



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

A G E N D A

DATE:	31 MAY 2017
VENUE:	TOWN PLANNING COMMITTEE ROOM HERMANUS
TIME:	14:00

OVERSTRAND MUNICIPALITY

Office of the Municipal Manager
Civic Centre
HERMANUS
7200

10 May 2017

TO : THE CHAIRPERSON AND MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

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

NOTICE IS HEREBY GIVEN that a meeting of the **Municipal Planning Tribunal (MPT)** will go into session on **Wednesday, 31 May 2017 at 14:00, Town Planning Committee Room, 16 Paterson Street, Hermanus**, to consider the attached agenda.

You are kindly requested to submit any amendments/additions to Ms S Swart (sswart@overstrand.gov.za) on or before **17 May 2017**.

**COENIE GROENEWALD
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

Distribution:

1. Mr C Groenewald (Chairperson)
2. Mr S Müller (Vice-Chairperson)
3. Mr S Madikane (Member)
4. Mr R Williams (Member)
5. Mr R Kuchar (Member)
6. Ms H Janser (Member)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Secretariat

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 26 April 2017

4. ITEMS FOR CONSIDERATION

Report attached

**4.2 ERF 6187, 12 HARBOUR ROAD, KLEINMOND, OVERSTRAND
MUNICIPAL AREA : PROPOSED CONSENT USE : WC NIEMAND ON
BEHALF OF GJ VAN EEDEN**

Report Attached

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

4.1

**ERF 2656, 89 CLARENCE DRIVE, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA :
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE : J INNES ON
BEHALF OF CERATONIA (PTY) LTD**

**2656 KBB (3427)
H van der Stoep
6 April 2017**

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

Applications have been received on 2 September 2016 from J Innes on behalf of Ceratonia (Pty) Ltd on Erf 2656, Betty's Bay for the following:

- ❖ Application for a removal of restrictive title conditions with reference to Clauses D.A.(b) & D.A.(d) of Title Deed T24494/2016 applicable to Erf 2656, Betty's Bay in terms of Section 16(2)(f) of Overstrand Municipal Planning By-Law, 2016, in order to accommodate the following:
 - A second dwelling unit on abovementioned property; and
 - An encroachment of the proposed existing deck on first floor level over the 1,57m title deed lateral building line with Erf 2655.

The restrictive title conditions read as follows:

"D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer T12724/1949, namely:

- A. As being in favour of the registered owner of any erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:-*
- (b) that only one dwelling, excluding licenced hotels, maalsonettes and semi-detached buildings, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf;*
- (d) that no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary to this erf. No such building or structure shall be situated within 1,57 metres of the lateral boundary common to any adjoining erf."*

- ❖ Application for a departure in terms of Section 16(2)(b) of Overstrand Municipal Planning By-Law, 2016, to relax the following:
 - Lateral building line with Erf 2655 from 2m to 0,5m to accommodate a proposed existing deck on first floor level; and
 - Lateral building line with Erf 3496 from 2m to 1,57m to accommodate the existing external staircase and second dwelling unit on ground floor level, as well as a proposed new deck on first floor level.

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 1796m² in extent and is held under Title Deed T24494/2016. The erf is located in the residential area of Betty's Bay.

The buildings on the property have been built in 1997, however the building plans are not available at the Overstrand Municipality. The wife of the builder and first owner of Erf 2565 confirmed that building plans were submitted to the Municipality during 1997. The aerial photos do reflect the building in 2001.

4. SUMMARY OF APPLICANT'S MOTIVATION

The present owner bought the property on an auction and assumed that the structures had approved building plans. With the renovations of the building, the architect did indicate that an application will have to be lodged to rectify the situation due to the non-availability of the building plans.

The second structure is not practical in its present form and would be better should the garages be at the bottom and the residential unit be on the second floor. To renovate the main dwelling and not the second structure, it will detract from the development on the erf, which is located at the entrance along the main road of Betty's Bay.

The renovation will make the erf viable for a family vacation home and can be rented out to various income groups.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	27 October 2016	2 December 2016
Gazette	Yes	28 October 2016	2 December 2016
Notices	Yes	27 October 2016	2 December 2016
Ward councillor	Yes	27 October 2016	2 December 2016
Total comments	4 (FOUR)		
Was public participation undertaken in accordance with section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

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	Recommendation
Fire Department	05/02/2017	Must have a concrete slab floor separation between garage and proposed flat above.	Positive
Building Control	11/11/2016	Supported subject to compliance with SANS 10400.	Positive
Senior Manager : Kleinmond Admin	11/11/2016	Support application, subject to compliance with relevant building standards.	Positive
Engineering Services	11/11/2016	See Annexure F.	Positive
Environmental Services	1/11/2016	We foresee no environmental issues regarding this proposal.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Objections were received from the following four (4) individuals:

- ❖ MCJ & GF Gunter;
- ❖ MCJ & GF Gunter and PA Swart;
- ❖ WA Theron Family Trust (HW Theron), and
- ❖ Betty's Bay Ratepayers Association.

The objections can be summarized as follows:

MCJ & GF Gunter and PA Swart : (Owners of Erven 2654, 2655 and 2657)

The objectors have resided in Betty's Bay for the past 20 years and acquired the property due to the tranquillity and the biodiversity. There are houses that offer accommodation which is disruptive. The proposed second building was never a second dwelling and is right on our border and face the house.

MCJ & GF Gunter : (Owners of Erf 2655)

The objection relates to the relaxation of the lateral building line from 2m to 0,5m to accommodate a deck on first floor level as it will be used by holiday makers and faces our house directly. The building was never designed to be used as a second dwelling.

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

WA Theron Family Trust – HW Theron : (Owner of Erf 2653)

The builder/owner built the outbuilding for garages and a gym on first floor level and not a second dwelling. The open braai structure facing south east of the building is problematic, due to the windy conditions in Betty's Bay.

Betty's Bay Ratepayers Association

The objection relates to the second dwelling, since the area was planned for a low density development and people enjoy this peaceful lifestyle. The Title Deed is more restrictive than the Zoning Scheme and Council is obliged to adhere to the Title Deed restrictions. It also objects to the relaxation of the lateral building line from 2m to 0,5m adjacent Erf 2655. The Association does support the relaxation of the 2m to the 1,57m Title Deed restriction to accommodate the staircase.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The applicant responded as follows:

The point that the Title Deed trumps the Zoning Scheme is correct, however once the restrictive conditions are removed the Zoning Scheme is applicable. The written consent from the surrounding owners is not a criterion in terms of Section 35(4) of the Overstrand Municipal Planning By-Law, 2016.

The main point of dispute is the use of the outbuilding. The objectors clearly indicated that the first story level was intended for a gym and not a second dwelling. Mr. G Ranfit rented the house during the period from 2002 - 2006 and the first floor level of the outbuilding was used as a second dwelling. The second dwelling was in use since 2006.

The objection that the proposed second dwelling and the relaxation of the building line from 2m to 0,5m adjacent to Erf 2655 is of no consequence, since the erf is not developed at this stage and there is substantial space between the existing buildings and the second dwelling.

The open braai area is not a point of contention, since the only braai is located on the first floor level of the main dwelling and was appropriately built to cater for the windy conditions in Betty's Bay.

The aspect that the owner does intend to rent out the dwellings is correct, but will follow due procedure to obtain the necessary rights.

9. MUNICIPAL ASSESSMENT OF COMMENTS

Town Planner's comment on objections

The Title Deed restriction applied for is in line with the procedure as per the Overstrand Municipal By-Law. The Zoning Scheme does make provision for a second dwelling as a primary right and this option is available to all the residents in the Overstrand Municipality. The applicant must comply with the development parameters and the availability of services. The reason that Betty's Bay is planned

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

as a low density town is correct and the second dwelling on the big erven will not have any detrimental effect on the density of Betty's Bay, since the coverage remain 50% in total. It must be borne in mind that servant's quarters have always been a primary right.

