLUS, approval of the following applications is required:

- Removal of Restrictive title deed conditions; and
- Subdivision of Erf 193 into two portions.



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### 4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's requirements are met. The following is proposed:

#### 4.1 Removal of a restrictive title deed condition in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020:

There are numerous title deed conditions that prohibit the property owners from utilising their property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions	
Condition E.4.(a)	<i>"it shall not be subdivided."</i>
Condition E.4.(b)	<i>"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:"</i>
Condition E.4.(c)	<i>"not more than 30% of the area thereof shall be built upon;"</i>
Condition E.4.(d)	<i>"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 not within 3,15 meters of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"</i>

The rationale for the removal of the restrictive title deed conditions is to enable the property owners to achieve their development intent highlighted in Section 3 and not be restricted in the future. Certain of the title deed conditions are more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

#### 4.2 Subdivision of the Erf 193 Fisherhaven into Portion A, ±762,5m<sup>2</sup> and the Remainder, ±762,5m<sup>2</sup> in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020:

The subject property has an extent of 1525m<sup>2</sup>. With the property being a vacant erf, it provides the property owners with an opportunity to create an additional erf.

The proposal is to subdivide the property into two equal parts of ±762,5m<sup>2</sup>, which allows the applicant to maximise the extent and opportunity of the subject property. These proposed portions could be developed into residential properties that is able to



## MOTIVATION

comfortably accommodate a dwelling house and second dwelling unit on each property. Refer to Figure 1 that illustrates the proposed subdivision:

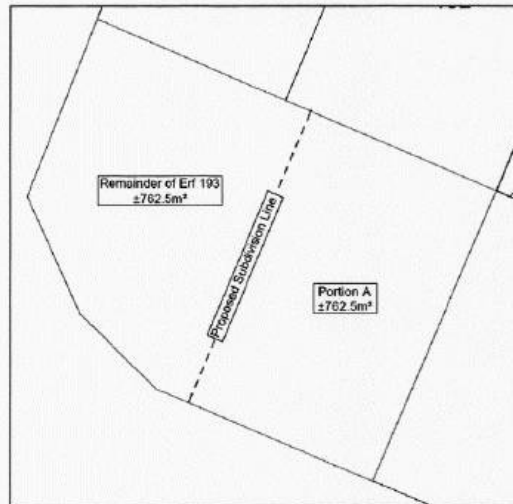


Figure 1: Extract of Plan 4 - Proposed subdivision

With the growth of the population in the Overstrand area, housing opportunities should be welcomed. Referring to the MSDP, Section 2.4.5, the population of Fisherhaven has increased by 44.9% from 2001 – 2011 and if the growth trend continues, the population is set to have doubled from 2001 – 2021.

This increases the pressure on the OM to continue to provide housing opportunities in areas where options are limited. Creating new housing and development opportunities in the Fisherhaven area should be welcomed. Smaller, more affordable properties are also in demand in Fisherhaven.

The average sale price of a vacant, larger Fisherhaven property is approximately between R500 000 to R1 000 000, which is high compared to more popular and more densely populated residential areas closer to economic activity and growth centres. With Fisherhaven not developing as fast as other areas in Hermanus, the property owners have identified a demand for smaller more affordable properties.

Referring to the guideline document being utilised by the OM, the Greater Hermanus: Volume II Spatial Development Strategy, 2000 provides the minimum erf size guidance for all the residential areas in the OM refer to the table on the next page.



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Area	Existing Gross Residential Density	Existing Average Erf Size (m <sup>2</sup> )	Proposed Gross Residential Density	Comments
Fisherhaven	4	1400	9	<ul style="list-style-type: none"> <li>Predominantly single residential.</li> <li>Cluster of group housing in development envelopes not exceeding 15000m<sup>2</sup> in extent, with minimum erf size of 375m<sup>2</sup>.</li> <li><b>No subdivision of single residential zoned erven less than 700m<sup>2</sup>.</b></li> <li>Densification subject to infrastructure.</li> </ul>

The property owners have a vision to improve each property with a main dwelling as well as a second dwelling which is aligned with the primary uses allowed in the OMLUS:

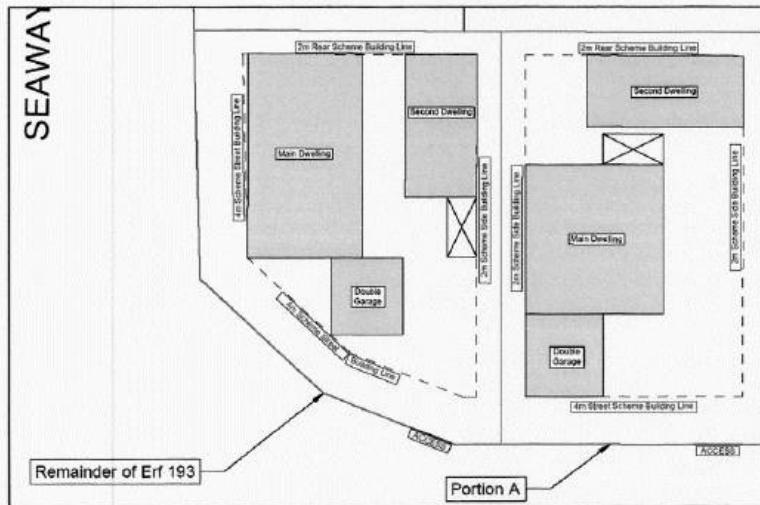


Figure 2: Proposed Development



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Page 79 of the MSDP states that between 2019 and 2031, more than 3058 residents will be required to be accommodated in the area and working on an average of 2.6 persons per household an additional 1165 dwelling units will be required. As the MSDP indicates, there were only 448 vacant properties (in 2020) which is more than 3 years ago, and there will be even less available as time has passed. If every vacant property is developed with 2 dwellings (main and a secondary) there would still be a shortage of 269 dwelling units.

The proposal to subdivide the subject property will contribute to addressing the future needs now, by introducing less expensive and smaller properties into the market which is more sought after.

### 5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 5.2 Subdivision** of the Erf 193 Fisherhaven into Portion A, ±762,5m<sup>2</sup> and the Remainder, ±762,5m<sup>2</sup>, in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

### 6. LAND USE ENVIRONMENT

The subject property is located on the edge of Fisherhaven in an area which is surrounded by only Residential Zone 1: Single Residential and Public Open Spaces properties. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

### 7. TITLE DEED

Title deed T53094/2021 (refer **Annexure B**) was perused and there is a restrictive condition that was inserted into the original title deed and transferred into the current title deed. This title deed condition prohibits that the applicant's intent with the subject property can be realised.

#### Title deed restriction

- Condition E.4. (a)** "it shall not be subdivided."
- Condition E.4. (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;"
- Condition E.4. (c)** "not more than 30% of the area thereof shall be built upon;"
- Condition E.4. (d)** "no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the



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*street line which forms a boundary of this erf not within 3,15 meters of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"*

### **Motivation**

#### **The rationale for the proposed removal**

The subject property is currently a vacant site, and the property owners has the vision to redeveloped it into 2 residential properties. The property owners have the vision and opportunity to expand on their primary right in terms of the OMLUS by building a second dwelling unit and utilising the entire property to do so (refer to Plan 5 – Proposed Development). Each property is being proposed to be developed with a main dwelling as well as a second dwelling. Several aspects of the proposed development is however being restricted by the conditions mentioned above and therefore the proposal is made to remove the restrictions.

#### **Title deed condition background**

The restrictive title deed condition was originally intended to protect the residential character of the Fisherhaven area, but the intention of the property owners is to increase the residential capacity on the property and meet the growing demand as indicated within the MSDF.

#### **Status quo**

The current OMLUS has clear development guidelines in place to ensure that the whole of the Overstrand Area's residential properties is managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

The current and future development of the property is being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the land use scheme and policies of the Overstrand Municipality, the property owners will not be able to utilise their property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5) (a-f):



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<b>LUPA, Section 39(5) (a-f)</b>	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of the restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is directly benefitting from this condition as the condition is only restricting the applicant.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	This restrictive condition does not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed.

