

## 4.2

**ERF 197, 23 MYRTEL STREET, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS MB PLAN TOWN PLANNING ON BEHALF OF HERMANUS CHILD AND FAMILY SERVICES**

197 HSB (4286/2022)

B Minnaar

9 April 2025

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Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) has been received on 07 November 2022 from MB Plan Town Planning on behalf of Hermanus Child and Family Services applicable to Erf 197, Sandbaai for the following:

- ❖ **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law of condition B.2.(a) & B.2.(c) contained in Title Deed T1949/2022, to utilize the property as an institution as well as to accommodate more than one dwelling unit.
- ❖ **consent use** in terms of Section 16(2)(o) of the By-Law to utilize the property as an institution (home for indigent children).
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to:
  - relax the southern lateral building from 2m to 0m to accommodate the existing garage/storage space; and
  - relax the total floor area of the second dwelling from 120m<sup>2</sup> to 170m<sup>2</sup>.
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to for the existing building and land use contravention.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C. Title Deed T1949/2022 is attached as Annexure D.

## 2. DECISION AUTHORITY

Authorized Official

## 3. BACKGROUND / SITE HISTORY

Erf 197, Sandbaai is situated at 23 Myrtle Street. The property is zoned as Residential Zone 1, measuring 1023m<sup>2</sup> in extent and comprising of two (2) buildings. The current property owner took transfer of the property in 2022 and utilised both buildings for institutional purposes without the relevant approval of the municipality.

The building 1 (positioned near the street) houses male children and consists of the following:

- open plan living area with kitchen;
- main bedroom with an en-suite for the carer;
- bedroom 2 consists of 3 beds;
- bedroom 3 consists of 3 beds;
- a full bathroom, and
- garage that was converted into a study area.

Building 2 (positioned at the rear of the property) was originally approved as an outbuilding (garage) accommodating four (4) vehicles. The outbuilding was converted into an additional dwelling unit which was further extended to include another garage and a covered patio. Building 2 houses female children and consists of the following:

- open plan living area with a kitchen;
- main bedroom with an en-suite for the carer;
- bedroom 2 consists of 3 beds;
- bedroom 3 consists of 4 beds with a cot for an infant;
- a full bathroom, and
- a garage used for storage.

The property is restricted to residential use and one dwelling with associated outbuildings in terms of the title deed. Application is therefore made for the removal of restrictive title deed conditions.

An application is also made for consent use to accommodate the institution on a single residential property as well as departures for exceeding the 120m<sup>2</sup> restrictions for a second dwelling and encroaching the southern boundary line.

Due to the property being operated as an institution without the necessary municipal approval, an application for the determination of an administrative penalty has also been submitted.

The application therefore entails applications for removal of restrictive title conditions, consent use, departure, and the determination of an administrative penalty.

#### **4. SUMMARY OF APPLICANT'S MOTIVATION**

The motivation for the application is summarised as follows:

- ❖ The Hermanus Child and Family Services NPO is operating an institution from the subject property housing indigent children.
- ❖ The application area accommodates a main dwelling unit at the front of the property and a second dwelling unit at the back of the property.
- ❖ The main dwelling is partly approved. The second dwelling was converted from a previous garage with a few additions.
- ❖ The services provided by the organisation include designated child protection, alternate care residential centres and early childhood development.
- ❖ Children placements are longer in term (until 18 years of age).
- ❖ The owner purchased the property on 28 October 2021 from the previous owner. The building transgressions which the previous owner is responsible for, already existed. The contraventions include a second dwelling and the increased floor area of the second dwelling. The current property owner is responsible for the existing proposed land-use for the institutional use.

- ❖ The current owner intends to rectify all existing contraventions through the submission of this application.
- ❖ The removal of restrictive conditions will allow the property to be restricted in terms of the scheme with regards to the land use rights of the property.
- ❖ Although an application for consent use is applied for to accommodate an institution, the actual use of the property will remain residential (housing for indigent children).
- ❖ The garage located over the rear building line is not a habitable space and will be utilised for housing a vehicle or for storage purposes. The impact on the neighbouring property is minimal since no visual or privacy intrusions occur.
- ❖ The applicant motivates that the administrative penalty be waived.
- ❖ The proposed development is situated on an already services property with sufficient services available for the proposed use.
- ❖ The proposal is consistent with the Overstrand Municipality Spatial Development Framework as well as the Overstrand Municipality Growth Management Strategy.
- ❖ The property is not situated within the EMOZ or HPOZ.
- ❖ The planning principles will be discussed in point 10.2 of this report.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	03 March 2023	06 April 2023
Gazette	Yes	10 March 2023	06 April 2023
Notices ( <i>possibly affected property owners</i> )	Yes	03 March 2023	06 April 2023
Notices ( <i>persons mentioned in title deed</i> )	N/A	N/A	N/A
Internal Departments	Yes	07 March 2023	06 April 2023
Ward councillor	Yes	03 March 2023	06 April 2023
Total comments	<b>ONE (1) letter of objection (LATE)</b>		
Total letters of support	<b>THREE (3) letters of no objection</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly?			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			<b>Yes</b>

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

Name	Date received	Summary of comments
Environmental Services	07/03/2023	No objection.
Building Department	07/03/2023	No objection: All buildings to comply with NBR and all other applicable law.
Fire Department	09/03/2022	The fire department has no objection subject to compliance with the provision of SANS 10400 A:2016, 10400-T:2020 and the By-Law relating fire safety.
OpenServe (Telkom)	15/03/2023	Attached as Annexure G.
Services Report	28/03/2023	Attached as Annexure H.
Waste Management	05/04/2023	No objection from Solid Waste Planning based on additional information received.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Registered letters sent to interested and affected parties, advertisements published in the Village News (local newspaper) and Provincial Gazette as well as a site notice invited the public to comment on the application during public participation.

Three letters of no objection were received (dated 11 April 2023, 24 May 2023 and 25 May 2025). One (1) late objection was received from H Potgieter (dated 05 May 2023). Attached as Annexure E.

The applicant was provided with an opportunity to respond to the objection. Attached as Annexure F.

See below a summary of the objections and applicant's response thereon, and also the municipal town planners' comments thereon.

### LETTERS OF NO OBJECTION FROM NJ VAN RENSBURG, PJ BOTHA AND D PIENAAR

NJ van Rensburg

*"Goeie dag*

*Ek het geen besware teen die verandering van die ontwikkeling van bogenoemde erf nie."*

PJ Botha

*"I have no objection to the proposed changes on the above.*

*I have no financial or other interest in this application."*

D Pienaar

*“Die bogenoemde het verwysing.*

*Ons het 'n kennisgewing ontvang per registreerde pos vir die opheffing van beperkende titelaktevoorwaards, vergunningsgebruik, afwyking en bepaling van 'n administratiewe boete vir Erf 197 HSB.*

*Ons het geen beswaar teen die aansoek nie.”*

**RESPONSE FROM APPLICANT**

No response from the applicant was provided.

**RESPONSE FROM TOWN PLANNER:**

The letters of support are noted.

**OBJECTION FROM H POTGIETER**

**OBJECTION 1**

*The proposal will affect the rural feel of Sandbaai which is mostly responsible for attracting tourists and guests to the area. The density of the area will be increased.*

**RESPONSE FROM APPLICANT**

The proposal does not affect the rural character of the area. The 1023m<sup>2</sup> extent of the subject property provides more than sufficient space to allow for the total existing footprint of the single-storey main and second dwellings with a total coverage of 32,2% which is still far from the permitted 50% coverage.

The total footprint of both dwellings on the application area does not appear to be out of character with the total footprints on surrounding properties with similar or smaller erf extents.

The scheme which is more updated than the title deed allows for a second dwelling as a primary land use right on a single residential property. The dwellings are occupied by the same number of residents as that of two families. The two homes for the indigent functions in much the same way as do regular families.

Therefore this statement is considered to be inaccurate and should be disregarded as the number of dwellings, the number of residents, the residential land-use activities and the increase in density are similar to that of two families residing on the property.

**RESPONSE FROM TOWN PLANNER**

The notion of a rural feel is subjective. The Sandbaai neighbourhood is an established residential neighbourhood within the urban edge of the municipal area. The proposed institution is to accommodate a home for indigent children. Each dwelling on the property has a carer with approximately six (6) children. The title deed is more restrictive than that of the relevant land use scheme in terms of the applicable uses which makes provision for a second dwelling. Therefore, the additional dwelling unit proposed is considered in line with the character of the area. Furthermore, the actual use of the institution will remain for residential purposes.

**OBJECTION 2**

*18 People will be living permanently on a residential property.*

**RESPONSE FROM APPLICANT**

The above comment is incorrect as a total of 14 residents reside on the property. The seven residents per home is equal to one family per dwelling unit, where each family consists of two parents with 5 children or with extended family such as grandparents.

The objector does not explain why she considers the number of residents on the property to be a concern for the surrounding area. The sufficiency of the residential facilities on the property to accommodate 14 residents is not taken into account or mentioned by the objector.

Therefore this comment is erroneous and irrelevant and should be ignored.

**RESPONSE FROM TOWN PLANNER**

The objection provided is only a statement which does not warrant a response. However, as stipulated by the applicant, only 14 people will be residing in the dwelling units. Furthermore, a dwelling unit is to be accommodated by a single family. There is no restriction on the number of family members of a single family.

**OBJECTION 3**

*The traffic will increase as taxis will take the children to school and elsewhere.*

**RESPONSE FROM APPLICANT**

The statement that the traffic in the area will increase due to taxis transporting children to school and elsewhere is unfounded and factually incorrect.

Two of the children travel to school by bus and another group of children is transported by a single taxi. A vehicle belonging to the organisation is used by one of the staff members to transport the younger children to and from the creche. Only this one vehicle is parked on the application area overnight and is used during the day for social work activities as well.

Therefore no more traffic is generated by the two homes for the indigent than the traffic generated by a regular residential property accommodating two families. This comment is incorrect and should therefore be disregarded.

**RESPONSE FROM TOWN PLANNER**

The above objection is again only a statement by the objector with no factual proof or any concrete substantiation.

The proposal to develop an institution for accommodating indigent children in two dwelling units on the subject property would not generate more traffic than that of other properties in the Sandbaai neighbourhood that have undergone a similar process to accommodate two dwelling units on a single residential property.

**OBJECTION 4**

*The property already has high walls with no visibility from the street.*

**RESPONSE FROM APPLICANT**

The message the objector is trying to convey through the above statement is unclear. The high walls with no visibility from the street is actually regarded as a positive comment as it increases the security and safety of the property thus contributing to the protection of the indigent children who are cared for here.

This comment is considered positive and should be regarded as such.

**RESPONSE FROM TOWN PLANNER**

The statement is noted.

**OBJECTION 5**

*When the property was sold on the 28<sup>th</sup> of October 2021, the irregularities were not picked up by the Municipal Planning Department.*

**RESPONSE FROM APPLICANT**

The only way that the Municipal Planning Department are able to pick up any "irregularities" on a specific property are through complaints from the surrounding landowners or through an application for building alterations. This statement actually confirms that the children's homes integrate very well with the surrounding residential land uses as there have not been any complaints since the establishment of the Alternate Care Residential Centres.

This comment is irrelevant and based on the incomprehension of the processes involved in purchasing and developing a property and should therefore be omitted.

**RESPONSE FROM TOWN PLANNER**

The Overstrand Town & Spatial Planning Department does not have the capacity to inspect and confirm whether each erf in its Municipal jurisdiction is compliant in terms of land use rights. The Town & Spatial Planning Department therefore makes use of the land use compliance process in which a complaint is submitted to the department in order to investigate the matter.

**OBJECTION 6**

*Hermanus Child and Family Services have already been operating illegally for over a year.*

**RESPONSE FROM APPLICANT**

When the property was purchased the building/structures already existed. The current owner is only responsible for the existing proposed land-use for "institutional" use, consisting of homes for the indigent.