The objector's point that the structure was never intended as a second dwelling is correct, since the Scheme 8 regulations - an application for a consent use - would have been applicable. Thus the first floor level of the outbuilding was illegally converted into a second dwelling. However, this use can now be accommodated in terms of the Overstrand Zoning Scheme.

The objection relating to the relaxation of the lateral building line from 2m and 1,57m to 0,5m on first floor level is valid. Although the adjacent erf is not developed, it will infringe on the privacy of the adjacent erf. The balcony is extended beyond the existing Zoning Scheme and the previous Scheme Regulations applicable to the erf, as well as the Title Deed. The applicant did at no stage indicate why it is necessary.

Internal Departments

No objection has been received by the internal 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

Not applicable.

Spatial sustainability

The application is to make the subject property more compact within the character of the area. The proposed use is located within an existing building.

Efficiency

The building is used as such and thus makes optimal use of the development parameters as defined in the Overstrand Zoning Scheme.

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

Spatial Resilience

The application is in line with policies and caters for maximum use of the property. The application will enable the applicant to optimise his assets should it be necessary due to economic and or financial reasons.

Good administration

Procedure was followed and full public participation was applicable.

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

Same.

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

Same.

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

N/A

10.6 Impact on Municipal engineering services

None.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

The financial rights will also be to the benefit of the Municipality in terms of rates and taxes due to the added value accrue to the property.

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

The personal benefit is financial of nature for the applicant since it will add to the value of the property.

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

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

The social benefits are the possibility to attract tourist to the area in terms of accommodation that can be provided in the area.

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

The rights enjoyed by the beneficiary will remain in place as it is only certain conditions pertaining to the erf that is removed.

12. THE DESIRABILITY OF THE PROPOSAL

The application is to legalize transgressions or assumed transgressions, since the building plans for the property is lost. The Municipality and or the owner do not have copies of the approved plans. The builder of the structures has passed away and thus cannot verify any of the alleged transgressions. The application is therefore evaluated from the basis of dealing with the existing structures and land uses.

Building plans must have existed, since a departure was granted during 2002. Letters indicating that the structures were in existence, however no plan was attached during this application.

The application is for a second dwelling on first floor level, above the garage. The external staircase to the second dwelling does transgress the 2m Scheme Regulations, but not the title restriction of 1,57m. This part of the application was not disputed and or objected to during the public participation process and is supported. The impact has been there since 1997 and it does comply with the establishment conditions of the town in 1949, although it does transgress the Scheme Regulations 8 (previous Regulations in place) before the Overstrand Scheme Regulations. Due to the lack of building plans, the transgression does not pose a problem since it does adhere to the Title Deed restriction of 1,57m.

The second dwelling on first floor level is located within the building lines of the Title Deed. The use is acceptable since it does comply with the stipulations as per the Zoning Scheme in terms of development parameters. However the servant's quarters cannot be approved, since the Scheme Regulations clearly stipulated that a servant's quarters is viewed as a second dwelling. The applicant did not request any departure of the Scheme Regulations in this regard, therefor the servant's quarters must be converted into a store room and cannot be used as habitable space as this will result in a third dwelling and therefore undesirable densification.

The application for the wrap around balcony from 2m and 1,57m to 0,5m is not supported. This is a blatant transgression of the Title Deed restrictions of 1,57m, previous Scheme Regulations 8 and the Overstrand Zoning Scheme. This would not have been approved on a building plan. If it is disputed the applicant must submit proof of an approved building plan. It should be noted that approved building plans are not only the responsibility of the Municipality, but also of every owner of a property. The Overstrand Municipality does not approve structures over the building lines on first floor level. In this case, the transgression is directly in conflict with all restrictions since the inception of the town. Although the adjacent erf has not been developed, it is the Municipality's responsibility to take responsibility of all its

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

residents and property owners and for the greater good. This request to relax the lateral building line for a balcony is not acceptable and will only benefit the applicant. The balcony must be set back to the Scheme Regulation building line of 2m.

The applicant and/or the representative of the applicant did not address the transgression of the proposed second dwelling transgression of the 2m eastern lateral building line as can be seen on the building plan submitted with the application. This will be allowed, only the existing building, without the balcony/stoep.

The objector did indicate the open braai area and the representative did respond in this regard. Although not part of this application, the braai is problematic as it transgresses the height restriction of 8m and was not a replacement of the exact structure. The applicant has been informed of the aforementioned. This must be rectified to be within the 8m height.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 2656, Betty's Bay for the removal of restrictive conditions D.A.(b) of Title Deed T24494/2016 to accommodate the proposed second dwelling on first floor level above the garages in the existing outbuilding, **be approved**, subject to the following condition:
 - (a) that the servant's quarters be converted into a store room, because it does not comply with the definition of a second dwelling.
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 2656, Betty's Bay for the removal of restrictive conditions D.A.(d) of Title Deed T24494/2016, **not be approved**, due to the following reasons:
 - (a) the wrap around balcony of the proposed second dwelling is illegally constructed;
 - (b) it is not in line with any development parameters since 1949 and the contrary has not been proven;
 - (c) there was no motivation why the balcony cannot comply with the Title Deed and the Scheme Regulations building lines, and
 - (d) the fact that it is existing and illegal is not reason enough to approve the removal of the conditions to legalise the balcony.
3. that the application for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 on Erf 2656, Betty's Bay to relax the lateral building line with Erf 3496 from 2m to 1,57m to accommodate the existing external staircase, **be approved**,

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

4. that the application for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 on Erf 2656, Betty's Bay to relax the eastern lateral building line of the 2m of the existing corner of the proposed second dwelling structure, **be approved**,
5. that the approvals in Points 3. and 4. be subject to the following conditions:
 - (a) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (c) that all the conditions in the Services Report (attached as Annexure F), be complied with, and
 - (d) that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage.
6. that the application for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 on Erf 2656, Betty's Bay to relax the lateral building line with Erf 2655 from 2m to 0,5m to accommodate a proposed existing deck on first floor level and a second dwelling unit on ground floor level, as well as a proposed new deck on first floor level, **not be approved**, due to the following reasons:
 - (a) the applicant cannot prove that the balcony was built legally, since it does not comply with the Title Deed, previous Scheme Regulations 8 and the Overstrand Zoning Scheme Regulations;
 - (b) the Overstrand Municipality does not view any transgression over the building lines on first floor level positively;
 - (c) the reasoning that the adjacent erf is undeveloped does not hold water, since it is the responsibility of the Municipality to ensure fairness to all its citizens and not to cater for only one owner, and
 - (d) the fact that the balcony is built illegally and is existing does not warrant an automatically legalizing of the structure. The balcony can be set back to the 2m building line and will have no effect on the applicant.
7. that building plans reflecting the approval be submitted to the Building Control Department within three (3) months of the decision.
8. that the braai roof be within the 8m height restriction, since it was not part of the application.

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

9. that no occupation certificate be issued until all the structures on the property complies with the National Building Regulations and the Scheme Regulations as well as the Title Deed.
- 10 that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

14. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ Four (4) objections have been received.
- ❖ None of the internal departments have any objection.
- ❖ None of the Municipal services will be needed.
- ❖ It is in line with policy documents.
- ❖ The applicant could not substantiate and or proof the necessity of the eastern lateral building line transgression.
- ❖ The objectors could not proof that the proposed second dwelling will negatively influence their peaceful living style.