**8. ZONING**

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:



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RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
<b>Primary use</b>	Crèche, Dwelling House, Guest Rooms, Home Occupation, <b>Second Dwelling Unit</b> and Self-Catering.	Dwelling House and Second Dwelling Unit	Comply
<b>Consent use</b>	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
<b>Coverage</b>	<p>The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area:</p> <ul style="list-style-type: none"> <li>• 400m<sup>2</sup> and greater = 50%</li> </ul>	<p><b>Development parameters</b> Existing Extent = 762.5m<sup>2</sup></p> <p><b>Remainder of Erf 193 – ±762.5m<sup>2</sup></b> Main Dwelling incl garage - ±202m<sup>2</sup> Second Dwelling - ±72m<sup>2</sup> Proposed Total Building Area - ±274m<sup>2</sup> Proposed Coverage - 36%</p> <p><b>Portion A – ±762.5m<sup>2</sup></b> Main Dwelling incl garage - ±190m<sup>2</sup> Second Dwelling - ±78m<sup>2</sup> Proposed Total Building Area - ±268m<sup>2</sup> Proposed Coverage - 35%</p>	Comply



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<p><b>Building lines</b></p>	<p>(i) The street building line is determined in accordance with the net erf area:</p> <ul style="list-style-type: none"> <li>• 400 m<sup>2</sup> and greater = 4m</li> </ul> <p>(ii) The side and rear building lines are determined in accordance with the net erf area:</p> <ul style="list-style-type: none"> <li>• Greater than 400 m<sup>2</sup> = 2m</li> </ul> <p>The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.</p>	<p>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</p> <p>Both the remainder and portion A complies with the building lines.</p> <p>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</p>	<p>Comply</p>
<p><b>Height</b></p>	<p>To be determined.</p>	<p>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</p>	<p>Comply</p>
<p><b>Garages and carports</b></p>	<p>Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.</p>	<p>A double garage is being proposed for each main dwelling and a carport is being proposed for each second dwelling.</p> <p>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</p>	<p>Comply</p>



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**9. SERVICES**

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

**Electricity, Water, Sewage and Solid Waste**

The subject properties will be connected to the OM's networks, which include electricity and water. The proposal of this application is not anticipated to influence on this existing service in the area.

The biggest concern regarding service provision pertains to sewage in the area as there may not be sufficient capacity in the area. It was confirmed by the Overstrand Municipality Engineering department that an additional conservancy tank that needs to be serviced, can be accommodated.

It should also be noted that the property owner will be required to pay a bulk services contribution levy that can be utilised by the OM to upgrade any service requirements in the area.

Solid waste will be collected every week by the OM.

**Access and Egress**

Access and egress to both properties will be gained from School Street and the proposal will not affect this.

**10. NEED AND DESIRABILITY**

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

**Need and desirability.**

The need for the land use application was a result of addressing all the land use requirements and ensuring the property meets the requirements of the property owners. To achieve this, the property owners are required to apply for the removal of the restrictive title deed condition and subdivision.

Socio-economic impact	<p>The proposed development has a positive impact on a socio-economic scale:</p> <ul style="list-style-type: none"> <li>• <b>Affordability:</b> Subdividing a property can increase the supply of available housing units, potentially making housing more affordable in the area. However, this can also depend on the local housing market and demand for housing.</li> <li>• <b>Property values:</b> Subdividing a property can impact on property values, depending on the demand for housing in the area. If there is a high demand for housing, the value of the subdivided</li> </ul>
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## MOTIVATION

	properties may increase, whereas if there is a low demand, the value may decrease.
Compatibility with surrounding uses	The proposal to subdivide the property is not considered out of the ordinary as the properties will both be used for residential purposes. The proposed property size is also not considered offensive, and the area of $\pm 762,5\text{m}^2$ is still within the average size in the area.
Impact on the external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community. In fact, the proposed property will increase the number of inhabitants in the area and increase the safety aspect within the community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.

### **Impact on views, sunlight and character of the area**

The subject property is located in a residential setting and the structures being proposed will be required to be compliant with the regulations and development parameters set out in the OMLUS. It is not predicted to have any impact on views, sunlight, or the character of the area.

### **Economic impact**

The proposal does not have an economic impact. The Overstrand Municipality will double the income in terms of rates and taxes being able to be collected.

### **Opportunity cost**

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The proposal is not predicted to have a negative impact on surrounding properties and the subdivision will have a positive impact on the community itself as the smaller properties will be able to be sold for lower amounts.

### **Environmental impact**

The subject property is not located within an environmentally important area.



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### 11. POLICIES AND REGULATIONS

#### 11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the Coastal Protection Zone and to ensure compliance with the guidelines set out in the EMOZ, the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within	X	N/A



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special management areas designated, demarcated and signposted by the Municipal Council from time to time.		
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life-saving device.		N/A
Staying overnight.	X	The proposal is to develop the property with two dwellings on each property.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non-designated zones.	X	N/A

SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling	X	This is noted and all water will be managed on-site.



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of storm water into open spaces without the necessary approval from the Municipality.		
<b>B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Coastal</b>	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.	X	N/A

<b>C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable</b>	<b>Applicable Environmental Management Overlay Zone (EMOZ)</b>	<b>Applicable to the application or not</b>
	<b>Coastal</b>	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	The entire proposed development is within the coastal protection zone.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The entire proposed development is within the coastal protection zone.



## MOTIVATION

### 11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

Both properties will be located within the "LANDSCAPES HPOZ" of which the purpose is the following:

*"Purpose: To ensure that any land use application resulting in additional rights complies with the existing character and contextual significance:*

- *To protect and enhance landscapes identified as having high natural, scenic and heritage significance and which contribute to the character and sense of place in the Overstrand and its economic base.*
- *To promote the cultural, tourism, environmental and amenity potential of significant Overstrand landscapes."*

To ensure compliance with the HPOZ it is of importance that certain aspects need to be provided and addressed in terms of Overstrand Municipality Heritage Protection Overlay Zone Regulations, 2020:

Section 20 – 22 states the following -

"20

*The Overstrand Municipality By-Law on Municipal Planning, 2020, will apply in respect of all applications, processes and decisions contemplated in these regulations.*

21

*In considering an application for written consent in order to undertake an activity in terms of the Heritage Protection Overlay Zone, the Municipality may require from an applicant whatever information it deems necessary in order for an informed decision to be made regarding the application.*

22 This could include, inter alia:

- 22.1 statements of significance;
- 22.2 heritage research;
- 22.3 photographs, including contextual photographs;
- 22.4 results of public consultation;
- 22.5 impact assessments; and
- 22.6 comment from affected and interested bodies."

#### Statements of Significance

The heritage significance of the subject property is not large.

#### Heritage Research

No additional heritage research was done.

#### Photographs, Including Contextual Photograph

Aerial maps were included into the application, refer to **Plan 3 – Aerial Plan**.



## MOTIVATION

### Results of Public Consultation

Regarding this application, an extensive public participation process will be followed. If any comments are received regarding the heritage aspect it will be addressed accordingly.

### Impact Assessments

No impact assessments were conducted.

### Comment From Affected and Interested Bodies

The application will be circulated to affected and interested bodies for comment.

### **11.3 Spatial Planning Policies**

An evaluation was done to determine whether the proposed plan adheres to the relevant spatial development policies. These policies play a vital role in directing spatial development and setting guidelines for sound town planning development practices. In order to illustrate the level of compliance with these policies, an assessment was carried out, taking into account both local and provincial development policies, which are essential sources of information on the subject.

It is crucial to ensure that the proposed plan is consistent with the applicable spatial development policies as they serve as a framework for development and contribute to the overall betterment of the community. By examining the proposed plan's compliance with these policies in conjunction with local and provincial policies, a comprehensive understanding of its alignment with broader development objectives can be achieved. This, in turn, facilitates a well-informed decision-making process, contributing to the development of the area in a sustainable and positive manner.

### **PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK - PSDF**

#### **Policy preface**

The PSDF is a product of a provincial inter departmental and inter-governmental collaboration under the guidance of the interdepartmental steering committee with the private sector, academia, and non-governmental organisations. This broad participatory process has created a shared spatial vision which is intended to inform spatial development patterns of urban areas in the province.

#### **Consistency of the proposal with the policy**

Throughout the framework, the process of infill planning is emphasized. Section 3.3.7 states that densification should take place using infill planning and should be the first choice when densification is proposed.

The proposal to create an additional erf is in line with the proposal to densify an existing area. By densifying through infill, no urban sprawl is created, and the maximisation of the existing urban area is achieved. By densifying existing areas, these areas can benefit from higher economic activity.



## MOTIVATION

### MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK – MSDF

#### **Policy Preface**

The SDF's intention is to ensure compliance with national, provincial and district legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development land uses and direction within the urban edge. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which development proposal should ideally attempt to synchronise with.

#### **Consistency of the proposal with the policy**

The policy promotes the protection of the character of the OM. The approval and implementation of the proposed subdivision will not undermine the character of the site and surrounding area. Refer back to Section 4.1 of the motivation above.

The SDF promotes the containment of the footprint of OM within the well-defined urban edge. The subject property is located within the urban edge of OM and this proposal contains urban development within this footprint as prescribed.

### OVERSTRAND MUNICIPAL SPATIAL GROWTH MANAGEMENT STRATEGY, 2010 (OGMS)

On the 27th of May 2020 the Municipal Council adopted the OMSDF, (Overstrand Spatial Development Framework, 2020), in the same instance rescinded the Overstrand Municipal Spatial Growth Management Strategy, 2010. Although the OGMS was rescinded in 2020, the Overstrand Municipality's Town Planning Department still utilise the document as a 'guideline'.