Only when acquiring the building plans for the required fire certificate, did the owner first discover that the buildings did not correspond with the approved building plans. Furthermore, the owner was unaware that a consent use was required for the alternate care residential centres as the activities on the property are residential in nature and the inhabitants of the two dwellings essentially function as regular families.

As soon as the owner became aware of the contraventions on the application area, swift action was taken to co-operate with the municipality to rectify the situation.

This comment is considered irrelevant and should be ignored.

**RESPONSE FROM TOWN PLANNER**

The statement is noted. The applicant has also applied for the determination of an administrative penalty in order to resolve the operation of the unauthorised land use prior to the submission of the application.

**OBJECTION 7**

*Has the property been inspected to determine that there is sufficient bathrooms and toilet facilities for the children.*

**RESPONSE FROM APPLICANT**

Each house accommodates two bathrooms with two toilets, thus providing one bathroom and one toilet to be shared by three children. In the experience of Hermanus Child and Family Services, the ablution facilities provided are considered more than sufficient for a household consisting of one house mother and six children.

This comment should be omitted as the ablution facilities provided are considered sufficient for the number of residents on the property.

**RESPONSE FROM TOWN PLANNER**

The subject property and the use thereof must still comply with all relevant legislation which includes health and safety as well as compliance with the legislation of the Department of Social Development which will be a condition of approval.

**OBJECTION 8**

*Can the sewer system cope with all these residents?*

**RESPONSE FROM APPLICANT**

Due to the fact that the number of residents on the property are equal to a household consisting of two families, sewerage capacity is sufficient. Furthermore, according to Hermanus Child and Family Services, no problems relating to the volume of sewerage have been encountered thus far. No comment or concern was raised by the Municipal Engineering Department in this regard either.

This comment is not considered a cause for concern and should therefore be omitted.

**RESPONSE FROM TOWN PLANNER**

The application was circulated to the Engineering Services Department which confirmed that only the existing sewerage connection be utilised. They further stipulated that should larger capacity services be required then the upgrading will be at the owner's cost.

In light of the above, the objections have been adequately discussed and resolved.

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

Refer to point 7 of this report.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

Refer to point 7 of this report.

**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 can be motivated in terms of the principles in the following manner:

Spatial Justice

The application is consistent with the principle of spatial injustice since the proposal is to accommodate a home(s) for indigent children.

Spatial sustainability

The application is in line with the character of the area since the actual use of the property will be for residential purposes. The proposal will have no impact on the conservation worthy areas of Sandbaai.

Efficiency

The application to accommodate two dwelling units for homes for indigent children effectively optimises the utilisation of the land. Therefore, the proposal is consistent with the principle of efficiency.

Spatial Resilience

The integration of an institution within an established neighbourhood ensures that the use of the property (for residential purposes) is maintained. And that for any reason that the property will no longer be utilised for an institution, the residential character of the site is maintained.

Good administration

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

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

Same as 10.2 above.

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

The application is consistent with the SDF.

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

N/A

#### **10.6 Impact on municipal engineering services**

The proposed development is situated on an already serviced site and no additional services are required. The proposed land use will not have a significant impact upon existing services and is supported by the Engineering Services Department.

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

The application does not trigger the provisions of NEMA or Section 38 of the National Heritage Resources Act.

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

The application proposes that the existing garage for the main dwelling has been converted into a study which does not require approval since it is not located over any building lines. The application also proposes that a new garage be developed at the rear of the property which can be utilised for storing vehicles or for other storage purposes. The garage is situated over the 2m scheme building line which extends to the rear property boundary line. An application for the departure has been submitted. The zoning scheme permits the development of garages over the applicable side- and rear building lines subject to the neighbours' consent which has been provided (Erf 198 – refer to Annexure I).

The application also proposes that the 2<sup>nd</sup> dwelling exceed the permissible 120m<sup>2</sup> development restriction. The proposal complies with all the development requirements apart from the size of the dwelling. Therefore, an application has been submitted to accommodate the increased second dwelling size. The proposed size of the second dwelling is 141.9m<sup>2</sup>, but with the inclusion of the patio, the size of the second dwelling is increased to 170m<sup>2</sup>. The size of the main dwelling unit must also be considered. The size of the main dwelling is 125,9m<sup>2</sup> in extent, with the additions of both front and rear covered patios, the size of the dwelling increases to 159,4m<sup>2</sup>. It should therefore be considered that the main and the second dwelling names could be changed since the function of the dwelling houses will be utilised in conjunction with one another. If the dwelling names are changed, then the building situated at the front of the property will be the second dwelling, and the increase in dwelling size alone will be from 120m<sup>2</sup> to 125,9m<sup>2</sup> which is close to the threshold size of a second dwelling. It is therefore considered that the increased size of the dwelling unit at the rear to 170m<sup>2</sup> be considered desirable.

It must also be noted that the additions have already been constructed and is currently being operated as an institution to accommodate homes for indigent children. The applicant has submitted an application for the determination of an administrative penalty which will be discussed later in the report.

## 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The restrictive conditions as contained in Title Deed T1949/2022 to be removed, read as follows:

Clause B.2.(a) - *“That the above erf or erven be used for residential purpose only.”*

Clause B.2.(c) - *“That not more than one dwelling together with outbuildings and accessories be erected on any of the above erven and that not more than one half of the area of any one of the above erven be built upon.”*

In terms of Chapter 4, Section 35(4) of the Overstrand Municipality’s By-Law on Municipal Land Use Planning, 2020 and Section 39(5) of the Land Use Planning Act, 2014, when the municipality considers the removal, suspension or amendment of a restrictive condition; the municipality must consider the following:

### ***The financial or other value of the rights***

No financial or other value of the rights in terms of the restrictive conditions enjoyed by the owner, are evident.

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

No material personal benefits which accrue to the holder of the rights in terms of the restrictive conditions are evident.

### ***The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended***

Hermanus Child and Family Services will be able to continue offering a vital service to the children of poor and needy families within the Greater Hermanus community, by providing two Alternate Care Residential Centres on the subject property. This involves 12 children under the care of 2 house mothers, assisting these children to be integrated and raised within a society where a variety of opportunities exist for upliftment, growth and success for these children.

Therefore, the personal benefits will accrue to the less privileged, including the previously disadvantaged children of the Hermanus community which are being cared for on the subject property.

### ***The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition***

No material social benefits to the restrictive conditions remaining in place in its existing form are evident.

The removal of the restrictive conditions will allow Hermanus Child and Family Services to continue their charitable work of serving and protecting certain of the most vulnerable members of the Greater Hermanus Community.

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

The removal of the restrictive title deed conditions mentioned above will allow the Hermanus Child and Family Services to continue their charitable work of serving and protecting certain of the most vulnerable members of the Greater Hermanus Community

### Conclusion

The removal of the restrictive condition regarding the number of dwelling units permitted on a property to accommodate more than one dwelling unit as well as the removal of the restrictive condition regarding the use of the property to allow for an institution facility (the actual use of the property remaining as residential) should be supported for the following reasons:

- ❖ The use of the property will be for institutional purposes; however the actual use of the property will remain as residential (home for the indigent children).
- ❖ The impact of the proposed application on the surrounding character will not be much different to that of a normal residential property that consists of two dwelling units.
- ❖ The application is proposed in such a way that, if in future the institutional use will no longer be operational, the dwelling unit will still be able to operate as two separate dwelling units.

The proposed application for the removal of the aforementioned restrictive title deed conditions is therefore considered favourable from a town planning perspective.

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

Erf 197 is located in the residential area of Sandbaai and is 1023m<sup>2</sup> in extent. The property is zoned Residential Zone 1: Single Residential Zone. As stipulated throughout the report, the property is utilised as an institution for homes for the indigent children.

The departures to accommodate the garage over the rear building line is supported from the town planning department due to the land use scheme making provision therefore subject to neighbours' consent which has been provided. Furthermore, the departure to accommodate an increase in size of the second dwelling unit is supported due to the main dwelling unit being 125,9m<sup>2</sup> which is just over the 120m<sup>2</sup> development restrictions. As stipulated previously, the description of the two dwelling units can be swapped which will result in the main dwelling (to be named the second dwelling) size being just over the development restriction having no major negative effect on the surrounding properties and is considered a more desirable departure encroachment.

The consent use for operating an institutional facility (home for indigent children) is considered desirable from a town planning perspective since the use of the property

will remain as residential purposes. Furthermore, the two dwelling units (institutional facilities) can easily be used as normal dwelling units in for any reason that the institutional facility is no longer operational.

There is sufficient parking on the property since only one car is utilised by the institution and in the event that the children need to be transported to and from the institution, then transport services are utilised.

Note that adequate services are provided on site, therefore no additional services are required.

The property has already been developed and utilised for institutional purposes, therefore the property is subject to the determination of an administrative penalty.

#### **DETERMINATION OF AN ADMINISTRATIVE PENALTY**

In terms of the By-Law the applicant must provide the following in terms of Section 90(3) of the By-Law, namely:

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

- ❖ Existing institutional land use which contravenes the conditions contained in the title deed.
- ❖ Existing second dwelling which contravenes the conditions contained in the title deed.
- ❖ Existing 2m southern rear building line encroachment of a portion of the second dwelling garage up to 0m, contravening the land use scheme regulations.
- ❖ Existing total floor area of approximately 170m<sup>2</sup> for the second dwelling, exceeding the maximum permitted total floor area of 120m<sup>2</sup> by 50m<sup>2</sup>.

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

- ❖ The building contraventions originated from the previous owner.
- ❖ The current property owner is responsible for the utilisation of the two dwelling units for institutional purposes for homes for indigent children.

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

No report by a quantity surveyor or builder's quotes were submitted. Therefore, the municipality will determine the administrative penalty by utilising the municipal tariff.

##### ***(d) whether the unlawful conduct was stopped***

The building contraventions and the addition of a second dwelling have already been built prior to the current property owner taking ownership of the property. However, the current property owner has since ownership utilised the property for institutional purposes and remains operational.

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

It is motivated that the current property owner is not aware of any previous contraventions of this By-Law or previous planning law.

**Administrative penalty calculation:**

The extent of the encroachment is highlighted in the table below:

Unauthorised Structures	Encroachment Extent
Garage / storage room	±17.54m <sup>2</sup>
Total Extent of Building Line Encroachments	±17.54m <sup>2</sup>

Unauthorised Land Use	Encroachment Extent
Second dwelling	±141.9m <sup>2</sup>
Institutional facility (dwelling units 1 & 2)	±267.8m <sup>2</sup>
Total unauthorised land use	±409.7m <sup>2</sup>

With reference to the calculation of the unauthorised land use: the second dwelling is also being operated as an institutional facility and should not be calculated twice. Therefore, the total unauthorised land use size applicable is only 267.8m<sup>2</sup>.

The contravention calculation is as follows:

**Unauthorised encroachment**

Municipal tariff: R20 253,00  
 Encroachment: 17.54m<sup>2</sup>  
 Calculation: 17.54m<sup>2</sup> x R20 253,00 = R355 237.62

*Note: It is of the opinion that the property owner sought immediate rectification of the unauthorised building line encroachment. In addition, the immediate neighbour provided their consent for the current position of the garage/storage room. Therefore, the opinion is held that an administrative penalty of 1% be imposed.*

Administrative penalty: (R355 237.62 x 1%) = R3 552.38

**Unauthorised land use**

Land Value: R520 000  
 Erf Size: 1023m<sup>2</sup>  
 Price/m<sup>2</sup>: Land value ÷ erf size  
 = R508.31 / m<sup>2</sup>  
 Unauthorised Land Use extent: 267.8m<sup>2</sup>  
 Contravention Value: (267.8m<sup>2</sup> x R508.31) = R136 125.42

*Note: The onus is on the property owner to ensure that their land use rights are in place prior to operating a land use activity prior to the approval thereof. Furthermore, the property owner did not receive a notice of non-compliance for unauthorised land use, therefore an administrative penalty of 5% is imposed.*

Administrative penalty: (R136 125.42 x 5%) = R6 806.27

**Total contravention penalty** = Building work + land use  
 = R3 552.38 + R6 806.27  
 = R10 358.65

### Conclusion

With the above-mentioned stated, it is evident that the application is considered desirable from a town planning perspective subject to conditions of approval and that the property owner **not be exempt** from an administrative penalty.

