

## 4.5

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

1029 KPRB (4112/2022)

H van der Stoep

13 October 2025

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An appeal was received from the Pringle Bay Ratepayers Association against the decision of the Municipal Planning Tribunal. The appeal was received on 24 February 2025.

The Appeal Authority on 23 July 2025 resolved as follows:

*"In an appeal against a decision of the Municipal Planning Tribunal (MPT) the onus is on the appellant to show that the MPT erred in reaching its decision and set out the reasons why there is a belief that the MPT erred.*

*The appeal documentation was scrutinized and after of the reasons provided by the Municipal Planning Tribunal and the arguments of the appellant it is herewith resolved that:*

1. *that the Appeal Authority **revoke** the decision of the Municipal Planning Tribunal dated 30 January 2025 in terms of Regulation 26.(1)(b) of SPLUMA referred to above;*
2. *that the Appeal Authority **remit** the matter back to the Municipal Planning Tribunal in terms of Regulation 26.(2) of SPLUMA for its further consideration.*

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

Pringle Bay Ratepayers commented on an application dated 21 April 2021. A different, original motivation by FVS was also first dated 21 April 2021 with a note at bottom of the first page: "Revision 2: September 2022: Stamped as received by the OM on 5 October 2022. This application referred of a Removal of Restrictive Conditions and Departure from the Land Use Parameters.

The Application that served before the Municipal Tribunal was an amended application dated 21 April 2021, Revision 4: July 2023 and stamped as received by the Overstrand Municipality on 27 August 2024.

The amended application, which differs from the original application, did not serve before the PBRA for its comments.

**4. SUMMARY OF APPEAL ITEM**

The amended application had inadvertently not been distributed to the Pringle Bay Ratepayers Association and was purely an innocent administrative error. In order to rectify the error, the amended motivation needs to be made available to the Pringle Bay Rate Payers for its evaluation.

**5. RECOMMENDATION**

that the **amended** motivation of Erf 1029 be distributed to the Pringle Bay Ratepayers Association.

**6. ANNEXURES**

- Annexure A: Appeal item that served before the Appeal Authority which includes the item with annexures that served before the MPT on 30 January 2025  
Annexure B: Appeal Authority decision dated 23 July 2025

**SIGNATURE****REGISTERED PLANNER**

Name: **H VAN DER STOEP**

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

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

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

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

1029 KPRB (4112/2022)  
R Kuchar  
12 May 2025

(028) 313 8900

Hermanus Administration

**1. EXECUTIVE SUMMARY**

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

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
  - to relax the lateral building line from 2m to 0m to accommodate an existing carport;
  - to relax the lateral building line from 2m to 0m to permit a change of use from garage to staff quarters, and
  - to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters.
- ❖ **Departure** in terms of Section 16.1.1.(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters.
- ❖ **Relaxation** of Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:
  - to relax the lateral building line from 1,5m to 0m to accommodate an existing carport, and
  - to relax the lateral building line from 1,5m to 0m to permit a change of use from garage to staff quarters.
- ❖ **Determination of an administrative penalty** in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate the unauthorised transgressions as stipulated above.

The proposal was considered by the Municipal Planning Tribunal on 30 January 2025, and it was resolved as follows:

**RESOLVED:**

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

**APPEAL AUTHORITY**

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- to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;
- to relax the lateral building line from 1,5m to 0m to accommodate a garage or storeroom;

**be approved**, in terms of Section 61 of the By-Law;

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

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

**be approved**, in terms of Section 61 of the By-Law;

4. that the application in terms of Section 16(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, **be approved**, in terms of Section 61 of the By-Law;

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

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

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

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

- (a) that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;
- (b) that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;
- (c) that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;
- (d) that **revised** building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;
- (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
- (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and
- (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.

**APPEAL AUTHORITY**

7. *that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, **be imposed**, and that an administration penalty fee of **R7 372,13** be payable within ninety (90) days of the final decision.*
8. *that the applicant and objector be notified of their right of appeal (against Paragraphs 2 – 6 above) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.*

**REASONS FOR THE RESOLUTION:**

- The proposed application for the carport fits in with the character of the surrounding area and is desirable in terms of use, not height.
- There will be no impact on services.
- The proposal for the carport will have no negative impact on the environment.
- Garages or carports are allowed on the 0m lateral and rear building lines with the neighbour's consent, which the owner obtained.
- The 5% penalty takes into consideration that the owners immediately appointed a consultant to address the illegal structure and use.
- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m.
- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
- The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
- The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
- Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
- There is sufficient space on the property within the building lines to construct staff quarters.

Attached please find the Land Use Planning Report that served before the Municipal Planning Tribunal (MPT) on 30 January 2025 as Addendum AA and the Minutes of the MPT meeting as Addendum BB.

An appeal was received from the Pringle Bay Ratepayers Association against the decision of the Municipal Planning Tribunal. The appeal was received on 24 February 2025.

The appeal was lodged within the By-Law's prescribed twenty-one (21) day period and the required appeal application fees have been paid. The appeal is therefore regarded as valid. The appeal is attached as Addendum DD.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town- and Spatial Planning

**3. Compliance with Strategic Priority**

Provision of democratic, accountable, and ethical governance

**APPEAL AUTHORITY**

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**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

Sections 78 and 79 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020

**6. Background/Discussion/Evaluation/Assessment**

The Municipal Planning Tribunal considered the application and resolved to approve the application, subject to a condition.

It is to be noted that one (1) objection was received against the application.

The applicant and objector were informed of their right of appeal against the decision, and an appeal was received against the approval from the Pringle Bay Ratepayers Association (PBRA). The appeal is lodged against the decision taken by the Municipal Planning Tribunal on 30 January 2025.

The appeal was forwarded to the applicant (FVS Town & Regional Planner) for their comments, and no response was received in this regard.

The points of appeal will be discussed in detail below.

**APPELLANT'S STATEMENT SUMMARY 1**

*The Ratepayers commented on an application dated 21 April 2021.*

*A different, original motivation by FVS was also first dated 21 April 2021 with a note at bottom of the first page: Revision 2: September 2022 and stamped as received by the Overstrand Municipality on 5 October 2022. This application referred to a Removal of Restrictive Conditions and Departure from the Land Use Parameters.*

*The Application that served before the Municipal Tribunal was an amended application dated 21 April 2021, Revision 4: July 2023 and stamped as received by the Overstrand Municipality on 27 August 2024.*

*The amended application, which differs from the original application, did not serve before the PBRA for its comments.*

**AUTHORISED OFFICIAL'S RESPONSE**

The Pringle Bay Rate Payers Association Grounds of Appeal is correct in that the Ratepayers did not have the opportunity to comment on the amended application.

**APPELLANT'S STATEMENT SUMMARY 2**

**Professional and ethical considerations**

**APPEAL AUTHORITY**- *Effectiveness of Overstrand Municipality quality control:*

*If the Overstrand Municipality Planning Department's report has been submitted as part of quality control to the immediate head of the responsible town planner for review, then the overseer would have noticed that the application reported on to the MPT is not the application that had been advertised and commented on by the PBRA.*

- *Apparent misrepresentation of information by the applicant's consultant:*

*The misrepresentation by the consultant should be reported to the professional association of which the consultant is a member.*

- *Did the MPT properly apply its mind in arriving at a decision?***AUTHORISED OFFICIAL'S RESPONSE**

The applicant was informed of the discrepancies regarding the information submitted and the contradiction between the building plan and motivation during the course of the process. These discrepancies were rectified by the applicant with the amended motivation and was received by the Planning Department on 27 August 2024.

The amended motivation was not furnished to the Pringle Bay Ratepayers Association for comments with the result that the ground of appeal only referred to the original application that was distributed. The comments are thus noted.

**APPELLANT'S STATEMENT SUMMARY 3**

*Did the MPT apply its mind since it did not notice the difference in the heading of the objector's comments and that of the item that served before it?*

**AUTHORISED OFFICIAL'S RESPONSE**

Duly noted.

**APPELLANT'S STATEMENT SUMMARY 3*****Duration of the application***

*In terms of Clause 58 of the By-Law, subsection (2), that the administrative phase may not exceed 12 months. The application administrative phase did exceed the 12-month period. The Municipal Tribunal and or the Authorised Official did not extend the period as contemplated in subsections (3) and (4).*

**AUTHORISED OFFICIAL'S RESPONSE**

The reason why of the 12-month period has been exceeded, during the item phase, was because the administrative penalty issue had not been addressed and had been requested from the applicant.

## EVALUATION / ASSESSMENT

The amended application had inadvertently not been distributed to the Pringle Bay Ratepayers Association and was purely an innocent administrative error. In order to rectify the error, the amended motivation needs to be made available to the Pringle Bay Ratepayers Association for its evaluation.

## CONCLUSION

In view of the inadvertent administrative error of the Planning Department, SPLUMA Regulations 26.(1)(b) permits the Appeal Authority to revoke the decision of the MPT taken on 30 January 2025 and to remit the matter to the MPT for it to instruct the Planning Department to rectify the error.

The Appeal Authority may, in terms of Regulation 26.(3), appoint a technical advisor to advise or assist it with regard to the matter, with "technical advice" including a legal advisor.

### 7. Financial Implications

None

### 8. Staff Implications

None

### 9. Comments from other Departments, Divisions and Administrations

None

### 10. Annexures

- Addendum AA: The item with annexures that served before the MPT on 30 January 2025
- Addendum BB: Minutes of the MPT dated 30 January 2025
- Addendum CC: Decision letters dated 6 February 2025 to applicant & objector
- Addendum DD: Appeal submitted by Pringle Bay Ratepayers Association

## RECOMMENDATION:

1. that the Appeal Authority **revoke** the decision of the Municipal Planning Tribunal dated 30 January 2025 in terms of Regulation 26.(1)(b) of SPLUMA referred to above;
2. that the Appeal Authority **remit** the matter back to the Municipal Planning Tribunal in terms of Regulation 26.(2) of SPLUMA for its further consideration.
3. The Appeal Authority's attention is also drawn to the fact that notwithstanding the recommendation to remit the matter back to the MPT, the Appeal Authority may, in terms of Regulation 26.(2) of SPLUMA **replace** the decision of the MPT with any decision it regards necessary.

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## 4.1

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

1029 KPRB (4112/2022)  
H van der Stoep  
11 November 2024

(028) 313 8900

Hermanus Administration

### 1. EXECUTIVE SUMMARY

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

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

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

### 2. DECISION AUTHORITY

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

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

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

The motivation for the application is summarised as follows:

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

**DETERMINATION OF THE ADMINISTRATIVE PENALTY****(a) *nature, duration, gravity and extent of the contravention***

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

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

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

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

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

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

The building work was already completed.

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

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

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

**PLANNING PRINCIPALS**

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

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

The proposal is in line with the SDF.

**Overstrand Integrated Development Plan, 2020:**

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

**Overstrand Growth Management Strategy, 2010:**

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

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

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

**5. ADMINISTRATIVE COMPLIANCE**

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025****6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS**

Name	Date received	Summary of comments
N/A		

**7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION**

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

✚ **OBJECTION:** Advertisement requirements

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

APPLICANT'S RESPONSE

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

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

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

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

AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL

30 JANUARY 2025

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

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

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

TOWN PLANNER'S RESPONSE

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

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

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

APPLICANT'S RESPONSE

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

TOWN PLANNER'S RESPONSE

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

✦ **OBJECTION:** Removal of illegal structure

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

APPLICANT'S RESPONSE

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

TOWN PLANNER'S RESPONSE

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

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

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

See point 7 above.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

See point 7 above.

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

**10.1 Background**

The application is to rectify an existing situation.

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

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

The objectives relating to:

**Spatial Justice**

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

**Spatial sustainability**

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

**Efficiency**

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

**Spatial resilience**

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

**Good administration**

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

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

Same as Point 10.2 above.

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

N/A

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

N/A

**10.6 Impact on Municipal engineering services**

No additional services are required.

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

N/A

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

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

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

N/A

**12. THE DESIRABILITY OF THE PROPOSAL**

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

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

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

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

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

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

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

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

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

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

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

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

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

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

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

The building work was already completed.

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

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

Calculation of the administrative penalty:

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

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

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

**CONCLUSION:**

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

**13. RECOMMENDATION**

1. that the objection be noted.

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

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

**be approved**, in terms of Section 61 of the By-Law.

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

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

**be approved**, in terms of Section 61 of the By-Law.

4. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters, **be approved**, in terms of Section 61 of the By-Law.

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

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

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

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

- (d) that **revised** building plans indicating Condition (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with, and
  - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, **be imposed**, and that an administration penalty fee of **R7 372,13** be payable within ninety (90) days of the final decision.
8. that the applicant be notified of its right of appeal (*against Paragraphs 2 – 6 above*) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

**14. REASONS FOR THE RECOMMENDATION**

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

Reasons for non-approval:

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

**15. ANNEXURES**

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

**SIGNATURES****REGISTERED PLANNER**

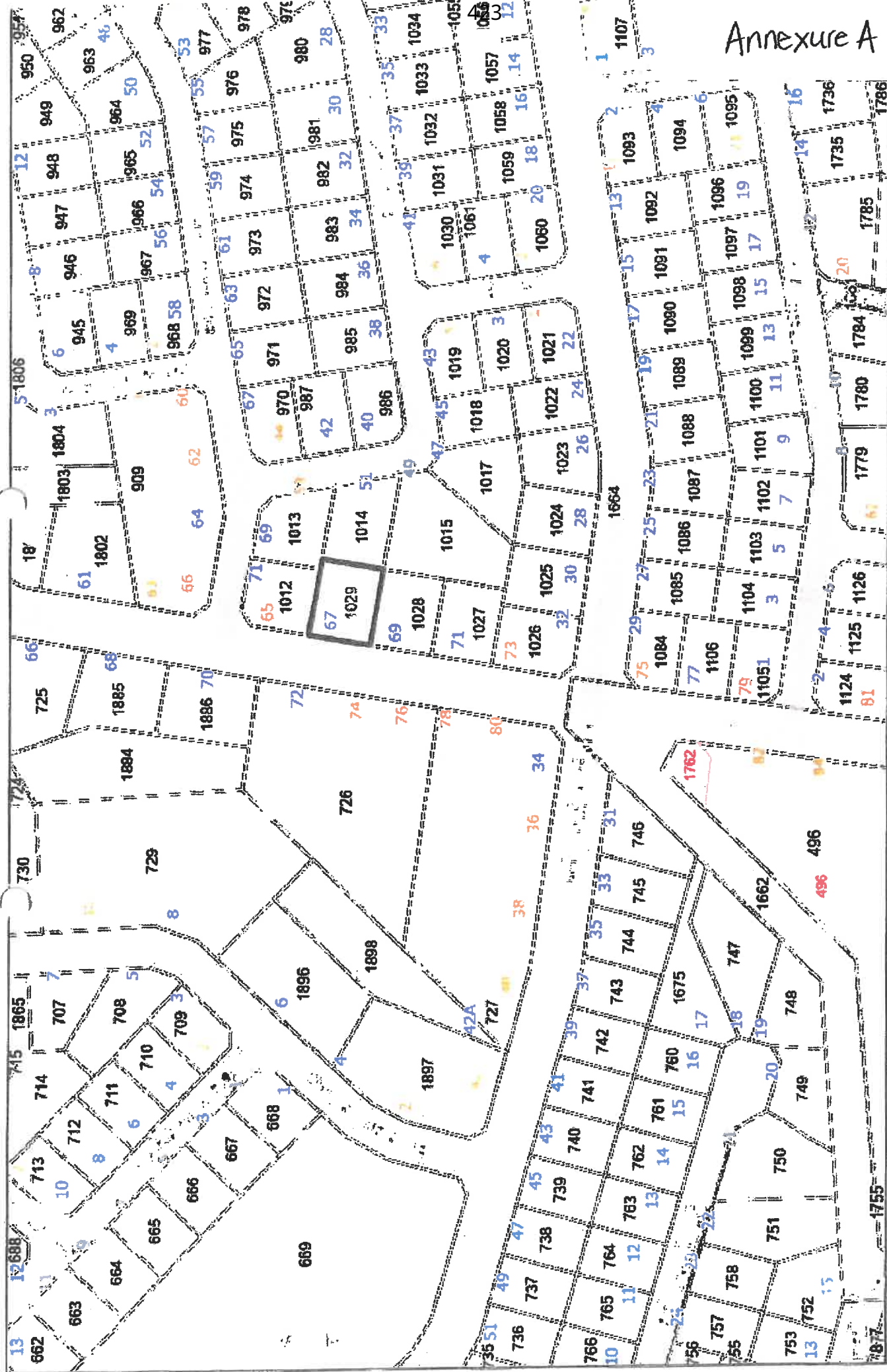
Name: **H VAN DER STOEP**

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

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

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

# Annexure A



Date

Locality Map

Erf 1029 Pringle Bay





Annexure B 1/13

TP-A Theart (H Vld Stoep)