The subject property is located within Planning Unit 1 which encompasses majority of the Fisherhaven area, see figure 3:



Figure 3: OGMS Planning Units - Fisherhaven



## MOTIVATION

According to the OGMS incremental residential densification is proposed to be occur on 20% of the erven through subdivision. This could increase the number of dwelling units in the planning unit by  $\pm 140$ .

As the property has a larger extent than the average erf size in the surrounding area, it is proposed that the subdivision is aligned with OGMS.

## 12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

### **Spatial justice**

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to increase the residential yield of the existing property is not predicted to aid in the elevation of past spatial injustices.

### **Spatial sustainability**

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal to subdivide intends to ensure the subject property is utilised to its maximum capabilities. The proposed infill densification is a sustainable method to create new properties without requiring additional land.

### **Efficiency**

This proposal is intended to maximise the usage of the subject property and ensure the applicant has sufficient space to provide four families with dwelling houses.

### **Spatial resilience**

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

### **Good administration**

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process.

The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



## RECOMMENDATION

### 13. EVALUATION

The proposal needs to be evaluated on the basis that the current situation is not utilising the available space efficiently. The applicant had the vision to subdivide the property which in turn will double the residential capabilities of the subject property.

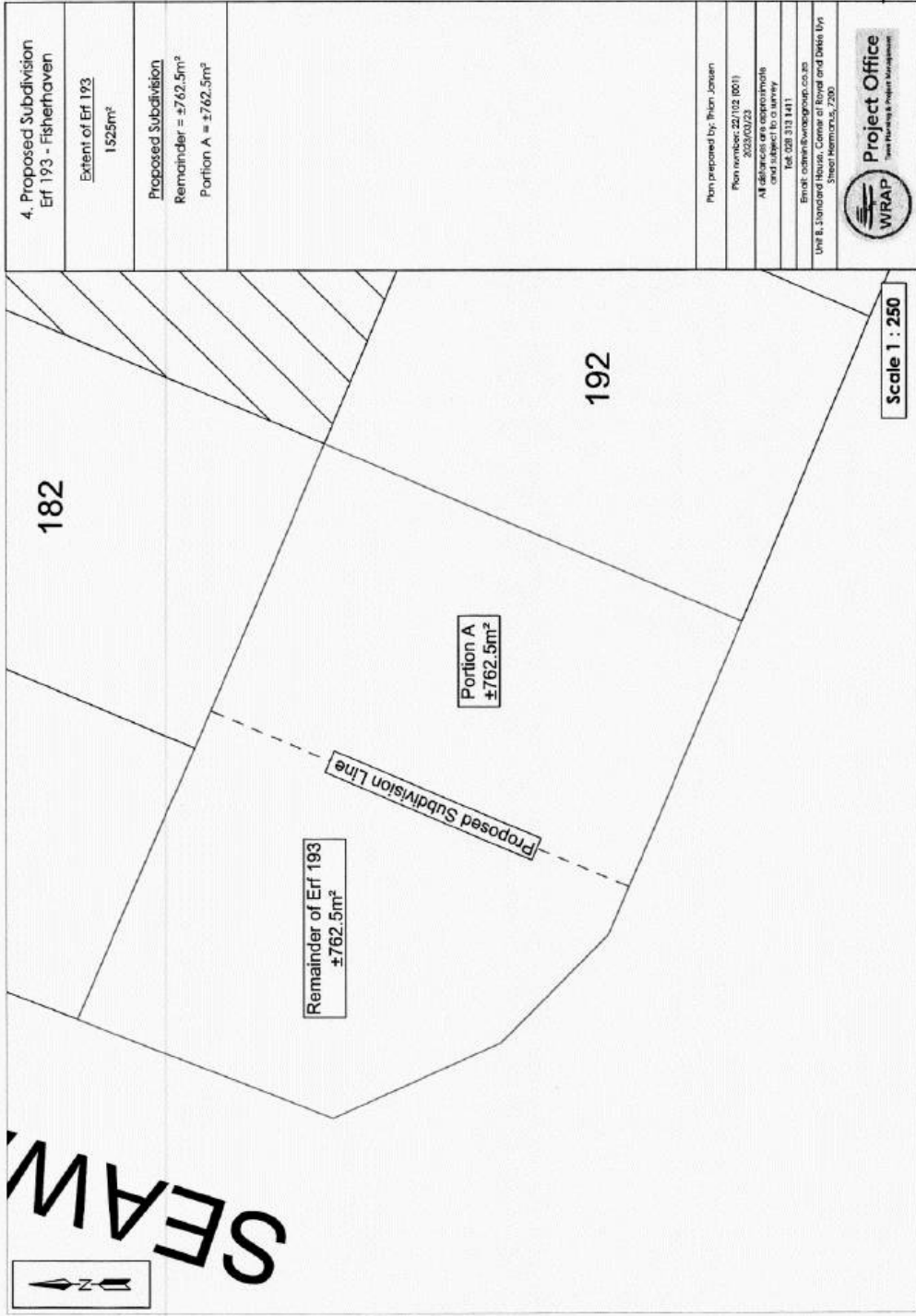
The new development will not add any new land use rights as the proposed subdivision is set to be utilised for residential properties. This proposal is in harmony with all relevant spatial planning policies which illustrates that the applicant did not arbitrarily invent this application but had due consideration for relevant spatial planning policies.

### 14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 14.2 Subdivision** of the Erf 193 Fisherhaven into Portion A,  $\pm 762,5\text{m}^2$  and the Remainder,  $\pm 762,5\text{m}^2$  in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Annexure C 1/4

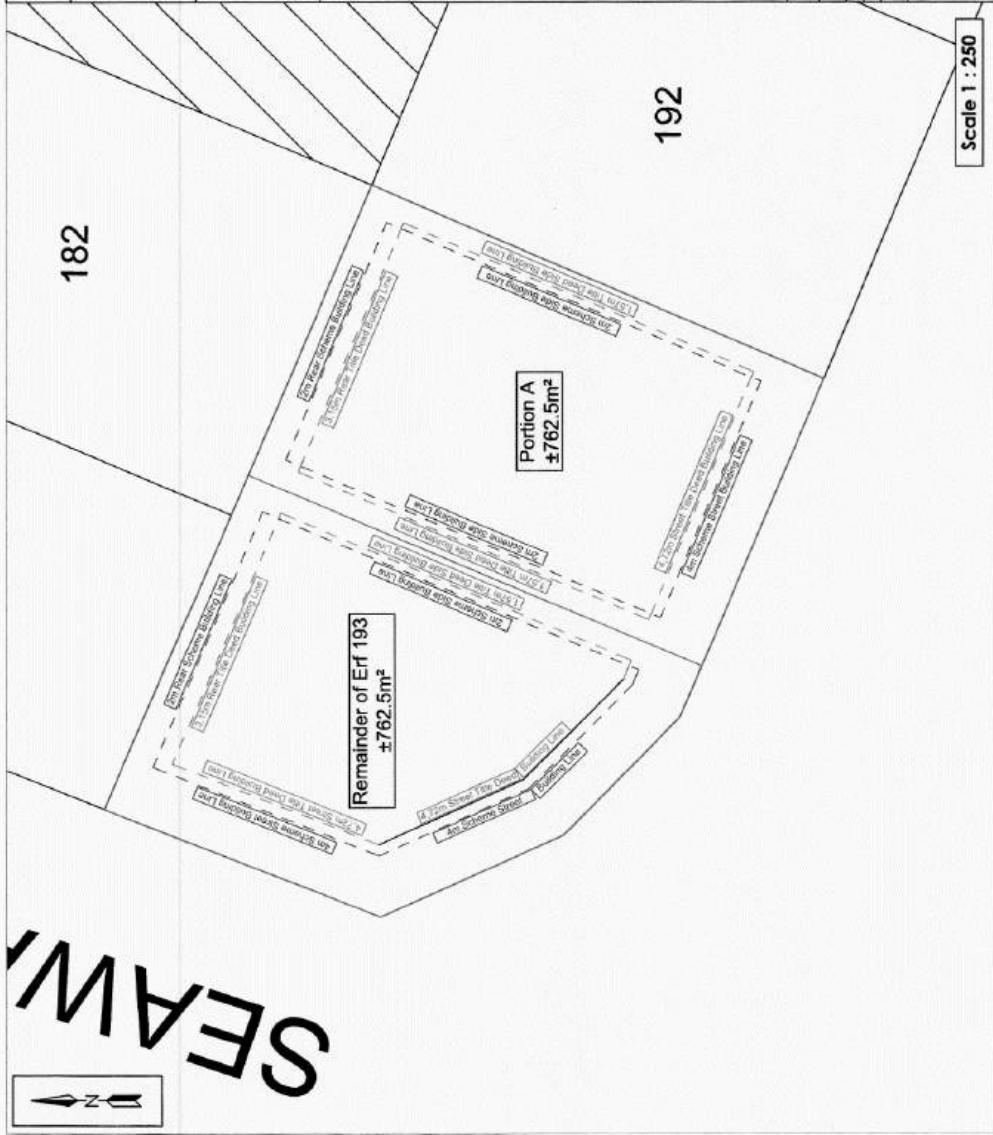


4. Proposed Subdivision Erf 193 - Fisherhaven
Extent of Erf 193 1525m <sup>2</sup>
Proposed Subdivision Remainder = ±762.5m <sup>2</sup> Portion A = ±762.5m <sup>2</sup>
Plan prepared by: Phil Janzen
Plan number: 22/102 (B01)
Date: 2022
All dimensions are approximate and subject to a survey
Tel: 028 313 1411
Email: <a href="mailto:sales@wrap.co.za">sales@wrap.co.za</a>
Unit B, Standard House, Corner of Royal and Dealelys Street, Hermanus, 7200

