



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

A G E N D A

DATE:	27 JUNE 2024
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

20 June 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 on **Thursday, 27 June 2024 at 10:00** in the **Town Planning Committee Room**, 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 S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Secretariat

MUNICIPAL PLANNING TRIBUNAL (MPT)

27 June 2024

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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 30 May 2024

4. ITEM FOR CONSIDERATION

4.1 ERF 876, 16 FRIEDA ROAD, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, RELAXATION OF TITLE DEED AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF DR. JE COETZEE

Report attached

4.2 PORTION 156 OF FARM HANGKLIP NO. 559, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USES AND DEPARTURE: WRAP PROJECT OFFICE ON BEHALF OF B TOPHAM

Report attached

4.3 PORTION 231 OF THE FARM AFDACS RIVIER NO. 575, BENGUELA COVE, A DIVISION OF CALEDON, OVERSTRAND MUNICIPAL AREA: PROPOSED CONSENT USE AND DEPARTURE: HIGHWAVE CONSULTANTS (PTY) LTD ON BEHALF OF BENGUELA COVE INV (PTY) LTD.

Report attached

4.4 ERF 2908, 51 ATLANTIC DRIVE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: ENGELBRECHT & SCORGIE ARCHITECTURAL OFFICE ON BEHALF OF LIANRI TRUST

Report attached

4.1

**ERF 876, 16 FRIEDA ROAD, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR DEPARTURE, RELAXATION OF TITLE DEED AND DETERMINATION
OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON
BEHALF OF DR. JE COETZEE**

876 KPRB (4427/2023)

H van der Stoep
5 March 2024

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 30 June 2023 from Plan Active Town & Regional Planners on behalf of Dr. JE Coetzee on Erf 876, Pringle Bay in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the street building line from 4m to 3,9m to accommodate a portion of the existing covered stoep, and the use change of the existing covered balcony into a braai room.
- ❖ and relax the lateral building line from 2,0m to 1,14m to accommodate a portion of the existing garage.
- ❖ and relax the lateral building line from 2,0m to 1,49m to accommodate a portion of an existing bathroom and outdoor shower.

- ❖ **Relaxation** of Clause B.6.(b) of Title Deed No. T59856/2017 to relax the street building line from 5m to 3,9m to accommodate a portion of the existing covered stoep, and the lateral building line from 1,5m to 1,14m and 1,49m respectively to accommodate a portion of the existing garage, the use change of the existing balcony into a braai room and a portion of an existing bathroom and outdoor shower.

- ❖ **Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate the unauthorised land uses as stipulated above.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The property measures 736m² in extent and located in Pringle Bay Township, Extension 3. The property is zoned Residential Zone 1: Single Residential and is surrounded by residential erven.

The As-Built survey confirmed that the position of the house differs from the position of the approved building plan. The dwelling was built at a slight angle and not parallel to the lateral boundaries. Subsequently small portions of the existing building and double garage established on Erf 876 encroach the Zoning Scheme Regulations and the Title Deed building lines. The intention of the owner is to address the unauthorised encroachments in order to obtain approved building plans for all structures on the property.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

DEPARTURE: LAND USE SCHEME

- The application for the relaxation of the street building line from 4m to 3,9m to accommodate a portion of the existing covered stoep on ground floor and a portion of the braai room on first floor;
- The relaxation of the lateral building line from 2m to 1,49m to accommodate a portion of the existing bathroom and outdoor shower;
- Relaxation of the lateral building line from 2m to 1,14m accommodating a portion of the existing garage.

The encroachment of the portions of the covered stoep on ground floor and the open braai on the first floor was inherited by the current owner. The owner has however enclosed the covered balcony on the first floor and changed it into a braai room. The portion of the dwelling does not have any negative impact on the neighbouring properties or the traffic flow of the street. The encroachment can be seen as a minor infringement of 0,1m.

The bathroom, outdoor shower and garage located on the eastern side of property and encroaches the building line with approximately 0,86m and does not have any negative impact on the neighbouring property.

No complaints have been received and has obtained neighbours consent as was identified by the Municipality and the Pringle Bay Ratepayers.

DEPARTURE: TITLE DEED

- Section B. 6 (b) reads that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m or the rear or 1,5m from the lateral boundary common to any adjoining erf.
- The application is thus for the relaxation of the street building line from 5m to 3,9m and the lateral building line from 1,5m to 1,49m and 1,14m, respectively. This relaxation is necessary to accommodate the encroachments of the existing building.

ACCESS

Access will be obtained from Freda Road.

SERVICES

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

RELAXATION OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

The abovementioned section B.6.(b) makes provision that an application may be lodged for the relaxation of the prescribed building lines. A prerequisite is that consent letters from the neighbouring landowners must accompany such an application. The prerequisite has been met and the consent letters have been attached.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:

The owner Mr Coetzee bought the property with the current building in its present position.

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

The unauthorised building work was partially erected by the owner. The unauthorised encroachment amounts to 11m². It is important to note that the footprint of the dwelling was incorrectly positioned by the previous owner. The position and nature of the unauthorised additions are unobtrusive in nature and does not impact negatively on the surrounding properties, as no complaint from the surrounding owners have been received.

(b) the conduct of the person (allegedly) involved in the contravention.

The unauthorised building work by the owner consists of a bathroom and outdoor shower. The owner also enclosed the open balcony on first floor into a braai room. The owner is in the process to address the above-mentioned.

(c) whether the unlawful conduct was stopped

The owner appointed a Land Surveyor to compile an As Built survey due to the suspicion that there may be transgression. The owner appointed an architect to compile an as built plan to rectify the transgressions.

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

Should the Municipality require a Quantity Surveyor report, it can be submitted.

(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.

To their knowledge the applicant has never previously contravened any By Law.

POLICY DOCUMENTS:

Overstrand Municipality Spatial Development Framework, 2020

The subject property is earmarked for urban development purposes. The property is zoned Residential 1, and the zoning will be retained.

Overstrand Growth Management Strategy, 2010

The property falls within Planning Unit 2 which consists primarily of the northern existing built-up area of Pringle Bay. No densification proposals are made for this planning unit. The application will have no impact on the density.

Heritage Overlay:

The property is not located within the heritage overlay.

Environmental Overlay:

The property does not fall within the environmental overlay zone.

CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:

- **Spatial Justice**
The main goal of the application is to address unauthorised encroachments and additions that will not have an impact on the neighbouring properties.
- **Spatial Sustainability**
The application will have no impact on the conservation worthy areas.
- **Spatial Efficiency**
The application will promote the logical optimisation of the current and future use of space of the subject property.
- **Spatial Resilience**
The principle refers to the flexibility of spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities to be able to resist, absorb and accommodate economic and environmental shocks and to recover from these shocks.
- **Good Administration**
Our company is committed to follow the required procedures as determined by the Municipality.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Registered notices	No		
Internal departments	Yes	18 August 2023	22 September 2023
Ward Councillor	Yes	18 August 2023	22 September 2023
Total comments	ONE (1)		
Total letters of support	FOUR (4) consent letters were submitted.		

Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?	Yes
Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

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

Name	Date received	Summary of comments
Engineering Services	15/11/2023	See Annexure G.

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

The application was distributed to the four (4) surrounding neighbours who all gave their consent for the application. See Annexure H.

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

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

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

OBJECTION - Administrative Penalty

The legalising, by levying of an Administrative Penalty, of structures in the present application that can possibly be removed without disproportionate cost to the benefit obtained for the community. It is requested that the legitimate alternative, order the removal of the structures to the extent that they contravene the building lines. The municipality must order the removal of structures that can be situated elsewhere on an erf and not create new precedent which could result in unwanted building activities from property owners.

APPLICANT'S RESPONSE

When determining an appropriate administrative penalty, the Authorised Official, Tribunal or Appeal authority, as the case may be, must take into consideration of the information provided by the applicant in Subsection (3) and may request additional information.

With the proposed application the following factors are important:

- In previous years it was not a prerequisite that land should be surveyed before it is developed and land surveyors did not set out these houses in relation to their actual boundaries before construction, therefore there is many contraventions without the knowledge the of the landowners, especially in Rooi Els, Pringle Bay and Betty's Bay.
- The owner purchased the property with the garage encroaching the building lines.
- The encroachment of the stoep was inherited and the present owner enclosed the stoep.
- The owner agrees that he is responsible for the addition of a small shower and toilet next to the house.

This was discussed with the Ratepayers on 15 May 2023 and the statement is incorrect that they purposefully tried to avoid the regulations.

With regard to creating a precedent and the impact on the spatial character on the town, it is unclear what the Ratepayers means since it was not described or discussed in the objection. The detail as required by the By-Law on Municipal Land Use Planning, 2020, was not supplied to comment on the objection.

TOWN PLANNER'S RESPONSE

The objection to a nil administrative penalty is noted.

OBJECTION - Title Deed Conditions

The application should be withdrawn and submitted in terms of Section 47 of SPLUMA, which refers to the conditions being removed, amended and or suspended with the approval of the Municipal Tribunal. The intention of Section 47 is furthermore confirmed by Ex. Parte Whitefield and Related matters 2017 (5) SA 161 (ECP) (28 March 2017) paragraph 37, which reads as follows: "... Section 47(1) says no more than that a restrictive condition may, pursuant to the Spatial Planning Act (SPLUMA), be removed with the consent of a municipal tribunal. Such consent is to be obtained in the prescribed manner, i.e. by way of an application made to the municipal tribunal and is to be granted subject to ss 42 and 47(2). The process is further described in the SPLUMA Regulations Schedule 5, Clause 1, which donates the present application as a Category 1 Application. The Overstrand Municipal Tribunal must thus consider the application and not the Authorised Official.

However, we concur that in the event of an outbuilding, the local authority may consent to the erection thereof, being the Authorised Official. The applicant's argument in its Paragraph 3.7 clearly states that an application is lodged for the consent of the Administrator and not for the approval of an outbuilding extending into the building line.

APPLICANT'S RESPONSE

It is clear that the Pringle Bay Ratepayers is not in agreement of the process followed by the Overstrand Municipality with regard to the relaxation of Title Deed Conditions.

TOWN PLANNER'S RESPONSE

The Ratepayers confuses the application in terms of SPLUMA read with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, and a consent, in terms of the Title Deed. The application is not in terms of Section 47 of SPLUMA read with Section 16(2)(f) in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. Therefore, the argument of the objectors that the application is subject to the requirements of Section 47 read with Section 16(2)(f) is thus not applicable.

Taken due cognisance of the objectors reasoning, which relates to Section 45(6) of SPLUMA which reads as follows: "where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or controlling authority is deemed to be a reference to the municipality." Read with Section 47 of SPLUMA which states the following:

1. "A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner be removed, amended or suspended
2. A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected:
 - a. In accordance with Section 25 of the Constitution and this act'
 - b. With due regard to the respective right to of all those affected, and to the public interest; and
 - c. In the prescribed manner, if such removal, amendment or suspension will deprive any person of property as contemplated in Section 25 of the Constitution".

The intention of Section 47 is furthermore confirmed by Ex Parte Whitefield and Related Matters 2017 (5) SA 161 (WECP) (28 March 2017), paragraph 37. The objector has taken paragraph 37 of the ruling in a case with reference to the Municipal Tribunal, which is not relevant in this application. Section 47 is not in dispute in terms of the Municipal Tribunal function, should the land use application be allocated in Category 1 as per the Overstrand Categorisation Schedule.