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

April 2021

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

Attention: Municipal Manager

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

Client: Rachele & Wikus Valente  
Consultants: FVS Town and Regional Town Planners

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

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

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

Revision 4: July 2024



Town and Regional Planners

2/13

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**LIST OF ANNEXURES:**

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



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## 1. INTRODUCTION

### 1.1. BACKGROUND INFORMATION

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

### 1.2. APPLICATION PARTICULARS

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

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

### 1.3. PERMANENT DEPARTURE

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

Please note the following:

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

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

### 1.4. DETERMINATION OF AN ADMINISTRATIVE PENALTY

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



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

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

The extent of the additions are as follows:

Staff Quarters: 3.56m<sup>2</sup> (area over the building lines)  
 Carport: 3.72m<sup>2</sup> (area over the building lines)  
 TOTAL: 7.28m<sup>2</sup> (1.01% of Erf 1029)

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

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

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

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

**Whether the unlawful conduct was stopped.**

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

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

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

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

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



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

#### 1.5. NEED AND DESIRABILITY

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

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

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

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

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



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## 2. PROPERTY DETAILS

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

### 2.1. OWNERSHIP DETAILS

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

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

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

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

### 2.2. LOCALITY

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

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

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

### 2.3. CHARACTER OF THE SURROUNDING AREA

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

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

### 2.4. ZONING

Single Residential Zone 1 (SR1)



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#### 2.5. IMPACT ON MUNICIPAL SERVICES

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

#### 2.6. ACCESS

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



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### 3. LEGISLATION

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

#### 3.1. FORWARD PLANNING

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

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

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

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

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

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

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

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

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

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

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

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

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



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**Planning Principles**

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



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#### 4. CONCLUSION

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

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

##### 4.1. REASONS FOR APPROVAL

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



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FIGURES:

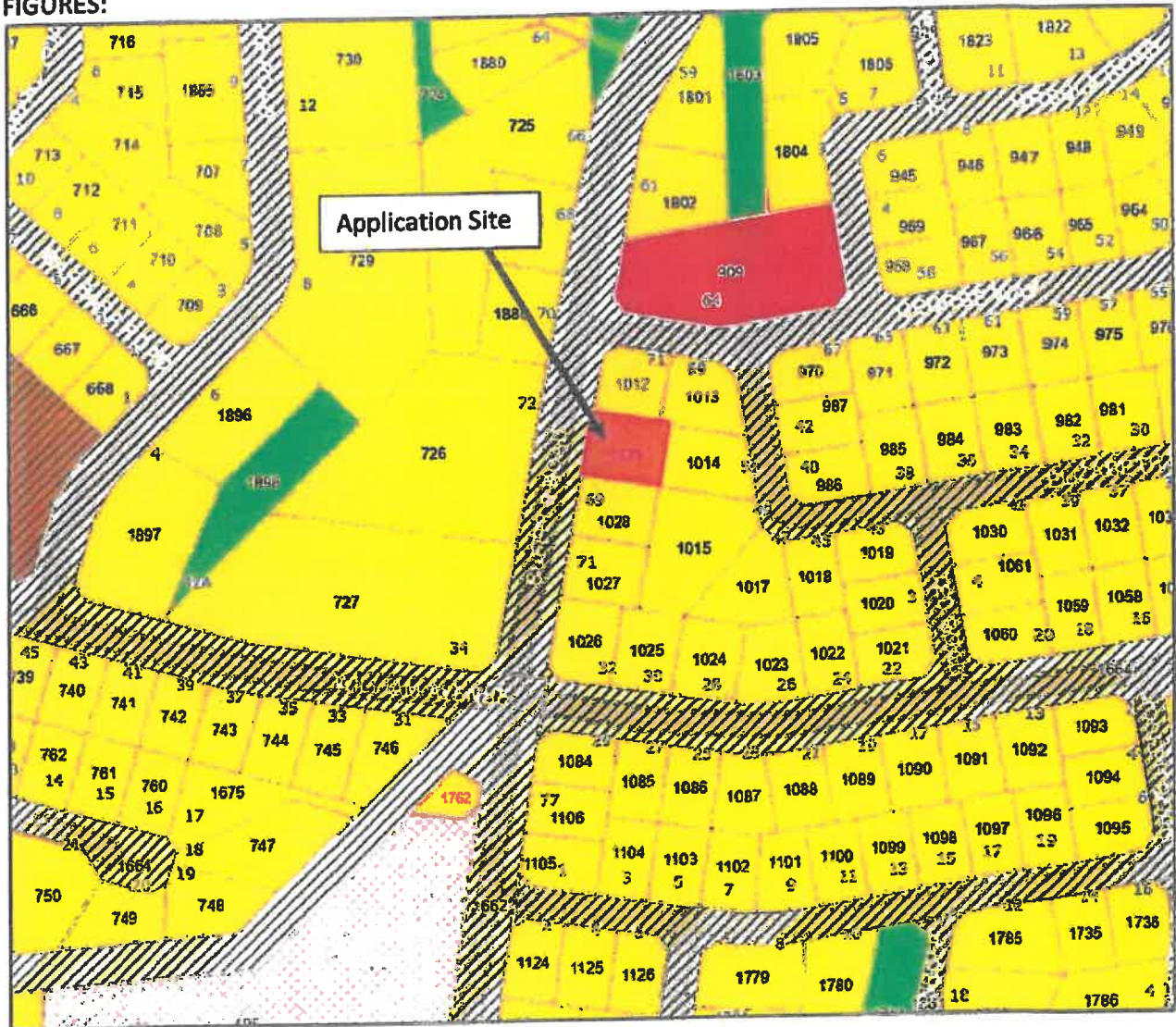


Figure 1: Surrounding Zonings (Overstrand Public Viewer, April 2022)

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



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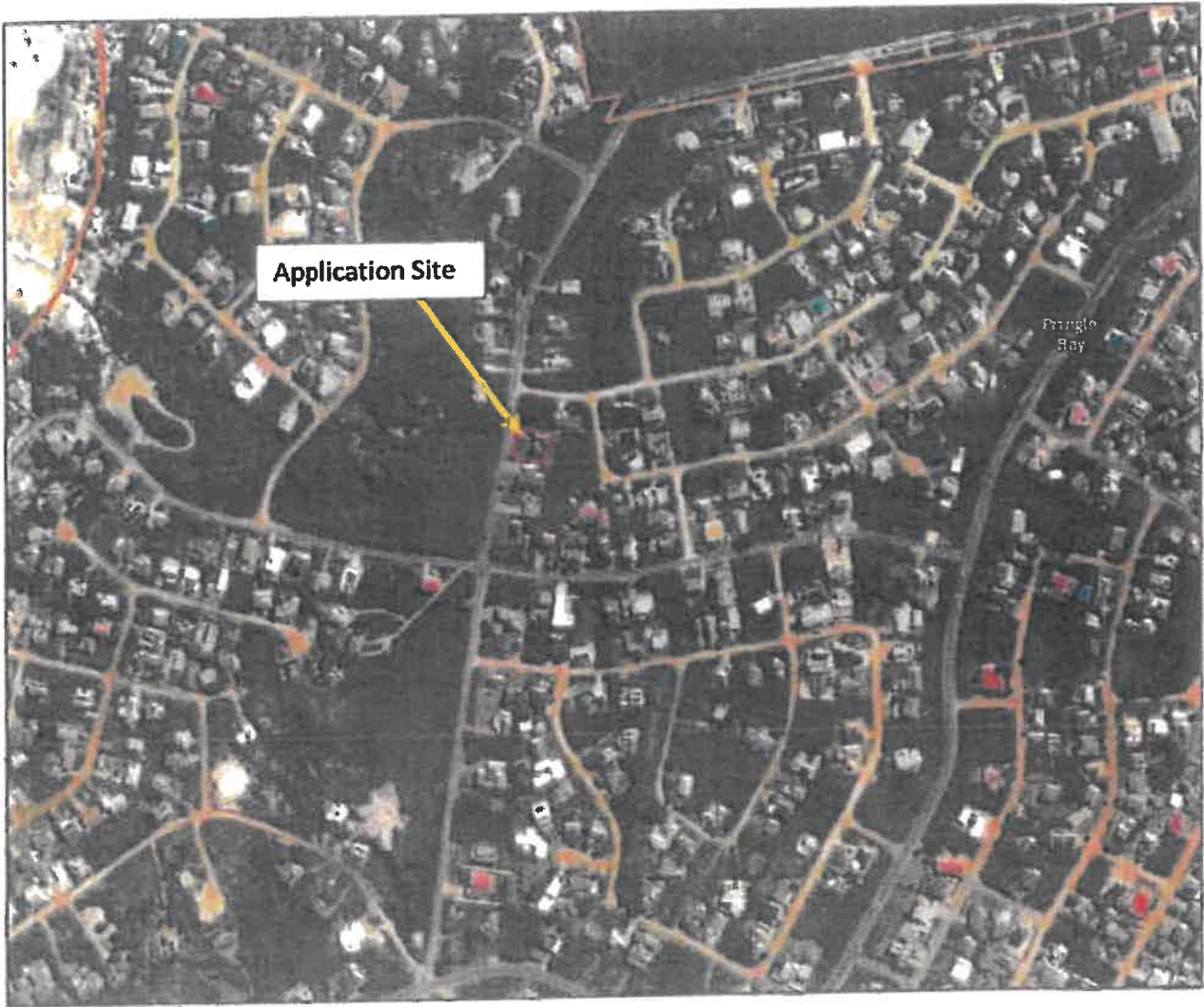


Figure 2: Aerial Photograph of application site and surrounding area (Cape Farm Mapper, April 2022)