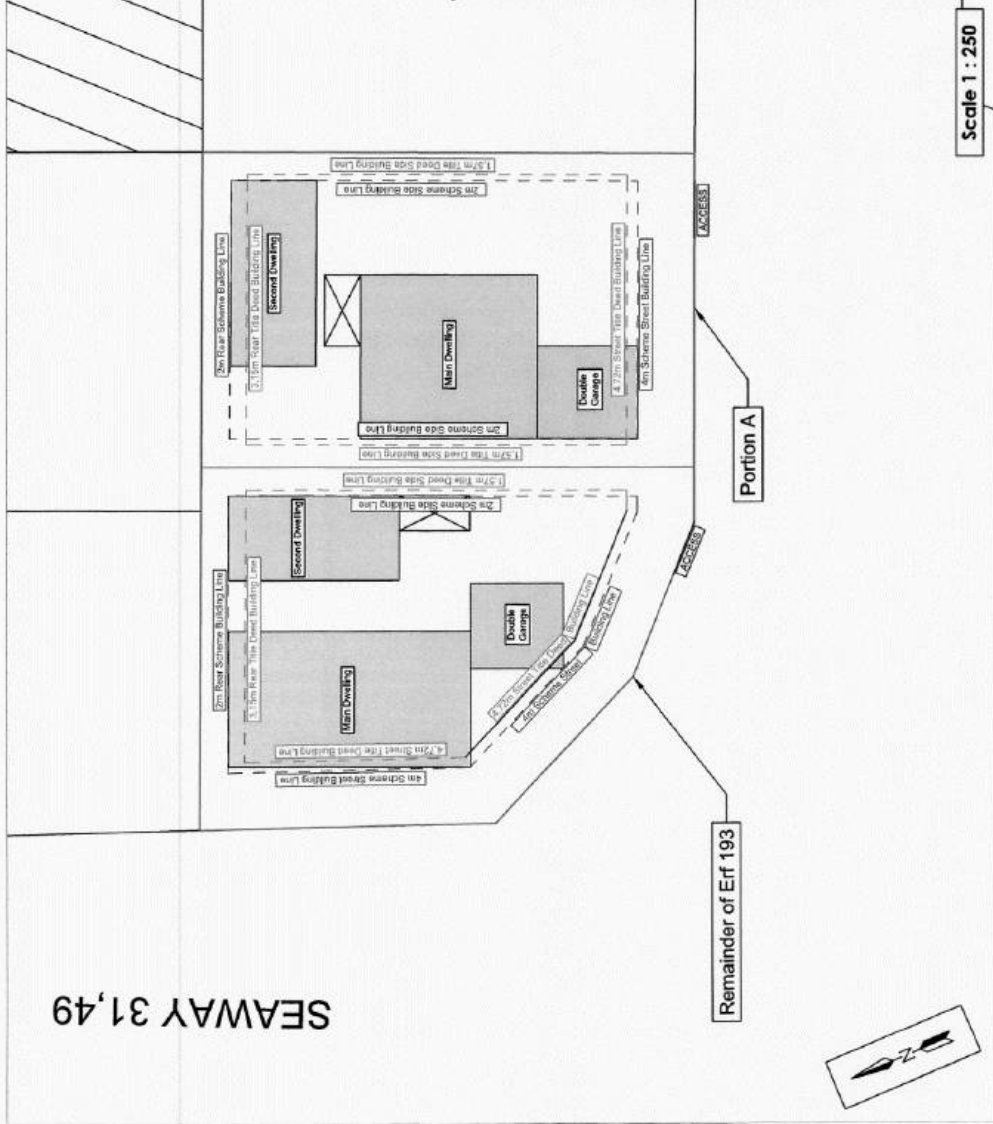
**Project Office**  
 WRAP  
 Project Management

Scale 1 : 250

<p>5. Proposed Develop Erf 193 - Fisherhaven</p>	<p>Overstrand Municipality Land Use Scheme - Building Lines</p> <p>[ ]</p>	<p>Title Deed - Building Lines</p> <p>[ ]</p>		<p>Plan prepared by: Ithon Jansen All dimensions are approximate and subject to a survey. Tel: 083 313 1411 Email: <a href="mailto:cm@wgap.co.za">cm@wgap.co.za</a></p>	<p>UPM B. Mordant House, Corner of Rood and Ethel, 195 Stapel Street, 7800</p> <p><b>WRAP</b> Project Office Town Planning &amp; Project Management</p>
--	--	---	--	---	---



<p><b>5. Proposed Develop Erf 193 - Fisherhaven</b></p>	<p><b>Portion A</b> Proposed Development Main Dwelling incl garage ±190m<sup>2</sup> Second Dwelling ±78m<sup>2</sup> Proposed Total Area - ±268m<sup>2</sup> Proposed Coverage - 35%</p>	<p><b>Remainder of Erf 193</b> Proposed Development Main Dwelling incl garage ±202m<sup>2</sup> Second Dwelling ±72m<sup>2</sup> Proposed Total Area - ±274m<sup>2</sup> Proposed Coverage - 36%</p>
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SEAWAY 31,49

3/4

Scale 1 : 250

Plan prepared by: Thien Jansen  
All dimensions are approximate and subject to survey.  
Tel: 088 313 1411  
Email: [admin@wrapgroup.co.za](mailto:admin@wrapgroup.co.za)  
Unit 8, Standard House, Corner of Road and Dikke Lys Street, Hermanus, 7200







AND the said Appearer declared that his/her principal had on 9 February 2021 truly and legally sold by Private Treaty and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

**JONATHAN CHARLES WALKER**  
 Identity Number 570408 5082 18 0  
 and  
**NICALENE LOUISE WALKER**  
 Identity Number 640116 0083 08 9  
 Married in community of property to each other

their heirs, executors, administrators or assigns in full and free property:

**ERF 193 FISHERHAVEN**  
**IN THE OVERSTRAND MUNICIPALITY**  
**DIVISION CALEDON**  
**WESTERN CAPE PROVINCE**  
**IN EXTENT: 1525 (ONE THOUSAND FIVE HUNDRED AND TWENTY FIVE)**  
**SQUARE METRES**

First transferred by Deed of Transfer No. T9841/1972 with Diagram No. 10848/1971 relating thereto and held by Deed of Transfer No. T63613/2008

- A. **SUBJECT** to the conditions referred to in Certificate of Uniform Title dated 12<sup>th</sup> May 1959 No. 5659.
- B. **SUBJECT** to the condition mentioned in Deed of Partition Transfer No. T8000/1931 in favour of Josias Servaas Delpont, that Petrus Johannes Delpont and his successors in title of the property called ROOI SAND, part of the AFDAKS RIVIER, transferred to him on 22<sup>nd</sup> October 1931, No. 7998, shall have the right of trekking with his sheep twelve times a year over the property hereby transferred at a spot to be indicated by the said Transferee and his aforesaid.
- C. **SUBJECT** as set forth in Certificate of Uniform Title No. 5659 dated 12<sup>th</sup> May 1959:
- a. ...
  - b. To the right to take land and remove materials for making and repairing public roads.
- D. **SUBJECT FURTHER** to the condition referred to in the endorsement dated 11<sup>th</sup> May 1970 on the said Deed of Transfer No. 11975 dated 6<sup>th</sup> June 1967, which endorsement reads as follows:
- "Registration of Servitude**
- The within described land is subject to a servitude with regard to apportionment of water in terms of an Order of the Water Court (Water Court District No. 11/64) dated 1<sup>st</sup> February 1965 as will more fully appear on reference to the copy of the said Order annexed to the Deed of Transfer No. 11190/60."
- E. **SUBJECT FURTHER** to the following conditions imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934 when approving the establishment of Fisherhaven Township, contained in the said Deed of Transfer No. 9841, dated the 3<sup>rd</sup> May 1972, namely:

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1. Any words and expressions used in the following conditions shall have same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No. 401 dated 17<sup>th</sup> October 1935, and in the memorandum which accompanied the said regulations.
  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 within or without this township to be conveyed across this erf, and if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to constructing, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
  3. The owner of this erf shall be obliged, without compensation, to receive 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.
  4. This erf shall be subject to the following further conditions, provided especially that where in the opinion of the Administrator after consultation with the Township Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose:
    - (a) it shall not be subdivided;
    - (b) it shall be used only for the purpose of erecting thereon one dwelling, together with such buildings as are ordinarily required to be used therewith;
    - (c) not more than 30% of the area thereof shall be built upon;
    - (d) no buildings or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4, 72 metres the street line which forms a boundary of this erf nor within 3, 15 metres of the rear or 1, 57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3, 05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consideration of any two or more ervens, 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.
- F. **SUBJECT FURTHER** to the condition imposed by the Transferor Company in its favour as owner of the remainder of Fisherhaven Township, and its successors in title, and held by it by Deed of Transfer No. 11975 dated 6<sup>th</sup> June 1967, contained in the said Deed of Transfer No 9841 dated 3<sup>rd</sup> May 1972, to wit:

"No buildings shall be placed on the land hereby sold until the plans and locations of the buildings have been submitted and approved by both the Company and the Local Authority"

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In the foregoing condition the expression "the Company" or "the Transferor Company" shall mean LAKE MARINA PROPERTIES (PROPRIETARY) LIMITED and its successors in title.