The objectors fail to take due cognisance of the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015, Chapter 3, which relates to Land Development and Land Use Applications.

Section 14 deals with the submission of land development and land use application:

- (1) A Municipality must, at least determine (a) the manner and format in which a land development and land use application must be submitted.

Section 15: Categories of land development and land use applications:

Section 15 (4) stipulates as follows:" The municipality must determine which category of land development and land use applications must be considered and determined by the authorised official and which category must be considered and determined by the Municipal Planning Tribunal and may use the standard division of functions contained in schedule 5."

The word that is of importance is that the Municipality **may use** the standard division of functions and **not must**. Thus, the assumption of the objector that schedule 5 is mandatory is incorrect.

The categorisation of land use applications was approved in 2015 and stipulates which authority is responsible for land use applications.

In terms of the land use categories, Category 1 is applications that the Municipal Tribunal deals with. Category 2 applications are dealt with by the Authorised Official, which includes relaxation and departure applications.

The pre-requisite for a relaxation is that the adjacent neighbours must consent to the application, if it is not the case; the procedure is that the applicant will have to lodge an application for the removal of restrictive conditions. The Pringle Bay Ratepayers is not an adjacent owner, but a representative of the community in its broadest sense. In this case, the adjacent owners gave their consent and therefore the Pringle Bay Ratepayers in terms of the process cannot overrule the consent given by the adjacent owners, who they represent as per introduction of their objection letter dated 18 September 2023.

The application is thus not unlawful due to non-compliance, since the procedure as stipulated by the Overstrand Municipality procedure for the relaxation of title deed building lines has been complied with by the applicant.

OBJECTION - Advertisement

Overstrand Municipality must in terms of the OM policy requirements publish all land use applications on the OM website. The legal precedent of legitimate expectations is set out as follows in the well-known case of Trustees of the Simcha Trust v Da Cruz and Others; City of Cape Town v Da Cruz and Others [2018] ZACC 8.

The OM website does reflect applications for removals, consent uses and departures and therefore the application is non-compliant.

APPLICANT'S RESPONSE

The application was discussed with the Municipality and the request was made to obtain the adjacent neighbours' consent. In a meeting with the Ratepayers, a request was made to obtain all the surrounding adjacent owners, which the applicant proceeded to obtain.

TOWN PLANNER'S RESPONSE

In terms of the By Law, Section 47 refers to notification in the media. Section 48(1) and (2) stipulates which application must follow the notification process.

Section 48(3) reads as follows:

"The Municipality may require the serving of a notice as contemplated in this section for any other application made in terms of the By-Law."

Thus, there is no requirement for the Municipality to place the application for a relaxation on the municipal website if neighbours' consent is obtained. The adjacent landowners are the people with legitimate expectations on development as a direct neighbour and their consent is imperative to accept the application as a relaxation. A normal departure is advertised and sent to the surrounding owners, and if an objection is received, it will be dealt with accordingly. In the case where there is a relaxation and a departure, the notification is dealt with as one and should consent not be obtained, the objection is dealt with accordingly. The Ratepayers requested that they be notified of all applications and in this case, they were notified as requested.

✚ **OBJECTION** - ***“Restrictive conditions on a title deed are placed for a specific reason and the removal of these conditions should not be considered lightly.”***

It is not desirable that a title deed restriction be removed in order to legalise an illegal structure.

In a previous OM Appeal Decision:

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

APPLICANT'S RESPONSE

The application will not create a precedent. It is a fact that many houses in Pringle Bay encroach building lines and erf boundaries due to the fact that erf boundaries that were not verified by land surveyors and houses were also not set out by them in the past.

TOWN PLANNER'S RESPONSE

First and foremost, the application is not for a removal of restrictive conditions. The objection only addresses the scenario of a removal of restrictive conditions, which has no bearing on the application.

The reference to a previous OM appeal decision is not referenced and thus can the context not be discussed or evaluated and is dismissed. However, that being said, the house and transgressions, except for the bathroom and outdoor shower, have been part of the spatial character of Pringle Bay as far back as 2006. The transgression of 0,51 (the bathroom and outdoor shower) over the 2m lateral Land Use Scheme and a transgression of 0,01m over the title deed building line of 1,5m will have an insignificant impact on the spatial character of Pringle Bay.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

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

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 Background**

N/A

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

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

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application is to legalise existing transgressions and unauthorised building work. None of the aforementioned has any impact on biodiversity and or environmental sensitive area on the erf. These transgressions date back to 2006. The unauthorised building work does not have any impact on the environment.

Efficiency

The locality of the existing dwelling will ensure efficient use of the property. Municipal services will not be influenced.

Spatial Resilience

The structures will be approved in terms of National Building Regulations. The requirements of SANS will ensure resilience and energy efficiency of the structure. The principle also advocates that developments must be able to stand economic and environmental shocks and the demolition of the structures consisted of 3m² within the erf boundaries will not be in the interest of the principle. There is no financial benefit for the community should the transgressions be requested to be demolished, but rather have an economic impact on the applicant.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

The application is in line with the SDF 2020.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services provided by the Municipality will be used.

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

Approved building plans dated 1989, 2002 and 2006 were investigated and clearly indicates that the building was placed diagonally on the erf and not squarely as indicated in building plans dated 2002 and 2006. The additions as per approved building plan, due to incorrect location on the erf, lead to the transgressions.

10.8 Existing and proposed zoning comparisons and considerations.

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

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

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

The Pringle Bay Ratepayers does not agree with the process of the relaxations followed by the Municipality. The process is similar to the process followed by the Western Cape Government: Environmental Affairs and Development Planning before SPLUMA. However, the Municipality will only allow a relaxation if consent is obtained from the affected neighbouring properties. If not, the applicant must submit a Removal of Restrictive Title Deed conditions application. The criteria for a relaxation application are based on the situation of an individual erf and are predominantly to rectify houses that have been incorrectly placed on the erf and or environmental or topographical informants to the erf.

In this case, the original building plan was approved in 1989. The dwelling did not transgress any building lines, which was 5m street building line, 2m lateral building line and 3m rear building line and the lateral building line in terms of the Title Deed of 1,5m.

The subsequent building plans dated 2002 and 2006 shows the house as square with the erf boundaries. Therefore, on the plan the garage and stoep do not transgress any building lines.

It is clear that the house placement of the erf and building plans since 2002 is not in line with each other. The surveyed plan clearly shows that a portion of the garage, stoep and bathroom transgresses the title deed and land use building lines. Google Earth clearly shows the transgression dates back to 2006, the stoep was still an open stoep and since 2011 the stoep was enclosed. Thus, according to Google Earth, 2011, the transgressions e.g. stoep and garage is located as per the surveyed plan. The assumption can be made that the stoep and the garage were built incorrectly and not in accordance with the approved building plans. The reason being, that the placement of the building in 2006 was incorrectly indicated on the building plan and that the house is diagonally placed on the erf.

The applicant did acknowledge the transgression of the en-suite bathroom and outdoor shower that was built without approved building plans; however, he bought the house with the garage and the open stoep in its present location. He also acknowledges that he enclosed the open stoep, but on the existing footprint.

The Ratepayers does indicate that the application will have an impact on the spatial character of Pringle Bay, they did not elaborate on this issue. It can be dismissed since the built character of Pringle Bay varies substantially. It is unclear why the Ratepayers object to a building that has been in existence since 2006 and request that it should be demolished. In the past 17 years no record can be found of an objection from the Ratepayers pertaining to this dwelling. Thus, the application can at the very least have very little bearing on the spatial character of Pringle Bay, but rather forms part of the existing spatial character of the town.

ADMINISTRATIVE PENALTY

The applicant acknowledges the ensuite bathroom and the enclosure of the open stoep. The open stoep does not add footprint but does change the use of the stoep to a braai room.

Calculations:

Enclosed stoep:	2,5m ² (1/2 x 1 x 5)
Bathroom:	0,5m ² (1/2 x 0,5 x 2)
Total transgression:	3m ²

In terms of the budget:

Formal Structure-habitable (erven larger than 150m²) per square meter:
 R19 107-00 (VAT inclusive)
 R19 107-00 x 3 = R57 321-00

5% of R57 321-00 = R2 866-05

Reasons for 5% determination:

Enclosed stoep:

The footprint of the stoep remains unchanged and remains habitable. The transgression over the 5m title deed building line is 1,1m and over the 4m land use building line is 0,1m.

En suite bathroom:

The applicant built the bathroom without building plans. The transgression over the 1,5m Title Deed is 0,01m and over the 2m land use scheme building line is 0,51m.

The owner immediately addressed the transgressions once it was found that the building was not built according to plan by the land survey's survey plan conducted to establish the placement of the building on the erf.

It should be noted that the garage can be dealt with neighbour's consent and thus is not part of the determination of the administrative penalty. The determination of the penalty is only applicable for the areas transgressing the building lines.

The impact of the transgressions is insignificant and has been in existence from 2006.

CONCLUSION

It is clear that the impact over the set of building lines as depicted on the surveyor's diagram is insignificant and not visible, as clearly indicated that over the past 20 odd years none of the community has lodged a complaint of the building transgressing the building lines.

In their preamble the Pringle Bay Ratepayers indicates that they represent the ratepayers within the urban edge, however the surrounding owners adjacent to the property, thus ratepayers, has consented to the application. It is unclear why the Pringle Bay Ratepayers does not respect their own ratepayers' decisions, since it is the same ratepayers that give the Pringle Bay Ratepayers as an organisation a voice and mandate.

Legality of the Objector (Pringle Bay Ratepayers) as an interested person:

The question arose whether the Objector, in this case, must be awarded appeal right against a decision of the Municipal Planning Tribunal. The opinion (attached as Annexure I) does not consider the objector as an interested person and came to the following conclusion that "*In the event that a question arises as to whether a person is an interested person in a land development application or an appeal, the Municipal Planning Tribunal or Appeal Authority concerned may make a determination as to whether such person qualifies as an interested person*".

13. RECOMMENDATION

1. that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 876, Pringle Bay for the relaxation of restrictive title deed condition B.6.(b) of Title Deed No. T59856/2017 to relax the street building line from 5m to 3,9m to accommodate a portion of the existing covered stoep, and the lateral building line from 1,5m to 1,14m and 1,49m respectively to accommodate a portion of the existing garage and the use change of the existing balcony into a braai room and a bathroom and outdoor shower, **be approved**, in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 876, Pringle Bay for a departure to relax the street building line from 4m to 3,9m to accommodate the roofed stoep and enclosed balcony (now braai room) on first floor and relaxation of the lateral building line from 2m to 1,49m and 1,144m respectively to accommodate a bathroom, outdoor shower and garage on the property and the use change of the existing covered balcony into a braai room, **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the approvals in Points 1 and 2 above be subject to the following conditions:
 - (a) that the approval be limited to the building/structures as indicated on Plan numbers C.708.P (1- 6) dated 23 March 2023, as submitted with this application;
 - (b) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
 - (c) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (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 G), be complied with.
4. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 876, Pringle Bay to accommodate the unauthorised land uses as stipulated above, **be imposed**, and that an administration penalty fee of R2 866,05 (*VAT included*), be payable within thirty (30) days of the decision.
5. that the applicant be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

6. that the Municipal Planning Tribunal must determine in terms of Section 45(4) of SPLUMA whether the objector is an interested person and be notified of their right to appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020

14. REASONS FOR RECOMMENDATION

POINT 1 & 2

- ❖ The dwelling on the erf has been incorrectly depicted on the approved building plans and the applicant on its own accord lodged the application to rectify the situation.
- ❖ The dwelling, with the exception of the bathroom and outdoor shower has been in existence on the erf since 2006.
- ❖ The building as depicted on the surveyed plan has been part of the spatial character of Pringle Bay since 2006 and as per Google Earth, 2011 and thus can the present application not be deemed out of character of the town Pringle Bay as per the objection.
- ❖ Previous years land surveyors were not involved in the layout of the development on an erf and applications to rectify transgressions is more prevalent than in years gone by.
- ❖ The total transgression over the building lines is 3m² of which 0,5m is over the Title Deed building line. Insignificant transgression, which has no impact on the area.
- ❖ None of the adjacent residents objected to the application.