15. ANNEXURES

- Annexure A: Locality Plan
 Annexure B: Site Development Plan
 Annexure C: Motivation Report
 Annexure D: Objection received
 Annexure E: Applicant's response to objection received
 Annexure F: Services Report

SIGNATURES

AUTHOR:

Author name:

HANNEEN VAN DER STOEP

Author signature:

Date:

**AGENDA of the
Municipal Planning Tribunal
31 May 2017**

REGISTERED PLANNER

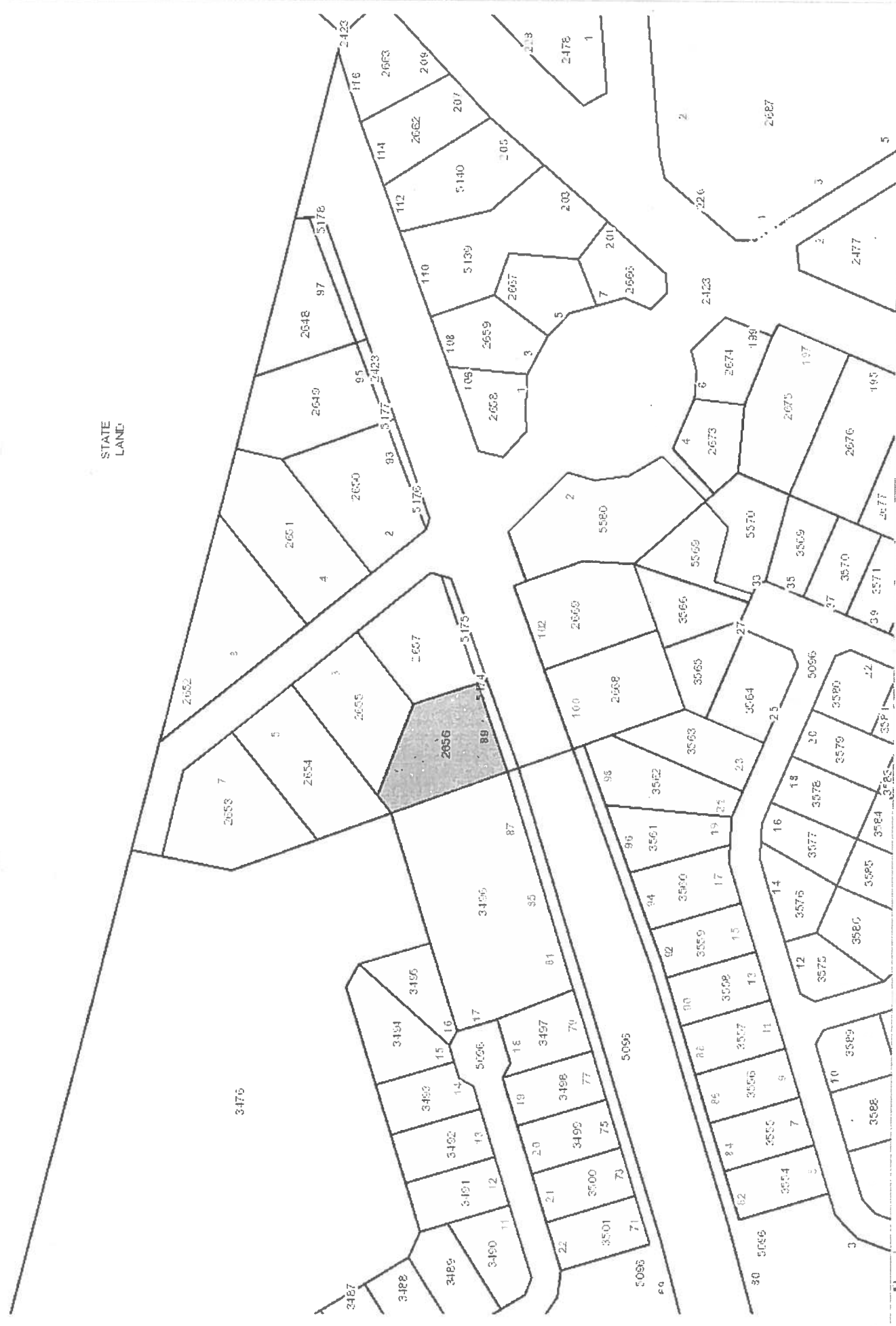
Registered planner name : **SCHALK VAN DER MERWE**

SACPLAN registration number: **A/1850/2014**

Registered planner signature : _____

Date: _____

STATE
LAND



LOCALITY PLAN
ERF 2656
BETTY'S BAY



13
ANNEXURE B 1/3

NOTES

1. THE DESIGN CONTAINED IN THIS DRAWING IS COPYRIGHT AND REMAINS THE PROPERTY OF THE ARCHITECTS.
2. ALL WORK TO BE CARRIED OUT IN STRICT ACCORDANCE WITH SABS 0400 AND LOCAL AUTHORITY BY-LAWS.
3. FIGURED DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALING OFF DRAWINGS.
4. ALL RELEVANT DETAILS, LEVELS & DIMENSIONS TO BE CHECKED BEFORE WORK COMMENCES. ANY OMISSIONS OR DISCREPANCIES TO BE REPORTED TO THE ARCHITECT.
5. THE ARCHITECT ACCEPTS NO RESPONSIBILITY FOR ERRORS RESULTING FROM THE MISINTERPRETATION OF THE DRAWINGS.
6. ALL DIMENSIONS ARE GIVEN IN MILLIMETRES.

REV	DATE	DESCRIPTION



INNES DESIGN
architecture
Jonathan Innes
Cell: 073 255-3084
Fax: 086 895 7198
SAIAT : 32172 SACAP : ST1029