For Information Only

MC  
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WHEREFORE the Appearer, renouncing all the right and title which the said

**ROBIN GORDON HADDON, 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

**JONATHAN CHARLES WALKER and NICALENE LOUISE WALKER, Married as aforesaid**

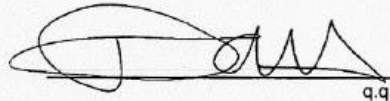
their heirs, executors, administrators or assigns

now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of R1 100 000,00 (ONE MILLION ONE HUNDRED THOUSAND RAND).


IN WITNESS WHEREOF I, the said Registrar of Deeds 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

**15 APR 2021**

  
q.q.

In my presence:

  
\_\_\_\_\_  
Registrar of Deeds

*Handwritten marks:*  
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*Handwritten mark:*  
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Annexure E 1/12

**Loretta Gillion**

**From:** Loretta Gillion  
**Sent:** Wednesday, 31 January 2024 11:52  
**To:** Willem Marais Coop  
**Cc:** buildsec  
**Subject:** RE: Erf 193 Fisherhaven

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
31 JAN 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Beste Mnr Coop

Ontvangs word hiermee erken van u ondersteuning vir die aansoek op Erf 193 Fisherhaven.

Met betrekking tot u bouplan op Erf 368, word u aangeraai om ons Boubeheer Afdeling direk te kontak –  
 0283138089 / [buildsec@overstrand.gov.za](mailto:buildsec@overstrand.gov.za). Laasgenoemde Afdeling hanteer bouplanne.

Groete

*T.P. n. (heerik  
 (M. Olivia)*

**Loretta Gillion**

Administrator : Town & Spatial Planning  
 Overstrand Municipality  
 A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20  
 T: 028 313 8900 | F: 028 313 2093 | E: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

FILE NO. <i>Erf 193</i>
<i>Fisherhaven.</i>
SCAN NO.
COLLABORATOR NO.
<i>1989365</i>

**From:** Willem Marais Coop <>  
**Sent:** Monday, January 29, 2024 11:28 AM  
**To:** Loretta Gillion <[loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)>  
**Subject:** Re: Erf 193 Fisherhaven

Ai tog man, Loretta nou verstaan ek die hele besigheid, dankie tog.  
 Ek het klaar my huis planne betaal by die Argietek Jacques wat in Brackenfell  
 sly hier in die kaap, hy sê hy het die huis plan vir julle gestuur van sy laptop af, het julle dit al ontvang, ek wag nou al  
 baie lank daarvoor,  
 Want ek wil begin bou.  
 Sy cell phone nommer is  
 Jacques 064 604 4937  
 Hy sê hys n Argietek.

Baie dankie dat U terug gekom het met die uitklaaring van ERF 193  
 Ek het geen beswaar met hulle beplanning nie, ek wens hulle voorspoet daarmee.  
 Baie dankie vir jou bystand.  
 Van my at, WMCOOP.  
 Lekker dag vir julle.

On Mon, 29 Jan 2024, 08:06 Loretta Gillion, <[loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)> wrote:

Beste Mnr WM Coop

31 JAN 2024

		OVERSTRAND MUNISIPALITEIT REKORDBEHEER 23 FEB 2024	2/12				
<b>Loretta Gillion</b>							
<b>From:</b>	Stefan Schoombie <<	<table border="1"> <tr> <td>FILE NO. 21 113</td> </tr> <tr> <td>Fisherhaven</td> </tr> <tr> <td>SCAN NO.</td> </tr> <tr> <td>COLLABORATOR NO. 2002196</td> </tr> </table>		FILE NO. 21 113	Fisherhaven	SCAN NO.	COLLABORATOR NO. 2002196
FILE NO. 21 113							
Fisherhaven							
SCAN NO.							
COLLABORATOR NO. 2002196							
<b>Sent:</b>	Thursday, 22 February 2024 17:31						
<b>To:</b>	Loretta Gillion						
<b>Subject:</b>	ERF 193, 2 SCHOOL ROAD, FISHERHAVEN						
Good evening,		<i>TP. N. Theakle (M. Olivia)</i>					
I trust this mail finds you well.							
We (Stefan and Janine Schoombie) are residents of Fisherhaven (36 Schooner Avenue, Fisherhaven, 7200), and was contacted by WRAP PROJECT OFFICE as a potentially affected party for proposed amendments to the title deed of erf 193.							
We strongly object to this proposal as set out in the document by WRAP (hereafter "the document").							
We also bought our property in Fisherhaven in 2021 as we found the low density, semi-rural setting appealing. If the proposed amendments are granted, it would set a precedent for future applications in Fisherhaven and very soon we could have many property owners subdividing their plots and constructing additional dwellings, which would change the whole setting of Fisherhaven and infringe on our enjoyment of our own property.							
The document provided by WRAP (on behalf of JC & NL Walker) is flawed on several places as detailed below:							
1. The document states the erf 193 is larger than the average plot in Fisherhaven. While this may be true, it is a misleading statement as the average plot size in Fisherhaven is ~1400 m <sup>2</sup> and the 1525m <sup>2</sup> size of erf 193 is not large to such a degree that subdivision is sensible.							
2. The Overstrand Spatial Development Framework, 2020 (MSDF) is quoted and it is argued that subdividing plots in Fisherhaven would help to house the projected population growth in the area by 2031. However, the MSDF document mentions the following on page 79 "The Overstrand Growth Management Strategy identified the aforementioned vacant zoned land as a densification area. With the correct density factor applied, the extent of the area will be sufficient to provide for the remaining 2031 population". Thus, there is no need to go look for other mitigation measures as the MSDF clearly states that the current vacant land in the area is sufficient to sustain population growth.							
3. The MSDF document as states on page 80: "The limited sewer network in Fisherhaven is linked to the Hawston waste water treatment works via a pump station and rising main pipeline. The sewer network however requires extension. The ESKOM bulk electrical network will have to be upgraded if further development is considered". Thus, any amendments to title deeds that increased the density of residential units in Fisherhaven must be foregone with considerable infrastructure upgrades.							
4. The document states on page 6 : "the intention of the property owners is to increase the residential capacity on the property and meet the growing demand as indicated within the MSDF." However, the MSDF also states on page 195 that Fisherhaven / Hawston should be promoted as a tourism destination. The current low density character of Fisherhaven (produced by the title deed restrictions) would allow Fisherhaven to flourish as a tourist destination should tourism development on the shores of the Botriver Estuary allow more people to enjoy the tranquil setting of the Estuary. High density housing would degrade the tourism potential of Fisherhaven.							
5. Fisherhaven is set in a critically endangered type of Fynbos vegetation. Relaxing the building restrictions (i.e. the building line around the property) would result in more destruction of endangered Fynbos.							
Please let me know if you have any questions or require anything else from us.							
23 FEB 2024		1					

Kind regards,

3/12

Stefan

--

Stefan Schoombie, PhD  
Post-doctoral Research Fellow  
Centre for Statistics in Ecology, the Environment and Conservation (SEEC)  
University of Cape Town  
Cape Town, South Africa  
Email:

4/12



To the Overstrand Municipality,

22 February 2024

In response to:

OVERSTRAND MUNICIPALITY ERF 193, 2 SCHOOL ROAD, FISHERHAVEN: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: WRAP PROJECT OFFICE ON BEHALF OF JC & NL WALKER

Friends of the Botriver Estuary and Environs (Botfriends) is an environmental group functioning within the surrounds of the Botriver Estuary, which includes Fisherhaven.

We are deeply concerned about the lack of environmental consideration in the application, and we are opposed to the acceptance of proposed amendments on the following considerations.

1. Environmental setting

At the bottom of page 11 of the motivation document the following statement is made:

**"Environmental impact**

The subject property is not located within an environmentally important area."

We do not believe this statement to be true.