### 13. RECOMMENDATION

1. that the objection be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the **removal of restrictive title conditions** B.2.(a) & B.2.(c) as contained in Title Deed T1949/2022 applicable to Erf 197, Sandbaai, in order to accommodate a second dwelling unit as well as an institutional facility (homes for indigent children) on the subject property, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for **consent use** applicable to Erf 197, Sandbaai, in order to accommodate an institutional facility (homes for indigent children) on the subject property, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the **departure** of the southern lateral building from 2m to 0m to accommodate the existing garage/storage space; and the **departure** of the total floor area of the second dwelling from 120m<sup>2</sup> to 170m<sup>2</sup>; **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the determination of an administrative penalty in terms of Section 90(4) of the By-Law for the unauthorised building work over building lines and unauthorised land uses on the subject property, **be imposed**, and that an administrative penalty fee of **R10 358.65** be payable within ninety (90) days of this decision; and
6. that the decisions in paragraphs 2. to 4. above be subject to the following conditions:
  - (a) that the approval is only for the development as indicated on Plan no. *2022\_22\_WD\_001\_REV* dated 2022/09/19, as submitted with the application;
  - (b) 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;

- (c) that the number of children be restricted to six (6) per dwelling and one (1) carer per dwelling;
  - (d) that the carers in each building reside on the premises permanently in relation to this planning approval;
  - (e) that the property owner comply with the Department of Social Development legislation;
  - (f) that all the conditions in the Engineering Services Report and Telkom (attached as Annexures G and H), be complied with;
  - (g) that the rates of the property be amended accordingly in terms of the latest rates policy;
  - (h) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with, and
  - (i) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
7. that the applicant and person who commented 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 conditions of approval.

#### 14. REASONS FOR RECOMMENDATION

##### Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The objection has been adequately responded to.
- ❖ The actual use of the institutional facilities remains for residential purposes and is in line with the residential character of the Sandbaai area.
- ❖ If for any reason that the institutional facilities are no longer in operation, the two dwelling units can immediately and without alterations be utilised for normal residential buildings for housing a single family in each dwelling unit.
- ❖ There is sufficient parking on the property since only one car is utilised by the institution and in the event that the children need to be transported to and from the institution, then transport services are utilised.
- ❖ Adequate services are provided on-site, therefore no additional services are required.
- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use and building line parameters.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners or the character of the area.
- ❖ The proposal is considered in line with the Municipality's SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.
- ❖ That the administrative penalty is imposed; the onus remains on the property owner to ensure their property has the necessary development rights.

**15. ANNEXURES**



Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Site Development Plan  
Annexure D: Title Deed T1949/2022  
Annexure E: Objection received  
Annexure F: Response from applicant from applicant  
Annexure G: Comment: OpenServe (Telkom)  
Annexure H: Services Report  
Annexure I: Neighbours consent (Erf 198)

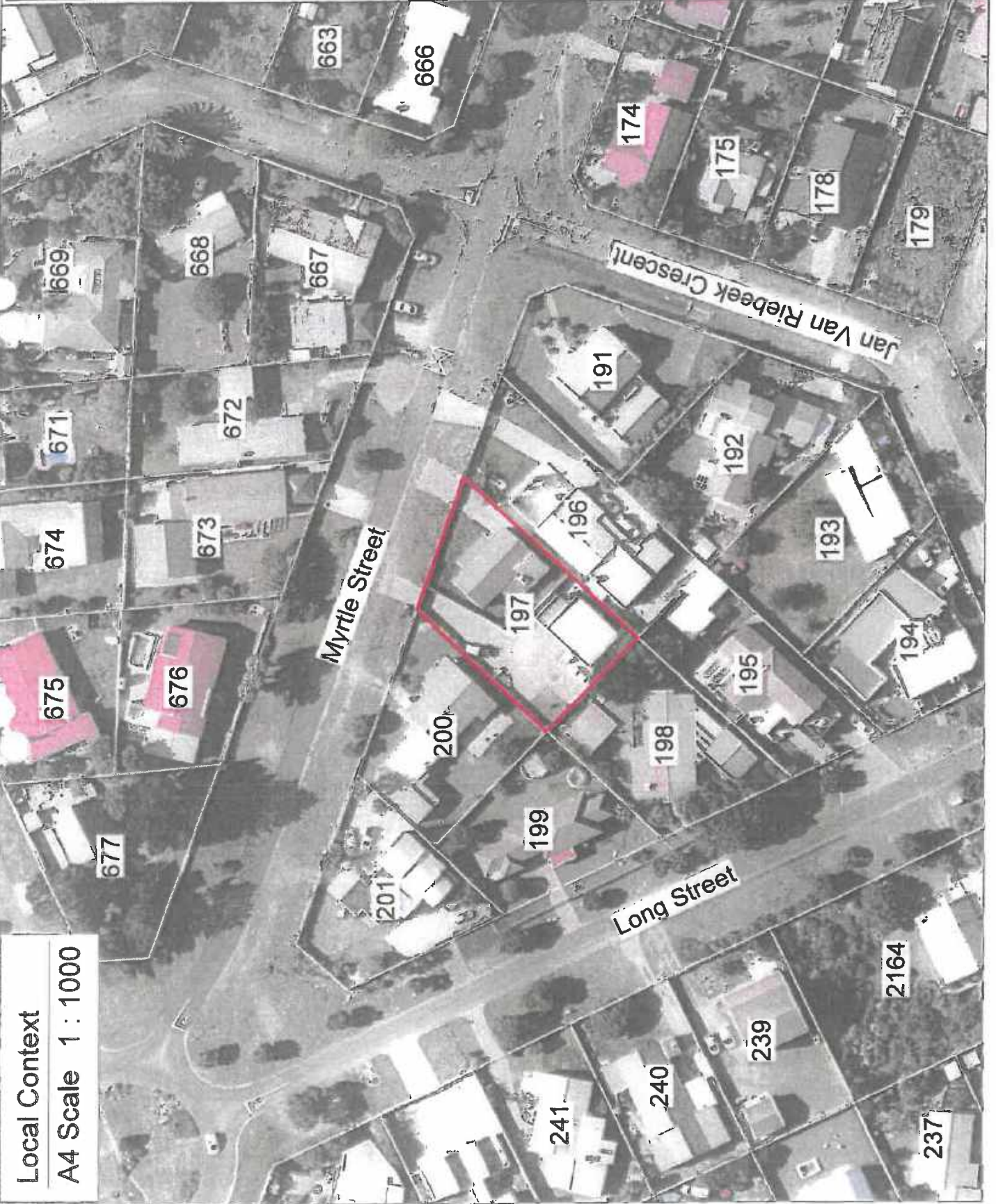
**SIGNATURES****AUTHOR**

Name: **BC MINNAAR**  
SACPLAN Reg No: **C/8630/2021**  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

**REGISTERED PLANNER**

Name: **H VAN DER STOEP**  
SACPLAN Reg No: **A/1708/2013**  
Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

PROJECT <b>Erf 197 Sandbaai</b>	TITLE <b>Locality Plan Local Context</b>	Application Area 	 <small>NOTES: This drawing is a photocopy of the original drawing. It is not to be used for any other purpose than the one for which it was prepared. The client is responsible for the accuracy of the information provided. The client is also responsible for the accuracy of the information provided. The client is also responsible for the accuracy of the information provided.</small>	<table border="1"> <tr> <td>DATE</td> <td>2023/09/21</td> </tr> <tr> <td>CHECKED BY</td> <td>AV</td> </tr> <tr> <td>PROJECT NUMBER</td> <td>001</td> </tr> </table>	DATE	2023/09/21	CHECKED BY	AV	PROJECT NUMBER	001															
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**Local Context**  
**A4 Scale 1 : 1000**

**mbplan**  
**Town Planning**  
Melissa Buys  
Email: mb.plan@yahoo.com  
Contact number: 071 347 4844

## 2 INTRODUCTION

### 2.1 APPOINTMENT OF MBPLAN

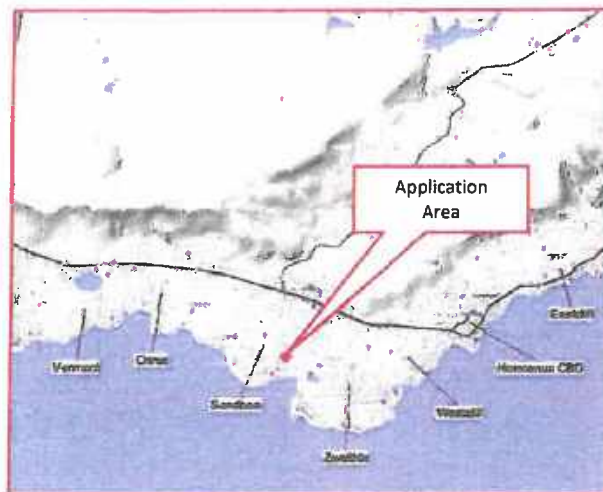
MBPLAN was appointed by **Hermanus Child and Family Services NPO**, the registered owner of Erf 197, Sandbaai, Hermanus, to prepare and submit an application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 Chapter IV, Section 16(2) for the removal of restrictive title deed conditions, consent use, permanent departures and waiving of the administrative penalty.

*(REFER TO ANNEXURE B FOR THE POWER OF ATTORNEY & COMPANY RESOLUTION)*

### 2.2 LOCATION OF APPLICATION AREA

#### a. REGIONAL CONTEXT

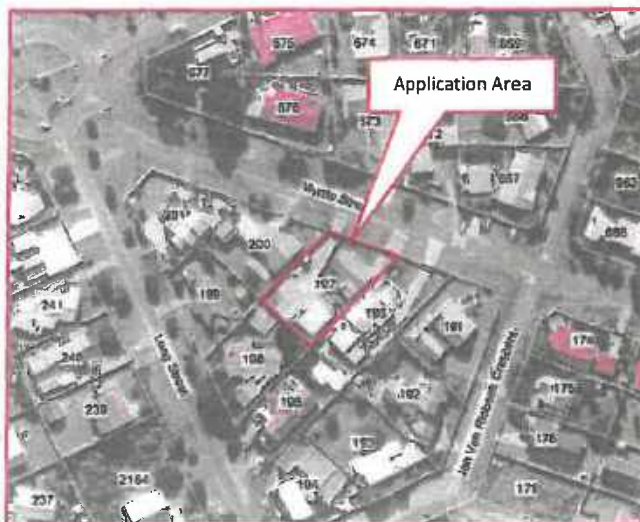
The application area is located within the Sandbaai residential suburb forming part of Hermanus West, as illustrated in **Figure 1** below.



**Figure 1: Regional Locality Plan**

#### b. LOCAL CONTEXT

The application area is located at number 23 Myrtle Street, as illustrated in **Figure 2** below.

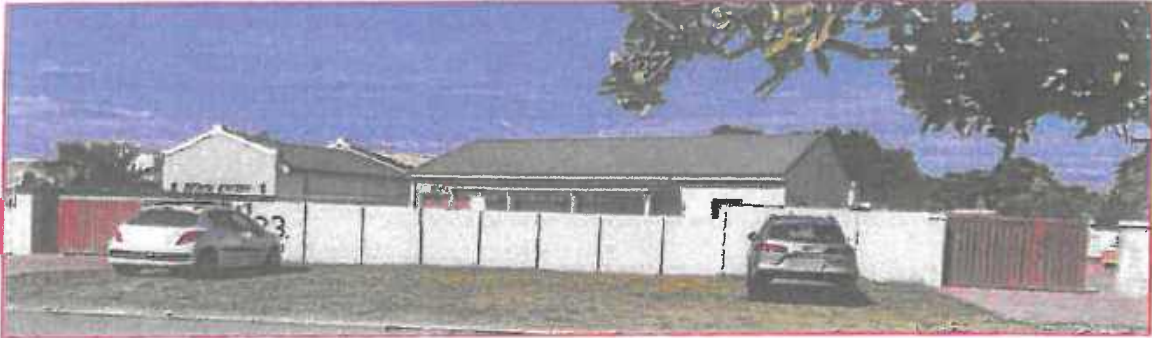


**Figure 2: Local Locality Plan**

*(REFER TO ANNEXURE F FOR LOCALITY PLANS)*

### 2.3 APPLICATION AREA INFO

Figure 3 below represents a street view of the application area.