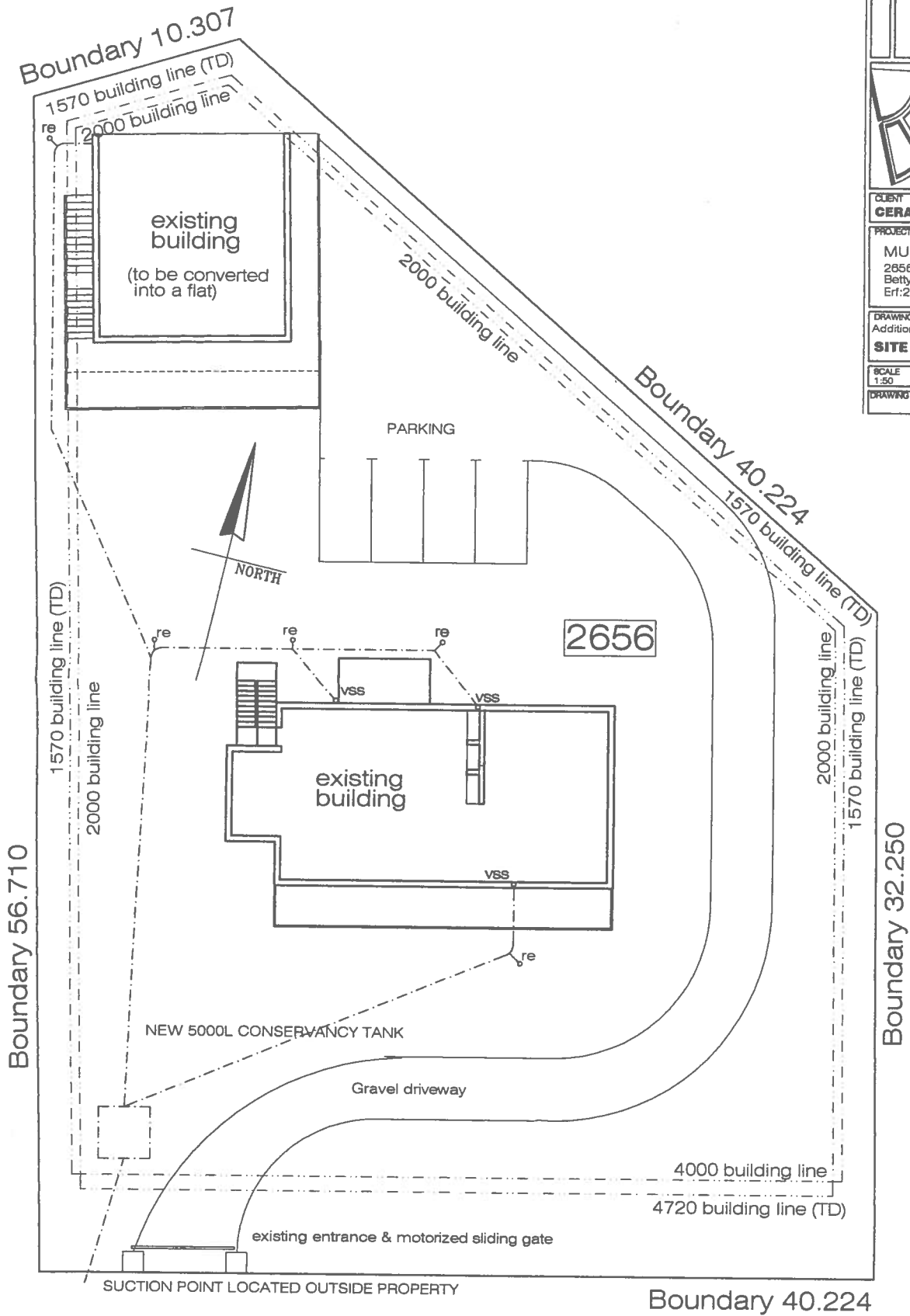
CLIENT
GERATONIA PROPRIETARY LTD

PROJECT
MUNICIPALITY DRAWINGS
2856 Clarence Drive
Betys Bay
Erf:2856

DRAWING
Additions to existing Dwelling cat. H4

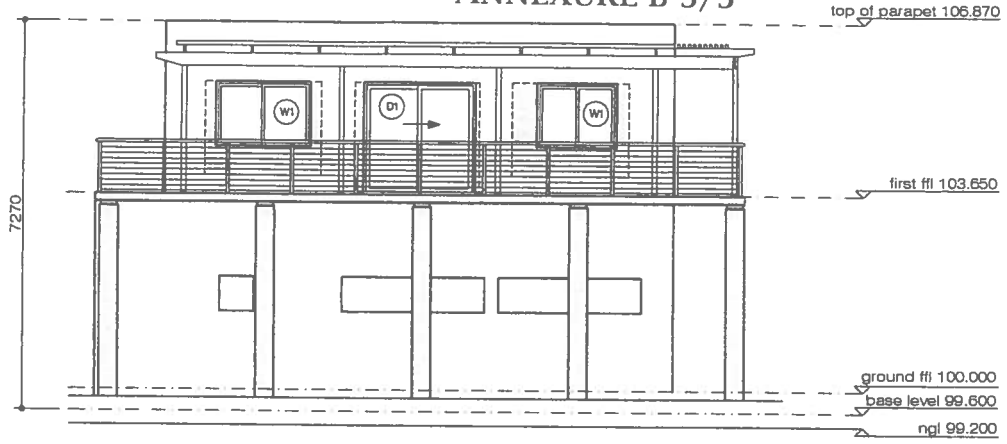
SITE PLAN

SCALE 1:50	DATE JULY 2018	DRAWN	CHECKED JINNES
DRAWING NO 2016/18		P.3	REV

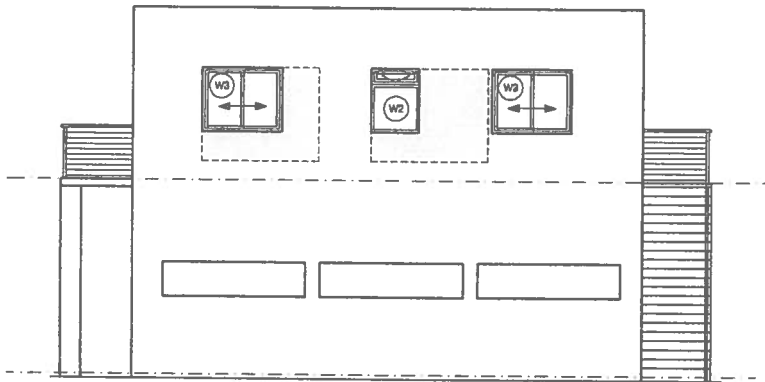


site plan
scale 1:200

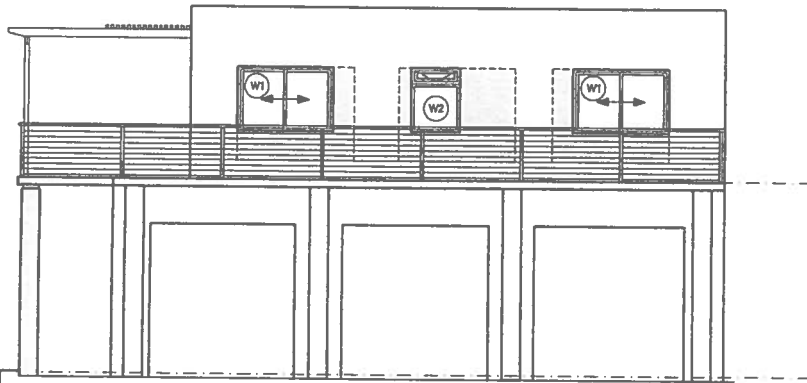
Clarence Drive



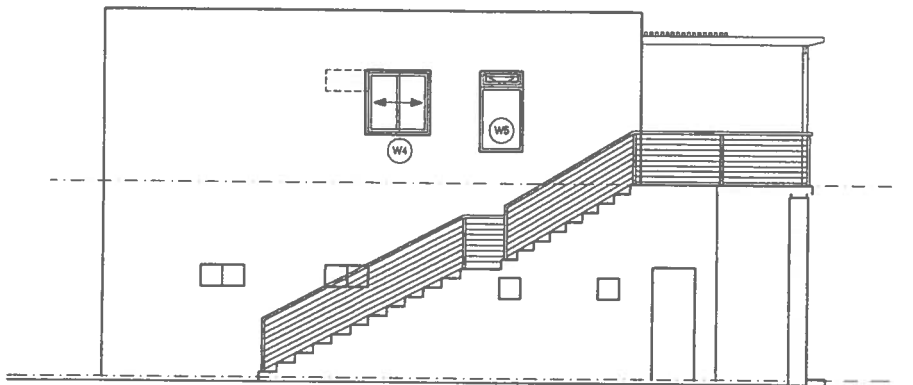
south elevation
scale 1:100




north elevation
scale 1:100



east elevation
scale 1:100



west elevation
scale 1:100

REV	DATE	DESCRIPTION
 <p>INES DESIGN architecture Jonathan Innes Cell: 073 255-3084 Fax: 086 695 7198 SAIAT : 32172 SACAP : ST1029</p>		
CLIENT		
CERATONIA PROPRIETARY LTD		
PROJECT		
MUNICIPALITY DRAWINGS 2656 Clarence Drive Bettys Bay Erf:2656		
DRAWING		
Additions to existing Dwelling cat: H4		
FLOOR PLANS XA		
SCALE 1:100	DATE JULY 2016	DRAWN / CHECKED JINNES
DRAWING NO 2016/18	P.2	REV

4

CERATONIA (Pty) LTD

Registration number 2014/136371/07
135 Main Road, Somerset West, 7130
Tel – 851 7604 Fax – 086 689 5882

Town Planning

Thursday, 18 August 2016

To Whom It May Concern

Re - MOTIVATIONAL LETTER FOR TWO DWELLINGS

We bought the property with two dwellings already built. As such our purchase price and the calculations of it included two dwellings on site 2656. We thus assumed the two dwellings would have been built according to plans submitted.

When we started the renovation process of the dwellings and got in touch with town planning we found that only one dwelling was allowed as per title deed but that the plans, as-built have gone missing.

We are currently renovating the current structures to make create a family vacation home and the extra dwelling, in line with the vacation home, would provide more space to accommodate people. This would make the site viable to be rented out to various income groups.