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### PHOTOS OF THE SITE

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

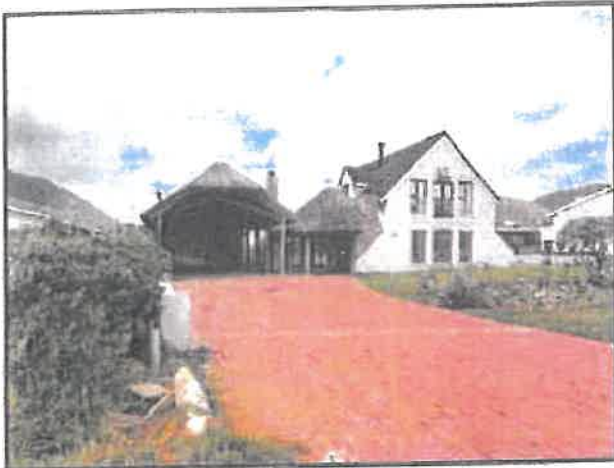


Photo 1

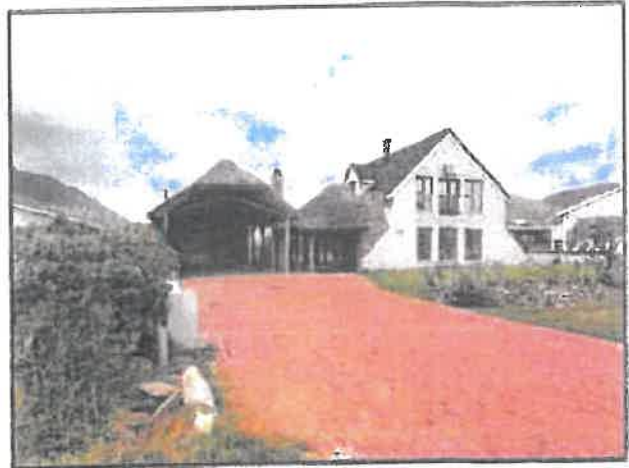


Photo 2

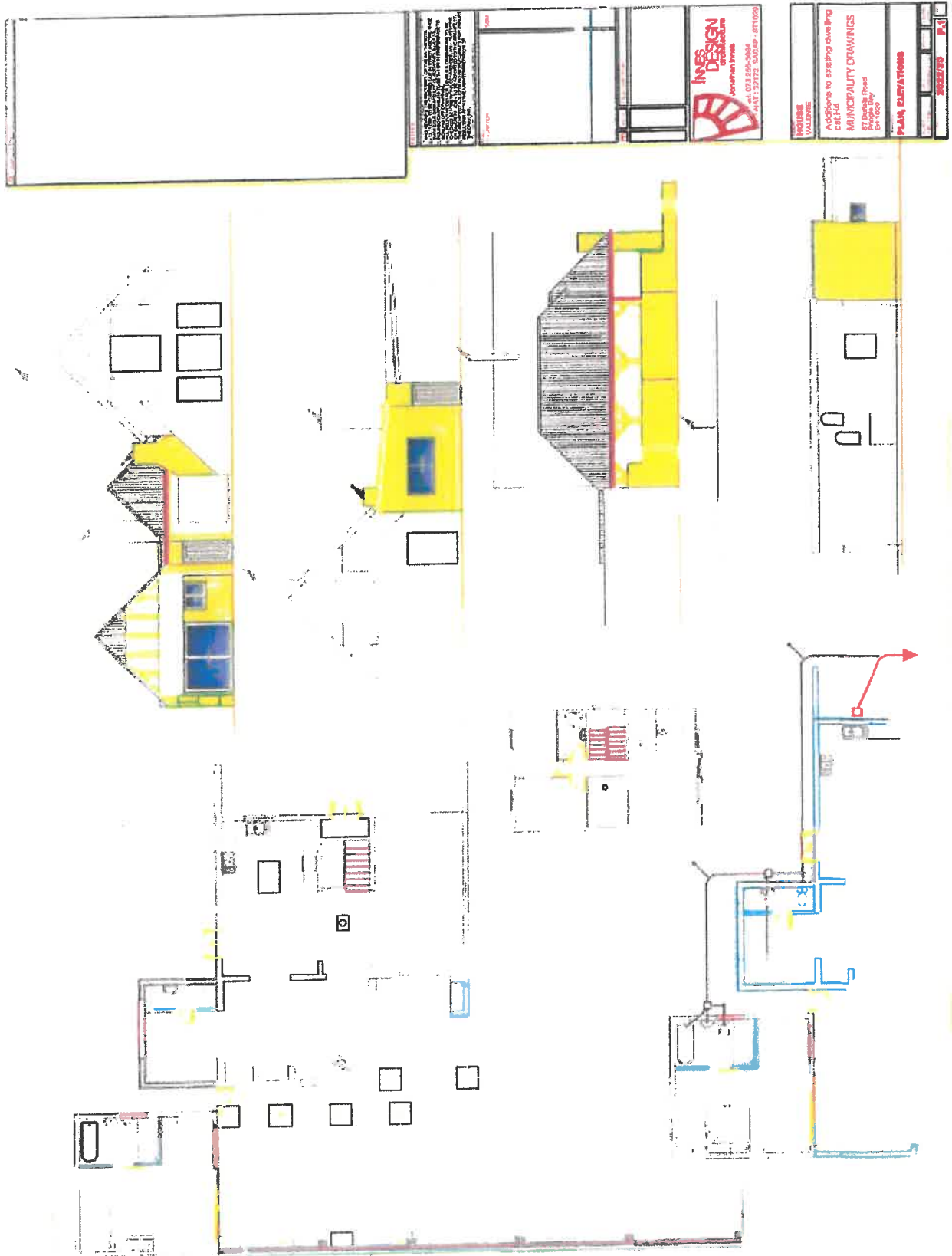


Photo 3

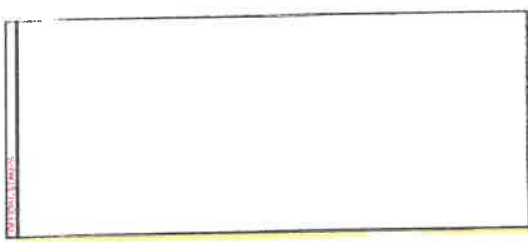


Photo 4

# Annexure C 1/3



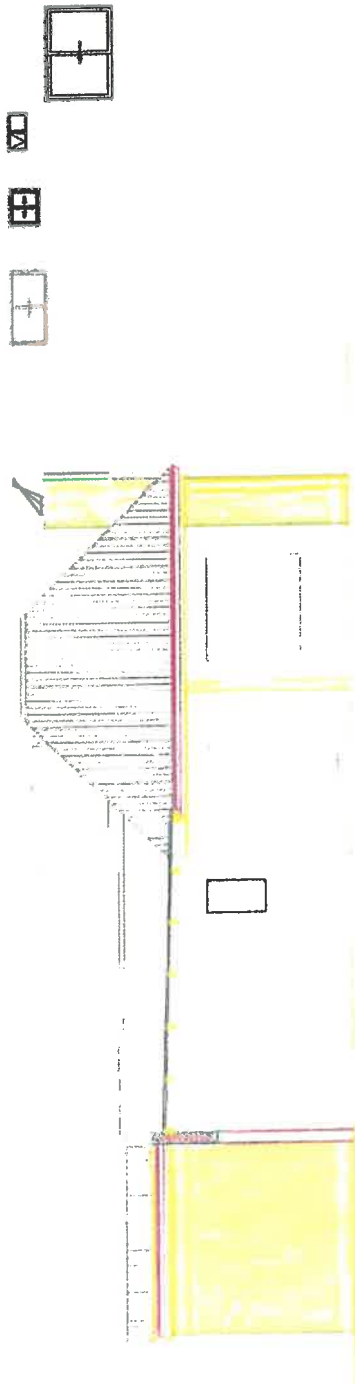




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**PROYECTO**  
 VALENTINE  
 Adicciones to existing dwelling  
 CALHÍ  
**MUNICIPALITY DRAWINGS**  
 87 Balsa Road  
 Puntarenas Bay  
 PUNTA  
**SECCIONES & XA**  
 2023/03




Annexure D 1/4

285

COPY

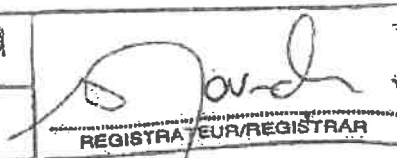
Prepared by me

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

  
CONVEYANCER  
TRACY PULLOCK  
(96590)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 2.250.000,00	R. 1.778,00
Reason for exemption	Category Exemption	Exemption i t o. Sec/Reg. Act/Proc.

DATA / VERIFY  
21-10-2021  
LITHA VUYO MADAMA

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

DATA / CAPTURE  
21-10-2021  
DIPONSHENG LEEUW

T 000051882 / 2021

### DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT  
JACOBUS PETRUS VAN ZYL

LPCM 79800



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

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

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

- 5 MAY 2022



And the appearer declared that his/her said principal had, on 02 September 2021, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

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

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

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

IN EXTENT 720 (SEVEN HUNDRED AND TWENTY) Square metres

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

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

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

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

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

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

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

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

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

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

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

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

20 OCT 2021

q.q.

In my presence

  
REGISTRAR OF DEEDS



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

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

www.pringlebayratepayers.co.za

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

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

TP n. Ahoed  
(W. Ud Sloep)

19 July 2023

The Municipal Manager  
 OVERSTRAND MUNICIPALITY  
 PO BOX 20  
 HERMANUS  
 7200



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

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

**PREAMBLE**

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

**1. ORGANISATION**

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

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

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

FILE NO.	ERF 1029 ✓
	Pringle Bay
SCAN NO.	KPRS 1024
COLLABORATOR NO.	1887006



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

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

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

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

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

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

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

*Hope you find the above in order."*

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

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

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

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

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

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

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



3.2. We submit that it is especially not desirable that a title deed restriction be removed in order to legalise an illegal structure.

3.3. Furthermore, the OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.

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

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

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

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

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

5. **CONCLUSION**

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

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

Kind regards

*AW Vorster*

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



TP. N. Theait  
(H. Ud Skoop)

FVS Town and Regional Planners

175 5<sup>th</sup> Avenue

Kleinmond

7195

Overstrand Municipality  
16 Paterson Street  
Hermanus  
7200

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

6 October 2023

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

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

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

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

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

**Comment:**

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

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

06 OCT 2023

TP

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

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

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

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

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

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

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

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

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

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

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

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

***REMOVAL OF ILLEGAL STRUCTURE***

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

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

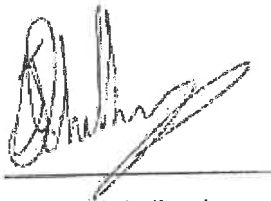
Our clients, upon being informed of the transgression on their property, immediately contacted us to seek advice and how to proceed with this, in order to rectify the wrongdoing of the past owners. Our clients have been patient during this process and have not argued against the processes to follow,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

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

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

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

Yours Sincerely



Jaco van Schalkwyk

FVS Town and Regional Planners

**4. ITEMS FOR CONSIDERATION****4.1****ERF 1029, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, RELAXATION OF THE TITLE DEED STREET BUILDING LINE AND DETERMINATION OF ADMINISTRATIVE PENALTY: FVS TOWN AND REGIONAL PLANNERS ON BEHALF OF W & R VALENTE****1029 KPRB (4112/2022)****H van der Stoep****11 November 2024****(028) 313 8900****Hermanus Administration****EXECUTIVE SUMMARY**

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

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
  - to relax the lateral building line from 2m to 0m to accommodate an existing carport;
  - to relax the lateral building line from 2m to 0m to permit a change of use from garage to staff quarters, and
  - to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters.
- ❖ **Departure** in terms of Section 16.1.1.(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters.
- ❖ **Relaxation** of Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:
  - to relax the lateral building line from 1,5m to 0m to accommodate an existing carport, and
  - to relax the lateral building line from 1,5m to 0m to permit a change of use from garage to staff quarters.
- ❖ **Determination of an administrative penalty** in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to accommodate the unauthorised transgressions as stipulated above.

**MINUTES : MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025****RESOLVED:**

1. that the objection **be noted**;
2. that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:
  - to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;
  - to relax the lateral building line from 1,5m to 0m to accommodate a garage or storeroom;

**be approved**, in terms of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:
  - to relax the lateral building line from 2m to 0m to accommodate an existing carport;

**be approved**, in terms of Section 61 of the By-Law;
4. that the application in terms of Section 16(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, **be approved**, in terms of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:
  - to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters

**not be approved** in terms of Section 61 of the By-Law
6. that the approvals in Points 2 - 4 above be subject to the following conditions:
  - (a) that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;

**MINUTES : MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

- (b) that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;
  - (c) that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;
  - (d) that **revised** building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and
  - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, **be imposed**, and that an administration penalty fee of **R7 372,13** be payable within ninety (90) days of the final decision.
8. that the applicant and objector be notified of their right of appeal (*against Paragraphs 2 – 6 above*) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

**REASONS FOR THE RESOLUTION:**

- The proposed application for the carport fits in with the character of the surrounding area and is desirable in terms of use, not height.
- There will be no impact on services.
- The proposal for the carport will have no negative impact on the environment.
- Garages or carports are allowed on the 0m lateral and rear building lines with the neighbour's consent, which the owner obtained.
- The 5% penalty takes into consideration that the owners immediately appointed a consultant to address the illegal structure and use.
- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m.
- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.

**MINUTES : MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

- The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
- The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
- Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
- There is sufficient space on the property within the building lines to construct staff quarters.

**The meeting adjourned at 10:31**

**DIRECTORATE: PLANNING & DEVELOPMENT  
TOWN & SPATIAL PLANNING**

ENQUIRIES | NAVRAE: H van der Stoep (Senior Town Planner)  
FILE REF | LEËRVERV: 1029 KPRB  
APP ID | AANSOEK ID: 41/2/2022  
DATE | DATUM: 6 February 2025



**REGISTERED MAIL**

FVS Town & Regional Planners  
PO Box 12, Postlink  
21 Third Street  
**KLEINMOND**  
7195

[jaco@fvstowndplanners.co.za](mailto:jaco@fvstowndplanners.co.za)

Dear Sir

**DECISION LETTER TO APPLICANT**

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

1. The application received on 11 April 2022 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 January 2025.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

**RESOLVED:**

- "1. *that the objection be noted;*
2. *that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:*
  - *to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;*
  - *to relax the lateral building line from 1,5m to 0m to accommodate a garage or storeroom;*

*be approved, in terms of Section 61 of the By-Law;*
3. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the lateral building line from 2m to 0m to accommodate an existing carport;*

*be approved, in terms of Section 61 of the By-Law;*

4. *that the application in terms of Section 16(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, be approved, in terms of Section 61 of the By-Law;*
5. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters*

*not be approved in terms of Section 61 of the By-Law*
6. *that the approvals in Points 2 - 4 above be subject to the following conditions:*
  - (a) *that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;*
  - (b) *that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;*
  - (c) *that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;*
  - (d) *that revised building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;*
  - (e) *that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;*
  - (f) *that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and*
  - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation.*
7. *that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, be imposed, and that an administration penalty fee of R7 372,13 be payable within ninety (90) days of the final decision.*
8. *that the applicant and objector be notified of their right of appeal (against Paragraphs 2 – 6 above) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision."*

4. Reasons for the above decision are as follows:

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

- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m.
  - The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
  - The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
  - The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
  - Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
  - There is sufficient space on the property within the building lines to construct staff quarters.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3935-00).
- 5.2 The appeal form is available at request or alternatively on the Municipal website (<https://www.overstrand.gov.za/en/documents/town-planning/application-forms>).
- 5.3 Contact details are as follows:
- |                   |  |
|-------------------|--|
| Physical address: | 16 Paterson Street, Hermanus, 7200                                       |
| Postal address:   | PO Box 20, Hermanus, 7200  |
| E-mail address:   | <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a> |
6. Kindly note that the rights are still not in place until the prescribed 21 days of registration of this letter have passed, and it is confirmed by our offices that there has been no appeal received against the proposal.

Yours faithfully



R KUCHAR

**DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING**

**DIRECTORATE: PLANNING & DEVELOPMENT  
TOWN & SPATIAL PLANNING**

ENQUIRIES | NAVRAE: H van der Stoep (Senior Town Planner)  
FILE REF | LEËRVERW: 1029 KPRB  
APP ID | AANSOEK ID: 4112/2022  
DATE | DATUM: 6 February 2025



**REGISTERED MAIL**

Pringle Bay Ratepayers Association  
AW Vorster  
PO Box 409  
**PRINGLE BAY**  
7196

[chairman@pringlebayratepayers.co.za](mailto:chairman@pringlebayratepayers.co.za)

Dear Sir

**DECISION LETTER TO PERSONS WHO COMMENTED**

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

1. Your objection regarding the above application dated 19 July 2023 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 January 2025.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

**RESOLVED:**

1. *that the objection be noted;*
2. *that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:*
  - *to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;*
  - *to relax the lateral building line from 1,5m to 0m to accommodate a garage or storeroom;*

*be approved, in terms of Section 61 of the By-Law;*
3. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the lateral building line from 2m to 0m to accommodate an existing carport;*

*be approved, in terms of Section 61 of the By-Law;*

4. *that the application in terms of Section 16(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, be approved, in terms of Section 61 of the By-Law;*
5. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters*

*not be approved in terms of Section 61 of the By-Law*
6. *that the approvals in Points 2 - 4 above be subject to the following conditions:*
  - (a) *that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;*
  - (b) *that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;*
  - (c) *that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;*
  - (d) *that revised building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;*
  - (e) *that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;*
  - (f) *that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and*
  - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation.*
7. *that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, be imposed, and that an administration penalty fee of R7 372,13 be payable within ninety (90) days of the final decision.*
8. *that the applicant and objector be notified of their right of appeal (against Paragraphs 2 – 6 above) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision."*

4. Reasons for the above decision are as follows:

- The proposed application for the carport fits in with the character of the surrounding area and is desirable in terms of use, not height.
- There will be no impact on services.
- The proposal for the carport will have no negative impact on the environment.
- Garages or carports are allowed on the 0m lateral and rear building lines with the neighbour's consent, which the owner obtained.
- The 5% penalty takes into consideration that the owners immediately appointed a consultant to address the illegal structure and use.
- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m.

- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
  - The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
  - The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
  - Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
  - There is sufficient space on the property within the building lines to construct staff quarters.
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3935-00).
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| Physical address: | 16 Paterson Street, Hermanus, 7200                                       |
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| E-mail address:   | <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a> |

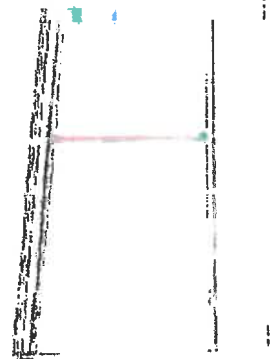
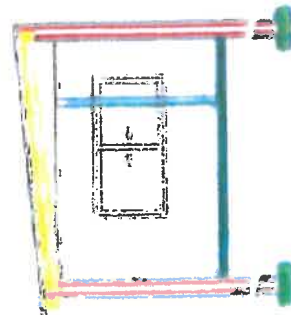
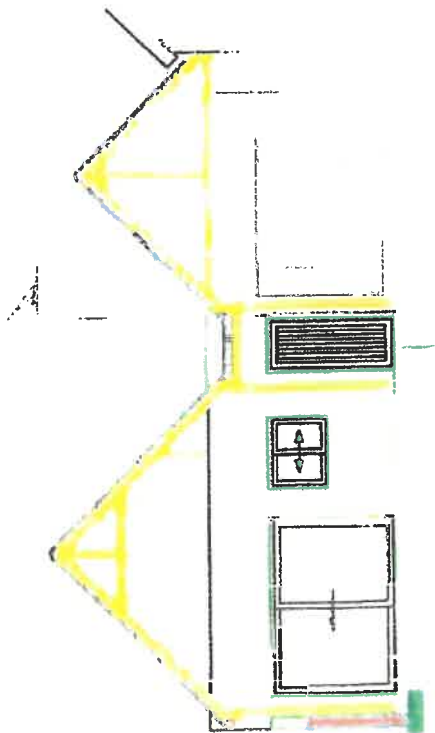
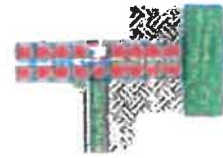
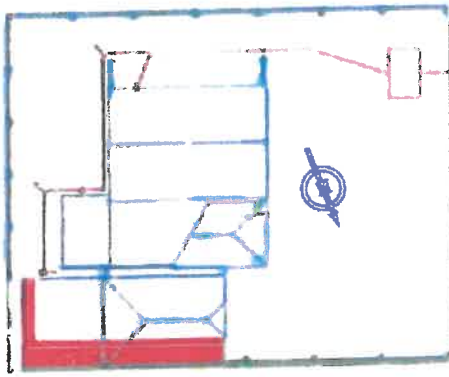
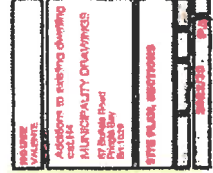
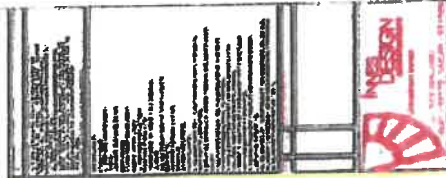
Yours faithfully



R KUCHAR

**DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING**









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

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

www.pringlebayratepayers.co.za

PO Box 409, Pringle Bay, 7196 / Posbus 409, Pringlebaai, 7196

Chairman/Voorsitter: chairman@pringlebayratepayers.co.za / Tel: 084 222 1242

OVERSTRAND MUNISIPALIT.