POINT 4

- ❖ The footprint of the stoep remains unchanged and remains habitable. The transgression over the 5m title deed building line is 1,1m and over the 4m land use building line is 0,1m.
- ❖ The applicant built the bathroom without building plans. The transgression over the 1,5m Title Deed is 0,01m and over the 2m land use scheme building line is 0,51m.
- ❖ The owner immediately addressed the transgressions once it was found that the building was not built according to plan by the land survey's survey plan conducted to establish the placement of the building on the erf.
- ❖ It should be noted that the garage can be dealt with neighbour's consent and thus is not part of the determination of the administrative penalty. The determination of the penalty is only applicable for the areas transgressing the building lines.
- ❖ The impact of the transgressions is insignificant and has been in existence from 2006.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plans
Annexure D:	Title Deed T59856/2017
Annexure E:	Objection received
Annexure F:	Applicant's response to the objection received
Annexure G:	Services Report
Annexure H:	Consent letters provided
Annexure I:	Legal opinion

SIGNATURE

REGISTERED PLANNER

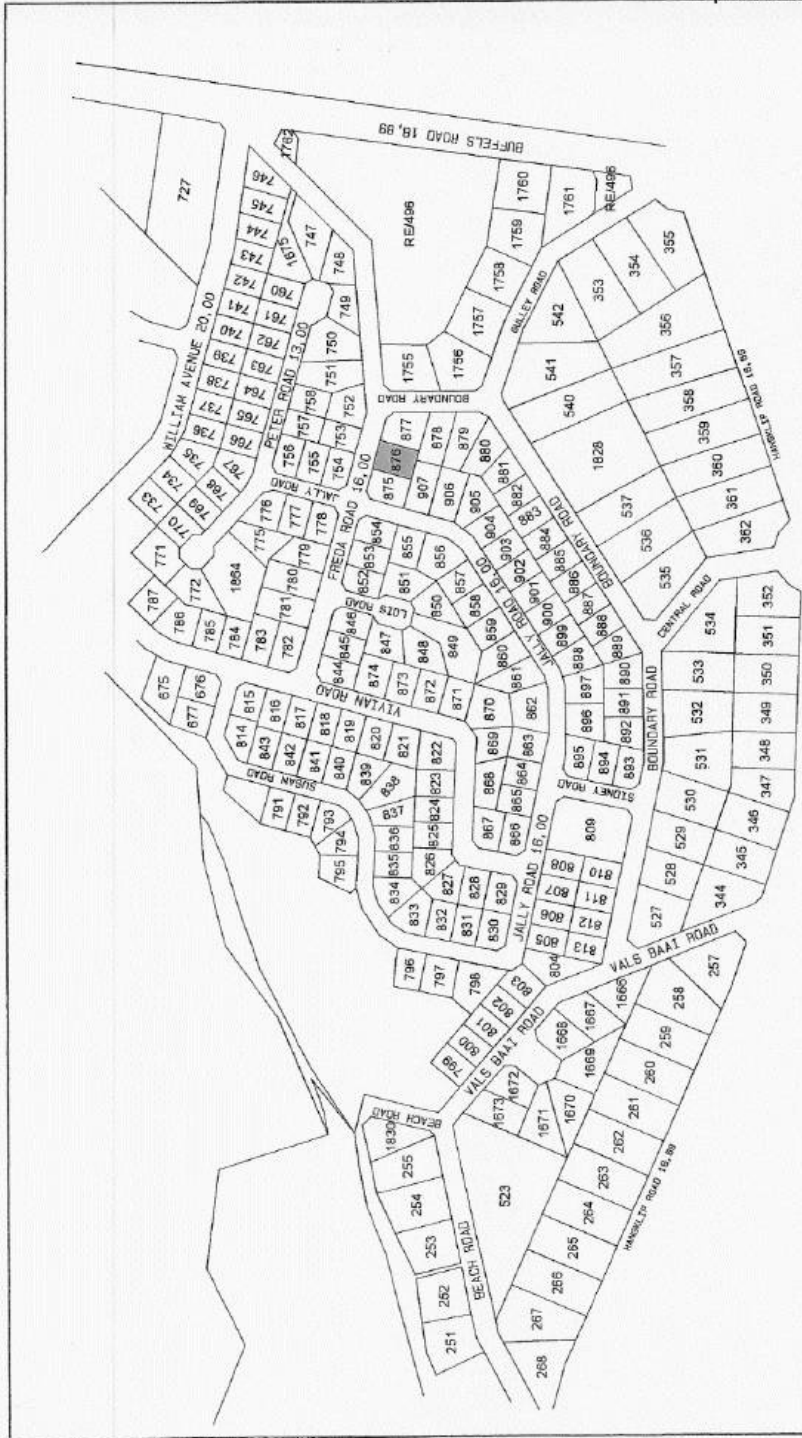
Name: **H VAN DER STOEP**

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

Signature: _____

Date: _____

Annexure A



Plan Stads- en Streeksbeplanners Active Town & Regional Planners	Property Description: PRINGLE BAY	Plan Description: LOCALITY MAP	Scale: NTS
	All distances approximate and subject to survey. COPY RIGHT RESERVED	Drawing Nr: ESF 876 PRINGLE BAY.dwg	Date: JUNE 2023

**DETERMINATION OF AN
ADMINISTRATIVE PENALTY AND
PROPOSED BUILDING LINE
DEPARTURES IN TERMS OF THE
SCHEME REGULATIONS AND TITLE
DEED**

ERF 876 PRINGLE BAY
DIVISION: CALEDON
OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

The owner of Erf 876 Pringle Bay, Dr. J.E. Coetzee, has instructed the company Plan Active Town and Regional Planners, to apply for the determination of an administrative penalty and departure from the building lines as prescribed in the Overstrand Municipality Zoning Scheme Regulations and the applicable Title Deed. A double storey dwelling with a double garage is established on the subject property.

The As built survey confirmed that the physical position of the dwelling differs from the position of the dwelling as indicated on the approved building plan. The dwelling was built at a slight angle and not parallel to the lateral boundaries as intended. Subsequently small portions of the existing dwelling and double garage established on Erf 876 Pringle Bay encroach the Zoning Scheme Regulations and Title Deed building lines. The intention of the owner is to address the unauthorised encroachments in order to obtain approved building plans for all the structures, as established on the subject property, from the Building Control Department.

Motivation report

Erf 876 Pringle Bay is 736m² in extent and is held by Title Deed Number T59856/2017.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the building line departures.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.
- Section B.6.(b) of the relevant Title Deed that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority.

3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

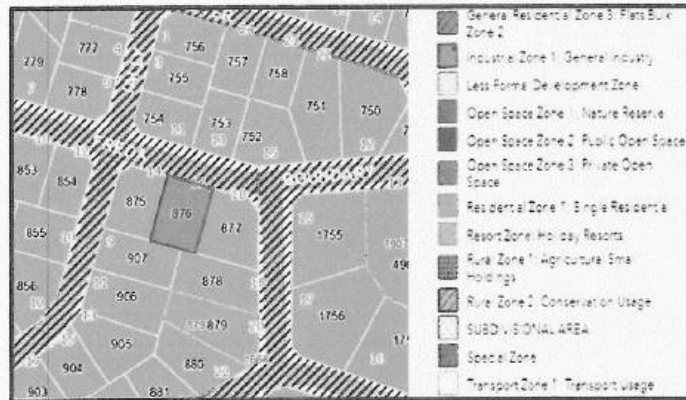
Erf 876 Pringle Bay is situated at 16 Freda Road, Pringle Bay and is 736m² in extent. Please refer to the enclosed locality map and the aerial photograph abstract below.



Motivation report

3.2 ZONING

According to the zoning map abstract from the Overstrand Municipality GIS System the subject property is zoned Residential Zone 1: Single Residential. Please refer to the zoning map abstract below:



3.3 LAND USE

Erf 876 Pringle Bay is used for single residential purposes. A double storey dwelling with a double garage is established on Erf 876 Pringle Bay.

Land uses that surround Erf 876 Pringle Bay are single storey dwellings, double storey dwellings and public roads. It is therefore evident that Erf 876 Pringle Bay is situated within a predominantly residential area.

3.4 PROPOSAL

The following is proposed in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the building line departures.

Motivation report

- Section B.6.(b) of the relevant Title Deed that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority.

The intention of the owner of Erf 876 Pringle Bay is to legalise the existing unauthorised alterations and additions made, that encroach the Zoning Scheme Regulation building lines as well as the Title Deed building lines.

The unauthorised alterations that need to be addressed are; a portion of the existing covered stoep on the ground floor and the braai area on the first floor, these areas encroach the street Zoning Scheme Regulations and Title Deed building lines. On the eastern side of the subject property, a portion of the existing garage, bathroom and outdoor shower encroach the lateral Zoning Scheme Regulations and Title Deed building lines. The detail of the proposed application is as follows:

3.4.1. Determination of an administrative penalty

The owner of Erf 876 Pringle Bay, Mr. J. E. Coetzee, purchased the property with the dwelling in its current position. The existing approved building plans indicate that the dwelling and garage should be positioned parallel with the common boundary wall adjacent to Erf 877 Pringle Bay.

The owner purchased the subject property with the house being mispositioned onsite. Subsequently he inherited the following building line encroachments in terms of both the Zoning Scheme Regulations and the Title Deed:

- a corner of the existing covered entrance;
- covered balcony on the first floor (later enclosed and changed into a braai room;
- a corner of the garage.

Motivation report

The covered balcony mentioned above on the first floor was enclosed and changed into a braai room and a toilet, and an outside shower was also constructed on the eastern side of the dwelling on the ground floor, by the current owner.