As the site is close to Betty's Bay CBD, located at the entrance the renovations will certainly create a better first impression for the whole of Betty's Bay. Leaving the second structure as is will deduct from this impression.

We also think that the second structure is wasted as a garage only and can be better utilized as accommodation on the first floor with garages on the ground floor. This also provides overall better security to the second structure.

Sincerely Yours

Erhard Theron

084 654 6070



BBRA / BBBV
Betty's Bay Ratepayers' Association
Bettysbaaise Belastingbetalersvereniging



*TP - A Theent
CH v/d Stoep*

Municipal Notice No: 143/2016

ERF: 2656, 89 CLARENCE DRIVE, Betty's Bay, Overstrand Municipality

APPLICATION FOR THE PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE: CERATONIA (Pty) LTD – PRESENTED BY J. INNES

OBJECTION

Sir/Madam

This submission is made on behalf of the members of the BBRA. I was contacted by various property owners as well as the councilor for ward 10, Mr Fanie Krige.

Written comments on the application of Jonathan Innes on behalf of the owner Ceratonia (Pty) LTD:

1. For the removal of restrictive title deed conditions to **accommodate a second dwelling** on the property and an encroachment of the 'proposed' existing deck on first floor level over the title deed lateral building line of 1,57m with erf 2655.

The BBRA, objects to the removal of restrictive title deed conditions to allow for a second dwelling.

The restriction of erven with a single residential zoning status, protects the character of our village, which should be adhered to by all property owners. The onus is on the owner of a property to ensure that the requirements of the property's title deed, are complied with. Betty's Bay coastal village was planned and developed within a low density environment. People bought properties in Betty's Bay to enjoy this peaceful lifestyle. The erf is surrounded by other single residential erven. An exception cannot be made for a property owner without the written consent of all the effected owners.

It must also be kept in mind that the title deed conditions made under the Act are superior to the scheme regulations of the Overstrand Municipality and council is obliged to apply the restrictions that carry the most weight.

2. Further for a departure in terms of sec 16(2)(b) of the municipal by law to relax the following:

Lateral eastern building line with erf 2655 from 2m to 0,5m to accommodate a proposed existing deck on the first floor.

The encroachment of the proposed existing deck on the first floor of the garage cannot be supported as the owner of the said property are not in favour of such encroachment.

Property No:	EL 2656
SCAN NO:	Betty's Bay
	21
COLLABORATOR NO:	975273
	Secretary: Adrian de Kock 0282729998

Chairman: Rudi Perold
028 272 9054

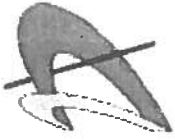
Treasurer: Adrian de Kock
082 940 4619

BBRA, P O Box 48, Betty's Bay, 7141

BBBV, Posbus 48, Bettysbaai, 7141

TP

1 DEC 06



BBRA / BBBV

Betty's Bay Ratepayers' Association
Bettysbaaise Belastingbetalersvereniging

Lateral western building line with erf 3496 from 2 m to 1,57m to accommodate the existing external staircase and second dwelling unit on ground floor level, as well as a proposed new deck on first floor level.

The BBRA supports the relaxation of the building line on the western side only, to condone the encroachment of the staircase and new concrete deck. No further development to be allowed.

3. Final Comment

The letter of the owner dd 18 August 2016, motivation for two dwellings, is misleading. He states that he was unaware of the restrictions prohibiting the erection of more than one dwelling on the property.

According to the deed of transfer, all the Title Deed conditions were clearly indicated on the document.

Mr Theron also clearly expresses his intention to rent out the property to accommodate various income groups. The increase in human activities more than an average household is also a concern to the property owners, who fear that their peace will be disturbed as the property is zoned for single residential purposes.

Regards,

**WRB PEROLD
CHAIRPERSON BETTY'S BAY RATEPAYERS ASSOCIATION**

TP A Theart
(H van der Stoep)

Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200
November 15, 2016



Dear Ms H van der Stoep

For attention Mr Rossouw

Re: TOWN PLANNING APPLICATION ERF 2656, BETTYS BAY: MUNICIPAL NOTICE NO. 143/2016

We received notification (letter dated 27 October 2016) regarding the application for second dwelling on erf 2656.

We have been in Bettys Bay for the past 20 years and acquired property to keep the tranquil surrounding as near as possible to what a biodiversity area such as Bettys Bay has to offer. Through the years the neighbours have been quiet and contend as we are all retired.

There are houses offering accommodation to numerous (often up to 20 people in the house at a time) not that far from us, that disrupt the people around them during weekends, to such an extent that the police often have to come to shut them up.

Having TWO properties occupied by people for "family vacation" and on weekends will disturb the environment to no end. The second building is also on our border, and face our house, when it was built, the intention was never as a second dwelling. The plan that was approved was only for one dwelling, I cannot understand the applicant stating that "at town planning they found that only one dwelling was allowed as per title deed, but that the plans have gone missing." It was ALWAYS only one dwelling approved.

Objections against the application :

As per 1 a We strongly object to this application as the building was in the first place not designed as a dwelling.

As per 1 b We are in disagreement with the encroachment of the "PROPOSED EXISTING DECK?" (JUST WONDERING HOW IT CAN BE "PROPOSED EXISTING?" over the lateral building line, as this was NOT supposed to be a "dwelling".

As per 2 "Application for a departure in terms of Section 16 (2)(b) to relax:

- a. "Lateral building line with Erf 2655 from 2m to 0,5m to accommodate deck on first floor level".

TP

28 NOV 16

FILE NO:	EL2656-Bettys Bay
SCAN NO:	08
COLLABORATOR NO:	973975

We object against the application as this "Second Dwelling" and the deck will be used by "holiday makers" and faces our house directly – We foresee that this may be used as braai area and that there may be unwanted partying influencing the environment.

We strongly object to this application as the building was in the first place not designed as a dwelling

This objection comes from the owners of erven, 2655.

Kind Regards

MCJ and GF Gunther
PO Box 312
Bettys Bay
7141

Landline: 0282729814 (Mr GF Gunther)
Mobile: 082 3207184 (Ms MCJ Gunther)

Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200
November 15, 2016



TR A Theart
(H vld stoep)

Dear Ms H van der Stoep

For attention Mr Rossouw

Re: TOWN PLANNING APPLICATION ERF 2656, BETTYS BAY: MUNICIPAL NOTICE NO. 143/2016

We received notification today (letter dated 27 October 2016) regarding the application for second dwelling on erf 2656.

We have been in Bettys Bay for the past 20 years and acquired property to keep the tranquil surrounding as near as possible to what a biodiversity area such as Bettys Bay has to offer. Through the years the neighbours have been quiet and contend as we are all retired.

There are houses offering accommodation to numerous (often up to 20 people in the house at a time) not that far from us, that disrupt the people around them during weekends, to such an extent that the police often have to come to shut them up.

Having TWO properties occupied by people for "family vacation" and on weekends will disturb the environment to no end. The second building is also on our border, and face our house, when it was built, the intention was never as a second dwelling. The plan that was approved was only for one dwelling, I cannot understand the applicant stating that "at town planning they found that only one dwelling was allowed as per title deed, but that the plans have gone missing." It was ALWAYS only one dwelling approved.

We strongly object to this application as the building was in the first place not designed as a dwelling. We would like to get extension to the end of December, for further objection as we only received this letter today and would like to obtain further legal advice.

This objection comes from the owners of erven 2654, 2655 AND 2657.