REKORDBEHEER

27 FEB 2025

DOCUMENT CONTROL

OVERSTRAND MUNISIPALIT

60/168

24 February 2025

The Municipal Manager  
 OVERSTRAND MUNICIPALITY  
 PO BOX 20  
 HERMANUS7200

TP-A Theart  
 (H vld Stoep)

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

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

I, the undersigned, AW Vorster (Identity no. 6110045027084) in my capacity as representative of the PRINGLE BAY RATEPAYERS' ASSOCIATION (hereafter referred to as PBRA, being a separate legal entity having a constitution, in terms of which it has a right, inter alia, to sue and to be sued), on behalf of our members who have granted a mandate to the PBRA to, amongst others, comment on and provide input on land use applications referred to the PBRA, hereby wishes to submit on behalf of the PBRA our APPEAL to a Municipal Planning Tribunal Decision regarding the subject matter.

**1. ORGANISATION**

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

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

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

FILE NO. Erf 1029-KPRB

SCAN NO.

COLLABORATOR NO.

2615443

## 2. OUR REFERENCES

- 2.1. Decision Letter dated 6 February 2025, OM File Reference: 1029 KPRB, Application ID: 4112/2022 (Attached hereto as: "SKM\_C55825020614580.pdf")
- 2.2. Municipal Planning Tribunal Agenda: 30 January 2025 (attached hereto as "Jan 30 2025 MPT Agenda.pdf")
- 2.3. The "Annexure to the Application" received via email on 20 Jun 2023, at 11:04, from Loriaan Isaacs <[loriaanisaacs@overstrand.gov.za](mailto:loriaanisaacs@overstrand.gov.za)> who wrote:

"Dear Sir / Madam

Attached please find a copy of the application for your attention. Kindly provide the Ratepayer Association's comments directly to Loretta Gillion ([loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before **20 July 2023**. ...."

The attachment to the above-mentioned is attached hereto as "Annexures, Erf 1029 Pringle Bay.pdf".

PLEASE NOTE: The title of the Motivation Report in the referenced Annexure is:

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

Our emphasis: ".... **REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS** ..."

- 2.4. The PBRA letter with comments/objections dated **19 July 2023**, attached hereto as "PBRA Erf 1029 Comments (19 July 2023- FINAL).pdf". Our letter was headed, in accordance with the application as "ERF 1029, BUFFELS ROAD PRINGLE BAY: OBJECTION TO THE APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND DEPARTURE FROM THE LAND USE PARAMETERS."

## 3. OUR GROUNDS FOR APPEAL

- 3.1. **A SECOND, UNLAWFUL MOTIVATION REPORT WAS SUBSTITUTED FOR THE ORIGINAL AND WAS NOW PRESENTED TO THE MPT**

The recommendation by the Overstrand Municipality Planning Department (OM PD) to the Municipal Planning Tribunal (MPT) for the meeting of 30 January 2025 is headed:

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

A new Motivation Report by Messrs FVS Town and Regional Planners (FVS) is now headed as per above, but still dated April 2021 with note at bottom of first page : "Revision 4: July 2024" Stamped as Received by OM on 27 August 2024

On page 3 of the agenda the OM PD reports to the MPT that the application was advertised on 20 June 2023 with closing date for comments 20 July 2023.

The objections by PBRA are attached, dated 19 July 2023.

- 3.2. However, the application to which PBRA had objected on 19 July 2023 was to a different application (as pointed out in paragraph 3.1 above), namely:

***"OBJECTION TO THE APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND DEPARTURE FROM THE LAND USE PARAMETERS."***

A different, original Motivation Report by FVS was also first dated April 2021 with note at bottom of first page : "Revision 2: September 2022". Stamped as Received by OM on 5 October 2022 .

It was to this application, to the **removal of a title deed restriction** to legalise illegal building work, that we had objected. The recommendation to the MPT meeting of 30 January 2025 introduces the consideration/recommendation of an administrative penalty. We need to put it on record that the PBRA was not made aware of a recommendation of an administrative penalty nor was PBRA asked for input or comment on this recommendation. Furthermore, the original application also referred in its title to "Application for **removal of restrictive title deed conditions...**". The title of the recommendation to the MPT now refers to "**relaxation of title deed**". This is different to the original application title and was also not relayed to the PBRA.

The second application was apparently after further consultation with the OM PD to remove certain objectionable aspects of the first, different application.

To complicate matters FVS comments on the PBRA objections as if these objections were made in respect of the second application which, as pointed out above, we have never received for comment. FVS responds to our objections that we are confusing the removal of a title deed condition with relaxation of a title deed condition, and OM PD unwisely accepts the comments as such and bases its recommendation to the MPT on this. The PBRA is very clear about the difference between removal of title deed and the "relaxation" thereof. However, we were not informed that there is now an application for "relaxation" of title deed and not an application for removal of title deed. We can only comment on what is provided to us. It is therefore simply untrue to claim that the PBRA is confused in relation to this application.

- 3.3. Please also see par 3.5 below: PBRA has not had the opportunity to comment on the second application to the MPT. It has therefore been deprived of its opportunity of commenting to one of its forums for objection, namely to the first

forum of the MPT. This defect cannot be "cured" by our appeal to the second forum, namely the Appeal Authority.

On two previous occasions appeals on this point were decided in our favour. In both cases new applications were ordered by the Appeal Authority.

### 3.4. WE APPEAL PROFESSIONAL AND ETHICAL CONSIDERATIONS

We would submit that the MPT, in the exercise of its quasi-judicial function, was not placed in a position to properly exercise its discretion as required by Rule of Law, because the report presented to it by the OM PD was in fact a misrepresentation of the actual facts.

#### 3.4.1. EFFECTIVENESS OF OM QUALITY CONTROL

We question the effectiveness of any quality control exercised prior to presentation of the OM PD's report to the MPT.

If the OM PD's report had, as part of quality control, been submitted to the immediate head of the responsible town planner for review, then the overseer would have noticed that the application reported on to the MPT is not the application that had been advertised and commented on by PBRA.

#### 3.4.2. APPARENT MISREPRESENTATIONS AND WITHHOLDING OF INFORMATION AMOUNTING TO APPARENT UNETHICAL BEHAVIOUR BY APPLICANTS' CONSULTANT

The extent of the apparent misrepresentations and apparent withholding of applicable information by the consultant (as set out in par 4 below) could be interpreted as unethical behaviour that should be reported to the professional association of which the consultant is a member.

#### 3.4.3. DID THE MPT PROPERLY APPLY ITS MIND IN ARRIVING AT A DECISION?

3.4.3.1. We question whether the MPT should not, in the proper exercise of its discretion, have noticed that the application to which PBRA had been objecting was not the application that was presented to the MPT.

3.4.3.2. We also question whether the MPT should not, in the proper exercise of its discretion, have noticed that the consultant was replying to the PBRA comments on the first application, as presented to us, as if PBRA had made a number of unfounded comments on the later dated second application, which was not presented to us.

3.4.3.3. We also question whether the MPT should not also have noticed from the comments in the report by the OM PD, that a number of misrepresentations and non-disclosures were apparently made by the consultant, which would have necessitated the application being referred back.

**3.5. FURTHER GROUNDS FOR APPEAL: NON-COMPLIANCE WITH THE RULES OF NATURAL JUSTICE FOR A QUASI-JUDICIAL BODY CANNOT BE CURED IN AN APPEAL TO THE APPEAL AUTHORITY.**

3.5.1. In our objection of 19 July 2023 (refer to par 2.4 above) we have pointed out that the application "... is unlawful due to non-compliance and should be referred back to the applicant."

3.5.2. Following the objection in Par 2.4 above, the consultant apparently responded to our objections by changing/altering the Annexure to the application (refer to paragraphs 3.1 and 3.2 above).

3.5.3. The result of the MPT approving the defective application without giving objectors the opportunity to comment is a defect of natural justice (applicable to a quasi-judicial body such as the MPT). This defect cannot be "cured" by our appeal to the second forum, namely the Appeal Authority.

3.5.4. We attach an article from the South African Law Journal "CURING DEFECTS OF NATURAL JUSTICE BY APPEAL" by L G BAXTER.

Therein the author motivates the following, with reference to legal precedent from cases from South African and international courts.

3.5.4.1. The author says on page 124:

*"Conclusion*

*There is a general principle in our law that a defect of natural justice cannot be cured by a domestic or administrative appeal. What is required is a hearing de novo. Although such a general principle has been doubted by the Privy Council in Calvin's case, there is no reason to assume that the principle is in any doubt in South Africa."*

3.5.4.2. By not being allowed to comment on complete documentation to the MPT, the PBRA is stripped of the opportunity to comment fully before the MPT. We were stripped of the right to more than one fair hearing, namely by both the MPT and the Appeal Authority.

3.5.4.3. The author says on page 119:

*"But not only is the complainant being stripped of his right to more than one fair hearing, there is also an important policy argument against allowing any appeal from a hearing at which the principles of natural justice were not observed: that the appeal is by its very nature inevitably affected by what took place at the first hearing, unless it is a complete rehearing (in which case it is not an appeal in the present sense)."*

Page 3

*“To adopt a phrase used by Botha JA in Turner (at 658D of the report), the taint of the hearing is carried forward to the appeal. Where natural justice has been denied, the record of the first hearing will be fundamentally defective either because one party was not allowed to present his case and evidence adequately, or because the decision-maker was biased and his or its interpretation of the evidence will be coloured by this bias.*

*The normal appeal is usually heavily influenced by the record of the original decision-making body. (For an analysis of the distinction between appeals in the wide sense and appeals in the ordinary sense, see A Rabie 'Administratiefregtelike Appelle' (1979) 12 De Jure 128.)”*

3.5.4.4. Although as per the further quotation from the author below, we could appeal on the merits to the Appeal Authority, we would choose not to do so. Reason: The first application, containing apparently false information and non-disclosures, was presented to the neighbours of the applicants for their permission. We submit that they should be given another opportunity to consider.

3.5.4.5. We seek a declaration from the Appeal Authority that the decision by the MPT was void. The author says on page 123:

*“In addition, although the act or decision is void, it can be appealed against, since it exists and has effect. Thus there is no anomaly in appealing to a domestic appeal body where there has been a failure of natural justice in connection with the original decision. However, the complainant may equally seek a declaration that the original decision is void.”*

3.6. WE MAKE THE FOLLOWING SUBMISSIONS OF APPARENTLY UNPROFESSIONAL AND UNETHICAL CONDUCT BY APPLICANTS' CONSULTANT

3.6.1. Consultant applies for the removal of a title deed condition whilst openly flaunting the mandatory legal requirements of notice to the holders of the title deed praedial rights in the rest of the subject township extension.

3.6.2. Consultant substitutes a different application for the original and apparently knowingly responds to, and nullifies, the objections to the application as if the objections are in respect of the substituted different application.

3.6.3. Consultant apparently knowingly withholds the information of the existing illegal conversion of a garage into additional bedrooms and apparently attempts to legalise it by ostensibly applying for the removal of the applicable title deed condition as if it applies only to the legalisation of an earlier illegally erected carport, and thereby achieving its real aim in respect of the existing garage illegally converted by the applicants.

3.6.4. In the first application, par 3.2 the consultant apparently falsely declares as follows:

*"Existing building on the application site*

- Dwelling house
- Garage converted to storeroom"

Only on 23 February 2023, in response to an enquiry by the OM PD, did the consultant admit that the garage had been converted by the applicants into additional bedrooms to the existing dwelling for the accommodation of a family member.

In the second application the consultant apparently continues with the misrepresentation by apparently falsely presenting the illegal conversion as (non-allowable) staff quarters in order to achieve the same purpose of conversion to additional bedrooms to the dwelling.

- 3.6.5. The consultant further applies for relief in respect of the illegally constructed carport, offering the excuse that it had been constructed by a previous owner without building plans. Only after enquiries by the OM PD did the consultant admit that the applicants had replaced the roof of the carport with thatch, illegally, knowing that no building plans had previously been submitted or approved.

Furthermore, apparently knowingly, in order to obtain a remission of the administrative penalty and apparently also not to endanger the approval of the relaxation, consultant does not disclose the full information, namely that the new roof of the carport exceeds the allowable height. It was only admitted after an enquiry by the OM PD.

### **3.7. DURATION OF APPLICATION**

- 3.7.1. The "Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2020" in Clause 58 states:

*"58 Timeframes pertaining to applications*

*(1) The administrative phase commences only after a complete land use application has been submitted to a municipality and the components of the said administrative phase contemplated in Subsection (2), for which the municipality is responsible, may not exceed 12 months.*

*(2) The administrative phase is the phase during which all public participation notices have to be published and responded to; parties have to be informed; public participation processes finalised; intergovernmental participation processes finalised and the application referred to the Municipal Planning Tribunal or Authorised Official for consideration and decision-making*

*(3) When an Authorised Official is authorised to take a decision and no provision of any other law has to be complied with, the Authorised Official must*



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*decide on the application within 60 days after completion of the administrative phase contemplated in Subsection (2).*

*(4) When the Authorised Official is not authorised to make a decision and no provision of any other law has to be complied with, the Municipal Planning Tribunal must decide on the application within 90 days after completion of the administrative phase contemplated in Subsection (2).*

*(5) The Authorised Official or Municipal Planning Tribunal, as the case may be, may extend the period contemplated in Subsections (3) or (4) in exceptional circumstances which may include the following:*

*(a) if an interested person has submitted a request for intervener status;*

*(b) if additional information is required in order to consider the application. "*

- 3.7.2. We submit that the "administrative phase" commenced on 20 June 2023 (ref to Paragraph 2.3 above).
- 3.7.3. We submit that the MPT considered the application on 30 January 2025, approximately 19 months (more than the 12 months stated in Clause 58(1) above) after the commencement of the "administrative phase", and more than 90 days after the expiration of the administrative phase (Clause 58(4) above).
- 3.7.4. We submit that we have not been informed by the OM PD nor the applicants of a request for extension of time in terms of Clause 58(5) above, nor do we read of such exceptional circumstances in the documentation presented to the MPT.

We sincerely request that you will please be so kind as to acknowledge receipt of our appeal and to take the necessary steps to revoke the decision by the MPT against the background of our grounds for appeal outlined in paragraph 3 above.