The current owner made additions and alterations to the existing structures situated on the property, without any land use or building plan approvals. The additions that were made by the current owner encroach the lateral Zoning Scheme and Title Deed building lines on the eastern side of the subject property where the bathroom and outdoor shower are established. The following unauthorised building work was established on the subject property as tabled below:

Structure	Encroachment
A portion of the covered stoep on the ground floor and braai area on the first floor	Encroachment of the street Scheme and Title deed building line
A portion of the double garage	Encroachment of the street Scheme and Title deed building line
A portion of the bathroom and outdoor shower	Encroachment of the street Scheme and Title deed building line

The intention of the property owner is to address the unauthorised building work by applying for the determination of an administrative penalty and departures from the Title Deed and Zoning Scheme building lines. The intention is to obtain building plan approval after the land use application has concluded. It is important to note that the current position of the dwelling and garage was inherited by the current owner as existing approved building plans indicate that the structure should be parallel with the eastern boundary line.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**, an application is made for the determination of an administrative penalty for unauthorised land uses. In terms of **Chapter 10, Section 90(1)**, "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

Motivation report

In terms of **Chapter 10, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must to the satisfaction of the municipality, provide the following:

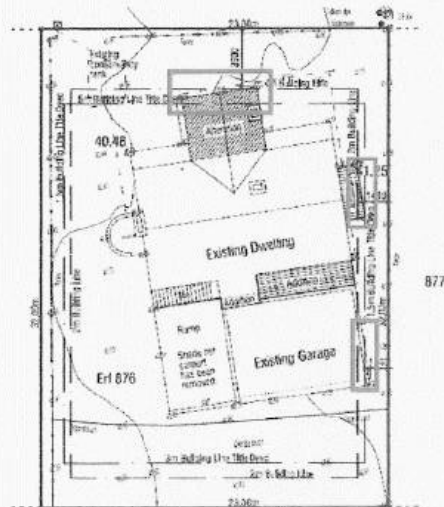
3.4.1.1 CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

The Nature, duration, gravity, and extent of the contravention

The unauthorised building work was partially erected by the owner. The intention of the owner is to address the unauthorised building work in order to obtain building plan approval for the alterations that were made without any land use or building plan approvals and the position of the dwelling and garage which is in contradiction with the approved building plan.

The extent of the unauthorised building work is as follows:

Structure	Extent of unauthorised building work
A portion existing covered stoep and Braai area	±7.4m ²
A portion of the existing bathroom and outdoor shower	±0.9m ²
A portion of the existing garage	±2.7m ²
Total Extent of unauthorised building work	±11m²



Motivation report

The property owner intends to provide his full co-operation to the Overstrand Municipality to address the unauthorised building work situated on the subject property. An application for the departure from the Title Deed and Scheme building lines is submitted simultaneously with the determination of an administrative penalty application, to address the building line encroachments situated on the subject property. The existing encroachments are also in contravention with the Title Deed restriction that refers to building lines. It is important to note that the footprint of the dwelling was incorrectly positioned by the previous owner and therefor the current owner inherited the encroachments as mentioned above.

The position and nature of the unauthorised additions are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from the surrounding property owners has been received. A building line departure application, from the Title Deed and Scheme building lines is also submitted to address the unauthorised building work on the subject property.

The conduct of the person involved in the contravention.

As mentioned, the unauthorised building work, that consists of the bathroom and outdoor shower, was erected by the current property owner of Erf 876 Pringle Bay. The owner also converted the covered balcony on the first floor into a braai room. The encroachment of the street Zoning Scheme Regulations and Title Deed building line was partially inherited from the previous owner.

The owner is in the process of also addressing the unauthorised building work that is in contravention of the zoning scheme regulations and the restrictive Title Deed condition that refer to building lines.

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

If the Overstrand Municipality finds it necessary, that an administrative penalty fee needs to be enforced for the unauthorised building work, a report from a quantity surveyor can be submitted.

Motivation report

Whether the unlawful conduct was stopped

The mispositioning of the dwelling and double garage only came to light after an As Built survey was carried out also confirming the encroachments. Subsequently the owner appointed Sandra Schutte Architect to compile an As Built building plan. As a result of the As Built building plan indicating the encroachments and unapproved building work the owner appointed Plan Active to lodge the necessary application to rectify the matter.

Subsequently the owner, without receiving any complaints, is in the process of addressing the contraventions by applying for the determination of an administration penalty and the building line departures. The building work is already completed.

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

To the best knowledge of the applicant and as confirmed by the landowner, the owner has never previously contravened this By-Law or any other previous planning law except partially for the current contraventions.

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. It should also be considered that no complaints from surrounding property owners has been received with regards to the unauthorised building work and can the encroachments be seen as minor encroachments, as only small portions of the mentioned structures encroach the building lines.

It is also important to note that the Overstrand Zoning Scheme Regulations, the remaining restrictive Title Deed conditions and the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020 will still be used to guide future development on the subject property. We therefore respectfully request that a penalty fee not be imposed on the property owner for the reasons given above.

Motivation report

3.4.2. PROPOSED BUILDING LINE DEPARTURES (Land Use Scheme)

A portion of the existing covered stoep, at the entrance to the house, on the ground floor and a portion of the braai room on the first floor encroaches the street building line. A portion of the bathroom, outdoor shower and garage also encroach the eastern lateral building line.

The building line departures can be summarised as follow:

- Relaxation of the street building line from **4m** to **3.9m** to accommodate a portion of the existing covered stoep on the ground floor and a portion of the braai room on the first floor;
- Relaxation of the lateral building line from **2m** to **1.490m** to accommodate a portion of the existing bathroom and outdoor shower;
- Relaxation of the lateral building line from **2m** to **1.140m** accommodate a portion of the existing garage.

The Overstrand Scheme Regulations stipulate that a **4m street building line** and a **2m lateral building line** apply to **Residential Zone 1: Single Residential** properties larger than **400m²** in extent as seen in the tables below:

Net erf area	Street building line
Less than 150 m ²	1,0 m
Less than 400 m ²	2,0 m
400 m ² and greater	4,0 m

Net erf area	Side and rear building lines
Less than 150 m ²	At least 1,0 m one side and 0 m on the other side. Rear = 1,0 m.
Up to 400 m ²	1,0 m
Greater than 400 m ²	2,0 m

Motivation report

The encroachment of the portions of the **covered stoep on the ground floor and the open braai room on the first floor** was inherited by the current owner when he purchased the subject property. The owner however enclosed the covered balcony on the first floor and changed it into a closed braai room.

A survey confirmed that the portion of the double storey dwelling that includes the existing covered stoep and braai room is situated $\pm 3.9\text{m}$ from the street boundary line adjacent to Freda Road, Pringle Bay. The portion of the dwelling does not have any negative impact on the neighbouring properties or the traffic flow of the aforementioned street. The encroachment can be categorised as a minor encroachment as the portion of the dwelling only encroaches the building line by 0.1m. The encroachment does not have any impact on the character or the property values of the residential area.

The **bathroom, outdoor shower and garage** are situated on the eastern side of the subject property. A portion of the **bathroom and outdoor shower** encroach the eastern lateral building line and is situated $\pm 1.490\text{m}$ from the eastern lateral boundary. A small portion of the garage also encroaches the aforementioned building line and is situated $\pm 1.140\text{m}$ from the eastern boundary line. The building line encroachments do not have any impact on the neighbouring property and can the encroachments be classified as minor encroachments.

The proposed building line departures do not have a negative impact on the neighbouring property as no complaints were received. We also include the neighbours' consent letters for the proposal. The affected neighbouring properties were identified by the Overstrand Municipality and as advised by the Pringle Bay Ratepayers Association.

3.4.3. PROPOSED BUILDING LINE DEPARTURES (Title Deed)

Section B.6.(b) of the relevant Title Deed reads that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m from the lateral boundary common to any adjoining erf.

Motivation report

The above mentioned street building line prescribed in the Title Deed is 1m wider than the building line prescribed in the Overstrand Municipal Land Use Scheme Regulations, 2020 applicable to single residential erven. We hereby apply for a Title Deed Street building line relaxation, alongside Freda Road from 5m to 3.9m to accommodate the portion of the double storey dwelling that includes a covered stoep on the ground floor and a portion of a closed braai room on the first floor. The proposed application also constitutes the relaxation of the lateral Title Deed building line from 1.5m to 1.49m to accommodate a portion of the bathroom and outdoor shower and from 1.5m to 1.14m to accommodate a portion of the garage.

As per the instruction from the Overstrand Municipality a letter of support from the owner of Erf 877 should have sufficed for the proposed application to be entertained. After meeting with the **Pringle Bay Ratepayers Association**, it was suggested that additional consent letters should be obtained from the neighbouring landowners of which their properties are indicated in yellow:



We have enclosed the letters of support from the owners of erven 875, 877, 907, and 878 Pringle Bay as Annexure A.

Motivation report

The 5m street building line relaxation to 3.9m and the 1.5m lateral building line relaxation to 1.49m and 1.14m respectively will not have a negative impact on the surrounding erven and the neighbouring landowners have provided their letters of consent supporting the application.

3.5 ACCESS AND PARKING

Vehicular and pedestrian access to subject property is from Freda Road and will be retained. A double garage is established on the subject property and the use will be retained.

3.6 SERVICES.

All services on the subject property already exist. Additional services other than what have already been allocated to the Erf 876 Pringle Bay are not required and therefore, the proposal will not have a negative impact on existing services that are provided by the Overstrand Municipality.

3.7 TITLE DEED

There is a restrictive Title Deed condition in Title Deed Number T59856/2017 applicable to Erf 876 Pringle Bay.

Section B.6.(b) of the relevant Title Deed reads that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m from the lateral boundary common to any adjoining erf.

The above-mentioned section from the Title Deed makes provision that an application may be lodged for the relaxation of the prescribed building lines that we have addressed in Section 3.4.3 above. A prerequisite is that consent letters from the neighbouring landowners must accompany such an application. This prerequisite has been met and the consent letters have been attached. Please refer to Annexure A.

Motivation report

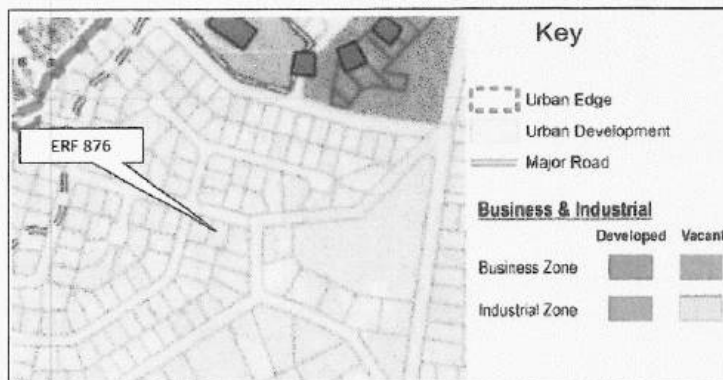
Subsequently the restrictive Title Deed condition does not have to be removed or amended but can be relaxed as motivated in **Section 3.4.3** above.

There is a bond registered against Erf 876 Pringle Bay and a copy of the bondholder's consent will be submitted once it has been obtained from the relevant bondholder.

3.8 FORWARD PLANNING

Overstrand Municipal Wide Spatial Development Framework (2020).

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for urban development purposes. The residential zoning and land use of the subject property will be retained after the application for the building line departures has been concluded.



Overstrand Growth Management Strategy (2010)

With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 2 that consists primarily of the northern existing built up area of Pringle Bay. No densification proposals are made for this planning unit.

We are of the opinion that the proposed building line departures will have no impact on the density as set out in the **Overstrand Growth Management Strategy (2010)** and can the proposed application be supported.

Motivation report

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 876 Pringle Bay is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is situated within an area earmarked as LCZ Zone A1 in terms of the Overstrand Municipal GIS system.