Kind Regards

MCJ and GF Gunther and PA Swart
PO Box 312
Bettys Bay
7141

Landline: 0282729814 (Mr GF Gunther)
Mobile: 083 2865024 (Mr PA Swart)
Mobile: 082 3207184 (Ms MCJ Gunther)

FILE NO:	EL 2656BB
SCAN NO:	01
COLLABORATOR NO:	971798

TP - A Theart
CHuldsteep)

Loretta Gillion - RE: Municipal Notice No 143/2016

Erf 2656, Betty's Bay

From: Pieter Swart <Pieter.Swart@neotel.co.za>
To: Judy G <judy@iapro.co.za>, "loretta@overstrand.gov.za" <loretta@overstra...>
Date: 16/11/2016 11:30 AM
Subject: RE: Municipal Notice No 143/2016
Cc: Gus Gunther <gusgun@telkomsa.net>

Hi Gus en Judy,

Ek neem aan dat dit die wit huis is. Die eienaar het nou aansoek gedoen om die motorhuis en die 'gym' in 'n tweede wooneenheid te omskep. Die feit dat hulle objeksie kry sal die munisipaliteit moet besluit of die servituut op die woonerwe te verander waar hulle meer as een wooneenheid op 'n erf sal toelaat. Dit sal 'n inpak op die infra struktuur (paaie, krag en riool) he en kan die karakter van die omgewing totaal verander. Ek stel voor dat ons die bou regulasie kry van die distrik waar dit verwys dat net een gebou toegelaat word end at objeksie aanteken teen 'n tweede wooneenheid. Die munisipaliteit moet dan die besluit maak of hulle dit gaan toelaat of nie. Dis nie nodig om regsadvies te kry nie, want dit is 'n versoek om 'n huidige munisipale reel te herroep/override.

Groete
Broer.



From: Judy G [judy@iapro.co.za]
Sent: Tuesday, 15 November 2016 3:47 PM
To: loretta@overstrand.gov.za
Cc: Gus Gunther <gusgun@telkomsa.net>; Pieter Swart <Pieter.Swart@neotel.co.za>
Subject: Municipal Notice No 143/2016

Dear Ms van der Stoep and Mr Rossouw,

Attach please find the initial letter regarding the objection to construct a second dwelling on the property. Apparently this building was originally planned as a gym.

We would like to have further extension for objection to the end of December, as we only received the letter today, 15 November 2016. We also want to consult a lawyer for a legal opinion.

Kind Regards

Judy Gunther

FILE NO:	EL 2656 Betty's Bay
SCAN NO:	
COLLABORATOR NO:	972852

✓
KBB

TP

Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200
November 15, 2016

FILE NO:	EL 2656 Bettys Bay
SCAN NO:	12
COLLABORATOR NO:	972608



TP-14 Theart
(Huld Stoop)

Dear Ms H van der Stoep

For attention Mr Rossouw

Re: TOWN PLANNING APPLICATION ERF 2656, BETTYS BAY: MUNICIPAL NOTICE NO. 143/2016

We received notification today (letter dated 27 October 2016) regarding the application for second dwelling on erf 2656.

We have been in Bettys Bay for the past 20 years and acquired property to keep the tranquil surrounding as near as possible to what a biodiversity area such as Bettys Bay has to offer. Through the years the neighbors have been quiet and contend as we are all retired.

There are houses offering accommodation to numerous (often up to 20 people in the house at a time) not that far from us, that disrupt the people around them during weekends, to such an extent that the police often have to come to shut them up. We are staying in a Bio-Diversity area, where we treasure the little klipspringers, and other creatures on a constant basis as permanent residents of Bettys Bay.

Not all people visiting on a weekend or only for vacation do not have the same sentiments as we have and regarding the surroundings and use the time to drink and party resulting in terrible noise and often litter as well.

Having TWO properties occupied by people for "family vacation" and for weekends "stay-over" will disturb the environment to no end. The plan that was approved was only for one dwelling, I cannot understand the applicant stating that "at town planning they found that only one dwelling was allowed as per title deed, but that the plans have gone missing." It was ALWAYS only one dwelling that was approved. We knew the owner builder and that the building was developed for garages downstairs and a gym upstairs. The new owners must have been misinformed or just made his own assumptions.

There is an open braai constructed facing south east of the building. To my knowledge an open braai poses a fire hazard and we are concerned that this was not approved before construction. There are numerous species of proteas on the erven surrounding this property and having the prospects of people not understanding this and having braais without considering the wind that springs up without any warning, this must be URGENTLY attended to. I am sure there are legal restrictions regarding an OPEN OUTSIDE BRAAI in Bettys Bay!

TP 22 NOV 16

We strongly object to this application as the building was in the first place not designed as a dwelling.

This objection comes from the owners of erven 2653.

Kind Regards

Mrs HW Theron
WA Theron Family Trust
PO Box 253
Bettys Bay
7141
Mobile: 083 703 3978 (Mrs H.W. Theron)

du plessis • hofmeyr • malan

land law specialists



File ref: 2656 KBB (3427)

Our ref: JP1219/C65

13 February 2017

TP A Theron
(H Jol Stoop)

FOR ATTENTION: S Müller

Director: Infrastructure and Planning

Town Planning Hermanus

Overstrand Municipality

FILE NO:	EL 2656
	Betty's bay
SCAN NO:	
COLLABORATOR NO:	994605

Email: loretta@overstrand.gov.za

Dear Mr Müller

**RESPONSE TO OBJECTIONS: ERF 2656, 89 CLARENCE DRIVE, BETTY'S BAY,
OVERSTRAND MUNICIPAL AREA: PROPOSED REMOVAL OF RESTRICTIVE
CONDITIONS AND DEPARTURE: J INNES (obo CERATONIA PTY LTD)**

1. Your letter dated 13 December 2016 to Mr J Innes has reference.
2. We confirm we act on behalf of Mr Erhard Theron and Ms Michelle Theron, directors of Ceratonia (Pty) Ltd, the applicant, who owns Remainder of Erf 2656, Betty's Bay, Overstrand Municipality which is situate on 89 Clarence Drive ('the Property').
3. We also refer to the email dated 6 January 2017 from Ms Loretta

TP

14 FEB 2017

DU PLESSIS HOFMEYR MALAN INC (Registration Number: 2011/134862/21)

ATTORNEYS • CONVEYANCERS • NOTARIES

DIRECTORS: JP du Plessis B Iuris LLB (UNISA), BPhil & MPhil Sustainability (US) •

CJ Hofmeyr BA LLB (US), LLM (HU-Berlin), LLM Public Law (UCT) • N Malan BA Industrial Psych (US), LLB (UNISA)

✓
KBB

2 | Page

Gillion granting the applicant an extension of 30 days in which to submit its response to the comments received from:

- 3.1. Betty's Bay Ratepayer' Association ('BBRA' comment');
 - 3.2. MCJ & GF Gunther, the owners of Erf 2655 ('Gunther's comment');
 - 3.3. MCJ & GF Gunther & PA Swart, the owners of Erven 2655, 2654, and 2657 ('Gunther's and Swart's comment'); and
 - 3.4. WA Theron Family Trust, the owner of Erf 2653 ('WA Theron's comment').
4. The main comment is against the application to remove condition D.A(b) from the Property's title deed which allows only one dwelling to be erected on the property. In addition to an in-principle objection, the reasons for objecting in summary are fears of noise and disturbance of the peace.
5. The BRRRA contends that:

'The restriction of erven with a single residential zoning status, protects the character of our village, which should be adhered to by all property owners. The onus is on the owner of a property to ensure that the requirements of the property's title deed, are complied with. Betty's Bay coastal village was planned and developed within a low, density environment. People bought properties in Betty's Bay to enjoy this peaceful lifestyle. The erf is surrounded by other single residential erven. An exception cannot be made for a property owner without the written consent of all the effected owners.

It must also be kept in mind that the title deed conditions made under the Act are superior to the scheme regulations of the

Overstrand Municipality and council is obliged to apply the restrictions that carry the most weight'.