**Figure 3: Street View of Application Area**

The following information in the table below with regards to the application area, is relevant to the proposal:

Category	Description	Comment
Property Description	Erf 197, Sandbaai	Confirmed by Title Deed
Extent	1023m <sup>2</sup>	Confirmed by Title Deed
Registered Owner	Hermanus Child and Family Services Registration Number 002-883 NPO	Confirmed by Title Deed
Title Deed	<u>T 1949/2022</u>	Two restrictive conditions to be removed
Zoning	Residential Zone 1: Single Residential	Consistent with surroundings
Land Use	Homes for the indigent which is essentially residential in nature	Compatible with surroundings Proposed to be legalised
Existing Buildings	Main Dwelling with new addition	To be updated on building plans for approval
	Approved Garage converted into new second dwelling with additions resulting in building line transgression and total floor area exceeding the maximum permitted floor area	Proposed to be legalised and then updated on building plans
Municipal Engineering Services	Municipal services	Sufficient for proposal
	Two entrances	Engineers have <b>no</b> objection

(REFER TO ANNEXURE C FOR THE TITLE DEED & ANNEXURE E FOR EXTRACTS OF THE SURVEYOR GENERAL DIAGRAM)

## 2.4 PROPOSAL BACKGROUND

Herewith follows a description of the current situation on the application area and the intention of the owner to rectify all existing contraventions.

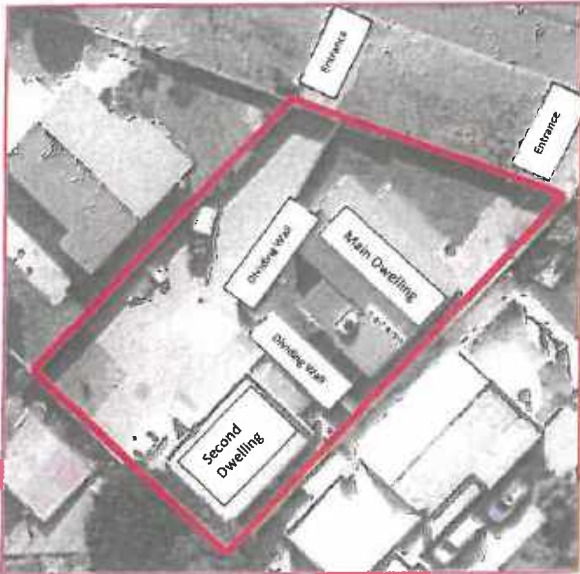


Figure 4: Aerial Photo of Application Area

### a. EXISTING BUILDINGS

As viewed in Figure 4, the application area accommodates a main dwelling unit at the front of the property and a second dwelling unit at the back of the property.

The main dwelling is partly approved. The second dwelling was converted from a previous garage with a few additions and is not yet approved.

A wall divides the subject property into two portions separating the two dwelling units and resulting in two separate entrances to the property.

### b. EXISTING LAND-USE

The two dwelling units are currently being utilised by Hermanus Child and Family Services (HCFS) as Institutional: Homes for the Indigent, which consist of children's homes for children from poor and needy families. HCFS refers to these homes as "Alternate Care Residential Centres".

### c. INTRODUCTION TO HCFS (INFORMATION BELOW COPIED FROM HCFS WEBSITE)

Hermanus Child & Family Services (previously Child Welfare Hermanus) is an organisation designated by the Department of Social Development to provide child protection services in Hermanus, Western Cape.

Established in 1944, they provide social and developmental services to children, families and communities in need and have been servicing the community of Hermanus and surrounding areas for over 75 years.

The organisation is led by a board of volunteer members, who provide leadership and strategic vision to the organisation. This vision is carried out by suitably qualified staff members who report to the board.

The head office of the organisation is in Mount Pleasant and the demarcated service areas are Mount Pleasant, Zwelihle, Sandbaai, Onrus, Vermont and Paradise Park.

The three kinds of services provided by the organisation include Designated Child Protection, Alternate Care Residential Centres and Early Childhood Development.

- The Designated Child Protection programme serves more than 1 000 families. This vital work is carried out by five social workers and a social auxiliary worker who are supported and supervised by a qualified social work supervisor.
- The Alternate Care Residential Centres, of which two are accommodated on the application area, provide residential and emergency care for children at risk. In total eighteen children are currently ably cared for by six residential care staff, known as "house mothers".

In general all the children are longer term placements (until 18). But a few have been moved on to different placements or reunified with family.

Where possible, reunification with family is a priority for Hermanus Child and Family Services but unfortunately, in many of the cases, this is not an option due to several factors, including but not limited to, alcohol or drug abuse, sexual abuse by a family member or a parent in jail.

Where absolutely necessary, in cases of extreme behavioural issues or brushes with the law, children may be transferred to higher level Child and Youth care facilities.

- The three ECD centres nurture, educate and feed 162 children daily.

#### d. REASONS FOR EXISTING CONTRAVENTIONS

When the application area was purchased “voetstoots” on the 28th of October 2021 by the current owner, the building transgressions for which the previous owner was responsible, already existed, including the existing new restricted second dwelling with total floor-area contravention and building line encroachment. The Municipal Public Viewer 2020 confirms that these building contraventions already existed. The current owner is responsible only for the existing proposed land-use for “Institutional” use, consisting of homes for the indigent.

Only when acquiring building plans for the required fire certificate, did the owner discover that the buildings did not correspond with the approved building plans. Furthermore, the owner was unaware that a consent use was required for the alternate care residential centres as the activities on the property are residential in nature and the inhabitants of the two dwellings essentially function as regular families.

#### e. INTENTION TO RECTIFY CONTRAVENTIONS

The owner now wishes to rectify all existing contraventions on the application area through the required town planning applications and by submitting updated building plans.

### 3 PROPOSAL PARAMETERS

The existing buildings and land-use on the application area have been evaluated in terms of the following documents which set parameters for the proposal and determine which rectifications/applications are required:

- Title Deed
- Land Use Scheme, 2020
- Latest Approved Building Plans from 2006
- Relevant Laws & Policies

The following contraventions have been identified which are required to be rectified:

#### 3.1 TITLE DEED CONDITIONS

The existing buildings and land use are inconsistent with the following two restrictive title deed conditions, as confirmed by the Conveyancer, Louis le Roux from Fairbridges, Wertheim & Becker Attorneys, namely:

- The application area may be used only for residential purposes.

The existing land use is Institutional: Homes for the Indigent.

However, it is important to note that the current land use is essentially residential in nature.

- Not more than one dwelling is allowed on the property.

A previous garage outbuilding was converted into a second dwelling by the previous owner, without acquiring municipal approval.

*(REFER TO ANNEXURE D FOR CONVEYANCER CERTIFICATE)*

### 3.2 LAND-USE SCHEME CRITERIA

The following three Scheme parameters are exceeded:

- Institutional land-use is a permitted consent use on a residential zone 1 property and therefore requires an application to the municipality for consent use
- The second dwelling garage/storage area exceeds the southern 2m rear building line up to 0m
- Total floor area of the second dwelling which is approximately 170m<sup>2</sup> exceeds the maximum permitted floor area of 120m<sup>2</sup> by 50m<sup>2</sup>

The proposal is **consistent** with all other Land Use Scheme, 2020 parameters.

*(REFER TO ANNEXURE J FOR SCHEME PARAMETER TABLE)*

### 3.3 APPROVED BUILDING PLANS

The approved building plans dated 26 September, 2006 indicate the main dwelling at the front and a triple garage outbuilding at the back of the application area, with one main street entrance to the subject property.

The existing buildings on the application area only partly correspond with the approved building plans and therefore the building plans are required to be updated, as follows:

- Existing new main dwelling addition on the southern side
- Previous garage converted into an existing new second dwelling with additions
- Division wall separating the two dwellings
- Two entrances and driveways to the property

*(REFER TO ANNEXURE G FOR APPROVED BUILDING PLANS)*

### 3.4 RELEVANT LAWS AND POLICIES

The proposal is **consistent** with the relevant extracts from the policy documents applicable to the application area, namely:

- i. Overstrand Municipal Spatial Development Framework; 2020  
The application area is located in a residential area within the urban edge
- ii. Overstrand Municipality Growth Management Strategy, 2010  
Located within a "No further densification" area – not applicable to single residential properties with second dwellings

### 3.5 CONFIRMATION BY LAND SURVEYOR

A Land Surveyor was instructed to survey the application area to confirm the current property boundary and building positions. The diagram confirms that other than the southern rear building line, no other building line encroachments exist.

*(REFER TO ANNEXURE E FOR SPECIAL SG-DIAGRAM)*

#### 4 DEVELOPMENT OBJECTIVE

The development objective therefore, is to legalise the existing buildings and land-use contraventions on the application area as follows:

- Existing restricted second dwelling requiring removal of restrictive title condition
- Use of existing main and second dwellings for "Institution" requiring removal of restrictive title condition and a consent use
- Existing second dwelling building line encroachment of the 2m southern rear building line up to 0m requiring a permanent departure
- Maximum permitted 120m<sup>2</sup> total floor area for the existing second dwelling exceeded by 50m<sup>2</sup> up to 170m<sup>2</sup> requiring a permanent departure

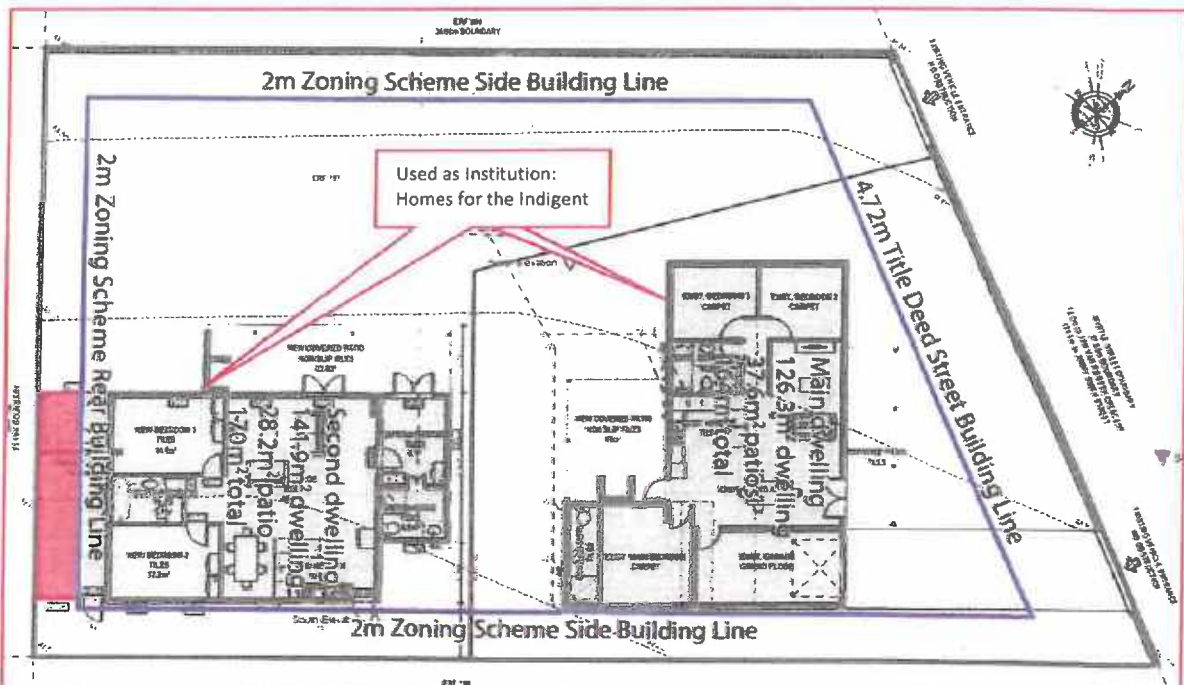


Figure 5: Proposal Plan

(REFER TO ANNEXURE H FOR BUILDING PLAN PROPOSALS)