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

In light of the above mentioned it is evident that the proposed building line departures will not have a negative impact on the heritage value of the subject property or the greater area of Pringle Bay.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed building line departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

Spatial Justice: The main goal of this application is to address the unauthorised encroachments and additions that will not have a negative impact on the surrounding

Motivation report

erven. It is motivated that the proposed departures from the Title Deed and Scheme building lines are compatible with the character of the area and do not impact negatively on the rights of the surrounding landowners.

Spatial sustainability: The proposed departures are in line with the current character of the surrounding area. The proposed application will have no impact on the conservation worthy areas of Pringle Bay. Spatially the land use and zoning of the subject property will be retained in line with the general residential character of the area.

Efficiency: The proposed application for the building line departures from the Scheme Regulations and the Title Deed building lines will promote the logical optimisation of the current and future use of space of the subject property within a developed single residential area.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

Good administration: Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an

Motivation report

efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

4. RECOMMENDATION

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

- The current wrongfully positioned main structure was inherited by the current owner and the owner is in the process of legalising the unauthorised encroachments situated on the subject property in order to obtain an As Built building plan approval;
- The proposal will not have a negative impact on the residential character of the area;
- The affected neighbours as identified by the Overstrand Municipality and the Ratepayers Association provided their consent for the proposed application;
- The proposal will not have a negative impact on the existing services;
- The proposed relaxation of the restrictive Title Deed condition will not have a negative impact on the land values of the surrounding erven;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA);
- We request that a penalty fee not be imposed.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the dismissal of an administrative penalty and the approval for the Title Deed and Scheme Regulations building line departures applicable to Erf 876 Pearly Beach.

Annexure C 1/7

Site Plan
Scale 1:200

General Specifications

All building work in accordance with the National Building Regulations and the South African Standard Code of Practice SANS 10400.

Sewer work in accordance with the National Building Regulations and Municipal By-laws.

All concrete work to Engineer's design and specifications in level, the design of tanks and downpipes in accordance with the detailed Requirements of SANS 10400-D.

Builders hold and site operations to be in accordance with SANS 10400-F.

Fire safety to comply with SANS 10400-T and the Overseas Fire Safety By-Law PN 6954 - 2007.

All materials and fittings used to be SABS approved. It is the responsibility of the Owner to appoint a Licensed Surveyor to confirm erf boundaries.

It is the responsibility of the Owner to appoint a Health and Safety Agent to comply with the Construction Regulations 2014 and the Occupational Health and Safety Act.

All concrete work to comply with SANS 2001-C11 & C12 as indicated by Specialist and to comply with SANS 10387-1:2013.

Client: SANDAF Reg No: Pt Area 21077
Client: Coetzee

Project: 2057
Project: Building Plans for Municipal Approval
Project: Documentation of existing additions and alterations to dwelling
Project: Erf No. 876
Project: 16 Freda Road
Project: Pringle Bay

Drawing: Site Plan
Scale: 1:200

Area:	22,07m ²
Additions:	227,45m ²
Footprint:	7,99m ²
Eri:	31%
Coverage:	H4
Class of occupancy of building:	Dwelling house
Occupancy:	10
Population:	Residential Zone 1 - Single Residential
Zone:	4 (Low, Low)
Commin:	Form
Energy zone:	
Engineer's Signature:	

Architect's Signature: _____

Owner's Signature: _____

All decisions from this document must be accepted in and approved by the Architect in writing. Failure to do so will absolve the Architect of ANY further responsibility relating directly or indirectly to the drawings.

4/7

North Elevation

East Elevation

Scale: 1:100

Drawn	LS	Checked	SS
Project No	Revision	Date	2023/03/23
C-708.P	0	Sheet No	4 of 5

Client: SACOP Reg No: Pr Arch 21077

Project: Building Plans for Municipal Approval

Description: Documentation of existing additions and alterations to dwelling

Address: Erf No. 876
16 Frede Road
Pringle Bay

Architect: Sandra Schutte
Pr Arch, MPNo. 011
Tel & Fax: 028 271 4238
Cell: 072 860 1650
121 Main Road
Kleinmond
7185
shunvokas@elektro.sand

Architect's Signature: _____

Engineer's Signature: _____

All deviations from plans, however minor, must be reported to the architect in writing. The architect will approve the architect or any further responsibility relating directly or indirectly to the variations.

Scale: dimensions fixed. All measurements have to be checked on site before work can commence. Copyright reserved. Any discrepancies or errors must be reported to the Architect.



Sandra Schutte
Pr Arch, MPNo. 011
Tel & Fax: 028 271 4238
Cell: 072 860 1650
121 Main Road
Kleinmond
7185
shunvokas@elektro.sand

Client: SACOP Reg No: Pr Arch 21077

Project: Building Plans for Municipal Approval

Description: Documentation of existing additions and alterations to dwelling

Address: Erf No. 876
16 Frede Road
Pringle Bay

Architect: Sandra Schutte
Pr Arch, MPNo. 011
Tel & Fax: 028 271 4238
Cell: 072 860 1650
121 Main Road
Kleinmond
7185
shunvokas@elektro.sand

Architect's Signature: _____

Engineer's Signature: _____

All deviations from plans, however minor, must be reported to the architect in writing. The architect will approve the architect or any further responsibility relating directly or indirectly to the variations.

South Elevation

West Elevation

ALL DISCREPANCIES FROM PLANS, HOWEVER MINOR, MUST BE REPORTED TO AND APPROVED BY THE ARCHITECT IN WRITING. FAILURE TO DO SO WILL ASSUME THE ARCHITECT OF ANY FURTHER RESPONSIBILITY RELATING DIRECTLY OR INDIRECTLY TO THE CORRECTIONS.

Architect's Signature

Engineer's Signature

Sandra Schutte
 ARCHITECT
 8 APTA WAY
 ST. JOHN, VIRGINIA, VA
 Tel & Fax: (804) 271-4238
 Cell: (703) 680-1660
 1211 Main Road
 PO Box 82
 Farmington
 VA 24120
 ds@schutte.com


CLIENT: SACAP Reg No: PI Act#: 21077
 ARCHITECT: Coetzee
 PROJECT: 2057
 Building Plans for Municipal Approval
 Documentation of existing additions and alterations to dwelling
 Erf No. 876
 16 Freda Road
 Pringle Bay


Drawing: Elevations
 Scale: 1:100
 Drawn: SS
 Project No: C.2008.P
 Revision: 0
 Date: 2025/03/23
 Sheet No: 5 of 6

Scaled dimensions provided. All measurements have to be checked on site before work can commence. Copyright reserved. Any discrepancies or errors must be reported to the Architect.



Annexure D 1/5

1052	Total outlay/amount	
	Amount	Office fee
	R 2300 000 00	R 12 75 00
63	Hayes Incorporated Themis Law Chambers Unit 32 Roeland Square Roeland Street Cape Town	
	Prepared by me	
		
	CONVEYANCER ESRI MARAIS	

VERBOND MORTGAG	
W1 FOR R 2 310 000,00	
B 000002632 / 2021	
29 JAN 2021	REGISTRAR OF DEEDS

DATA / VERIFY
23 OCT 2017
YOLANDI OLIVIER

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

T 000059856 / 2017

RAYMOND FRANCIS SCOTT

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at Cape Town on 11 July 2017 granted to him by

1. PRAGASEN PATHER
Identity Number 720822 5136 08 6
Married out of community of property
2. VIMALA PATHER
Identity Number 730211 0132 08 4
Married out of community of property

DATA / CAPTURE
18 OCT 2017
LORRAINE NURIS

Page 2

And the appraiser declared that his said principal had, on 30 June 2017, truly and legally sold by Private Treaty, and that he, the said Appraiser, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

JACOBUS ERNST COETZEE
Identity Number 761010 5020 08 4
Married out of community of property

his Heirs, Executors, Administrators or Assigns,

ERF 876 PRINGLE BAY
IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON
PROVINCE OF THE WESTERN CAPE

IN EXTENT 736 (SEVEN HUNDRED AND THIRTY SIX) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T46818/1981 with General Plan No. TP8158 relating thereto and held by Deed of Transfer Number T4530/2012.

- A. Subject to the conditions referred to in the Title Deed T14826/1970.
- B. Subject further to the following conditions as per Title Deed T46818/1981, imposed by the Administrator upon approving the township development Pringle Bay Extension No.3 Township in terms of Ordinance 33 of 1934, namely:
1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Notice No. 523 dated 14th August 1970.
 2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf any provisions thereof which provisions are more restrictive than the provisions of the title applicable to this erf shall take precedence. Furthermore nothing in these conditions shall be construed as overriding the provisions of section 146 of Ordinance no.15 of 1952 as amended.
 3. The owner of this erf shall, without compensation, be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage including stormwater of any erf or erven, inside or outside this township to be conveyed across this erf, if deemed necessary by the local or any other statutory 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

Ghos/Convey 15.9.12.2



Page 3

any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.

4. The owner of this erf shall be obliged without compensation, to receive such material or permit such excavation on this 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 streets as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
5. No building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
6. (a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purpose as the Administrator may from time to time after reference to the Townships Board and the local authority approve provided that if the erf is included within the area of a Town Planning Scheme the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.
- (b) No building or structure or any portion thereof, except boundary walls and fences, shall except with the consent of the Administrator be erected nearer than 5 metres to the street line which forms a boundary of this erf, nor within 3 metres of the rear or 1,5 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority.
 - (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3 metres in height measured from the ground floor of the outbuilding to the wall plate thereof may be erected within such side and rear spaces and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 metres measured from the rear boundary of the erf provided that in the case of a corner erf the distance of 12 metres shall be measured from the point furthest from the street abutting the erf.

Page 4

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

Page 5

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

- 1. PRAGASEN PATHER, Married as aforesaid
- 2. VIMALA PATHER, Married as aforesaid

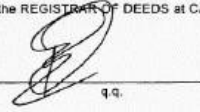
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

JACOBUS ERNST COETZEE, Married as aforesaid

his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 300 000,00 (TWO MILLION THREE HUNDRED THOUSAND RAND).

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

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 10 OCT 2017



99

In my presence



REGISTRAR OF DEEDS

For Information



Annexure E 1/10



PRINGLE BAY RATEPAYERS' ASSOCIATION
PRINGLEBAAI BELASTINGBETALERSVERENIGING

SARS Reg. 9101/136/16/3
 NPO Reg. 214-205
 www.pringlebayratepayers.co.za
 P O Box 409, Pringle Bay, 7196 / Posbus 409, Pringlebaai, 7196
 Chairman / Voorsitter: chairman@pringlebayratepayers.co.za / Tel: 083 556 3345

18 September 2023

The Municipal Manager
 OVERSTRAND MUNICIPALITY
 PO BOX 20
 HERMANUS
 7200

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
20 SEP 2023
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

TP- n. Ahearne
 (V. ud Skoop)

PER EMAIL: loretta@overstrand.gov.za

SUBJECT: ERF 876, 16 FREDA ROAD PRINGLE BAY: DETERMINATION OF AN ADMINISTRATIVE PENALTY AND PROPOSED BUILDING LINE DEPARTURES IN TERMS OF THE SCHEME REGULATIONS AND TITLE DEED: COMMENTS AND OBJECTION

PREAMBLE

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

1. ORGANISATION

The Pringle Bay Ratepayers' Association (PBRA) was started in 1967 by the first property owners of Pringle Bay to represent the interests of ratepayers and residents. Today it is a registered Non-Profit, Public Benefit Organisation.