6. We disagree with the BRRR for the following reasons:
 - 6.1. The restriction against the second dwelling unit is as a result of a restrictive title deed condition and not the Overstrand Zoning Scheme Regulations (PN 400/2013 dated 29 November 2013) which allows as a primary use, a second dwelling or guest rooms on properties zoned Single Residential I.
 - 6.2. Although it is trite that while restrictive title deed conditions exist, they will 'trump' the Municipality's scheme regulations, once the conditions are removed this will no longer be the case. This is an application to remove the relevant restrictive title deed conditions.
 - 6.3. The Removal of Restrictions Act 84 of 1967 has been repealed and section 16(2)(f) read with section 35(1) of the Overstrand Municipal Planning By-Law (PG 7540 dated 4 December 2015 as amended) ('the By-Law') authorises the Municipality to amend, suspend or delete restrictive conditions in respect of a land unit.
 - 6.4. Section 35(4) sets out the criteria the Municipality is to have regard to when considering the amendment, suspension or deletion of a restrictive condition. The written consent of all the effected owners, as contended by the BRRR, is not a criterion.
7. While it is correct that the personal benefits which accrue to the applicant's neighbours, as the holders of rights in terms of the restrictive condition is a low density environment, the objectors do

not dispute that the second structure exists and has existed for a long time. There is also no dispute that the ground floor contains garages. What is disputed is what the first floor of this structure was intended for, or used for, the objectors saying that:

- 7.1. *'the building was in the first place not designed as a dwelling'* (Gunther's comment and Gunther's and Swart's comment);
 - 7.2. *'the intention was never as a second dwelling'* (Gunther's comment and Gunther's and Swart's comment); and
 - 7.3. In a later email Mrs Gunther says that *'[a]pparently this building was originally planned as a gym (emphasis added)'*. According to WA Theron's comment, *'the building was developed for garages downstairs and a gym upstairs'*.
8. This was not the situation when on 26 February 2016 the applicant bought the property on an auction. When the applicant took occupation, the first floor of the structure was used for dwelling purposes.
 9. Mr Theron, on behalf of the applicant, spoke to Mr George Ranft, currently residing at 177 3de Laan, Kleinmond who from 2002 to 2006 lived in the main house on the property. A copy of a signed statement from Mr Ranft accompanies this response. Mr Ranft says that in 2006, Mr Henk Fourie, the erstwhile owner and builder (now deceased) converted the first floor from an open space into an apartment/flat for rental purposes by constructing walls for the bedrooms and inserting a kitchen.
 10. Mr Theron also spoke to Mr Fourie's widow, Mrs E Fourie, who confirmed her husband had built the two structures on the property. A signed statement is being obtained from Mrs Fourie

5 | Page

and will be submitted to the Municipality during the course of this week. Mrs Fourie confirms that her husband built the dwellings 19 years ago in about 1997.

11. Mrs Fourie also confirms that the dwellings were constructed in accordance with plans approved by the Council. Unfortunately, despite enquiries by the applicant for copies of these plans, the Municipality has been unable to locate these plans.
12. It is therefore not correct that the second dwelling was only used as a gym. Since 2006, the second dwelling has been used for accommodation purposes.
13. The social benefits of retaining the restrictive condition accrues primarily to the applicant's neighbours by limiting any increased use of this area in Betty's Bay which according to the objectors, suit them in their retirement. The social benefits which arise from the removal of the restriction have a wider impact positively affecting not only the persons who will need to be employed to manage the short-term accommodation but also the increase in people moving through Betty's Bay and frequenting the local and surrounding businesses and spending money in the area and contributing to tourism in the local area and region.
14. We also point out that the title deed restriction was imposed in 1949 when the approach towards town planning did not emphasise densification and the responsible use of resources as today in the Western Cape Provincial Spatial Development Framework. We refer to the applicant's motivation which deals in more detail with this issue.
15. In its application, the applicant seeks to regularise the second dwelling which already existed on the property when it bought it which consists of:

6 | Page

- 15.1. three garages and domestic quarters on the ground floor;
 - 15.2. two bedrooms, an open-plan kitchen, lounge and dining-room, and a bathroom on the first floor;
 - 15.3. the first-floor living area is accessed by an external staircase on the westerly-side of the building. The external staircase, however, is right on the 1,57m lateral boundary line in common with Erf 3496. The applicant seeks to regularise the external staircase encroachment of the Municipality's 2m side building line restriction by seeking a departure therefrom;
 - 15.4. from the external staircase was a 'stoep/deck' which wrapped around along the southern-side and on the eastern-side of the first floor. On the eastern side, the existing 'stoep/deck' is over both the 2m municipality side building line and the 1,57m title deed restriction building line. All around the 'stoep/deck' was an approximately 1 m high brick wall. The applicant seeks to regularise the encroachment on the first-floor by the 'stoep/deck' on the westerly-side as described in paragraph 15.3 above as well as permission that the lateral eastern building line be 0.5m.
16. But for the BBRA's comment, the three letters received from the owners of Erven 2654, 2655, 2657, and 2653 are virtually identical, namely that:
- 16.1. All three owners have been in Betty's Bay for the past 20 years, are retired, and want to keep the surroundings tranquil;
 - 16.2. There are unspecified houses '*not far from us*' that offer accommodation up to 20 people per house who are disruptive and the police '*often have to come and shut them up*'; and

7 | Page

- 16.3. Having two properties occupied by people for vacation and on weekends will disturb the environment to no end.
17. We point out that these comments are vague, unspecific, and speculative.
18. Before dealing with the comments, we point out that only Erven 2653 and 2654 have dwelling structures erected on them. Only a small section in the south-easterly corner of Erf 2654 adjoins the Property. For the rest the erven surrounding the Property (Erven 2657, 2655, and 3496) are undeveloped. As a result there is considerable open space between the applicant's structures and the houses on Erven 2653 and 2654.
19. While it is correct that the applicant's intention is to use the main and second dwellings for short-term rentals and will shortly be applying for the necessary town-planning permissions in this regard, the BBRA is mistaken when it states that '*Mr Theron also clearly expresses his intention to rent out the property to accommodate various income groups*'. There is no such mention in Mr Theron's motivational letter dated 18 August 2016. The applicant is aiming for the high-end luxury market, will ensure appropriate signage and warnings are placed to prevent any excessive noise and will comply with any occupancy restrictions imposed by the Municipality.
20. In summary:
 - 20.1. The second dwelling has been used for the last nine years for accommodation purposes. The removal of the restriction will not completely remove all the neighbour's rights as the number of structures on the property will not increase. It cannot be said that the regularisation of the second dwelling will have an undesirable impact on the surrounding uses. The

Municipality should exercise its discretion and remove condition D.A(b) from title deed T24494/2016 to regularise the second dwelling's continued existence;

20.2. As outlined in paragraphs 15.3 and 15.4 above, the applicant seeks to regularise the encroachments on the 2m building line caused by the external staircase and existing deck. The BRRRA in paragraph 2 of its comments supports the departure. None of the other comments deal with this departure. The Municipality should grant the departure of the lateral western building line with Erf 3496 from 2m to 1,57m to accommodate the existing external staircase and the extended deck on the first floor;

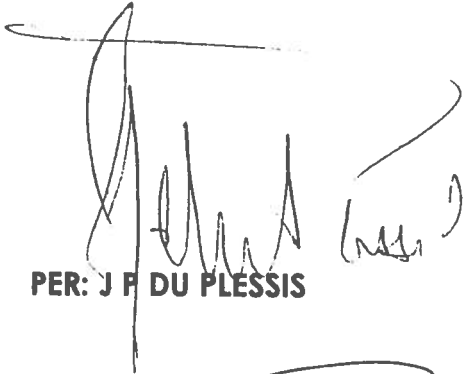
20.3. As outlined in paragraphs 15.3 and 15.4 above, the applicant seeks to regularise the encroachments on the lateral eastern 2m municipal building line and 1.57m title deed restriction building line caused by the existing 'stoep/deck'. This is not supported by the owners of Erf 2655, Mr and Mrs Gunther, for no other reason than it allegedly directly faces their house and that they foresee that it will be used as a braai area with '*unwanted partying*'. Besides the fact that the Gunther's residence on Erf 2654 is situated about 50 metres away on an incline and obliquely faces the eastern side of the second dwelling, the applicant has no intention to have an open braai area on the first floor for which there is also no space. It is only the main dwelling which has provision for a braai area which is appropriately built given the prevailing windy conditions in Betty's Bay and concerns for fires. The Municipality should grant the departure and allow the relaxation of title deed restriction D. A.(d) only insofar as the eastern lateral boundary line is concerned.