#### 5 THE APPLICATION

Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- Removal of Restrictive Title Deed Conditions
  - The Removal of Restrictive Title Deed Condition B2(a) from Title Deed T 1949/2022, in terms of Chapter IV, Section 16(2)(f) to accommodate the existing "Institutional" land-use
  - The Removal of Restrictive Title Deed Condition B2(c) from Title Deed T 1949/2022, in terms of Chapter IV, Section 16(2)(f) to accommodate the existing second dwelling
- Consent Use for Institution
  - Consent Use for "Institution" to accommodate two homes for the indigent, in terms of Chapter IV, Section (16)(o)

- Permanent Departures
  - Permanent Departure in terms of Chapter IV, Section (16)(b) to relax the southern 2m rear building line to 0m, to accommodate the portion of the existing second dwelling single garage/storage area which exceeds the building line,
  - Permanent Departure in terms of Chapter IV, Section 16(b) to relax the total floor area for the existing second dwelling from 120m<sup>2</sup> to 170m<sup>2</sup>
- Waiving of Administrative Penalty

Waiving of the Administrative Penalty in terms of Chapter IV, Section 16 (q) for the existing building and land-use contraventions. (REFER TO ANNEXURE A FOR APPLICATION FORMS)

## 6 APPLICATION MOTIVATION

Each application proposal for legalisation of the buildings and land-use on the application area will be motivated separately as follows:

### 6.1 REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

The development proposal is restricted by two title deed conditions in Title Deed T 1949/2022, required to be removed, namely B2(a) and B2(c) which read as follows:

“B. Subject further to the special conditions contained in Deed of Transfer T2418/1953 dated 28 February 1953 which read as follows:-

2. Have been imposed by the Administrator:

- (a) That the above erf or erven be used for residential purposes only.
- (c) That not more than one dwelling together with outbuildings and accessories be erected on any of the above erven and that not more than one half the area of any one of the above erven be built upon.”

The application proposal has been evaluated in terms of Section 35(4) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020 regarding personal and social benefits which are foreseen to result from the amendment versus non-amendment of the two restrictive title deed conditions and the following conclusions were made:

- (a) Financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement

No financial or other value of the rights in terms of the restrictive conditions enjoyed by the owner, are evident.

- (b) Personal benefits which accrue to the holder of rights in terms of the restrictive condition

No material personal benefits which accrue to the holder of rights in terms of the restrictive conditions, are evident.

- (c) Personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if it is removed

Hermanus Child and Family Services will be able to continue offering a vital service to the children of poor and needy families within the Greater Hermanus community, by providing two Alternate Care Residential Centres on the subject property. This involves 12 children under the care of 2 house mothers, assisting these

children to be integrated into and raised within a society where a variety of opportunities exist for upliftment, growth and success for these children.

Therefore, the personal benefits will accrue to the less privileged, including the previously disadvantaged children of the Hermanus community which are being cared for on the subject property.

**(d) The social benefit of the restrictive condition remaining in place in its existing form**

No material social benefits to the restrictive conditions remaining in place in its existing form, are evident.

**(e) The social benefit of the removal or amendment of the restrictive condition**

The removal of the restrictive condition will allow Hermanus Child and Family Services to continue their charitable work of serving and protecting certain of the most vulnerable members of the Greater Hermanus community.

The children cared for on the subject property are being integrated into a healthy and safe environment where the vicious cycle of poverty and abuse is being replaced by a positive cycle of upliftment, nurturing, health and well-being. In the longer term, this is foreseen to decrease the burden on a society of adults who are not able to contribute and function independently.

**(f) Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights?**

The removal of restrictive conditions will result only in the continuation of the use of the two existing dwellings for "Institution: Homes for the Indigent" referred to as "Alternate Care Residential Centres". These children's homes are serving, nurturing and protecting certain of the most vulnerable members of the Greater Hermanus community and are essentially residential in nature.

It is evident from the neighbours' consent forms, attached as Annexure I, that the surrounding neighbours fully support the proposal. This support indicates that the surrounding area is not materially impacted by the proposal and that the institutional land-use integrates well within the residential area.

Therefore, the removal of the restrictive title deed conditions to allow for two dwellings for Institution consisting of two homes for the indigent, is considered not only desirable, but essential.

## 6.2 CONSENT USE

The consent use application is to allow the continued use of the existing main and second dwelling on the application area for "Institution: Homes for the Indigent" (children from poor and needy families) and which is of a charitable nature. Refer to the photos in Figure 6 below of the two existing dwellings used as homes for the indigent, proposed to be legalised as well as Figure 7 which depicts the Northeast elevation of the main dwelling.



Figure 6: Front View of Main & Second Dwelling

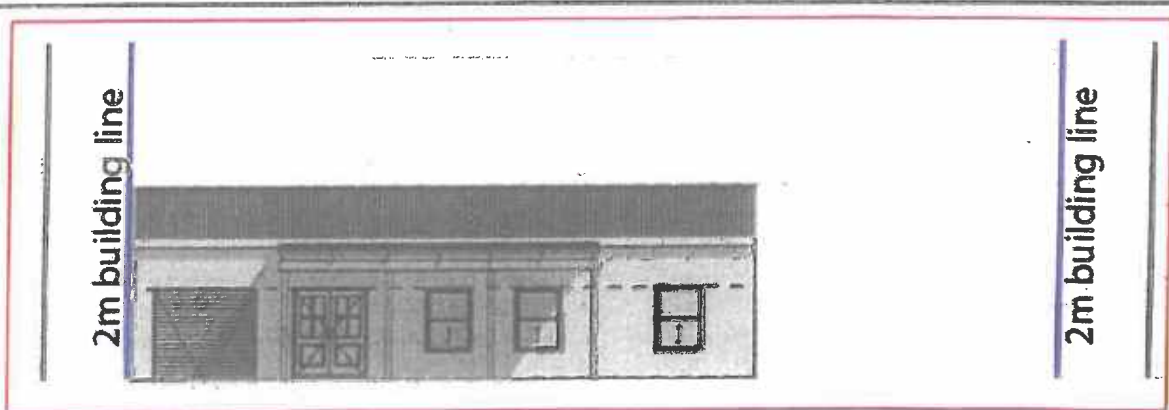


Figure 7: Northeast Elevation Indicating Main Dwelling

The land use activities consist of residential use in the form of a Children's Home, also referred to as "Alternate Care Residential Centres". In each dwelling resides a house mother with 6 children, between the ages of 3 and 17, under her care.

The NPO's main objective for Alternate Care Residential Centres is to function, as far as possible, like regular families. During weekdays, the children all attend local schools and ECDs appropriate to their age. Afterschool and weekend activities are similar to those of any regular family home. Activities include homework under supervision, household chores, informal sporting and play activities, for which there is sufficient outdoor space on the erf, and walking outings to the beach. Volunteers assist the children with art and craft activities on occasion. A neighbour involves some of the children in woodwork and DIY activities. Children walk to church in the vicinity of the homes on Sundays.

The majority of the children travel to school using a school transport company, sponsored by the organisation. A vehicle belonging to the organisation is used by one of the staff members to transport the younger children to and from the crèche. Only this one transportation vehicle is parked on the application area overnight and is used during the day for social work activities as well.

Therefore, it is evident that the land use is entirely residential in nature and that the residential activities do not result in any noise, nuisance or hindrance to the surrounding neighbours. Furthermore, no additional traffic is generated by the foster care dwellings either.

Therefore, the consent use for institution for two homes for the indigent is considered desirable.

### 6.3 LAND USE SCHEME BUILDING LINE DEPARTURE

Building Line Departure to relax the southern 2m rear building line to 0m for the purpose of accommodating the portion of the existing second dwelling garage/storage area which exceeds the building line



Figure 8: Front and Rear of Second Dwelling Garage/Storage Area exceeding building line

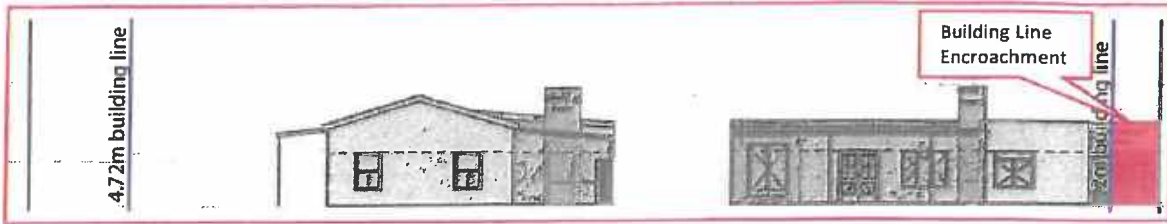


Figure 9: Northwest Elevation Illustrating Rear Building Line Encroachment of Second Dwelling

As viewed in Figure 9, the garage/storage area protrudes only slightly above the boundary wall and large trees located along the wall on the southern adjacent property, provide a screening function between the two adjacent erven. Therefore no visual impact or privacy intrusion results from the building line encroachment. Furthermore, as the purpose of a garage/storage area is for housing vehicles and for storing household items, no noise, nuisance or hindrance generally originates from this land-use.

Also see below the southeast and southwest elevations indicating the second dwelling building line encroachment.

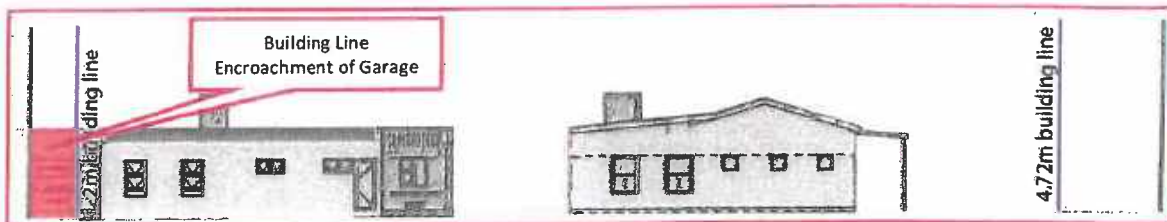


Figure 10: Southeast Elevation

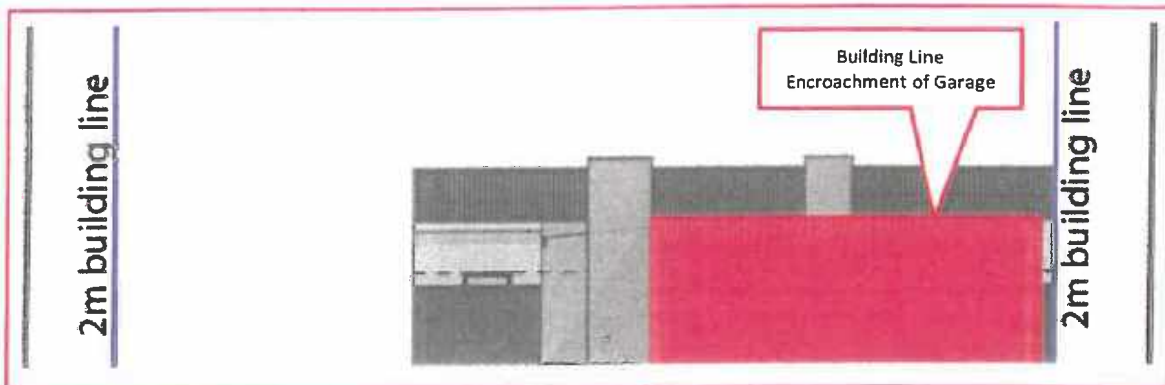


Figure 11: Southwest Elevation

Therefore, due to the position, nature and scale of the new existing single garage/storage area exceeding the southern 2m rear building line up to 0m, no material impact is evident or further foreseen on the southern adjacent property.