Kind regards

**AW Vorster**  
Obo: Pringle Bay Ratepayers' Association

**ANNEXURES:**

- 1) Decision Letter dated 6 February 2025, OM File Reference: 1029 KPRB, Application ID: 4112/2022 (Also Attached hereto as: "SKM\_C55825020614580.pdf")
- 2) Duly Completed Appeal Form (also Attached hereto)
- 3) Proof of Payment of Appeal Fee (also Attached hereto)



68/168

**ATTACHMENTS:**

1. Decision Letter dated 6 February 2025, OM File Reference: 1029 KPRB, Application ID: 4112/2022 (Attached hereto as: "SKM\_C55825020614580.pdf")
2. Municipal Planning Tribunal Agenda: 30 January 2025 (attached hereto as "PBRA ERF 1029 Jan 30 2025 MPT Agenda.pdf")
3. "Annexures, Erf 1029 Pringle Bay.pdf"
4. The PBRA letter with comments/objections dated 19 July 2023, attached hereto as "PBRA Erf 1029 Comments (19 July 2023- FINAL).pdf".
5. "CURING DEFECTS OF NATURAL JUSTICE BY APPEAL" by L G BAXTER.
6. Duly Completed Appeal Form (Attached hereto as "PBRA APPEAL ERF 1029 - 2024 - 2025 APPEAL FORM (14 Feb 2025).pdf")
7. Proof of Payment of Appeal Fee (Attached hereto as "PBRA Erf 1029 Appeal Fee - Payment Notification.pdf")

## ANNEXURE 1: DECISION LETTER

### DIRECTORATE PLANNING & DEVELOPMENT TOWN & SPATIAL PLANNING

ENQUIRIES | NAVRAE: H van der Stoep (Senior Town Planner)  
FILE REF | LEERVERW: 1029 KPRB  
APP ID | AANSOEK ID: 4912/2022  
DATE | DATUM: 6 February 2025



REGISTERED MAIL

Pringle Bay Ratepayers Association  
AW Vorster  
PO Box 409  
PRINGLE BAY  
7196

[pringlebay@pringlebay.co.za](mailto:pringlebay@pringlebay.co.za)

Dear Sir

### DECISION LETTER TO PERSONS WHO COMMENTED

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

1. Your objection regarding the above application dated 19 July 2023 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 January 2025.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

#### RESOLVED:

1. that the objection be noted;
2. that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:
  - to relax the lateral building line from 1,5m to 0m to accommodate an existing carport.
  - to relax the lateral building line from 1,5m to 0m to accommodate a garage or store room
 be approved, in terms of Section 61 of the By-Law;
3. that the application in terms of Section 18(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following
  - to relax the lateral building line from 2m to 0m to accommodate an existing carport.
 be approved, in terms of Section 61 of the By Law.

Tel: 028 313 6506 | E-mail: [pringlebay@pringlebay.co.za](mailto:pringlebay@pringlebay.co.za)  
PO Box 26 | HERMANUS 7209  
www.pringlebay.co.za

- 4 that the application in terms of Section 18(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 0m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, be approved, in terms of Section 61 of the By-Law;
- 5 that the application in terms of Section 18(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:
- to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters
- not be approved in terms of Section 61 of the By-Law
- 6 that the approvals in Points 2 - 4 above be subject to the following conditions
- (a) that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;
  - (b) that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;
  - (c) that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;
  - (d) that revised building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and
  - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.
- 7 that the determination of an administrative penalty in terms of Section 90 (4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, be imposed, and that an administration penalty fee of R7 372,13 be payable within ninety (90) days of the final decision
8. that the applicant and objector be notified of their right of appeal (against Paragraphs 2 - 6 above) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision "

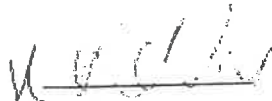
4 Reasons for the above decision are as follows:

- The proposed application for the carport fits in with the character of the surrounding area and is desirable in terms of use, not height
- There will be no impact on services.
- The proposal for the carport will have no negative impact on the environment
- Garages or carports are allowed on the 0m lateral and rear building lines with the neighbour's consent, which the owner obtained
- The 6% penalty takes into consideration that the owners immediately appointed a consultant to address the illegal structure and use
- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m

Tel: 029 31 12910 | Email: [info@overstrand.gov.za](mailto:info@overstrand.gov.za)  
 P.O. Box 20 | HERMANUS 7200  
 www.overstrand.gov.za

- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
  - The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
  - The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
  - Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
  - There is sufficient space on the property within the building lines to construct staff quarters
5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 76(2) of the By-law
- 5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received within 21 days of notification of this decision together with proof of payment of the appeal fee (R3935-00)
- 5.2 The appeal form is available at request or alternatively on the Municipal website (<https://www.overstrand.gov.za/erw/documents/town-planning/arc-application-forms>)
- 5.3 Contact details are as follows:
- |                  |  |
|------------------|--|
| Physical address | 18 Paterson Street, Hermanus, 7200                               |
| Postal address:  | PO Box 20, Hermanus, 7200  |
| E-mail address   | <a href="mailto:arc@overstrand.gov.za">arc@overstrand.gov.za</a> |

Yours faithfully



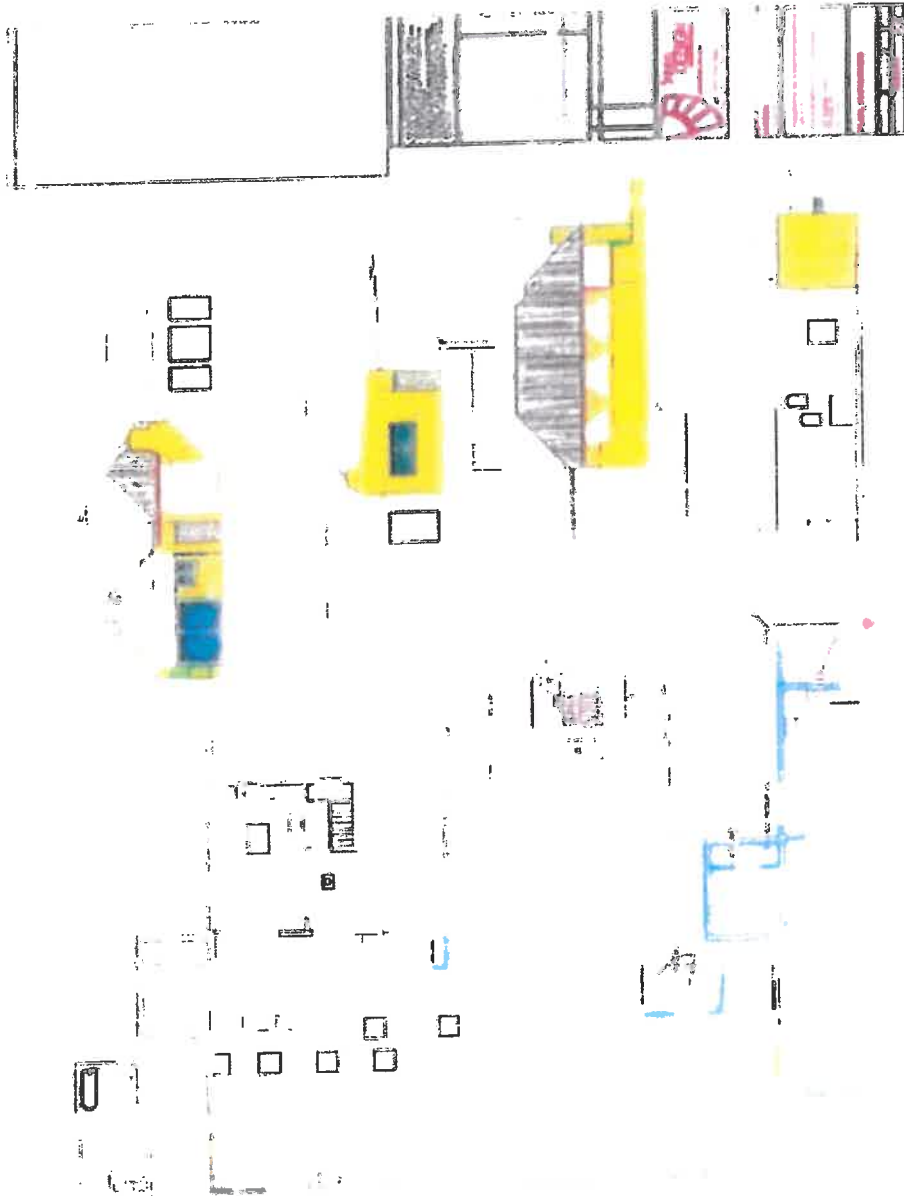
R KUCHAR

DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING


Tel: 022 313 8500 | E-mail: [arc@overstrand.gov.za](mailto:arc@overstrand.gov.za)  
 PO Box 20 | HERMANUS 7200  
[www.overstrand.gov.za](http://www.overstrand.gov.za)

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Annexure C 1/3



**ANNEXURE 2: APPEAL FORM**

		<b>TOWN &amp; SPATIAL PLANNING APPEAL FORM</b> (Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020) 16 Paterson Street / PO Box 70 HERMANUS, 7200 Tel: 028 313 8900 Fax: 028 313 1093	
<b>KINDLY NOTE:</b> Please complete this form using BLOCK capitals and ticking the appropriate boxes. Append this form to your letter of appeal which must comply with Annexure E of the Application Form as attached.			
<b>PART A: APPEAL</b>			
Are you appealing against the decision made by the authorized employee or Tribunal?	<input checked="" type="checkbox"/>	1.	If Yes, indicate in Part E if the appeal is lodged against the whole decision or part thereof. If the latter applies provide a description of the part.
Are you appealing against the condition(s) of approval imposed by the authorized employee or Tribunal?	<input checked="" type="checkbox"/>	2.	If Yes, list relevant condition(s) and provide a description in Part E.
Is your appeal based on and primarily concerned with the process followed prior to the authorized employee or Tribunal decision?	<input checked="" type="checkbox"/>	3.	If Yes, specify in Part E.
Is your appeal based on and primarily concerned with the merits of the land development or land use application on which it is believed that the authorized employee or Tribunal erred in coming to the conclusion?	<input checked="" type="checkbox"/>	4.	If Yes, specify in Part E.
Date of decision	30 JANUARY 2025	Date receiving notice of decision	6 FEBRUARY 2025
Who took the original decision?	Authorized employee	<input checked="" type="checkbox"/>	Municipal Planning Tribunal
<b>PART B: APPELLANT'S DETAILS</b>			
First name(s)	ALBERT WILLEM		
Surname	VORSTER		
Company name (if applicable)	PRINGLE BAY RATEPAYERS' ASSOCIATION		
Postal address	PO BOX 409, PRINGLE BAY, WESTERN CAPE		
	Postal Code	7196	
Email	SECRETARY@PRINGLEBAYRATEPAYERS.CO.ZA		
Tel	Fax	Cell	083 556 3345
<b>PART C: APPELLANT'S PROPERTY DESCRIPTION (Property that is affected by proposed development)</b>			
Erf / Erven / Portion(s) or Farm(s)	PRINGLE BAY ERF 1029		
Physical Address			
GPS Coordinates	Town/City	PRINGLE BAY	
<b>PART D: PROPERTY DESCRIPTION OF PROPOSED LAND DEVELOPMENT</b>			
Erf / Erven / Portion(s) or Farm(s)	ERF 1029		
Physical Address	67 BUFFELS ROAD, PRINGLE BAY		
GPS Coordinates	Town/City	PRINGLE BAY	

**PART E: APPEAL MOTIVATION AND REASONS\***

1. A SECOND, UNLAWFUL MOTIVATION REPORT WAS SUBSTITUTED FOR THE ORIGINAL AND WAS NOW PRESENTED TO THE MPT: PBRA has not had the opportunity to comment on the second application to the MPT. It has therefore been deprived of its opportunity of commenting to one of its forums for objection, namely to the first forum of the MPT. This defect cannot be "cured" by our appeal to the second forum, namely the Appeal Authority.
2. WE APPEAL PROFESSIONAL AND ETHICAL CONSIDERATIONS:
3. NON-COMPLIANCE WITH THE RULES OF NATURAL JUSTICE FOR A QUASI-JUDICIAL BODY CANNOT BE CURED IN AN APPEAL TO THE APPEAL AUTHORITY.
4. DURATION OF APPLICATION
  - i. We submit that the "administrative phase" commenced on 20 June 2023
  - ii. We submit that the MPT considered the application on 30 January 2025, approximately 19 months (more than the 12 months) after the commencement of the "administrative phase", and more than 90 days after the expiration of the "administrative phase".
  - iii. We submit that we have not been informed by the OM PD nor the applicants of a request for extension of time, nor do we read of such exceptional circumstances in the documentation presented to the MPT.

*Our detailed motivating and reason(s) are attached hereto for your consideration.*

\* Appeal motivation, information and reasons may be attached.

**PART F: APPEAL FEE (valid from 1 July 2024 to 30 June 2025)**

Erven 150m <sup>2</sup> and smaller	R389.00
Erven between 150m <sup>2</sup> and 400m <sup>2</sup>	R729.00
Erven larger than 400m <sup>2</sup>	R3935.00

**\*\* PROOF OF PAYMENT OF THE APPEAL DEPOSIT MUST BE SUBMITTED.  
\*\* KINDLY NOTE THAT THE APPEAL DEPOSIT IS REFUNDABLE SHOULD THE APPEAL BE UPHeld.**

**BANKING DETAILS**

Name: Overstrand Municipality  
 Bank: ABSA  
 Account no.: 322 00000 35  
 Payment Reference: Erf number and suburb / Farm number and portion

**PART G: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION**

Complete the following checklist and attach all the information and documentation relevant to the appeal.

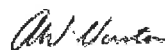
Y	N		Y	N	Motivation and reasons for appeal
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Proof of payment of appeal fees	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Copy of decision and proof of notification	<input checked="" type="checkbox"/>	<input type="checkbox"/>	1) "CURING DEFECTS OF NATURAL JUSTICE BY APPEAL" by LG BAXTER. 2) PBRA Erf 1029 Comments (19 July 2023- FINAL).pdf 3) Annexures, Erf 1029 Pringle Bay.pdf

**SECTION H: DECLARATION**

I hereby wish to confirm the following:

1. That the information contained in this appeal form and accompanying documentation is complete and correct.
2. I'm aware that it is an offense in terms of Section 84 of the said legislation to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.

Appellant's signature:



Date: 14 February 2025

Full name: ALBERT WILLEM VORSTER aka PRINGLE BAY RATEPAYERS' ASSOCIATION



## **ANNEXURE 3: PROOF OF PAYMENT: APPEAL FEE**



### **NOTIFICATION OF PAYMENT**

To Whom it may Concern:

First National Bank hereby confirms that the following payment instruction has been received

Date Actioned : 2025/02/24  
Time Actioned : 07:18:32  
Trace ID : C9GX0M99M

**Payer Details**

Payment From : MRS DARYN Q WICKHAM-BASSON  
Cur/Amount : ZAR3835.00

**Payee Details**

Recipient/Account no : ..000035  
Name : OVERSTRAND MUNICIPAL  
Bank : ABSA BANK LIMITED  
Branch Code : 632666  
Reference : ERF 1029 PBRA APPEAL

END OF NOTIFICATION

To authenticate this Payment Notification, please visit the First National Bank website at [fnb.co.za](http://fnb.co.za), select the "Verify Payments" link and follow the on-screen instructions.

Our customer (the payer) has requested First National Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. First National Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

**Disclaimer:**

The information contained in this email is confidential and may contain proprietary information. It is meant solely for the intended recipient. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on this is prohibited and may be unlawful. No liability or responsibility is accepted if information or data is, for whatever reason corrupted or does not reach its intended recipient. No warranty is given that this email is free of viruses. The views expressed in this email are, unless otherwise stated, those of the author and not those of First National Bank Limited or its management. First National Bank Limited reserves the right to monitor, intercept and block emails addressed to its users or take any other action in accordance with its email use policy. Licensed divisions of FirstRand Bank Limited are authorised financial service providers in terms of the Financial Advisory and Intermediary Services Act 37 of 2002.

First National Bank - a division of FirstRand Bank Limited. An Authorised Financial Services and Credit Provider (NCRCPZB).