9 | Page

21. Kindly acknowledge receipt hereof.

Yours sincerely

DU PLESSIS HOFMEYR MALAN INC



PER: J F DU PLESSIS



PER: Adv ADELE ERASMUS (Consultant to DHM Attorneys)

Datum 13 Januarie 2017

Aan wie dit mag aangaan

insake – Erf 2656 Betty's Baai en die hoofhuis, die garages, woonstel en bediende kamer.

Ek George RANFT wat woonagtig is
177 - 3 de Laan, Kleinmond stel hiermee die volgende op
 skrif:

1. Ek het in die Hoofhuis, wat op erf 2656 Clarence Drive, Betty's Baai gelee is, gebly die periode tussen 2002 en 2006..
2. Daar het ongeveer 4 mense op die erf gebly terwyl ek daar gewoon het.
3. Die tweede gebou was aanvanklik net een groot kamer wat in 2006 omskep was in n woonstel wat toe uitverhuur was.

Enige ander notas –

Geteken te BETTY'S BAAI op hierdie dag 13 van JANUARIE 2017

H.G. RANFT (Handtekening)

H.G. RANFT (Naam)

13/1/2017 (Datum)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS AND
DEPARTURE: ERF 2656, BETTY'S BAY (3427)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that stormwater be allowed to discharge through Erf 2656, Betty's Bay, unobstructed;
4. that no on-street parking be allowed;



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

11/11/2016
DATE

VELLE TINTO & ASSOCIATES INC,
P.O.BOX 733
WAPADRAND
0050

Prepared by me

CONVEYANCER
MADELEYN KRUGER

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ANNECKE LOUW

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 CALEDON on 5 MARCH 2016 granted to him by

**Sheriff of the High Court of South Africa Western Cape Division, Cape
Town, DIVISION CALEDON AND GRABOUW, WESTERN CAPE
PROVINCE**

AND the said Appearer declared that

WHEREAS in the matter wherein

ABSA BANK LIMITED
REGISTRATION NUMBER 1986/004794/06

was the Plaintiff and

RAGNAR BAARD OLSEN
Born on 11 February 1954
and
TARYN OLSEN
Identity Number 751201 0136 080
Married in community of property to each other

were the Defendant and the property herein described is registered in the name of the said

RAGNAR BAARD OLSEN and TARYN OLSEN

and the said Sheriff of the High Court of South Africa Western Cape Division, Cape Town for the district of CALEDON AND GRABOUW, Province of WESTERN CAPE, acting by virtue of a Warrant of Execution, issued by the Registrar of the High Court of South Africa Western Cape Division, Cape Town at Cape Town on 21 September 2015 under Case Number 3974/2012, caused to be attached and to be sold by Public Auction on 26 February 2016 for the sum of R891 000,00 (EIGHT HUNDRED AND NINETY ONE THOUSAND RAND) and transfer duty being paid on the amount of R905 536.12 (NINE HUNDRED AND FIVE THOUSAND FIVE HUNDRED AND THIRTY SIX RAND AND TWELVE CENTS) which amount includes arrear rates and sheriff commission as set out on the transfer duty receipt, the hereinafter mentioned property to the hereinafter mentioned transferee/s.

NOW THEREFORE he, the said Appearer in his capacity aforesaid, did by virtue of these presents, cede and transfer to and on behalf of

CERATONIA PROPRIETARY LIMITED
Registration Number 2014/136371/07

or its Successors in Title or assigns, in full and free property

REMAINDER OF ERF 2656 BETTYS BAY
IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON
PROVINCE WESTERN CAPE

IN EXTENT 1796 (ONE THOUSAND SEVEN HUNDRED AND NINETY SIX)
Square metres

FIRST TRANSFERRED BY DEED OF TRANSFER NO. T12724/1949 WITH DIAGRAM NO. 5014/1949 ANNEXED THERETO AND HELD BY DEED OF TRANSFER NO. T14691/2007

A. SUBJECT to the conditions referred to in Certificate of Registered Title T11939/1943.

B.

"NOT SUBJECT to condition B on page 2 of Deed of Transfer 14691/2007, by Virtue of Section 53 of the Mining Titles Registration Amendment Act, 24 of 2003."

C. ENTITLED to the benefit of the conditions referred to in the servitude endorsement dated 24th June 1940 ON Certificate of Consolidated Title T3720/1937 which endorsement reads as follows:

"By Deed of Transfer No. 6068/1940 dated 26/6/1940 certain conditions relating to (b) prohibition of Petrol Station on land, (d) wood and iron buildings, (e) slaughter poles, cattle kraals and manufacture of bricks, tiles etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer."

D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer T12724/1949, namely:

A. As being in favour of the registered owner of any erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:-

(a) That this erf be used for residential purposes only

(b) That only one dwelling, excluding licenced hotels, maalonettes and semi-detached buildings, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf;

(c) That not more than one-half of the area of this erf be built upon;

(d) That no building or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary to this erf. No such building or structure shall be situated within 1,57 metres of the lateral boundary common to any adjoining erf.

B. As being in favour of the Administrator:-

(e) That this erf be not subdivided except with the consent in writing of the Administrator.

C. As being in favour of the Local Authority:-

- (f) That the owner of this erf shall be obliged to allow the drainage or sewerage of any other erf to be conveyed over this erf if deemed necessary by the local authority.
- (g) That the owner of this erf shall be obliged to receive material to give a proper slope to the bank if this erf is below the level of the adjoining street and if this erf is above the level of the adjoining street, he shall in like manner permit a safe slope to the bank, unless in either case he shall elect to build retaining walls to the satisfaction of the local authority and within a period to be determined by the local authority:
- (h)

D. As being in favour of the registered owner of any erf in the Township:-

- (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes;
- (c) No slaughter poles, cattle kraals, pigsties or cow-sheds shall be erected or carried on by any person whomsoever on this erf;
- (d) Save with the consent in writing of the Company and of any Local Authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature nor shall he have the right (save and except to prepare the erf for building purposes) or dig or quarry any earth, gravel, lime or stone thereon;
- (e) No building shall be erected on this erf at a cost of less than R800,00 exclusive of the cost of the land;
- (f) No noxious trade or noxious business shall be carried on on this erf;
- (g) No garage or service station may be erected or carried on on the land hereby conveyed;
- (h) The transferee shall not camp overnight or light fires on the erf save with the written consent of the company;

Of the foregoing condition D, (b), (c), (d), (e), (f) and (g) have been imposed by Hangklip Beach Estates Limited."

In the foregoing conditions the words and expressions used have the meaning assigned to them in the regulations published in Provincial Notice No. 401 dated 17th October 1935.

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

RAGNAR BAARD OLSEN and TARYN OLSEN

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

CERATONIA PROPRIETARY LIMITED
Registration Number 2014/136371/07

or its Successors in Title 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 R891 000,00 (EIGHT HUNDRED AND NINETY ONE THOUSAND RAND) and transfer duty being paid on the amount of R905 536.12 (NINE HUNDRED AND FIVE THOUSAND FIVE HUNDRED AND THIRTY SIX RAND AND TWELVE CENTS) which amount includes arrear rates and sheriff commission as set out on the transfer duty receipt.

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

q.q.

In my presence

REGISTRAR OF DEEDS