#### 6.4 DEPARTURE TO RELAX THE MAXIMUM PERMITTED FLOOR AREA

Permanent Departure to relax the maximum permitted total floor area of 120m<sup>2</sup> to 170m<sup>2</sup> for the second dwelling unit, currently serving as an "Alternate Care Residential Centre"

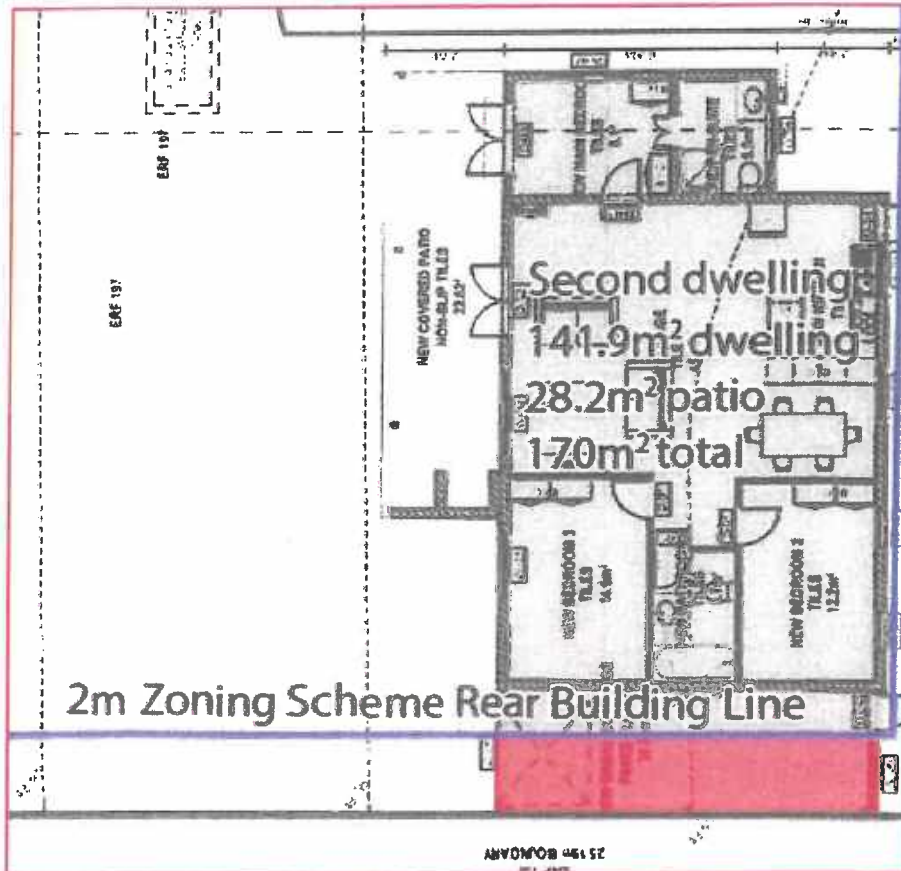


Figure 12: Floor Plan of Second Dwelling

As viewed in Figure 12 above, the total floor area of the existing new second dwelling, currently serving as an Alternate Care Residential Centre, is approximately 170m<sup>2</sup>.

The floor area allows sufficient space to comfortably accommodate the house mother in the main bedroom with en-suite bathroom as well as to accommodate the six children in two larger bedrooms with a bathroom in the middle to be shared. The rest of the dwelling consists of an open plan lounge and kitchen where homemade meals are prepared and enjoyed and where residents interact as a regular family. The main bedroom and lounge open up onto a covered stoep. A single garage/storage area is attached to the dwelling, which exceeds the building line. At the front of the second dwelling, sufficient play area for children exists, consisting of a paved area and a patch of grass. Loose standing vegetable planters are lined up along the western boundary wall. The children are introduced to organically growing their own vegetables for consumption, thus instilling practical and healthy lifestyle habits resulting in the benefits of independent living, healthy nutrition and increased savings.



**Figure 13: Second Dwelling Play Area and Vegetable Planters**

The purpose of the Alternate Care Residential Centre is to assist the children of poor and needy families to integrate into a normal society with opportunities for growth and for realizing their full potential.

The 1023m<sup>2</sup> extent of the application area is more than sufficient to allow for the existing total footprint of the second dwelling to exceed the maximum permitted footprint by 50m<sup>2</sup>, without exceeding the 50% coverage allowed.

The total footprint of both dwellings on the application area does not appear to be out of character with the total footprints on surrounding properties with similar or smaller erf extents.

#### **6.5 WAIVING OF THE ADMINISTRATIVE PENALTY FOR THE EXISTING NEW SECOND DWELLING AND INSTITUTIONAL LAND USE**

The following information with regards to the application for waiving the administrative penalty is provided, as required according to Chapter X, Section 90(3):

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

The nature, duration, gravity and extent of the contravention has been described in detail in this motivation report and includes the following contraventions;

- Existing institutional land use which contravenes the restrictive title deed condition (2)(a) from Title Deed T1949/2022, limiting the property to only residential use
- Existing second dwelling which contravenes the restrictive title deed condition (2)(c) from Title Deed T1949/2022, limiting the property to only one dwelling
- Existing 2m southern rear building line encroachment of a portion of the second dwelling garage up to 0m, contravening the Scheme regulations
- Existing total floor area of approximately 170m<sup>2</sup> for the second dwelling, exceeding the maximum permitted total floor area of 120m<sup>2</sup> by 50m<sup>2</sup>

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

The building contraventions originated from the previous owner. According to the Deed of Sale, the application area was purchased "voetstoots" on the 21<sup>st</sup> of October 2021. According to the current registered owner and partly evident from the aerial photo of the Overstrand Municipality Public Viewer, 2020, the building transgressions for which the previous owner was responsible, already existed. This includes the restricted second dwelling with total floor area contravention and building line encroachment.

The owner only discovered that the buildings did not correspond with the approved building plans when acquiring these plans for the fire certificate.

The current owner is responsible for utilising the two dwellings for "Institution", consisting of homes for the indigent. The owner was unaware that a consent use was required for the children's homes as the activities on the property are essentially residential in nature and the inhabitants of the two dwellings function as regular families.

It is evident from this application that the owner is co-operative and willing to rectify the existing contraventions and to follow the correct statutory procedure to apply to legally accommodate the existing buildings and land-use.

In this way, Hermanus Child and Family Services is able to continue serving and protecting certain of the most vulnerable members of the Greater Hermanus community.

**(b) Report by a quantity surveyor in matters of unauthorised building/construction:**

Due to the nature, scale, origin and immaterial impact of the contraventions as well as the application to waive the administrative penalty, a report by a quantity surveyor is considered non-applicable.

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

It would be potentially emotionally detrimental to the children who are being taken care of on the application area to even temporarily close down the two Alternate Care Residential Centres, as stability and consistency is key to their feeling of safety and well-being.

The contraventions consist of serving and protecting some of the most vulnerable members of the Greater Hermanus Society without resulting in a material impact on the surroundings. Therefore, the most ethical, compassionate, reasonable and cost-efficient way considered to deal with the unlawful conduct is by legalising the contraventions.

The owner is in the process of applying for legalisation by means of this application.

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

The current owner is not aware of any previous contraventions of this By-Law or a previous planning law.

**6.6 DESIRABILITY**

The proposal which includes Homes for the Indigent is considered desirable for the following reasons:

- The proposal is in accordance with the relevant spatial planning legislation, policies and frameworks for the area.
- The more updated Land Use Management Scheme, 2020 allows for second dwellings as a primary land use right on a Residential Zone 1 erf.
- The surrounding neighbours have provided consent for the proposal (*REFER TO ANNEXURE I FOR NEIGHBOURS' CONSENT*)
- The proposal provides an essential service to the community of Greater Hermanus by protecting children from abusive and other threatening conditions and providing the children with a chance at a better life with opportunities to realize their full potential
- There is currently a huge need in the Greater Hermanus area for children's homes which has been increased by the impact of covid and the current economic recession.
- Due to the nature and scale of the proposal as well as the screening function of the existing mature trees along the southern erf boundary, the building line relaxation is not foreseen to cause any material impacts on the adjoining erf to the south

Therefore, the land will be optimally utilized to provide a satisfactory residential environment for the children which caters for their full range of residential needs. The proposal is foreseen to provide an essential service to the community without causing any material impact on the surrounding properties and is in accordance with/accommodated by the municipal statutory framework.

## 6.7 PLANNING PRINCIPLES

In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:

- The proposal is **consistent** with the principle of spatial justice as it will legally accommodate two homes for the indigent therefore aiming for equity in the provision of access opportunities, facilities, services and land to the less privileged, including the previously disadvantaged members of society.
- The application proposal is **consistent** with the principle of spatial sustainability as it will legally accommodate two homes for the indigent on a single residential erf within the urban edge which will assist in uplifting the Hermanus society. Therefore, no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas will occur.
- The application proposal is **consistent** with the efficiency principle, optimizing the property to provide an essential service and a satisfactory and integrated residential environment for 12 children, in an efficient manner and without any material impact on the surrounding area foreseen.
- The application proposal is **consistent** with spatial resilience, as it is foreseen to contribute to empowering the most vulnerable members of the Hermanus community.
- The application proposal is **consistent** with the principle of good administration as this application is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

## 7 CONCLUSION AND RECOMMENDATION

The application as motivated in this report is considered **essential** due to the need for these types of services which has been exacerbated by the recent Covid Pandemic and economic recession.

The application is considered **desirable** within its local context and well-integrated within the existing community land-use activities. Furthermore, the application proposal is considered to represent the optimal use of the application area to providing a satisfactory residential environment for the indigent without causing any material impact on the surrounding environment.

It is therefore recommended that the application **be approved** in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, for the following on Erf 197, Sandbaai:

- Removal of Restrictive Title Deed Conditions
  - The Removal of Restrictive Title Deed Condition 2(a) from Title Deed T 1949/2022 to accommodate the existing land use for "Institution" consisting of two homes for the indigent, in terms of Chapter IV, Section 16(2)(f)
  - The Removal of Restrictive Title Deed Condition 2(c) from Title Deed T 1949/2022 to accommodate the existing second dwelling, in terms of Chapter IV, Section 16(2)(f)
- Consent Use for Institution
  - Consent Use for "Institution" to accommodate two homes for the indigent, Sandbaai, in terms of Chapter IV, Section (16)(o)

- Permanent Departures
  - Permanent Departure in terms of Chapter IV, Section (16)(b) to relax the southern 2m rear building line to 0m to accommodate the portion of the second dwelling single garage/storage area which exceeds this building line,
  - Permanent Departure in terms of Chapter IV, Section 16(b) to relax the total floor area permitted for the second dwelling from 120m<sup>2</sup> to 170m<sup>2</sup>
- Waiving of Administrative Penalty
  - Waiving of the Administrative Penalty in terms of Chapter IV, Section 16 (q) for the existing building and land-use contraventions



## MB Plan Town Planning

Email: mb.plan@yahoo.com

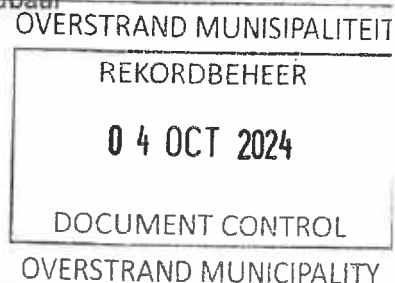
Contact number: 071 347 4844

Date: 26 September, 2024

Reference: Erf 197, Sandbaai

Attention: Mr B Minnaar, Mr AJ Fourie, Mrs A Conradie  
Town Planning Department  
Overstrand Municipality

TP - A Theart  
(Hollivier)



Dear Madam/Sir

**ERF 197, SANDBAAI, HERMANUS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE, DEPARTURE & WAIVING/DETERMINATION OF AN ADMINISTRATIVE PENALTY: REQUEST FOR ADDITIONAL INFORMATION & REQUEST FOR WAIVING THE ADMINISTRATIVE PENALTY**

Your e-mail dated the 5th of August, 2024, regarding the provision of a Quantity Surveyors Report or confirmation that the municipal tariff may be used for determining the administrative penalty, refers.