**DIRECTORATE: PLANNING & DEVELOPMENT  
TOWN & SPATIAL PLANNING**

ENQUIRIES | NAVRAE: H van der Stoep (Senior Town Planner)  
FILE REF | LEËRVERW: 1029 KPRB  
APP ID | AANSOEK ID: 4112/2022  
DATE | DATUM: 6 February 2025



**REGISTERED MAIL**

Pringle Bay Ratepayers Association  
AW Vorster  
PO Box 409  
**PRINGLE BAY**  
7196

[chairman@pringlebayratepayers.co.za](mailto:chairman@pringlebayratepayers.co.za)

Dear Sir

**DECISION LETTER TO PERSONS WHO COMMENTED**

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

1. Your objection regarding the above application dated 19 July 2023 refers.
2. You are hereby notified in terms of Section 62 of the Overstrand By-law on Municipal Land Use Planning of the decision made by the Municipal Planning Tribunal on 30 January 2025.
3. The Resolution in terms of Section 61 of the Overstrand By-Law on Municipal Land Use Planning, with conditions, are as follows:

**RESOLVED:**

1. *that the objection be noted;*
2. *that the application in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for the relaxation of restrictive title deed condition Clause 6.(b)(i) of Title Deed No. T51882/2021 to relax the following building lines:*
  - *to relax the lateral building line from 1,5m to 0m to accommodate an existing carport;*
  - *to relax the lateral building line from 1,5m to 0m to accommodate a garage or storeroom;*

*be approved, in terms of Section 61 of the By-Law;*
3. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the lateral building line from 2m to 0m to accommodate an existing carport;*

*be approved, in terms of Section 61 of the By-Law;*

4. *that the application in terms of Section 16(1)(1)(c)(iii) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or one third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and garage/storeroom, be approved, in terms of Section 61 of the By-Law;*
5. *that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for a departure on Erf 1029, Pringle Bay for the following:*
  - *to relax the rear building line from 2m to 0,5m to permit a change of use from garage to staff quarters*

*not be approved in terms of Section 61 of the By-Law*
6. *that the approvals in Points 2 - 4 above be subject to the following conditions:*
  - (a) *that the carport be lowered to the 3,5m height restrictions as per the Land Use Scheme;*
  - (b) *that the staff quarters be changed to a garage or a storeroom within 90 (ninety) days from date of final decision;*
  - (c) *that the approval for the departure is only for the development over the building lines as indicated on plans numbers 2022/30 (1-3) dated November 2022, submitted with the application;*
  - (d) *that revised building plans reflecting Conditions (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building and the Fire Departments be complied with at that stage;*
  - (e) *that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;*
  - (f) *that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and*
  - (g) *that this approval does not absolve the applicant from compliance with any other relevant legislation.*
7. *that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, be imposed, and that an administration penalty fee of R7 372,13 be payable within ninety (90) days of the final decision.*
8. *that the applicant and objector be notified of their right of appeal (against Paragraphs 2 – 6 above) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision."*

4. Reasons for the above decision are as follows:

- The proposed application for the carport fits in with the character of the surrounding area and is desirable in terms of use, not height.
- There will be no impact on services.
- The proposal for the carport will have no negative impact on the environment.
- Garages or carports are allowed on the 0m lateral and rear building lines with the neighbour's consent, which the owner obtained.
- The 5% penalty takes into consideration that the owners immediately appointed a consultant to address the illegal structure and use.
- The condition restricting the height of the carport to 3,5m was imposed as the application did not address the need for a carport with a height of 6,010m.

- The request to waive the administrative penalty cannot be accommodated, since the buyer remains responsible for any structures on the property and accepted liability in this regard.
- The buyers also replaced the roof of the illegal structure in 2022, which they knew was not on an approved building plan.
- The proposed staff quarter is in close proximity of the neighbouring erven, which can create privacy issues.
- Staff quarters or dwelling units are not considered desirable on the 0m building line on single residential properties.
- There is sufficient space on the property within the building lines to construct staff quarters.

5. You are hereby informed of your right to appeal to the Appeal Authority in terms of Section 78(2) of the By-law.

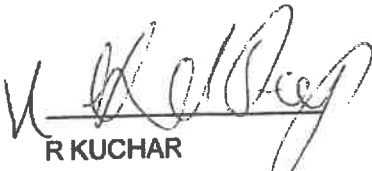
5.1 The appeal form must be completed and should be directed to the Appeal Authority (Executive Mayor) and received **within 21 days of notification** of this decision together with proof of payment of the appeal fee (R3935-00).

5.2 The appeal form is available at request or alternatively on the Municipal website (<https://www.overstrand.gov.za/en/documents/town-planning/application-forms>).

5.3 Contact details are as follows:

Physical address: 16 Paterson Street, Hermanus, 7200  
Postal address: PO Box 20, Hermanus, 7200  
E-mail address: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

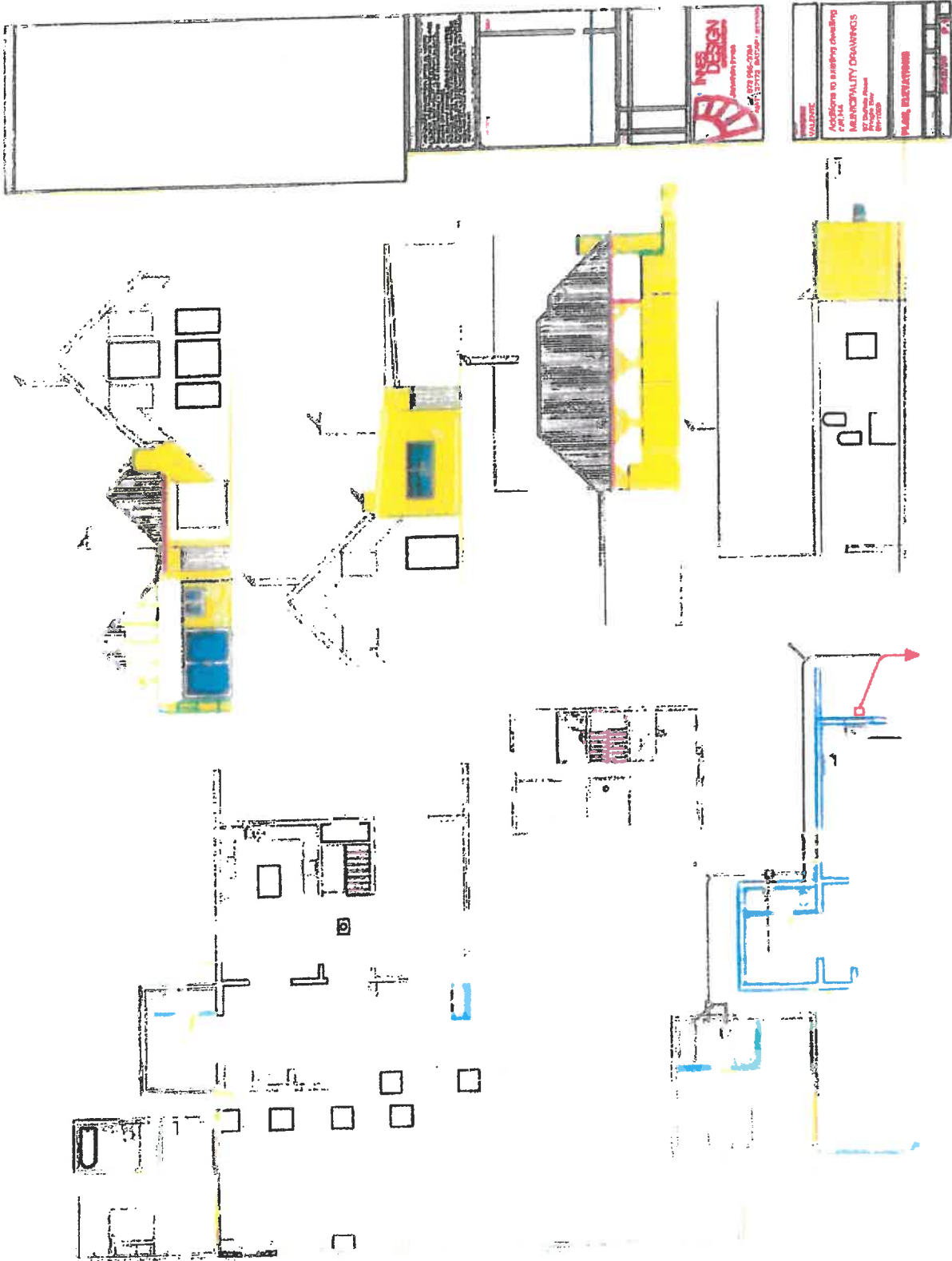
Yours faithfully



R KUCHAR

**DIVISIONAL MANAGER: TOWN & SPATIAL PLANNING**

Annexure C 1/3





PROJECT: [illegible]  
 CLIENT: [illegible]  
 DATE: [illegible]  
 DRAWN BY: [illegible]  
 CHECKED BY: [illegible]  
 APPROVED BY: [illegible]  
 PROJECT NO.: [illegible]  
 SHEET NO.: [illegible]

**INSIDE DESIGN**  
 ARCHITECTURAL & INTERIOR DESIGN  
 1111 14th St, Suite 100  
 San Francisco, CA 94103  
 Tel: 415.398.1234  
 Fax: 415.398.1235  
 Email: info@insidedesign.com

**INSIDE DESIGN**  
 ARCHITECTURAL & INTERIOR DESIGN  
 1111 14th St, Suite 100  
 San Francisco, CA 94103  
 Tel: 415.398.1234  
 Fax: 415.398.1235  
 Email: info@insidedesign.com





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

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**30 JANUARY 2025  
VIRTUAL  
10:00**

**OVERSTRAND MUNICIPALITY**

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

23 January 2025

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

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

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

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

**Distribution:**

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

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**30 January 2025**

**I N D E X**

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

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

**1**

**AGENDA : MUNICIPAL PLANNING TRIBUNAL:****30 JANUARY 2025**

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

Report attached

## 4.1

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

1029 KPRB (4112/2022)  
H van der Stoep  
11 November 2024

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

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

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

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

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

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

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

The motivation for the application is summarised as follows:

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

**DETERMINATION OF THE ADMINISTRATIVE PENALTY****(a) *nature, duration, gravity and extent of the contravention***

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

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

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

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

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

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

The building work was already completed.

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

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

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

**PLANNING PRINCIPALS**

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

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

The proposal is in line with the SDF.

**Overstrand Integrated Development Plan, 2020:**

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

**Overstrand Growth Management Strategy, 2010:**

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

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

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

**5. ADMINISTRATIVE COMPLIANCE**

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

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

Name	Date received	Summary of comments
N/A		

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

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

### ⚡ **OBJECTION: Advertisement requirements**

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

### APPLICANT'S RESPONSE

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

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

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

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

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

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

**TOWN PLANNER'S RESPONSE**

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

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

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

**APPLICANT'S RESPONSE**

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

**TOWN PLANNER'S RESPONSE**

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025****✦ OBJECTION: Removal of illegal structure**

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

**APPLICANT'S RESPONSE**

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

**TOWN PLANNER'S RESPONSE**

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

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

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

See point 7 above.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

See point 7 above.

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

The application is to rectify an existing situation.

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

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

The objectives relating to:

**Spatial Justice**

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

**Spatial sustainability**

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

**Efficiency**

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

**Spatial resilience**

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

**Good administration**

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

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

Same as Point 10.2 above.

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

N/A

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

N/A

**10.6 Impact on Municipal engineering services**

No additional services are required.

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

N/A

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

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

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

N/A

**12. THE DESIRABILITY OF THE PROPOSAL**

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

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

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

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

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

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

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

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

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

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

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025**

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

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

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

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

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

The building work was already completed.

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

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

Calculation of the administrative penalty:

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

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

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

**CONCLUSION:**

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

**13. RECOMMENDATION**

1. that the objection be noted.

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

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

**be approved**, in terms of Section 61 of the By-Law.

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

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

**be approved**, in terms of Section 61 of the By-Law.

4. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1029, Pringle Bay for a departure to exceed the 9m length or third restriction of buildings over the building lines to a total length of 11,34m to accommodate a carport and staff quarters, **be approved**, in terms of Section 61 of the By-Law.

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

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

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

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

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

- (d) that **revised** building plans indicating Condition (a) and (b) be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with, and
  - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation.
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 1029, Pringle Bay to accommodate the unauthorised transgressions as stipulated above, **be imposed**, and that an administration penalty fee of R7 372,13 be payable within ninety (90) days of the final decision.
8. that the applicant be notified of its right of appeal (*against Paragraphs 2 – 6 above*) in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

#### 14. REASONS FOR THE RECOMMENDATION

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

#### Reasons for non-approval:

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

**AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL****30 JANUARY 2025****15. ANNEXURES**

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

**SIGNATURES****REGISTERED PLANNER**

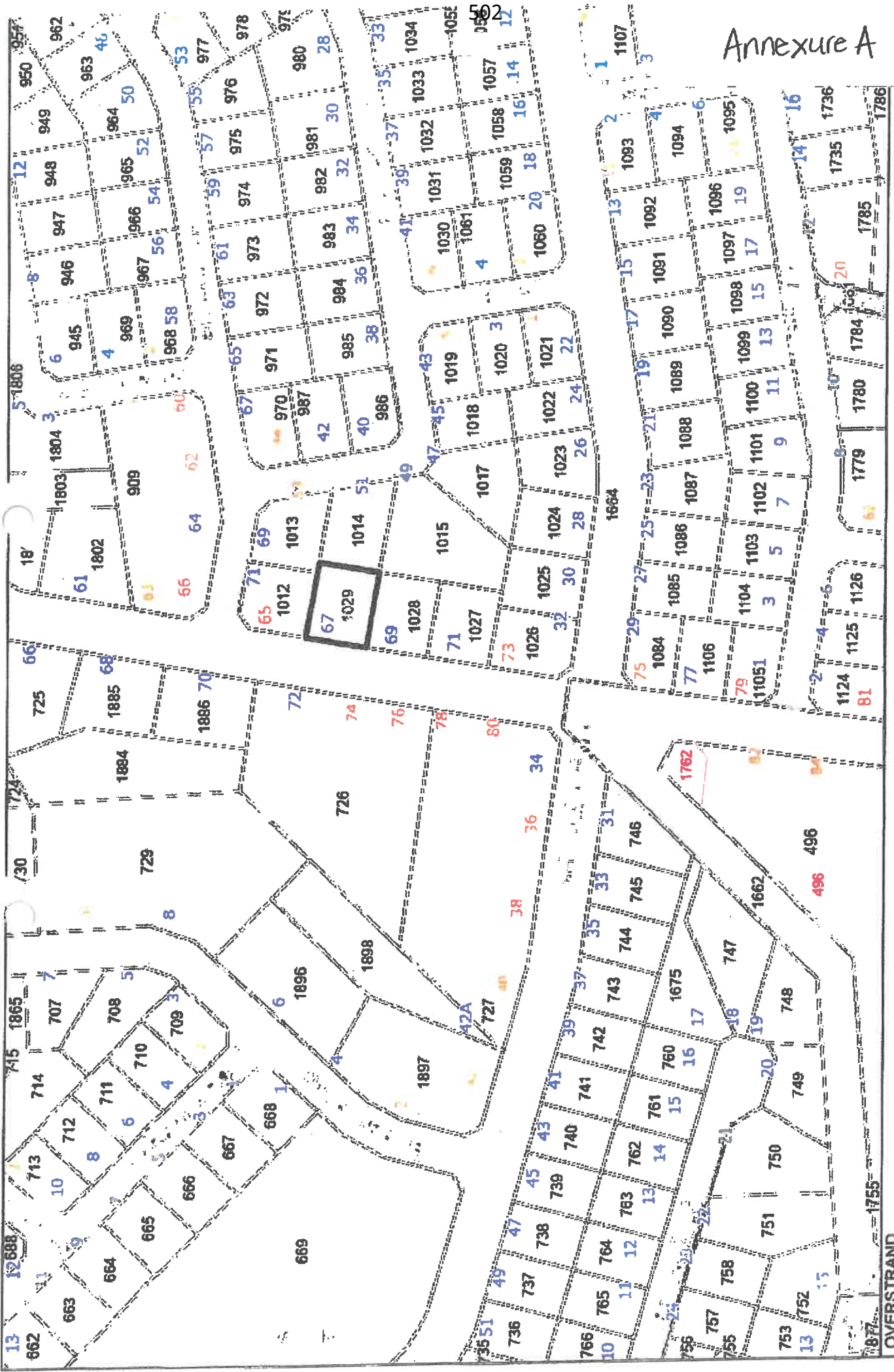
Name: **H VAN DER STOEP**

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

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

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

# Annexure A



Locality Map  
Erf 1029 Pringle Bay



Note:



Annexure B1/13

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

TP-A Theart  
(H Vld Stoep)

April 2021

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

Attention: Municipal Manager

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

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

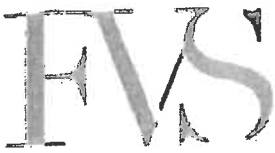
Author:  
Jaco van Schalkwyk (C/8702/2018)

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

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

Revision 4: July 2024

27 AUG 2024



Town and Regional Planners

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



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## 1. INTRODUCTION

### 1.1. BACKGROUND INFORMATION

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

### 1.2. APPLICATION PARTICULARS

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

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

### 1.3. PERMANENT DEPARTURE

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

Please note the following:

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

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

### 1.4. DETERMINATION OF AN ADMINISTRATIVE PENALTY

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



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

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

The extent of the additions are as follows:

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

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

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

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

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

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

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

**Whether the unlawful conduct was stopped.**

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

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

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

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

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



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

### 1.5. NEED AND DESIRABILITY

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

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

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

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



Town and Regional Planners

## 2. PROPERTY DETAILS

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

### 2.1. OWNERSHIP DETAILS

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

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

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

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

### 2.2. LOCALITY

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

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

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

### 2.3. CHARACTER OF THE SURROUNDING AREA

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

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

### 2.4. ZONING

Single Residential Zone 1 (SR1)



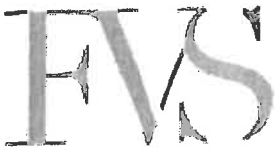
Town and Regional Planners

#### 2.5. IMPACT ON MUNICIPAL SERVICES

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

#### 2.6. ACCESS

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



Town and Regional Planners

### 3. LEGISLATION

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

#### 3.1. FORWARD PLANNING

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

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

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

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

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

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

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

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

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

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

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

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

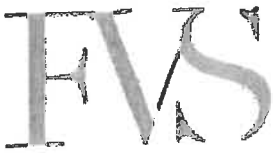
The proposal is not considered to be a deviation from the aforesaid requirements, however, is substantially under any residential neighbourhood, and is not deemed to pose a significant threat to the abutting property.