The vegetation in Fisherhaven mainly consists of two endangered Fynbos types, namely Elim Ferricrete Fynbos and Hangklip Sand Fynbos – erf 193 could be either of the two (Figure 1 below). These fynbos types are incredibly diverse in their flower assemblages, but both are threatened by land degradation with < 5% of Elim Ferricrete Fynbos left

(<https://www.grootbosfoundation.org/conservation/project/conservation-of-elim-ferricrete-fynbos/>).

Members of Botfriends (many of whom are property owners in Fisherhaven) are making every effort to conserve the little of this Fynbos we have left, and we believe much of the property value of erven in Fisherhaven is due to the natural setting of the village. If title deeds are amended to reduce the erf size, relax boundary conditions, and increase the number of dwellings, there would be a significant loss of natural vegetation in the process, completely changing the natural setting of Fisherhaven.



FILE NO. OF 193  
Fisherhaven  
SCAN NO.   
COLLABORATOR NO. 2002161

TP: A/theak  
(M. Olivia).

TP 23 FEB 2024

5/12



Figure 1: Fisherhaven vegetation types and erf numbers.

## 2. Environmental impact

The motivation document shows that should the amendments be approved on all vacant erven, the gross residential density in Fisherhaven could more than double.

Without a considerable upgrade of infrastructure in Fisherhaven this could lead to an environmental disaster.

The motivation cites page 79 of the Overstrand Spatial Development Framework, 2020 (MSDF) to motivate why additional dwellings are necessary in the area. However, the MSDF states (page 80) that improvement to the sewer network requires extension if population in the area increases.

Fisherhaven is located on the banks of the Botriver Estuary, which is designated as a UNESCO Biosphere Reserve and World Heritage site as well as a RAMSAR site of importance due to the waterbirds that breed there (<https://rsis.ramsar.org/ris/2291>). If the sewerage system in Fisherhaven does not function properly, it risks the spillage of raw sewage into the Botriver Estuary, which could lead to severe degradation of the estuary.

We believe that allowing these amendments to a title deed would set a bad precedent to future development in Fisherhaven, where the sensitive setting of the natural environment it sits in is completely ignored. We also encourage the Overstrand Municipality to celebrate and promote

6/12

the special natural setting we have surrounding the Botriver Estuary and urge the protection of these sensitive vegetation types when development is considered.

Yours sincerely,

Executive committee - Friends of the Botriver Estuary and Environs

**Loretta Gillion**

---

**From:** Chair|Botfriends <chair@botfriends.org.za>  
**Sent:** Thursday, 22 February 2024 16:37  
**To:** Loretta Gillion  
**Cc:** Friends of the Bot River Estuary and Environs  
**Subject:** Municipal Notice No. 3/2024  
**Attachments:** Comment\_on\_erf193\_deed\_adjustments.pdf

To whom it may concern,

Please find attached response letter to the municipal notice (3/2024) regarding amendments to the title deed of erf 193 in Fisherhaven.

Botfriends is an environmental organisation functioning within the surrounds of the Botriver Estuary and many of our members are residents in Fisherhaven.

Please find herewith (attached document) our objection to the proposed amendments.

Kind regards

--

Stefan Schoombie  
Chair - Friends of the Botriver Estuary and Environs Botfriends

26 FEB 2024

8/12

**Loretta Gillion**

**From:** Gary Lombard <  
**Sent:** Wednesday, 21 February 2024 14:44  
**To:** Loretta Gillion  
**Cc:** Susan Lombard  
**Subject:** Comment re removal of restrictive Title Deeds ERF 193

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
21 FEB 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Dera Loretta,

Please note my comments to the removal of restrictive title deeds pertaining to the subdivision of ERF193.

Name: Gary and Susan Lombard  
 Address: 5 Park Road, Fisherhaven.  
 Contact Number:  
 Interest in the application. Owners of ERF182 and ERF183.

Reason for Comment: Not in agreement with relaxation of the 3.15m rear building line (Condition E.4.(c))on proposed **portion A of subdivision.**

*"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 not within 3,15 meters of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height, measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space.*

Rationale on objection is that the boundary of 3.15 meters is intended to provide a reasonable amount of privacy and space between two neighbouring dwellings.

The choice of staying in Fisherhaven was based the size if the ERF's and the space and privacy afforded by the larger properties.

It is our intention to develop ERF182 and this will be likely be double story and I believe the rear building line is essential to provide this privacy.

Please note that I am viewing this as assumption that a double story will be erected on the relaxed building line. If this is limited to a single-story dwelling, I would have no objection.

**Portion A, identified in schematic below, building line referred to is also indicated in the schematic below.**

FILE NO. <u>Et 193</u>
<u>Fisherhaven</u>
SCAN NO.
COLLABORATOR NO.
<u>2000750</u>

21 FEB 2024

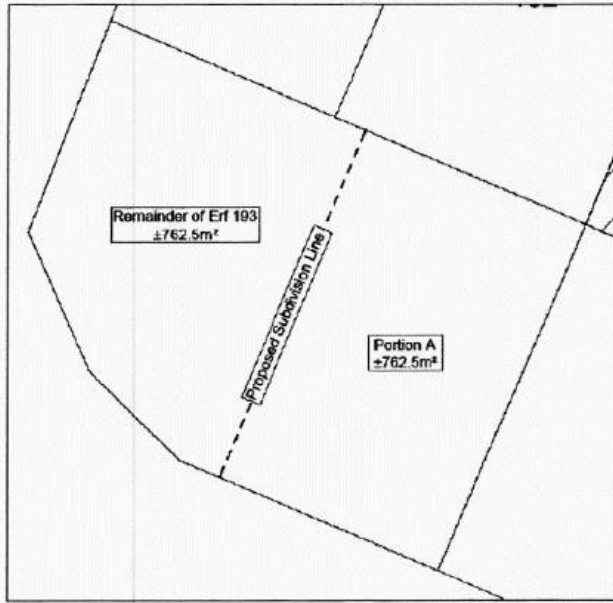
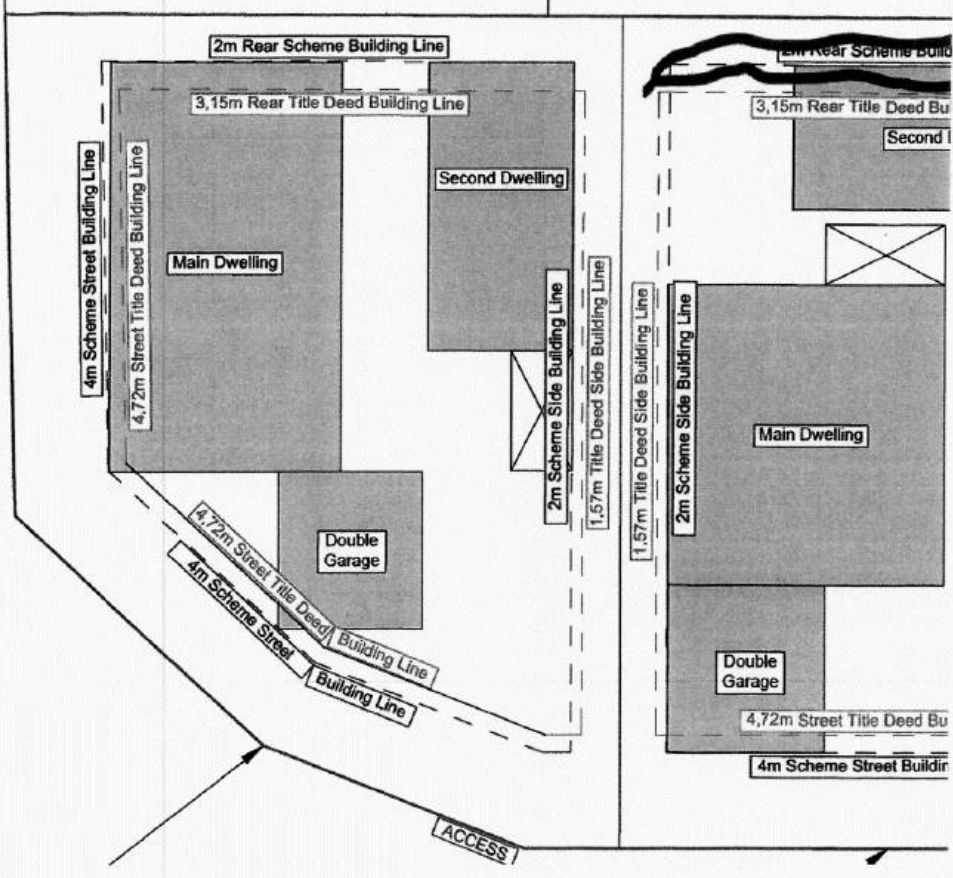


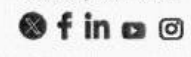
Figure 1: Extract of Plan 4 - Proposed subdivision



Kind Regards,  
 Gary Lombard  
 Cryoease Business Manager



Service that delivers the difference  
[www.airproducts.co.za](http://www.airproducts.co.za)



**Disclaimer**

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11/12

Loretta Gillion

Re: Erf 193 Fisherhaven

From: Lorraine Davies <  
Sent: Tuesday, 23 January 2024 11:44  
To: Loretta Gillion  
Subject: Re: Wrap

To Whom it may concern

I am the owner of ERF 601, 17 Schooner Avenue, Fisherhaven, and am currently in the process of building my home on the plot.