Unfortunately, after several attempts the client was unable to acquire a building quote. Therefore, should the municipality decide to impose a penalty, we agree that the municipal tariff for determining the administrative penalty be applied.

Kindly note that the existing unauthorised building work totals 66m<sup>2</sup> which consists of a 16m<sup>2</sup> building line contravention and a 50m<sup>2</sup> second dwelling floor area contravention, for which the previous owner is responsible. The land use contraventions consist of the second dwelling with an extent of 170m<sup>2</sup> restricted by the title deed for which the previous owner is responsible and the use of both dwellings for "Institution" with a total extent of 334m<sup>2</sup> for which the current owner is responsible.

However, we hereby kindly request that the Administrative Penalty be waived or minimised for the following reasons:

- Residential nature, limited scale and immaterial impact of the contraventions
- Property owned by Hermanus Child and Family Services (HCFS) which is a Non-profit Organisation
- Provides an essential service to the community by protecting and caring for the most vulnerable members of society i.e. children from poor and needy families
- Neighbours' support for departure applications
- Property was purchased by HCFS with the existing buildings and HCFS did not undertake the unauthorised building work themselves
- Owner's co-operation and willingness to rectify the contraventions
- Residential nature of the institutional land use

Your favourable consideration to **waive** the administrative penalty would be greatly appreciated.

Kind Regards, Melissa Buys Pr Pln A/3040/2021

FILE NO.	Erf 197 - HSB
SCAN NO.	213402
COLLABORATOR NO.	

10











KVV DU PLOOY Inc.  
Conveyancers & Notaries

## TITLE DEED

T 1949/2022

HERMANUS CHILD & FAMILY SERVICES  
REGISTRATION NUMBER 002-883 NPO

3B Village Lane.  
Hemel & Aarde Village  
Sandbaai  
HERMANUS  
PO Box 1005  
Hermanus  
7200  
Tel: 028 316 3707  
VAT Registration No. 4040280010  
E-Mail: [marica@kvvduplooyinc.co.za](mailto:marica@kvvduplooyinc.co.za)

53

3B Village Lane  
 Hemel & Aarde Village  
 Sandbaai  
 Hermanus

Prepared by me



CONVEYANCER  
 LOUIS RUDOLPH LE ROUX (82492)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R 3000 000,00	R 1778,00
Reason for exemption	Category Exemption	Exemption in o Sec/Reg Act/Proc

T 000001940 2021

## DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

**LYNNE BOTHA (82076)**

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

**Hendrik Kotze Henn**  
 Identity Number 760729 5046 085  
 Married out of community of property

which said Power of Attorney was signed at Hermanus on 11 November 2021



Page 2

And the appearer declared that his/her said principal had, on 28 October 2021 truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of.

**Hermanus Child & Family Services  
Registration Number 002-883 NPO**

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

**Erf 197 Sandbaai  
In the Overstrand Municipality  
Division of Caledon  
Western Cape Province**

**IN EXTENT 1023 (ONE THOUSAND AND TWENTY THREE) Square metres**

**FIRST TRANSFERRED** by Deed of Transfer No. T2418/1953 with Diagram No 11334/1952 relating thereto and held by Deed of Transfer No. T89504/2004.

- A. SUBJECT to the conditions referred to in Deed of Transfer No. 5209/1915 dated 21 August 1915.
- B. SUBJECT FURTHER to the special conditions contained in Deed of Transfer T2418/1953 dated 28 February 1953 which read as follows:-
1. Have been imposed for the benefit of the transferor Company as owners of the remaining extent of Lot No. 3 of the farm Onrust Rivier held by them by Deed of Transfer No. 11466 of 1929 and the owners of Lots in the said township already transferred subject to similar conditions, namely:-
    - (a) The Company reserved to itself and its successors in title the sole right to all hotels and all liquor licenses and the Purchaser/s (Transferee/s) or his/their successors in title shall not have the right to erect any hotel or hold any liquor licence, without the written consent of the Directors of the Company, or its successors in title, first had and obtained.
    - (b) The Company and its Successors shall not have the right to subdivide and/or sell in even the land between lots sold as seafront lots and the sea.
    - (c) That no building shall be erected on any stand unless and until the plans for such buildings have been submitted to and approved by the Directors of the said Company or the successors in title of the said Company.
    - (d) The Transferee/s, and his/their successors in title of the hereinabove described property shall have the right to divert any stream of water running on the said property so as to run alongside any of the avenues or streets as laid down on the General Plan of the Township.

- (e) The Company reserves to itself and its successors in title the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over and upon any portion of the property hereby purchased, with further right of causing them to be affixed to any building or erection not less than 10 (ten) feet from the ground with access at any time to such wires for the purpose of removal or maintenance.
- (f) The Company further reserves to itself and its successors in title the right at any time hereafter to lay and to maintain piping under any portion of the above land or elsewhere, and at all times to have access to such piping for removal, maintenance, extension or any other purpose, and to do all such acts and things as shall be required for the convenience of the inhabitants of the Township in regard to supplying them with water
- (g) .....
- (h) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the owner of the above land by means of wells or boreholes sunk on such land.

2. Have been imposed by the Administrator:

- (a) That the above erf or erven be used for residential purposes only.
- (b) That the above erf or erven be not subdivided.
- (c) That not more than one dwelling together with outbuildings and accessories be erected on any of the above erven and that not more than one half the area of any one of the above erven be built upon.
- (d) That no building shall be erected on the above erf or erven within 15 feet of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts, such space may be used as gardens but shall not be built upon.

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

**HENDRIK KOTZE HENN, Married as aforesaid**

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

**HERMANUS CHILD & FAMILY SERVICES**  
**Registration Number 002-883 NPO**

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 R3 000 000,00 (THREE MILLION 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

25 January 2022.

  
 \_\_\_\_\_  
 q.q.

In my presence

  
 \_\_\_\_\_  
 REGISTRAR OF DEEDS



Attention: Alida Conradie  
Municipality Town Planning  
16 Paterson Street  
Hermanus 7200  
[alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

Helen Potgieter  
Erf 132  
14 Kusweg  
Sandbaai 7200  
072 218 9607

TP - A Theart  
(H Olivier)

**Re: OBJECTION TO MBPLAN Town Planning 23 Myrtle street Sandbaai application**

I hereby DO NOT give my consent to the following applications

1. Application to remove restrictive title deed conditions from residential dwelling
2. No consent is given to run an orphanage or childcare centre with children and care givers (mothers)
3. No waving of building restrictions
3. No waving of restrictions to from one dwelling to more than one.

As a concerned resident of Sandbaai the above application

1. Will be the beginning of the rural feel of Sandbaai that most tourist and guests attracts to Sandbaai. This will increase the density of the area.
2. That 18 people living permanently on a residential property.
3. The Increase of traffic as taxis will take the children to schools etc.
4. The property has already high walls that there is no visibility from the street.

One of my concerns is also that when the property was sold in 28 October in 2021, the Municipal Planning did not pick up the irregularities.

That the current Hermanus Child and Family Services already operates illegally over a year.

Were they visited by inspectors to see if there is enough bathrooms and toilets for these children?  
Can the Sewer system cope with 18 people?

Acknowledgement of my complaint will be greatly appreciated.

Kind regards

Helen Potgieter  
Erf 132 Sandbaai.

FILE NO.	Erf 197- HSB
SCAN NO.	
COLLABORATOR NO.	1854310

- 5 MAY 2023



TR. A. Thon  
(H. Olivier) ANNEXURE F 1/4



## MB Plan Town Planning

Email: mb.plan@yahoo.com

Contact number: 071 347 4844

Date: 6 June 2023

Reference: Erf 197 Sandbaai

FILE NO.	EF 197
	Sandbaai ✓
SCAN NO.	HSB 197
COLLABORATOR NO.	1866966

Attention: Mr Helgaardt Boshoff, Town Planning Department, Overstrand Municipality

### ERF 197, SANDBAAI, HERMANUS: REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSENT USE, PERMANENT DEPARTURES AND WAIVING OF ADMINISTRATIVE PENALTY: RESPONSE TO OBJECTIONS

Comments & objections, dated 29 May 2023, were received from Helen Potgieter residing on Erf 132 Sandbaai in response to the following application:

- Removal of Restrictive Title Deed Conditions
  - The Removal of Restrictive Title Deed Condition B2(a) from Title Deed T 1949/2022, in terms of Chapter IV, Section 16(2)(f) to accommodate the existing "Institutional" land-use
  - The Removal of Restrictive Title Deed Condition B2(c) from Title Deed T 1949/2022, in terms of Chapter IV, Section 16(2)(f) to accommodate the existing second dwelling
- Consent Use for Institution
  - Consent Use for "Institution" to accommodate two homes for the indigent, in terms of Chapter IV, Section (16)(o)
- Permanent Departures
  - Permanent Departure in terms of Chapter IV, Section (16)(b) to relax the southern 2m rear building line to 0m, to accommodate the portion of the existing second dwelling single garage/storage area which exceeds the building line,
  - Permanent Departure in terms of Chapter IV, Section 16(b) to relax the total floor area for the existing second dwelling from 120m<sup>2</sup> to 170m<sup>2</sup>
- Waiving of Administrative Penalty
  - Waiving of the Administrative Penalty in terms of Chapter IV, Section 16 (q) for the existing building and land-use contraventions.

The purpose of the application is to allow for two homes for indigent children, also called "Alternate Care Residential Centres", on the application area.

#### Helen Potgieter: Erf 132 Sandbaai comments & objections

We are objecting to the proposal and our reasons are the following:

1. *The proposal will affect the rural feel of Sandbaai which is mostly responsible for attracting tourists and guests to the area. The density of the area will be increased.*
2. *18 People live permanently on a residential property.*
3. *The traffic will increase as taxis will take the children to school and elsewhere.*
4. *The property already has high walls with no visibility from the street.*

- 6 JUN 2023

TP

5. *When the property was sold on the 28<sup>th</sup> of October 2021, the irregularities were not picked up by the Municipal Planning Department.*
6. *Hermanus Child and Family services have already been operating illegally for over a year.*
7. *Has the property been inspected to determine that there are sufficient bathrooms and toilets for the children?*
8. *Can the sewer system cope with all these residents?*

#### **Response to comments/objections**

##### **Comment/objection 1**

*The proposal will affect the rural feel of Sandbaai which is mostly responsible for attracting tourists and guests to the area. The density of the area will be increased.*

##### **Response**

The proposal does not affect the rural character of the area. The 1023m<sup>2</sup> extent of the subject property provides more than sufficient space to allow for the total existing footprint of the single-storey main and second dwellings with a total coverage of 32,2% which is still far from the permitted 50% coverage.

The total footprint of both dwellings on the application area does not appear to be out of character with the total footprints on surrounding properties with similar or smaller erf extents.

The Scheme which is more updated than the title deed allows for a second dwelling as a primary land use right on a single residential property. The dwellings are occupied by the same number of residents as that of two families. The two homes for the indigent function in much the same way as do regular families.

Therefore this statement is considered to be inaccurate and should be disregarded as the number of dwellings, the number of residents, the residential land-use activities and the increase in density are similar to that of two families residing on the property.

##### **Comment/objection 2**

*18 People will be living permanently on a residential property.*

##### **Response**

The above comment is incorrect as a total of 14 residents reside on the property. The seven residents per home is equal to one family per dwelling, where each family consists of two parents with 5 children or with extended family such as grandparents.

The objector does not explain why she considers the number of residents on the property to be a concern for the surrounding area. The sufficiency of the residential facilities on the property to accommodate 14 residents is not taken into account or mentioned by the objector.

Therefore this comment is erroneous and irrelevant and should be ignored.

##### **Comment/objection 3**

*The traffic will increase as taxis will take the children to school and elsewhere.*

##### **Response**

The statement that the traffic in the area will increase due to taxis transporting children to school and elsewhere is unfounded and factually incorrect.