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Planning Principles

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



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#### 4. CONCLUSION

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

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

##### 4.1. REASONS FOR APPROVAL

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





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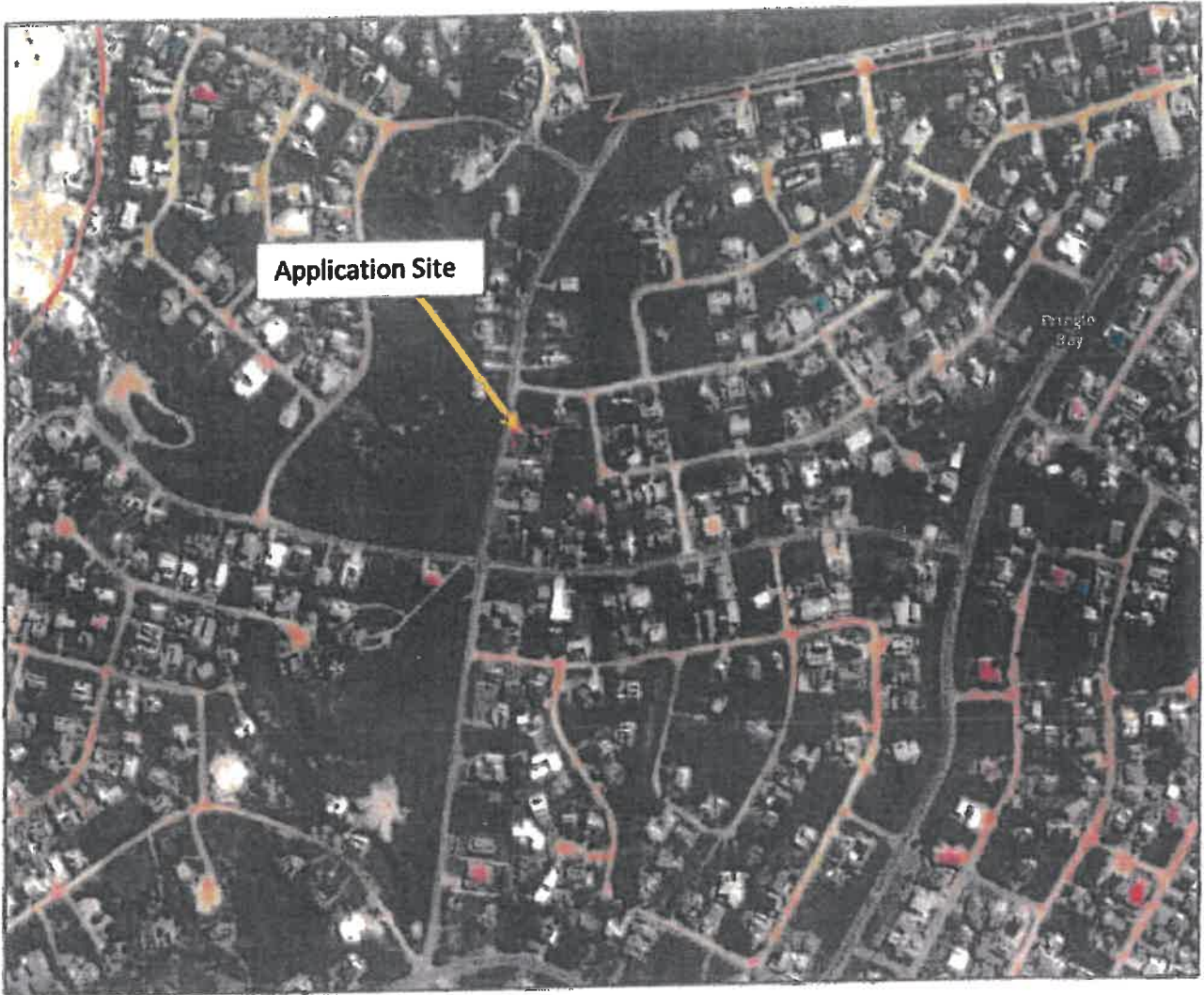


Figure 2: Aerial Photograph of application site and surrounding area (Cape Farm Mapper, April 2022)



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#### PHOTOS OF THE SITE

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

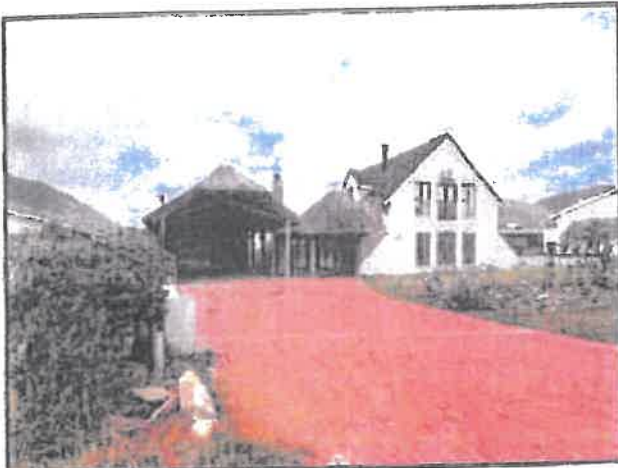


Photo 1

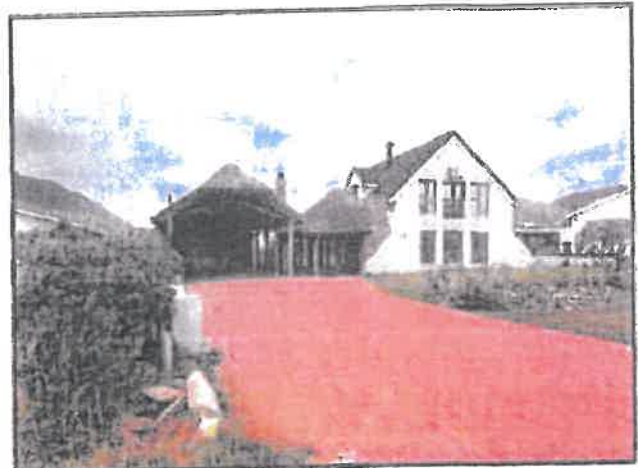


Photo 2

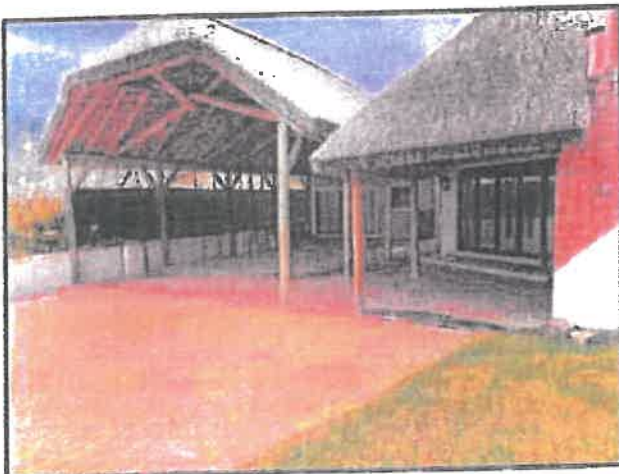


Photo 3

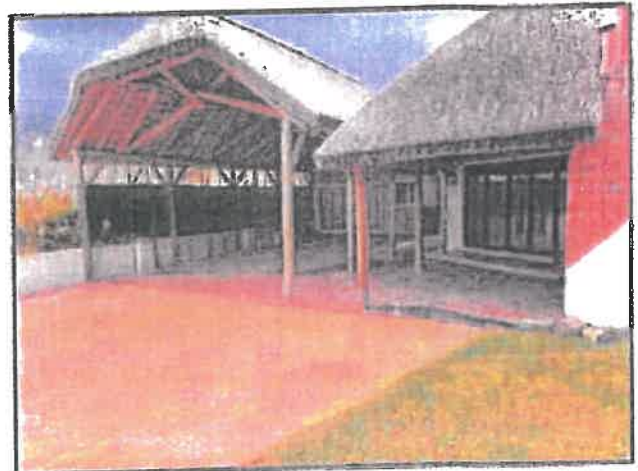
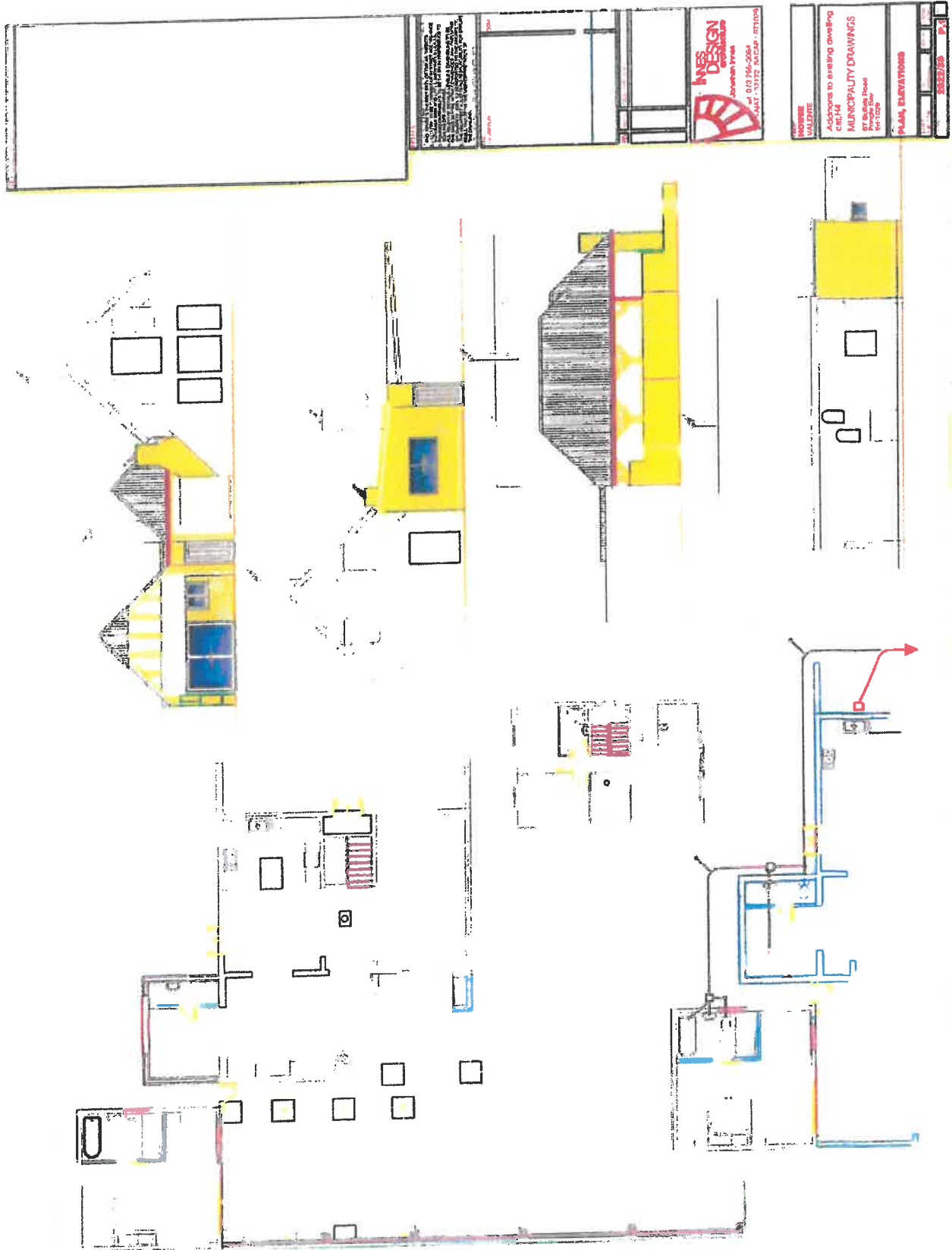
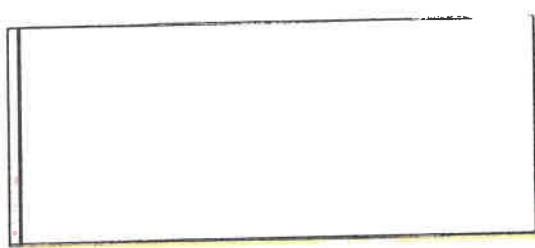


Photo 4

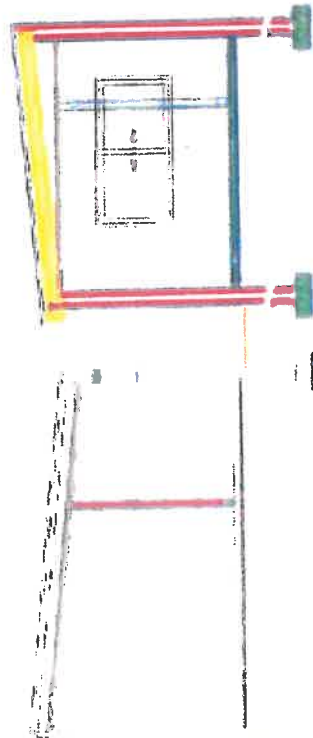
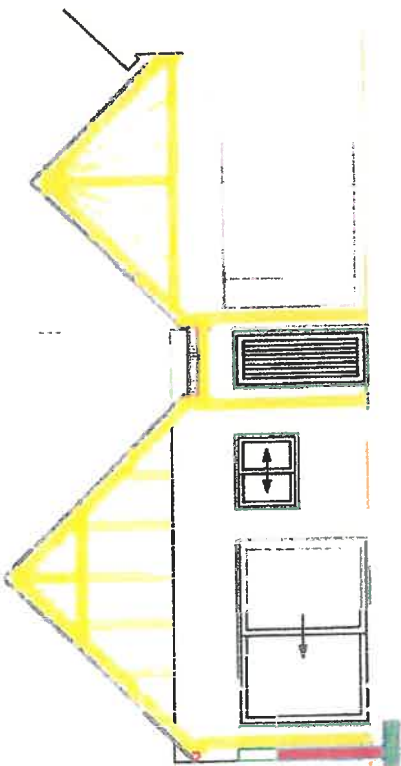
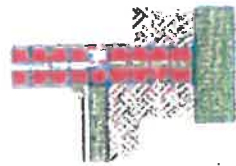
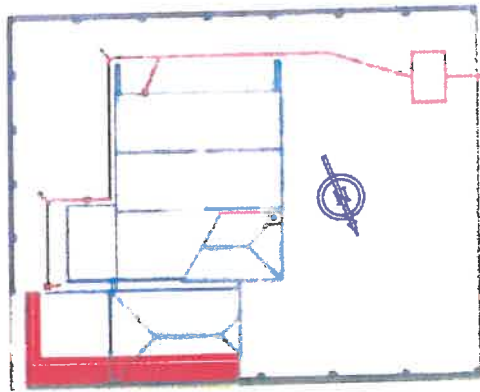
# Annexure C 1/3





**INNES DESIGN**  
 ARCHITECTS  
 10000 17th Street, Suite 100  
 Denver, CO 80202  
 Phone: (303) 733-1100  
 Fax: (303) 733-1101  
 Website: www.innesdesign.com

**MOORE VALDTE**  
 Architects  
 Additions to existing dwelling  
 6414  
 MUNICIPALITY DRAWINGS  
 87, Duane Street  
 Bldg 1028  
**SITE PLAN, SECTIONS**






285

COPY


Prepared by me

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

  
CONVEYANCER  
TRACY PULLOCK  
(96590)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 2.260.000,00	R. 1.718,00
Reason for exemption	Category Exemption	Exemption i t o. Sec/Reg..... Act/Proc.....