Though I have no objection to the subdivision of the plot mentioned above - ERF 193, I do object to erecting 2 properties on each of the subdivisions. Surely it is sufficient to erect a single dwelling on each of the subdivided plots?

Part of the charm of Fisherhaven is that the large plots create a rural environment. To place 4 dwellings on the original single plot will create a built-up, densely populated site which is counter-intuitive to the overall ambience of the village.

Though I understand the pressing need for accommodation and housing in the Overstrand region, I feel strongly that this level of density needs to wait until some future date when all of the ERFs in Fisherhaven have been sold and developed.

Yours faithfully

Lorraine Davies

TP n Abegile  
(M. Olivier)

OVERSTRAND MUNISIPALITEIT  
REKORDBEHEER  
23 JAN 2024  
DOCUMENT CONTROL  
OVERSTRAND MUNICIPALITY

FILE NO. 21 193  
Fisherhaven  
SCAN NO. 13  
COLLABORATOR NO. 1984520

TP 23 JAN 2024

12/12

**Loretta Gillion**

**From:** Bresler van Blerk <l...>  
**Sent:** Friday, 19 January 2024 16:22  
**To:** Loretta Gillion  
**Subject:** ERF193, SKOOLSTRAAT 2, FISHERHAVEN

OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

22 JAN 2024

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

TP - D. Albrecht  
 (D. Olivier)

Goeiedag,

Ek het 'n e-pos ontvang van WRAP Projects oor die opheffing van die beperkende titelakteenwaardes en onderverdeling van bogemelde erf. Die erf is 1525 m2 groot.

Ons erf is nie naby hierdie eiendom nie en ons sal dus nie direk geraak word deur 'n moontlike onderverdeling nie. Tog is ons besorg oor die aansoek en wil daarom die aansoek teestaan.

Fisherhaven is bekend vir sy landelike atmosfeer en redelike groot erwe. Hier bestaan 'n rustigheid juis vanwee die plattelandse atmosfeer en klein getal woonhuise. Hier is ook min verkeer.

Erf 193 mag dalk effe groter wees as die gemiddelde erf in Fisherhaven, maar enige onderverdeling met twee woonhuise op elk van die twee erwe, gaan dalk 'n **presedent skep**. As hierdie onderverdeling toegelaat word, beteken dit dat elke erfeienaar van ongeveer 750 m2 geregtig mag wees om twee woonhuise op een erf op te rig. Eienaars van erwe groter as 1200 m2 mag dan dalk ook dink aan onderverdeling.

Ons is van opinie dat dit dalk sal lei tot 'n onwelkome vermeerdering van huise en inwoners. Fisherhaven se strate is nie bedoel vir kwaai verkeer nie en die munisipaliteit moet die getal erwe en woonhuise so laag moontlik probeer hou. Ons dink nie die idee van 'n tekort aan wooneenhede in Fisherhaven is 'n geldige rede vir die aansoek nie.

Vriendelike groete

Celia en Bresler van Blerk

Erf 418

Sel nr.

FILE NO.	Erf 193 ✓
	Fisherhaven
SCAN NO.	
	HFH 193
COLLABORATOR NO.	
	1983563

TP

22 JAN 2024

1

Annexure F 1/4



# Project Office

Town Planning & Project Management

Our reference: 22/102  
Your reference: 193 HFH/4379/2023

5 April 2024

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

Attention: Mr Henk Olivier

**ERF 193, 2 SCHOOL ROAD, FISHERHAVEN: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION**

Your letter dated 6 March 2024, refers.

The comments and objections received are addressed herein.

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
08 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

*TP-N. Meak  
(H. Olivier)*

FILE NO. <i>Er 193</i>
<i>Fisherhaven</i>
SCAN NO.
COLLABORATOR NO.
<i>2026338</i>

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Unit B, Standard House,  
Cnr Royal and Dirkie Uys Street  
Hermanus

PostNet Hermanus Suite 170  
Private Bag X16, Hermanus,  
7200

Tel: +27 (0)28 313 1411  
Email: admin@wrapgroup.co.za  
Web: www.wrapgroup.co.za



WRAP Group Established 2002

- 8 APR 2024

<b>SUPPORT</b>
<p><b>Willem Marais Coop</b> <b>Erf 368</b></p> <p><i>Ek het geen beswaar met hulle beplanning nie, ek wens hulle voorspoed daarmee.</i></p>
<b>NEIGHBOURHOOD</b>
<p style="text-align: center;">Stefan and Janine Schoombie Celia en Bresler van Blerk</p> <p style="text-align: center;"><b>Response:</b></p> <p>The comments are noted. The owners are however not proposing to have a negative impact on the surrounding neighbourhood. The desire to maintain the area's unique character and tranquillity is paramount, and we share the commitment to preserving Fisherhaven's appeal.</p> <p>A single subdivision is not expected to drastically affect the entire Fisherhaven area or have a negative effect on the surrounding area.</p> <p>The owner's intention is not to disrupt the existing low-density, semi-rural setting of the neighbourhood. His aim is to enhance the property in a manner that respects and complements the surrounding environment while meeting the needs of current and future residents.</p> <p>Preserving Fisherhaven's status as a tourism destination is vital. The proposed amendments are aligned with this objective, seeking to enhance residential capacity without compromising the area's natural beauty and tranquillity. Responsible development can co-exist with promoting Fisherhaven as a tourism destination, and the owner is committed to ensure that any changes made contribute positively to this goal.</p> <p>Concerns about increased traffic and density are acknowledged. The owner is dedicated to implementing measures to mitigate any potential negative impacts on the neighbourhood in order to strike a balance between meeting the needs of residents and preserving the unique charm of Fisherhaven.</p>
<b>MISLEADING APPLICATION</b>
<p style="text-align: center;">Stefan and Janine Schoombie</p> <p style="text-align: center;"><b>Response:</b></p> <p>The objector confirmed that the property is larger than the average erven in Fisherhaven. The owner bought the property to subdivide due to its size and being a corner property. The location of the property is also advantageous as it is located close to the estuary and water's edge which adds value to the proposed development.</p>
<b>POLICY ALIGNMENT</b>
<p style="text-align: center;">Stefan and Janine Schoombie</p> <p style="text-align: center;"><b>Response:</b></p> <p>The comment is noted, but the motivational report indicates the methods how the application aligns with the applicable policies and legislation.</p>

**SERVICES**

Stefan and Janine Schoombie  
Executive committee - Friends of the Botriver Estuary and Environs

**Response:**

The sewage will be contained in closed conservancy tanks serviced by the municipality. The sewage system in the area can only be upgraded once the municipality has the required funds. As stated in the application, it should also be noted that the property owner will be required to pay a bulk services contribution levy that can be utilised by the OM to upgrade any service requirements in the area.

If more subdivisions are allowed, more funds will be available to ensure Fisherhaven's sewage system can be upgraded.

**ENVIRONMENTAL**

Stefan and Janine Schoombie  
Executive committee - Friends of the Botriver Estuary and Environs

**Response:**

The comments have been noted. The site has however historically undergone transformation and has been systematically cleared as per the municipality's request. It is unlikely that any form of Fynbos vegetation remained on the site. Nevertheless, an environmental consultant has been appointed to ensure that no critically endangered types of Fynbos vegetation have been affected by the clearing activities.

**PRECEDENT**

Executive committee - Friends of the Botriver Estuary and Environs

**Response:**

The application cannot establish a precedent, as town planning is inherently site-specific. The idea that approving this proposal would automatically justify approval for other applications is not considered a valid rationale. Each application is assessed independently, taking into account its unique site characteristics and merits, to ascertain its suitability for approval.

The Overstrand Municipality cannot be compelled to approve an application simply because the subdivision proposal for Erf 193 in Fisherhaven was allowed. The municipality is required to consider all factors that may influence their decision on an application.

**REAR BUILDING LINES**

Gary and Susan Lombard

**Response:**

This comment is noted and taken into careful consideration. It is important to highlight that the proposed development does not seek any departure from the established rear municipal building line. The owner is committed to adhere to the prescribed 2m building line, consistent with the zoning parameters for all single residential properties across the Overstrand municipality. The application is submitted to remove the restrictive title deed condition that restricts any building work to 3,15m.

A 2m building line not only complies with the OMLUS but also adequately addresses concerns regarding privacy for all parties involved.

**DENSITY**

Lorraine Davies  
Celia en Bresler van Blerk

**Response:**

There are numerous erven throughout the Overstrand, including Fisherhaven that are improved with two dwelling units. This is not considered out of the ordinary and is not expected to be a nuisance. Additionally, to continue above, no precedent can be created through this application as each application needs to be evaluated individually.