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

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

FILE NO.	Er 876 ✓
	Pringle Bay
SCAN NO.	KPRB 876
COLLABORATOR NO.	1917981

COMMENTS ON APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE
 ERF 876, PRINGLE BAY
 DATE: 18 September 2023
 DOC STATUS: FINAL FOR SUBMISSION

1

TP
 20 SEP 2023



2. SUMMARY

- 2.1. It is our opinion that two aspects need to be considered in the context of the application. These are:
- 2.1.1. The Owner's and/or OM's desire to rectify illegal building activities/mistakes of the past; and
- 2.1.2. That whatever is necessary to effect such rectification, appropriate and due process(es) must be followed.
- 2.2. In this regard, the PBRA:
- 2.2.1. Fully supports the OM's endeavours to normalise anomalies and discrepancies within its area of jurisdiction; and
- 2.2.2. Requests that in doing so, the OM follow due process in a fair and equitable manner such that negative impact ("detrimental precedent") is limited, preferably be eliminated.
- 2.2.3. We draw the attention that these actions by the OM would include any or all of an administrative penalty, removal of the contravening structures or amendment of title deed restrictions.
- 2.3. The subject application is made in terms of:
- 2.3.1. Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the building line departures.
- 2.3.2. The PBRA supports the rectifying of illegal building practices as is apparently the case in this application, as per the alternatives described in par 2.2.3 above.
- 2.3.3. The PBRA requests that due process be followed in considering the necessary actions to rectify the illegal building practices. We submit that our understanding is that this must take place in accordance with the requirements of SPLUMA Regulations, Schedule 5, Clause 1 and Section 16 of the Amended By-law on Municipal Land Use Planning, 2020.
- 2.3.4. We highlight our understanding in this regard in paragraphs 3 and we also want to emphasise the following for consideration:
- 2.3.4.1. We wish to draw the attention that the conduct by the applicant for undertaking apparently substantial illegal building operations, which include failure to submit building plans, and contravening the building line restrictions, are not adequately explained in the application, other than a blunt request for rectification, nor was it pointed out to the PBRA during our meeting with the Owner and his Consultants.
- 2.4. Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.
- 2.4.1. In accordance with our plea for due process in par 2.2.2 above, we wish to emphasise the principle of fairness towards all involved and affected parties.



2.4.2. Whilst the OM is on record for enforcing administrative penalties by imposing fines for contravention of land use legislation, we are concerned about the potential abuse of process in the present application by allowing the levying of an administrative penalty to legalise apparently substantial and wilful contraventions. The PBRA thus objects to:

2.4.2.1. A nil Rand Administrative Penalty as is applied for by the applicant.

2.4.2.2. The legalising, by the levying of an Administrative Penalty, of structures in the present application that can possibly be removed without disproportionate cost to the benefit obtained for the community.

We request the OM to consider, as a legitimate alternative, ordering the removal of the structures to the extent that they contravene the building lines.

2.4.2.3. We request that OM consider this aspect against the background of fairness and following precedent, for which it is on record, of ordering the removal of structures that can be situated elsewhere on an erf and not create new precedent (expectations) which could result in unwanted building activities from other property owners and then result in unwarranted preferential land use applications from them.

2.4.3. The title deed of erf 876 reads (our emphases in bold):

"6. (2) Except with the prior consent of the Administrator –

(a) No building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding.....may be erected within the prescribed rear space....."

(b)etc"

2.4.3.1. The PBRA submits that the applicant is confusing two matters, namely the removal, amendment or suspension of a restrictive Title Deed Condition, on the one hand, and the request for approval to build an outbuilding within the confines of the building lines as defined in the terms of the Title Deed restriction itself, on the other hand.

2.4.3.2. It is our opinion that the Applicant must apply for a restrictive title deed condition to be removed, amended or suspended in terms of SPLUMA Section 47 to enable the contraventions of the building lines. We highlight our understanding in this regard in paragraphs 3 and following below.

2.4.3.3. We submit that the application for the structures in the building lines are not applications for allowing an outbuilding within the building lines of either the Scheme Regulations or the Title Deed conditions. The application is not covered by the second part of the title deed restriction, which allows for an easier approval process.

2.4.4. **We request that the application be withdrawn and be re-submitted to fully comply with the requirements of SPLUMA and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.**



4/10

2.4.5. We submit that it is a requirement, as motivated in paragraph 4 below, for applications to be advertised such that the public can be made aware of the application. This in our opinion should as a minimum be through the placement of a notice on the OM web-site and in case of the requirements of SPLUMA in terms of Title Deeds, also to be published in local printed media. Added to this is the common professional knowledge requirement that all owners within the development should receive notice of an application to remove, amend or suspend a title deed restriction.

2.4.6. Informing the public is in our opinion important not only for purposes of transparency, but even more so for purposes to ensure that the praedial rights of the directly affected people as well as the legitimate expectations of the public in general be properly respected and protected as is emphasised by the OM when they say:

"The building lines and height restriction per the title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay." (refer to paragraph 5 below)

3. TITLE DEED RESTRICTIONS

3.1. The relevant Title Deed restriction (Section B.6.(b)) reads (**our emphases in bold**):

"6. (2) Except with the prior consent of the **Administrator** –

(a) No building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than **be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding.....may be erected within the prescribed rear space....."**

In this regard, SPLUMA Section 45(6) reads as follows:

"Where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the townships board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, a Premier, the townships board or controlling authority is deemed to be a reference to the municipality."

3.2. It is our understanding that prior to the enactment of **Section 25** of our Constitution the Administrator exercised his/her duty in this regard in terms of the *Removal of Restrictions Act of 1967*. However, as stated below, the event of **Section 25** now dictates that he/she is to act in accordance with SPLUMA, specifically in this regard in accordance with **Section 47** thereof, which states the following:

"....

1. *A restrictive condition may, with the approval of a Municipal Planning Tribunal and in the prescribed manner, be removed, amended or suspended.*
2. *A removal, amendment or suspension of a restrictive condition contemplated in subsection (1) must, in the absence of the contemplated written consent, be effected:*
 - a. *in accordance with **Section 25** of the Constitution and this Act;*



- b. *with due regard to the respective rights of all those affected, and to the public interest; and*
- c. *in the prescribed manner, if such removal, amendment or suspension will deprive any person of property as contemplated in **Section 25** of the Constitution."*

3.3. **The intention of Section 47 is furthermore confirmed by *Ex Parte Whitfield and Related Matters* 2017 (5) SA 161 (ECP) (28 March 2017) paragraph 37, which reads as follows:**

".....Section 47(1) says no more than that a restrictive condition may, pursuant to the Spatial Planning Act (SPLUMA), be removed with the consent of a municipal planning tribunal. Such consent is to be obtained in the prescribed manner, i.e. by way of an application made to the municipal planning tribunal and is to be granted subject to ss 42 and 47(2)."

(The application process is further described in the SPLUMA Regulations Schedule 5, Clause 1, which denotes the present application as a Category 1 Application related to a Land Development Application, which must be considered by the Administrator/Municipal Planning Tribunal as described below):

In the past, prior to the enactment of the Removal of Restrictions Act 1967, Title Deed Conditions could only have been removed, amended, or suspended by obtaining agreement amongst the holders of praedial rights. For that reason, the Removal of Restrictions Act 1967 made provision for Title Deed Conditions to be removed, amended, or suspended through approval by the Administrator and more recently in accordance with the requirements of SPLUMA regulations, specifically Schedule 5, Clause 1, which states that the Municipal Planning Tribunal must grant approval in accordance with the following:

"SCHEDULE 5

Standard Categories of Land Development and Land Use Applications

(1) Category 1 Applications are:

- a)
- b)
- c)
- d)
- e)
- f)
- g) *any consent or approval required in terms of a condition of title, a condition of establishment of a township or condition of an existing scheme or land use scheme";*

Based on the above, we submit that this application must be processed in terms of the requirements of SPLUMA Section 47. The Overstrand Municipal Planning Tribunal must thus consider the application and not the Authorised Official of the Overstrand Municipality.

3.4. **HOWEVER**, we concur that in the event that if the local Authority is referenced in the Title Deed as:

" provided that with the consent of the local authority an outbuilding.....may be erected within the prescribed rear space ...",



the following may be applicable:

Local Authority in this sense could imply the Municipality's Authorised Official which rightly is not the Municipal Planning Tribunal.

SPLUMA Regulations, in particular Schedule 5, Clause 2, then applies and it reads as follows:

"Category 2 Applications are:

(a) ...

(b) ...

(c) ...

(d) *the consent of the municipality for any land use purpose or departure or deviation in terms of a land use scheme or existing scheme which does not constitute a land development application."*

Thus, typically approvals related to aspects contained and described within the Title Deed such as for instance an application for approval of an outbuilding extending into the building line areas which are described in the Title Deed conditions. These are typically not decided upon by the Municipal Planning Tribunal but rather by the Authorised Official and these decisions are then taken in accordance with an applicable Municipal Bylaw, in Overstrand Municipality's case, Section 16 of the Bylaw.

- 3.5. The Applicant's argument in its Paragraph 3.7 clearly states that an application is lodged for the "relaxation" of a restrictive Title Deed Condition " with the consent of the Administrator ..." and NOT for the approval of an outbuilding extending into the building line area(s).

This in our opinion constitutes a Category 1 Application as described in paragraph 2.3.3 above, thus requiring Municipal Planning Tribunal attention and NOT that of the Authorised Official.

4. OBJECTION: ADVERTISING REQUIREMENTS HAVE NOT BEEN COMPLIED WITH

- 4.1. We submit that it is an OM policy requirement to publish all land use applications on the OM website, and that the requirement has not been complied with in the present case. In **Annexure A** hereto we submit our understanding of the OM procedural and policy background for this requirement.
- 4.2. We further submit that, by not advertising on the website, the OM planning department has not met the legitimate expectations of Pringle Bay erf owners, namely that applications for departures will be advertised on the OM website. The legal precedent of legitimate expectations is set out as follows in the well-known case of Trustees of the Simcha Trust v Da Cruz and Others; City of Cape Town v Da Cruz and Others [2018] ZACC 8



The judge says:

"[27] The concept of legitimate expectation finds its origins in administrative law. In Traub, the then Appellate Division cited with approval the following passage from a judgment of an English Court: "But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue."

[28] The Full Court correctly distinguished the creature of legitimate expectations known to administrative law from the phrase as it is used in Camps Bay. The Full Court held: "The reference to 'legitimate expectations' in Camps Bay Ratepayers is therefore to be understood as a reference to the hypothetical range of future possibilities which the parties to a national sale would, as a legal construct, be considered to have had in the forefront of their minds, at the time, and is not to be confused with the concept of a 'legitimate expectation' as it has been established in law, in order to protect a party, by way of a procedural remedy, from the adverse consequences of a decision being taken by another without a prior opportunity to be heard."

- 4.3. In Annexure B we submit a copy of the OM website as at 5 September 2023 from which it can be seen that not only applications for removal of restrictions are advertised, but also applications of departures and consent uses.
- 4.4. **We submit that the application is unlawful due to non-compliance and should be referred back to the applicant.**
5. **OBJECTION: "RESTRICTIVE CONDITIONS ON A TITLE DEED ARE PLACED THERE FOR A SPECIFIC REASON AND THE REMOVAL OF THESE CONDITIONS SHOULD NOT BE CONSIDERED LIGHTLY."**
- 5.1. This is what was said in a previous OM Appeal Decision:
- "The building lines and height restriction per the title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay."*
- 5.2. We submit that it is especially not desirable that a title deed restriction be removed in order to legalise an illegal structure.
- 5.3. Furthermore, the OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.