Two of the children travel to school by bus and another group of children is transported by a single taxi. A vehicle belonging to the organisation is used by one of the staff members to transport the younger children to and from the crèche. Only this one vehicle is parked on the application area overnight and is used during the day for social work activities as well.

Therefore no more traffic is generated by the two homes for the indigent than the traffic generated by a regular single residential property accommodating two families. This comment is incorrect and should therefore be disregarded.

**Comment/objection 4**

*The property already has high walls with no visibility from the street.*

**Response**

The message the objector is trying to convey through the above statement is unclear. The high walls with no visibility from the street is actually regarded as a positive comment as it increases the security and safety of the property thus contributing to the protection of the indigent children who are cared for here.

This comment is considered positive and should be regarded as such.

**Comment/objection 5**

*When the property was sold on the 28<sup>th</sup> of October 2021, the irregularities were not picked up by the Municipal Planning Department.*

**Response**

The only way that the Municipal Planning Department are able to pick up any "irregularities" on a specific property are through complaints from the surrounding land owners or through an application for building alterations. This statement actually confirms that the children's homes integrate very well with the surrounding residential land uses as there have not been any complaints since the establishment of the Alternate Care Residential Centres.

This comment is irrelevant and based on the incomprehension of the processes involved in purchasing and developing a property and should therefore be omitted.

**Comment/objection 6**

*Hermanus Child and Family services have already been operating illegally for over a year.*

**Response**

When the property was purchased the building/structural contraventions already existed. The current owner is only responsible for the existing proposed land-use for "Institutional" use, consisting of homes for the indigent.

Only when acquiring building plans for the required fire certificate, did the owner first discover that the buildings did not correspond with the approved building plans. Furthermore, the owner was unaware that a consent use was required for the alternate care residential centres as the activities on the property are residential in nature and the inhabitants of the two dwellings essentially function as regular families.

As soon as the owner became aware of the contraventions on the application area, swift action was taken to cooperate with the municipality to rectify the situation.

This comment is considered irrelevant and should be ignored.

**Comment/objection 7**

*Has the property been inspected to determine that there are sufficient bathrooms and toilets for the children?*

**Response**

Each house accommodates two bathrooms with two toilets, thus providing one bathroom and one toilet to be shared by three children. In the experience of Hermanus Child and Family Services, the ablution facilities provided are considered more than sufficient for a household consisting of one house mother and six children.

This comment should be omitted as the ablution facilities provided are considered sufficient for the number of residents on the property.

**Comment/objection 8**

*Can the sewer system cope with all these residents?*

**Response**

Due to the fact that the number of residents on the property are equal to a household consisting of two families, sewerage capacity is sufficient. Furthermore, according to Hermanus Child and Family Services, no problems relating to the volume of sewerage have been encountered thus far. No comment or concern was raised by the Municipal Engineering Department in this regard either.

This comment is not considered a cause for concern and should therefore be omitted.

**Conclusion**

The comments and objections are considered to be inaccurate, incomplete or irrelevant and it is therefore recommended that these comments / objections be disregarded and rejected.

The proposal is compatible with the relevant policy documents as well as with the character of the area, provides income and job creation and provides for the care of indigent children for which there is a growing need. The proposal is foreseen to provide an essential service to the community without causing any material impact on the surrounding properties and therefore your favourable consideration of the application will be highly appreciated.

Kind Regards,



Melissa Buys



61 Oak Avenue, Highveld,  
Techno Park, Centurion 0157  
Private Bag X881, Pretoria, Gauteng, 0001  
T: +27 12 000 0000  
F: +27 12 000 0000  
C: +27 81 000 0000

TP. N. Theat  
(H. Olivia)



FILE NO.	EF 197 ✓
	Sandbaai
SCAN NO.	HSB 197
COLLABORATOR NO.	1828421

I Peters (Mrs)

Tel: 021 414 5614

Fax: 086 480 0617

Email: [ihlaamp@openserve.co.za](mailto:ihlaamp@openserve.co.za)

Our Ref.: WWIP\_WHMN0931\_23

Your Ref.: ERF 197

15 March 2023

Attention: Alida Conradie  
OVERSTRAND MUNICIPALITY  
TOWN PLANNING

### OPTIC FIBRE CABLE SERVICES AFFECTED

#### APPLICATION FOR WAYLEAVE: ERF 197, 23 MYRTLE STREET, SANDBAAI, HERMANUS

With reference to your application dated March 2023.

**As important OPTIC FIBRE cables are affected, please contact our representatives MELT VAN AS at telephone number 0813637873/MeltVA@openserve.co.za at least 48 hours' prior of commencement on construction work.**

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for **6 months only**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Open Serve infrastructure **will be affected**, consequently the conditions below and on the attached legend will apply.

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

**Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.**

All Open Serve rights remain reserved.

Yours faithfully



---

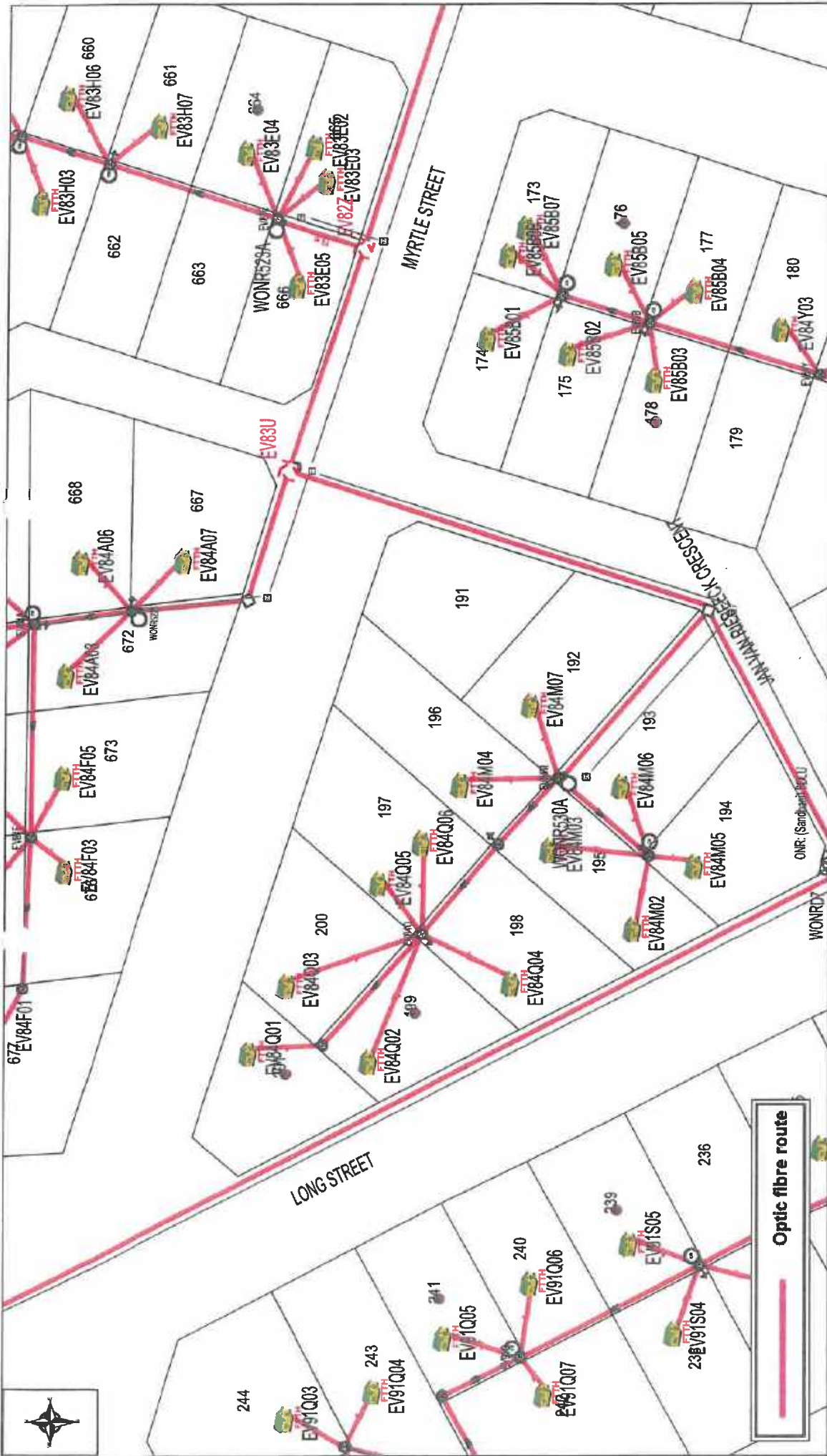
Ihlaam Peters

for

Selwyn Bowers

Operations Manager

Wayleave Management: Western Region



Legend		Existing SDC		Existing Indoor DP		Existing Underground Route	
	Existing Manhole		Existing SDC		Existing Indoor DP		Existing Underground Route
	Planned Manhole		Planned SDC		Planned Indoor DP		Planned Underground Route
	To Be Abandoned Manhole		To Be Recovered SDC		To Be Recovered DP		To Be Abandoned Underground Route
	Existing Jointing Pit		Existing DLC		Existing DP		Existing Overhead Route
	Planned Jointing Pit		Planned DLC		Planned DP		Planned Overhead Route
	To Be Abandoned Jointing Pit		To Be Recovered DLC		To Be Recovered Pole		To Be Recovered Overhead Route
	Existing PJB		Existing Pillar Joint		Existing Pole		Existing Mini OMDP
	Planned PJB		Planned Pillar Joint		Planned Pole		Planned Mini OMDP
	To Be Abandoned PJB		To Be Recovered Pillar Joint		To Be Recovered Pole		Existing Strut and Stay

TELKOM REGIONAL EXECUTIVE	
Completed By	I Peiers
Client	OVERSTRAND MUNICIPALITY
Client ref	
Details	OPTIC FIBRE SERVICES AFFECTED
Date	15/03/2023
OpenServe ref	WWIP_WHMN0931_23
Page Size	A4

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
CONSENT USE, DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE  
PENALTY: ERF 197, SANDBAAI**

Stormwater (SW) : In Order  
Electricity : In Order  
Water : In Order  
Sewer : 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 only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. 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*;
4. 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: Hermanus for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through Erf 197, Sandbaai, unobstructed;
7. that no on-street parking be allowed.

  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

  
**DATE**

## MUNISIPALITEIT OVERSTRAND MUNICIPALITY

The owner of the undermentioned property contemplates to erect a dwelling/do additions to the existing dwelling which will encroach upon the building lines (as per enclosed plan). This requires the consent /comments of the adjacent property owners.

DETAILS OF OWNER(S) THAT NEED/S CONSENT FOR RELAXATION OF BUILDING LINES	
ERF NO	197
STREET ADDRESS	23 Myrtle Street, Sandbaai, 7200
NAME AND SURNAME	Hermanus Child and Family Services
TEL NO	0283130830
POSTAL ADDRESS	PO Box 31
	Hermanus
	7200

DETAILS OF APPLICATION (complete where necessary)					
RELAXATION OF:	MARK (√)	BUILDING LINE ACCORDING TO SCHEME REGULATIONS		BUILDING LINE ACCORDING TO TITLE DEED:	
		From	To	From	To
LATERAL BUILDING LINE			m		m
REAR BUILDING LINE		2.0m	0m		m
STREET BUILDING LINE			m		m

DETAILS OF ADJACENT PROPERTY OWNER(S)	
ERF NO	198
STREET ADDRESS	91 Long Street, Sandbaai, 7200
NAME AND SURNAME	
TEL NO	
POSTAL ADDRESS	
	POSTAL CODE

**NB: CONSENT TO RELAXATION IS INCOMPLETE IF NOT ACCOMPANIED BY A SITE PLAN SIGNED BY ADJACENT PROPERTY OWNER(S).**

I/We hereby give my/our consent to the abovementioned relaxation.

DAVID JOHANNES JON ORZ BERG

NAME



SIGNATURE

25/9/2022

DATE

NAME

SIGNATURE

DATE

COMMENTS/CONDITIONS