Additionally, as motivated throughout the application, the owner only wants to align with the allowed uses of the Overstrand Municipality Land Use Management Scheme, where a second dwelling is a primary right in terms of the zoning.

**Conclusion**

The objections received focus on several topics that were adequately addressed in this response. It is important to note that the owner was not aware of any important biodiversity present when he bought the property. To ensure that the property does not contain any significant flora, an environmental consultant was appointed to conduct a site visit and screening while submitting a listing notice application to the relevant authority.

Considering the response to objections, it is recommended that the planning application be approved as submitted.

Yours faithfully



**T. JANSEN**  
**PROFESSIONAL TOWN PLANNER (A/2858/2019)**

Annexure G 1/2

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION &  
SUBDIVISION: ERF 193, FISHERHAVEN (4379/2023)**

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

**Conditions:**

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

**1.1 Developments containing Sectional Title Units/ Commercial Buildings (non-free standing properties – property is not to be subdivided)**

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

**1.2 Developments with free standing properties (property that is subdivided and plots to be sold individually).**

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (2023/2024) is as follows:

**Freehold erven:**

Water	R 27 598.16 x 1	=	R 27 598.16
Sewerage	R 18 608.30 x 1	=	R 18 608.30
Roads	R 8 344.32 x 1	=	R 8 344.32
Stormwater	R 9 626.92 x 1	=	R 9 626.92
Solid Waste	R 1 668.44 x 1	=	R 1 668.44
<b>TOTAL (inclusive of VAT)</b>		<b>=</b>	<b>R 65 846.14</b>

Note:

- 1.3 **The above figures are estimates**  
1.4 **The above figures do not include investigation and connection fees**

2. that any part of the existing water and sewer services on Erf 193 that crosses the common boundary of Portion A and the Remainder of Erf 193 shall be disconnected and sealed off;
3. that the Remainder and Portion A of Erf 193 must be serviced with individual and separate water connections, which must comply with the standards of the Department: Operational Services;
4. that the proposed Portion A and Remainder of Erf 193 must each be serviced with individual and separate sewer conservancy tanks, which must comply with the standards of the Department: Operational Services, and to which the sewer services of the individual erven must connect to;
5. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
6. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
7. that any additional and / or extended vehicle entrances will be for the owner's account;
8. that stormwater be allowed to discharge through the proposed Erven, Fisherhaven, unobstructed.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE

Annexure H 1/2



Western Cape Government

Department of Environmental Affairs and Development Planning  
Tarryn Mourles | Melanese Schippers  
Development Management  
Tarryn.Mourles@westerncape.gov.za | Tel.: 021 483 8349

REFERENCE: 16/3/3/6/1/E2/8/1199/24  
DATE OF ISSUE: 14 May 2024

TP - A Theart  
(Hollivier)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
20 JUN 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

The Proponent  
PO Box 361  
ONRUS RIVER  
7201

Attention: Mr. J.C. Walker

Tel: 083 777 4275  
Email: johnnywalker7070@gmail.com

Dear Sir,

**THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) WITH RESPECT TO THE PROPOSED APPLICATION FOR SUBDIVISION AND THE REMOVAL OF TITLE DEED RESTRICTION FOR ERF 193, FISHERHAVEN.**

1. The applicability checklist and supporting documentation received by this Directorate on 29 April 2024, refer.
2. This letter serves as an acknowledgement of receipt of the above-mentioned documentation and to determine the applicability of the EIA Regulations, 2014 (as amended), with respect to the proposed activity.
3. Based on the information provided by you, this Directorate notes the following:
  - 3.1. The proposed activity entails the subdivision and removal of title deed restrictions for Erf 193, 2 School Road, Fisherhaven.
  - 3.2. The purpose of the proposed activity is to create two separate erven for residential development.
  - 3.3. The development of a primary- and secondary dwelling on both proposed subdivided erven will entail the following:
    - Portion A: A primary dwelling with a footprint of approximately 190m<sup>2</sup>, including a garage and a second dwelling with a footprint of approximately 78m<sup>2</sup>.
    - Portion B: A primary dwelling with a footprint of approximately 202m<sup>2</sup>, including a garage and a second dwelling with a footprint of approximately 72m<sup>2</sup>.

TP 20 JUN 2024

[www.westerncape.gov.za](http://www.westerncape.gov.za)  
Department of Environmental Affairs and Development Planning

FILE NO. Erf 193-HFH
SCAN NO.
COLLABORATOR NO. 70651271

- 3.4. Although the site is mapped to contain Hangklip Sand Fynbos which is classified as a critically endangered ecosystem, and Elim Ferricrete Fynbos which is classified as an endangered ecosystem, the site has been lawfully transformed and does not contain the vegetation types.
- 3.5. The proposed site is not located within 100m of the high-water of the estuary; and
- 3.6. The proposed site is not located within or within 32m of a watercourse.
4. You are herewith informed that the proposed development does not constitute any listed activity in terms of the EIA Regulations, 2014 (as amended).
5. This determination is based on the following:
  - 5.1. No development will occur within 100m of the high-water mark of the estuary;
  - 5.2. No development will occur within or within 32m of a watercourse; and
  - 5.3. The proposed development will not result in the clearance of vegetation that is classified as a critically endangered or endangered ecosystem.
6. Written Environmental Authorisation would therefore not be required from the competent authority (in this instance the Directorate) prior to the undertaking of the said development.
7. However, should any revision of the proposed development constitute a listed activity(ies) in terms of the NEMA EIA Regulations, 2014 as defined in Listing Notices 1, 2 and 3 an application must be submitted, and environmental authorisation obtained before such activity(ies) may commence.
8. The applicant must comply with any other statutory requirements that may be applicable to the development.
9. The applicant is reminded of his/her general duty of care and the remediation of environmental damage. Section 28(1) of NEMA specifically states that –“Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.”
10. This Directorate reserves the right to revise or withdraw its comments and request further information based on any new or revised information received.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully

**Melanese Schippers**  
 Digitally signed by  
 Melanese Schippers  
 Date: 2024.05.14  
 08:44:20 +02'00'

**pp HEAD OF COMPONENT  
 DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

CC. Ms Penelope Aplon (Overstrand Municipality)

Email: [pcaplan@overstrand.gov.za](mailto:pcaplan@overstrand.gov.za)



Annexure I 1/2

## CONSERVATION INTELLIGENCE

postal 16 17th Avenue, Voëlkop, Hermanus, 7200  
 physical 16 17th Avenue, Voëlkop, Hermanus, 7200  
 website [www.capenature.co.za](http://www.capenature.co.za)  
 enquiries Rhett Smart  
 telephone 087 087 8017  
 email [rsmart@capenature.co.za](mailto:rsmart@capenature.co.za)  
 reference LS14/2/6/1/7/2/193\_subdivision\_Fisherhaven  
 date 4 June 2024

Overstrand Municipality  
 P.O. Box 20  
 Hermanus  
 7200

Attention: Henk Olivier  
 By email: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

Dear Mr Olivier

TP-A Theart  
(H Olivier)

OVERSTRAND MUNISIPALITEIT REKORDBEHEER 05 JUN 2024 DOCUMENT CONTROL OVERSTRAND MUNICIPALITY
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**Additional Information for Application for Subdivision and Removal of Title Deed Restrictions on Erf 193, 2 School Road, Fisherhaven**

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

CapeNature recommended that an applicability checklist should be provided to the Department of Environmental Affairs and Development Planning (DEA&DP) for the proposed subdivision and construction of dwellings on the subject property. The applicability checklist indicated that environmental authorisation is not required.

The basis for the decision is that there is no indigenous vegetation remaining on site, as the activity which may have been triggered is clearing of indigenous vegetation within an endangered or critically endangered ecosystem. The applicability checklist compiled by an environmental assessment practitioner indicated that the vegetation on site is highly transformed and degraded and photographs were provided in support of this.

While the legal definition of indigenous vegetation according to the National Environmental Management Act (NEMA) states that this is regardless of the level of alien infestation, it is evident from Google Earth imagery that there was clearing of the erf in 2021. It is assumed that this is the reference in the DEA&DP response that the site was lawfully transformed. It is evident that the site does not currently contain habitat which is conservation worthy. Independent verification of the condition of the site has been provided.

In conclusion, CapeNature is therefore satisfied that the proposal will not have a significant impact and do not object to the application.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

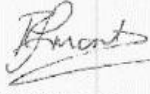
The Western Cape Nature Conservation Board trading as CapeNature

Board Members: Associate Prof Denver Hendriks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Margaret Mervyn, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

05 JUN 2024

FILE NO. Erf 193-HFH
SEARCHED
INDEXED
COLLABORATOR NO. 2058877

Yours sincerely

A handwritten signature in cursive script, appearing to read "Rhett Smart".

**Rhett Smart**  
**For: Manager (Landscape Conservation Intelligence)**

cc. Thian Jansen, WRAP Group