6. CONCLUSION

We request that the Overstrand Municipality please follow due process as is highlighted above and henceforth reject this application and request re-application to the planning department or to the building control department.

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

Kind regards

AW Vorster

Vice Chair: PBRA

Obo: Pringle Bay Ratepayers' Association

Annexure A:

OUR UNDERSTANDING OF THE OM PROCEDURAL AND POLICY BACKGROUND FOR THE ADVERTISING REQUIREMENT.

Annexure B:

OM SCREEN OF LAND USE APPLICATIONS AS DEPICTED ON 5 SEPTEMBER 2023.



9/10

ANNEXURE A:

OUR UNDERSTANDING OF THE OM PROCEDURAL AND POLICY BACKGROUND FOR THE ADVERTISING REQUIREMENT.

We are of the opinion that a certain amount of public participation is required by OM policies as evidenced by the OM policy of advertising all land use applications on the OM website.

1. OM SCHEME REGULATIONS: PUBLIC PARTICIPATION:

We refer to the OM SCHEME REGULATIONS that read:

"2.2 ADDITIONAL REQUIREMENTS RELATING TO PUBLIC PARTICIPATION

Advertisements and / or notifications Advertising of all applications shall take place in accordance with the requirements of applicable Planning Law, applicable legislation and the Municipality's advertising policy, as approved by the Municipality from time to time."

2. OM COMMUNICATION POLICY: PUBLIC PARTICIPATION:

2.1. We could not find a specific documented advertising policy on your website, but we refer to the OM COMMUNICATION POLICY of MARCH 2007 which reads:

"5.4 Public Participation:

..... Furthermore, in terms of Chapter 4 of the Local Government: Municipal Systems Act (No. 32 of 2000), the municipality has an obligation C4 / 0014 to establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality."

2.2. We would submit that advertising all land use applications on the OM website is such an appropriate mechanism.



ANNEXURE B: OM WEBSITE AS AT 5 SEPTEMBER 2023

Use Planning Applications

Advertisements : Archived

Notices : Archived

Documents

NOTICE - Erf 987 Franskraal (Departure & Admin Penalty) (30 downloads)	25 Aug 2023
NOTICE - Erf 1668, Stanford (Departure) (31 downloads)	25 Aug 2023
NOTICE - Erf 2388 Pearly Beach (Departure) (32 downloads)	25 Aug 2023
NOTICE - Erf 2816 Voëklip (Departure) (32 downloads)	25 Aug 2023
NOTICE - Erf 4113 Onrus River (departure) (34 downloads)	25 Aug 2023
NOTICE - Farm 905 Restless River Hemel Aarde Val (23 downloads)	25 Aug 2023
NOTICE - Erf 1539 Sandbaal (subdivision departure admin penalty) (74 downloads)	18 Aug 2023
NOTICE - Portion 5 of Farm 587 (departure consent use admin penalty) (35 downloads)	18 Aug 2023
ADVERTISEMENT - Erven 1885 & 1886 Franskraal (Consolidation, Rezoning and Subdivision) (49 downloads)	18 Aug 2023
ADVERTISEMENT - Portion 31 of the Farm 711 (Subdivision & Amendment of conditions of approval) (36 downloads)	18 Aug 2023
NOTICE - Erf 6680 Voëklip (Departure) (42 downloads)	07 Aug 2023
ADVERTISEMENT - Erf 338 Rooi Els (amended application) (200 downloads) Popular	31 Jul 2023



TOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS

Annexure F 1/6

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:
planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA23024

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200



27 October 2023

For attention: Me. Hanneen van der Stoep

TP-A Theart
(H vld Stoep)

Sir

**COMMENTS ON OBJECTION: ERF 876 PRINGLE BAY: APPLICATION FOR DEPARTURE,
RELAXATION OF THE TITLE DEED CONDITION AND DETERMINATION OF AN
ADMINISTRATIVE PENALTY**

Your e-mail dated 3 October 2023 with the objection from the Pringle Bay Ratepayers Association attached thereto refers.

An application was submitted for a departure, relaxation of the title deed building line and determination of an administrative penalty in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the building line departures.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.
- Section B.6.(b) of the relevant Title Deed that no building or structure or a portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority.

FILE NO. Erf 876-KPRB
SCAN NO.
COLLABORATOR NO. 1936222

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

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr. 10908; SACPLAN Tech.Pln B/8250/2014
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009
Darren Adams: BTech (Town and Regional Planning) CPUT; SACPLAN Pr.Pln A/3002/2021

27 OCT 2023

Our comments on the objection are as follow:

It is important to note that we did not have sight of the Pringle Bay Rate Payers Association's founding documents or their membership records. According to the objection received, the Pringle Bay Ratepayers Association (PBRA) represents all the ratepayers within the urban edge of Pringle Bay which constitutes approximately 1800 properties of which approximately 1200 are developed. In the objection the PBRA does not disclose how many of its members are apposed to the application and how many are in support thereof. It is also not stated which steps, if any, have been taken to assess which of their members are in favour of the development, and who are against it. We get the impression, nonetheless, that the author of the Objection Letter holds the belief that the organisation's members would be overwhelmingly opposed to the application.

It is a prerequisite that approvals be obtained from all the neighbouring landowners, as indicated by the Overstrand Municipality, when applying for a Title Deed Relaxation before an application is lodged for the relaxation of restrictive conditions contained in a Title Deed. Other than the Title Deed relaxation our application also consisted of building line relaxations and a determination of an administrative penalty.

The as-built building plan was discussed with the Overstrand Municipality before submission of the application, and it was concluded that a relaxation of the Title Deed Building lines may be applied for. As per the instruction from the Overstrand Municipality a letter of support from only the owner of **Erf 877 Pringle Bay** should have sufficed for the proposed application to be entertained. After meeting with the PBRA on the 15th of May 2023, where the as built plans were presented and the methods of addressing the encroachments were discussed, it was suggested by the PBRA that additional neighbours consent letters should be obtained in order for them to support the application. The consent letters required from the neighbouring landowners, as suggested by the PBRA, are indicated on the aerial photograph in yellow below:



The required approvals from the neighbouring landowners, as indicated by the PBRA, were obtained and accompanied our application. We are therefore of the opinion that all affected parties involved have provided their written consent, which is disputed by the Pringle Bay Rate Payers Association, after they specifically identified during the meeting the neighbours who should provide consent. The objection that came forward during the public participation process from the PBRA came as a surprise as we as the applicant, the architect and the owner were under the impression that the ratepayers provided their consent for the proposed application as discussed in the pre-application meeting. The as-built plans were not amended after the meeting that was held.

According to our knowledge the Overstrand Municipality may use their discretion and, in this case, followed the correct application procedures. In this instance advertising was not required as the affected neighbouring property owners provided their written consent for the proposed application.

A determination for an administration penalty is also applied for in terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. An as built survey confirmed that the physical position of the dwelling differs from the position of the dwelling as indicated on the approved building plan. The dwelling was built at a slight angle and not parallel to the lateral boundaries as intended. Subsequently small portions of the existing dwelling and double garage established on Erf 876 Pringle Bay encroach the Zoning Scheme Regulations and Title Deed building lines.

The determination of an administrative penalty application is made in the prescribed manner and is motivated as such. It is important to note that due process was followed, and the responsibility is with the municipality to what extent a penalty should be imposed after all relevant factors have been considered and evaluated. According to **Chapter 10, Section 90(6) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** additional information may be requested should the information provided be insufficient. The aforementioned section reads as follow:

"When determining an appropriate administrative penalty, the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, must take into consideration for the information provided by the applicant in Subsection (3), and should the information be insufficient the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, may request additional information."

The Overstrand Municipality is responsible to inform the applicant, should the application be deemed incomplete or should they require any additional information. No additional information was requested during the application process.

The Pringle Bay Rate Payers Association also raised concerns that the determination of an administrative penalty process may be abused by property owners in order to simply just rectify contraventions by applying for an administrative penalty. We are also of the opinion that the process can be abused to rectify contraventions, but every application should be evaluated on its own merit as some contraventions can be inherited from previous homeowners or merely by means of contractors not building according to building plans. With the proposed application the following factors are important:

- In previous years it was not a prerequisite that land should be surveyed before it is developed as is the case today and land surveyors also in general did not set out these houses in relation to the actual boundaries before construction, and therefore many contraventions exists without the knowledge of land owners. Especially in the areas of Rooi-Els, Pringle Bay and Betty's Bay;
- The owner purchased the property with the garage encroaching the building lines;
- The encroachment of the stoep was also inherited from the previous owner, and as disclosed in the motivational report the owner only enclosed the portion on the first floor;
- The owner agrees that he is responsible for the addition of the small shower and toilet next to the house as his builder committed to do the building plans for him, but it was always his responsibility and therefore he takes full responsibility for his actions in this regard.

The owner, Mr Coetzee also disclosed that the proposed as-built plan that accompanied the proposed application was discussed at the meeting that was held on the 15th of May 2023 and that the statement is incorrect that he purposefully tried to avoid the regulations and necessary processes as most of the encroachments were inherited from the previous owner.

The owner stated the following in an email to the applicant dated 13 October 2023, ***"We have spent a lot of money already in trying to rectify, not only this mistake but the sins of the past which was nothing of my doing. So, I do feel it would be unfair to conclude that I am trying to rectify errors and it is not costing me anything."***

The above statement made by the owner is one of the reasons why every application should be evaluated on its own merit as most of the encroachments were inherited from the previous owner and the contraventions only became clear after an as-built survey was conducted of the subject property.

The Pringle Bay Ratepayers Association is of the opinion that the proposed application proposal will create a precedent in the area of Pringle Bay. They have however failed to provide detail on how the proposed application for a building line relaxation in terms of the Zoning Scheme Regulations and Title Deed will negatively impact on the spatial character and how it would create a precedent. In terms of the By-Law on Municipal Land Use Planning 2020 objections must set out sufficient detail. Please refer to the abstract below from the said By-Law:

The reasons for any objection, comment or representation must be set out in sufficient detail in order to—

- (a) indicate the facts and circumstances which explains the objection, comment or representation;
- (b) demonstrate the undesirable effect which the application will have on the area;
- (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

No detail was presented by the Pringle Bay Ratepayers Association.



With reference to the above aerial photograph and our visit to this specific area of Pringle Bay the built character can be described as being mixed due to each individual's needs. The colour schemes and architectural styles vary and there is no set trend. Some of the houses are constructed parallel to the erf boundaries, others are built at an angle, set back from the road and some are built closer to the road.

Furthermore, this application will not create a precedent. It is a fact that there are many houses built in Pringle Bay that encroach building lines and erf boundaries due to the fact that erf boundaries that were not verified by land surveyors, and houses were also not set out by them in the past. There are also a lot of such occurrences in the towns of Rooi-Els and Betty's Bay as previously mentioned.

b/lb

These encroachments are only now brought to the forefront due to surveys conducted prior to the approval of building plans and the construction of new houses and additions. Subsequently building line and property boundary encroachments are already established occurrences and needs to be rectified.

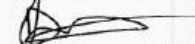
It is also clear that similar applications have been supported in the past and the statement that a precedent will be created is false. Aerial photographs and visits to the Pringle Bay area indicate that encroachments of Title Deed and Zoning Scheme building lines do exist in the area as mentioned earlier.

In conclusion it is clear that the Pringle Bay Rate Payers has a problem with the town planning process followed for the proposed application. Similar applications have been entertained in the past and were dealt with in the same manner. The proposed application was discussed with the Overstrand Municipality, and it was made clear what process had to be followed for the application for the departure from the Title Deed Building lines. It is the process that was successfully followed in the past by the Overstrand Municipality.

From the information provided in our motivation report and our comments on the objections it is clear that the objections raised cannot be substantiated and that the application can be dealt with favourably. All the parties that are directly affected, as identified by the Overstrand Municipality and the Pringle Bay Rate Payers Association, provided their consent for the proposed application. We respectfully request that the merit of the specific application should be considered.

We trust that you would find our comments on the objections in order, and that the proposed application should be dealt with favourable.

Yours faithfully



Darren Adams

Pr.Pin. A/3002/2021

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE, RELAXATION OF TITLE DEED &
DETERMINATION OF ADMINISTRATIVE PENALTY, ERF 876, PRINGLE
BAY (4427/2023)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Kleinmond for written approval;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that no reservation of on-street parking be allowed.
6. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
7. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.

p.p. M. Cooper
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

15/11/2023
DATE



Annexure H 1/4

Postbus 20
HERMANUS
7200

Tel: (028) 3138089
Fax: (028) 3132822
e-mail: elowings@overstrand.gov.za

P.O. Box 20
HERMANUS
7200

BUILDING ON REAR AND SIDE BOUNDARIES

NAME OF APPLICANT JE (COBUS) COETZEE
 ERF NO 876
 STREET ADDRESS 16 FREDA ROAD PEINSLER BAY

NOTE: REASONS FOR REFUSAL MUST BE STATED AND IF NOT, IT WILL BE ASSUMED THAT THERE ARE NO LEGITIMATE GROUNDS FOR REFUSAL

IF THE ERF IS REGISTERED IN A TRUST, THE PERSON SIGNING ON BEHALF OF THE TRUST MUST PROVIDE POWER OF ATTORNEY.

1) ABUTTING OWNER'S COMMENTS

I, BA JOHNSON, the owner of ERF 875 which abutts ERF 876, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]

DATE 30 May 2023

2) ABUTTING OWNER'S COMMENTS

I, GD JOHNSON, the owner of ERF which abutts ERF, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]

DATE 30 May 2023

Pr. 1000 201
HERMANNEN
100



Tel: (021) 313800
Fax: (021) 313822
E-mail: enquiries@environment.gov.za

BUILDING ON REAR AND SIDE BOUNDARIES

NAME OF APPLICANT JE (COBUS) COETZEE
ERF NO 876
STREET ADDRESS 16 FRODA ROAD PENANG BAY

NOTE: REASONS FOR REFUSAL MUST BE STATED AND IF NOT, IT WILL BE ASSUMED THAT THERE ARE NO LEGITIMATE GROUNDS FOR REFUSAL
IF THE ERF IS REGISTERED IN A TRUST, THE PERSON SIGNING ON BEHALF OF THE TRUST MUST PROVIDE POWER OF ATTORNEY.

1) **ABUTTING OWNER'S COMMENTS**

I, A H BOUTAU, the owner of ERF 877 which abutts ERF 876, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / do not hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED A Boutau

DATE 14/06/2023

2) **ABUTTING OWNER'S COMMENTS**

I,, the owner of ERF which abutts ERF, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / do not hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED

DATE



Postbus 20
HERMANUS
7200

Tel: (028) 3138089
Fax: (028) 3132822
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P.O. Box 20
HERMANUS
7200

BUILDING ON REAR AND SIDE BOUNDARIES

NAME OF APPLICANT JE (COBUS) COETZEE
 ERF NO 876
 STREET ADDRESS 16 FREDA ROAD PRINSBURG BAY

NOTE : REASONS FOR REFUSAL MUST BE STATED AND IF NOT, IT WILL BE ASSUMED THAT THERE ARE NO LEGITIMATE GROUNDS FOR REFUSAL
 IF THE ERF IS REGISTERED IN A TRUST, THE PERSON SIGNING ON BEHALF OF THE TRUST MUST PROVIDE POWER OF ATTORNEY.

1) **ABUTTING OWNER'S COMMENTS**

I, MC BOULTEE, the owner of ERF **878** which abutts ERF 876, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]
 DATE 07/06/2023

2) **ABUTTING OWNER'S COMMENTS**

I, KA BOULTEE, the owner of ERF 878 which abutts ERF 876, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / ~~do not~~ hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]
 DATE 07/06/2023



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7200

BUILDING ON REAR AND SIDE BOUNDARIES

NAME OF APPLICANT J.E. (COBUS) COETZEE
 ERF NO 876
 STREET ADDRESS 16 FEBDA ROAD PRINGLE BAY

NOTE: REASONS FOR REFUSAL MUST BE STATED AND IF NOT, IT WILL BE ASSUMED THAT THERE ARE NO LEGITIMATE GROUNDS FOR REFUSAL
 IF THE ERF IS REGISTERED IN A TRUST, THE PERSON SIGNING ON BEHALF OF THE TRUST MUST PROVIDE POWER OF ATTORNEY.

1) **ABUTTING OWNER'S COMMENTS**

I, COEN COETZEE TRUST the owner of ERF 307 which abuts ERF 876, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / do not hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED [Signature]

DATE 30/5/2023

2) **ABUTTING OWNER'S COMMENTS**

I, the owner of ERF which abuts ERF, have seen the drawing showing the structure to be erected thereon, and wish to comment as follows:-

I do / do not hereby grant permission to the Applicant to carry out the proposed building work.

SIGNED

DATE

Liana Taylor

From: Andre Olivier
Sent: Thursday, 09 May 2024 16:04
To: Hanneen van der Stoep; Riaan Kuchar
Cc: Jacques Wilkinson; Brady Minnaar; Riaan Marinus
Subject: Erf 876 Pringle Bay Application for Departure and Relaxation

Good afternoon.

Re the above and our discussion on 8 May 2024 refer.

The question posed was whether the **only objector** to the Application, namely the **Pringle Bay Ratepayer's Association (the Objector)** should be afforded a **statutory right of appeal** in this matter, or differently put, whether it enjoys *locus standi in iudicio* to appeal.

The matter will be decided on by the **Municipal Planning Tribunal (MPT)** and has an Agenda, which is self-explanatory, been drafted.

The applicable legislation and authority consulted are:

1. The **Municipal Land Use Planning by-law** (the by-law).
2. The **Spatial Planning and Land Use Management Act (SPLUMA)**.
3. Case law:
 - **RAINBOW JUNCTION DEVELOPMENT AND ANOTHER v CITY OF TSHWANE METROPOLITAN MUNICIPALITY AND OTHERS - HIGH COURT GAUTENG DIVISION (Case 82434/2019);**
 - **DU TOIT AND ANOTHER v MANGAUNG METROPOLITAN MUNICIPALITY NNO AND OTHERS – [2023] ZAFSHC 136 (FREE STATE HIGH COURT).**

The Objector lodged 4 (four) objections discussed in paragraph 7 of the **Agenda**.

It would appear that 4 (four) letters of consent were received from direct neighbours and would they have been "**persons**" for purposes of section **51(1)** had they lodged objections – please refer to the **Du Toit** judgement in **paragraph 7** below.

Regarding the question posed the following opinion is proffered:

1. **Section 78 of the by-law** in essence states that: "**a person whose rights are affected...may appeal...**". Unfortunately, the by-law does not assist any further with regard to the question posed.
2. **Section 51(1) of SPLUMA** in essence states the same as the by-law (it should actually be the other way round, ie, that the by-law determines the same as SPLUMA).
3. Where the **by-law** only refers to "**person**", **SPLUMA** goes further by distinguishing between "**a person**" (section 51(1)) and an "**interested person**" (section 51(4)(c)) and then qualifies the latter in section 51(5) that an "**interested person**" is a person whose rights are not only affected, but for purposes of section 51(4)(c), "**must be a person having a pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision of the planning tribunal or an appeal in respect of such a decision**".

ANNEXURE I 2/3

4. With regard to the second part of section 51(5), ie, that the "interested person" must be able to "demonstrate that he/she will be adversely affected", **section 45(3)** of SPLUMA determines that: "A person claiming to be an interested person in a land

development application or an appeal **has the burden of establishing his or her status as an interested person"** (my emphasis).

5. What the above means is that in order to be afforded a right to appeal, an **interested person** has the **statutory burden of establishing / demonstrating (proving)** that:

- he/she is a person who **is adversely affected** by the decision, in other words **personally** affected.
- he/she is a person whose **rights are** adversely affected, or whose **rights will be** adversely affected by a decision.
- he/she has a **pecuniary or proprietary interest** in the matter where "**pecuniary**" means to have a **financial interest** in the matter and "**proprietary**" means to have or hold a right or interest in a **property**.

(I will discuss the implications of **section 45(4)** later)

6. In view of the above it needs to be determined whether the **Association** is (simply) a "**person**" who has a right to appeal **without** a burden of proof except that its **rights** had to have been affected, or is it an "**interested person**" saddled with an

onerous burden of proof? To answer this question, I reverted to case law for guidance as to the **difference** between "**person**" and "**interested person**".

7. In the **Du Toit** judgement the Court, in analysing and interpreting **section 45** (and obviously section 45(3)) of **SPLUMA**, stated the following:

"[21] In my view, section 45 of SPLUMA provides that persons, other than those directly affected, such as neighbouring owners, must present evidence that they have an interest in a land use application and should be allowed to participate in the proceedings."

In the **Rainbow** judgement the Court similarly stated the following:

"19] ...while a person claiming to be an interested person in a land development application or an appeal has the burden of establishing his or her status as an interested person as contemplated in section 45(3), section 51...places the burden on a person whose rights are affected, including an interested person in terms of section 51(4)(c) of SPLUMA to comply with the rules and procedure..."

What the above therefore means is that if those "**persons**" (read: "**interested persons**") do not "**present evidence**" and **do not** discharge their **statutory burden** as contemplated in **sections 45(3) and 51(5)**, they will **not** have a right to an appeal.

8. In the matter at hand, it is my submission that the **Objector** is not a "**person**" for purposes of **section 51(1)** of **SPLUMA** but an "**interested person**" for purposes of **section 51(4)(c)** and because of this had to discharge the burden of proof as required by **sections 45(3) and 51(5)**. From its objections it is clear that it **not only** failed to discharge its burden of proof, but it did not even **remotely comply with the legal requirements discussed herein**. As such the **MPT** may in my opinion invoke the provisions of **section 45(4)** of **SPLUMA** which determines the following:

"In the event that a question arises as to whether a person is an interested person in a land development application or an appeal, the Municipal Planning Tribunal or Appeal Authority concerned may make a determination as to whether such person qualifies as an interested person".

Regards

Andre Olivier
Legal Advisor
Overstrand Municipality/Munisipaliteit

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E: aolivier@overstrand.gov.za