DATA / VERIFY  
21-10-2021  
LITHA VUYO MADAMA

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

DATA / CAPTURE  
21-10-2021  
FRONTSHENG LEEUW

T 000051882 / 2021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT  
JACOBUS PETRUS VAN ZYL

LPCM 79800 

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

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

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

- 5 MAY 2022

And the appearer declared that his/her said principal had, on 02 September 2021, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

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

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

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

IN EXTENT 720 (SEVEN HUNDRED AND TWENTY) Square metres

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

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

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

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



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

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

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

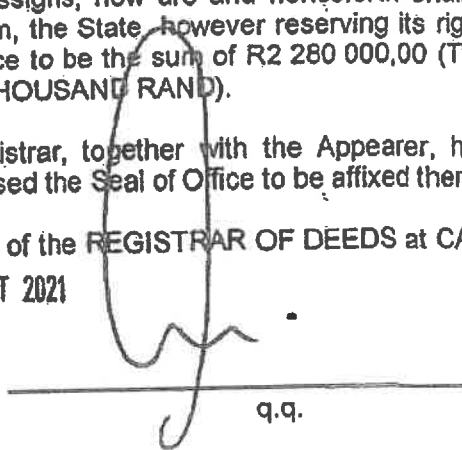
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

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

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

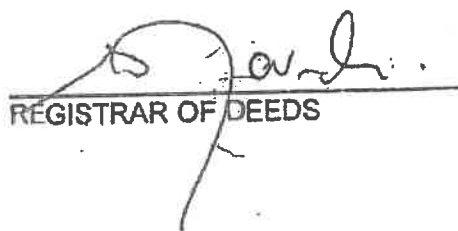
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 20 OCT 2021



q.q.

In my presence



REGISTRAR OF DEEDS





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

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

www.pringlebayratepayers.co.za

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

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

TR. N. Theod  
(W. Ud Sloep)

19 July 2023

The Municipal Manager  
 OVERSTRAND MUNICIPALITY  
 PO BOX 20  
 HERMANUS  
 7200



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

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

**PREAMBLE**

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

**1. ORGANISATION**

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

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

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

FILE NO.	Er 1029 ✓
	Pringle Bay
SCAN NO.	KFRB 1029
COLLABORATOR NO.	1887006

COMMENTS ON APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE  
 ERF 1029, PRINGLE BAY  
 DATE: 19 JULY 2023  
 DOC STATUS: FINAL FOR SUBMISSION

20 JUL 2023



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

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

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

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

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

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

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

*Hope you find the above in order."*

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

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

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

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

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

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

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



3.2. We submit that it is especially not desirable that a title deed restriction be removed in order to legalise an illegal structure.

3.3. Furthermore, the OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.

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

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

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

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

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

5. **CONCLUSION**

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

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

Kind regards

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



TP. N. Theart  
(H. ud Sloep)

FVS Town and Regional Planners

175 5<sup>th</sup> Avenue

Kleinmond

7195

Overstrand Municipality  
16 Paterson Street  
Hermanus  
7200

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

6 October 2023

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

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

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

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

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

**Comment:**

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

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

TP 06 OCT 2023

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

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

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

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

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

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

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

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

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

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

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

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

***REMOVAL OF ILLEGAL STRUCTURE***

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

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

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

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

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

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

Yours Sincerely



Jaco van Schalkwyk

FVS Town and Regional Planners



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

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

[www.pringlebayratepayers.co.za](http://www.pringlebayratepayers.co.za)

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

Chairman / Voorsitter: [chairman@pringlebayratepayers.co.za](mailto:chairman@pringlebayratepayers.co.za) / Tel: 083 556 3345

19 July 2023

The Municipal Manager  
 OVERSTRAND MUNICIPALITY  
 PO BOX 20  
 HERMANUS  
 7200

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

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

**PREAMBLE**

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

**1. ORGANISATION**

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

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

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

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

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

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

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

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

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

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

*Hope you find the above in order."*

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

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

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

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

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

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

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

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

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

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

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

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

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

**5. CONCLUSION**

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

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

Kind regards



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



**TOWN & SPATIAL PLANNING  
APPEAL FORM**  
(Sections 78 & 79 of the Overstrand Municipality Amendment By-Law, 2020)  
16 Paterson Street / PO Box 20 HERMANUS, 7200 Tel: 028 313 8900 Fax: 028 313 2093

**KINDLY NOTE:**

Please complete this form using **BLOCK** capitals and ticking the appropriate boxes.  
Append this form to your letter of appeal which must comply with Annexure E of the Application Form as attached.

**PART A: APPEAL**

Are you appealing against the decision made by the authorised employee or Tribunal?	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	If Yes, indicate in Part E if the appeal is lodged against the whole decision or part thereof. If the latter applies provide a description of the part.
Are you appealing against the condition(s) of approval imposed by the authorised employee or Tribunal?	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	If Yes, list relevant condition(s) and provide a description in Part E.
Is your appeal based on and primarily concerned with the process followed prior to the authorised employee or Tribunal decision?	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	If Yes, specify in Part E.
Is your appeal based on and primarily concerned with the merits of the land development or land use application on which it is believed that the authorised employee or Tribunal erred in coming to the conclusion?	Y <input checked="" type="checkbox"/>	N <input type="checkbox"/>	If Yes, specify in Part E.
Date of decision	30 JANUARY 2025	Date receiving notice of decision	6 FEBRUARY 2025
Who took the original decision?	<input type="checkbox"/> Authorised employee	<input checked="" type="checkbox"/> Municipal Planning Tribunal	

**PART B: APPELLANT'S DETAILS**

First name(s)	ALBERT WILLEM		
Surname	VORSTER		
Company name (if applicable)	PRINGLE BAY RATEPAYERS' ASSOCIATION		
Postal address	PO BOX 409. PRINGLE BAY. WESTERN CAPE		
	Postal Code	7196	
Email	SECRETARY@PRINGLEBAYRATEPAYERS.CO.ZA		
Tel	Fax	Cell	083 556 3345

**PART C: APPELLANT'S PROPERTY DESCRIPTION** (Property that is affected by proposed development)

Erf / Erven / Portion(s) or Farm(s)	PRINGLE BAY ERF 1029		
Physical Address			
GPS Coordinates	Town/City	PRINGLE BAY	

**PART D: PROPERTY DESCRIPTION OF PROPOSED LAND DEVELOPMENT**

Erf / Erven / Portion(s) or Farm(s)	ERF 1029		
Physical Address	67 BUFFELS ROAD, PRINGLE BAY		
GPS Coordinates	Town/City	PRINGLE BAY	

**PART E: APPEAL MOTIVATION AND REASONS\***

1. A SECOND, UNLAWFUL MOTIVATION REPORT WAS SUBSTITUTED FOR THE ORIGINAL AND WAS NOW PRESENTED TO THE MPT: PBRA has not had the opportunity to comment on the second application to the MPT. It has therefore been deprived of its opportunity of commenting to one of its forums for objection, namely to the first forum of the MPT. This defect cannot be "cured" by our appeal to the second forum, namely the Appeal Authority.
2. WE APPEAL PROFESSIONAL AND ETHICAL CONSIDERATIONS:
3. NON-COMPLIANCE WITH THE RULES OF NATURAL JUSTICE FOR A QUASI-JUDICIAL BODY CANNOT BE CURED IN AN APPEAL TO THE APPEAL AUTHORITY.
4. DURATION OF APPLICATION
  - i. We submit that the "administrative phase" commenced on 20 June 2023
  - ii. We submit that the MPT considered the application on 30 January 2025, approximately 19 months (more than the 12 months) after the commencement of the "administrative phase", and more than 90 days after the expiration of the "administrative phase".
  - iii. We submit that we have not been informed by the OM PD nor the applicants of a request for extension of time, nor do we read of such exceptional circumstances in the documentation presented to the MPT.

*Our detailed motivating and reason(s) are attached hereto for your consideration.*

*\* Appeal motivation, information and reasons may be attached.*

**PART F: APPEAL FEE (valid from 1 July 2024 to 30 June 2025)**

Erven 150m <sup>2</sup> and smaller	R389.00
Erven between 150m <sup>2</sup> and 400m <sup>2</sup>	R729.00
Erven larger than 400m <sup>2</sup>	R3935.00

**\*\* PROOF OF PAYMENT OF THE APPEAL DEPOSIT MUST BE SUBMITTED.**

**\*\* KINDLY NOTE THAT THE APPEAL DEPOSIT IS REFUNDABLE SHOULD THE APPEAL BE UPHELD.**

**BANKING DETAILS**

Name: Overstrand Municipality  
 Bank: ABSA  
 Account no.: 322 00000 35  
 Payment Reference: Erf number and suburb / Farm number and portion

**PART G: ATTACHMENTS AND SUPPORTING INFORMATION AND DOCUMENTATION**


Complete the following checklist and attach all the information and documentation relevant to the appeal.

Y ✓	N		Y ✓	N	Motivation and reasons for appeal
Y ✓	N	Proof of payment of appeal fees	Y ✓	N	
Y ✓	N	Copy of decision and proof of notification	Y ✓	N	1) "CURING DEFECTS OF NATURAL JUSTICE BY APPEAL" by L G BAXTER. 2) PBRA Erf 1029 Comments (19 July 2023- FINAL).pdf 3) Annexures, Erf 1029 Pringle Bay.pdf

**SECTION H: DECLARATION**

I hereby wish to confirm the following:

1. That the information contained in this appeal form and accompanying documentation is complete and correct.
2. I'm aware that it is an offense in terms of Section 84 of the said legislation to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct.

Appellant's signature: 

Date: 14 February 2025

Full name: ALBERT WILLEM VORSTER obo PRINGLE BAY RATEPAYERS' ASSOCIATION



## NOTIFICATION OF PAYMENT

To Whom it may Concern:

First National Bank hereby confirms that the following payment instruction has been received:

Date Actioned : 2025/02/24  
 Time Actioned : 07:18:32  
 Trace ID : C9GXM98M

### Payer Details

Payment From : MR DARYN Q WICKHAM-BASSON  
 Cur/Amount : ZAR3935.00

### Payee Details

Recipient/Account no : ..000035  
 Name : OVERSTRAND MUNICIPAL  
 Bank : ABSA BANK LIMITED  
 Branch Code : 632005  
 Reference : ERF 1029 PBRA APPEAL

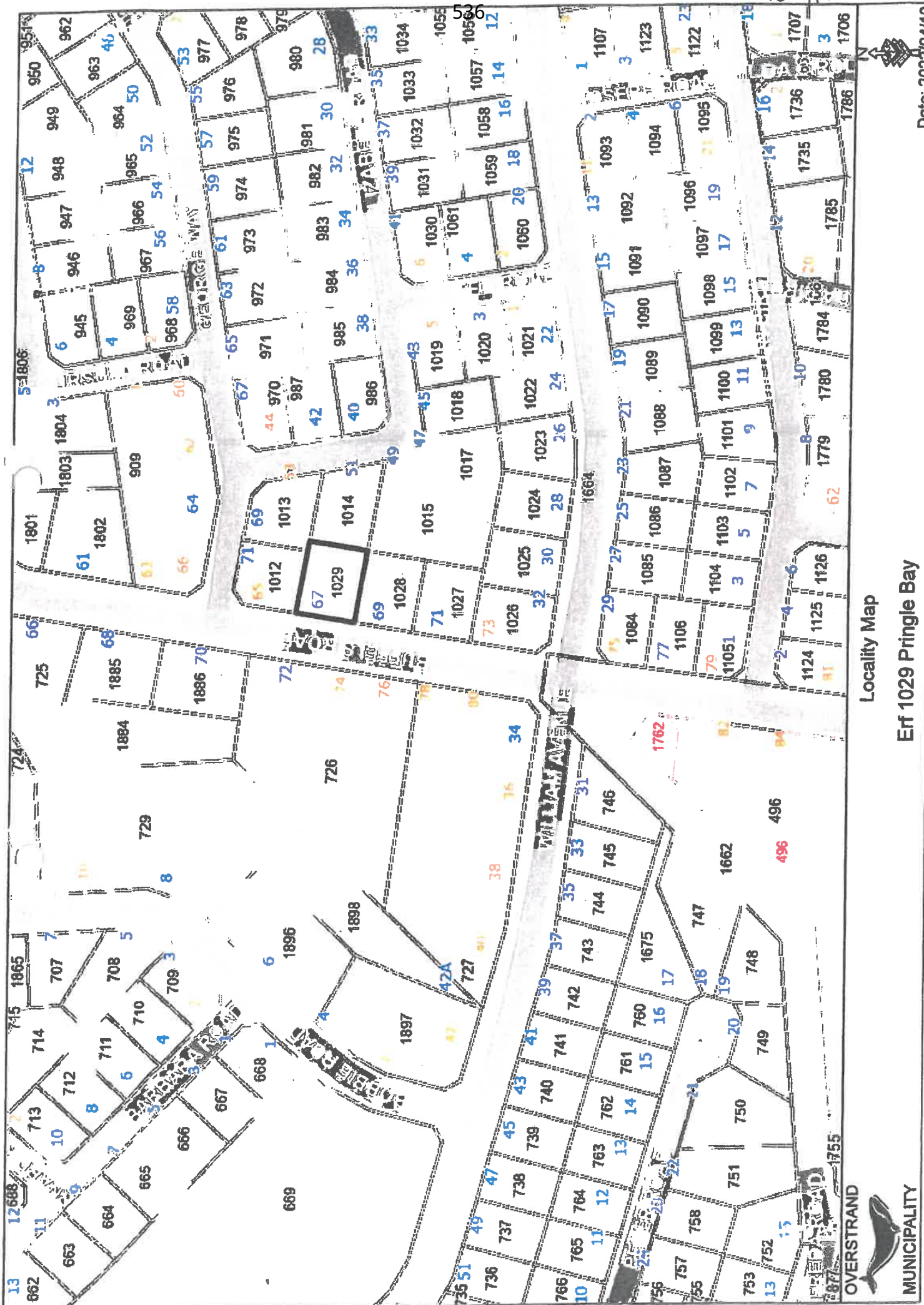
END OF NOTIFICATION

To authenticate this Payment Notification, please visit the First National Bank website at [fnb.co.za](http://fnb.co.za), select the "Verify Payments" link and follow the on-screen instructions.

Our customer (the payer) has requested First National Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. First National Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

### Disclaimer:

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Locality Map  
Erf 1029 Pringle Bay





April 2021

Rev Oct 2022

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

**Attention:** Municipal Manager

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

Dear Municipal Manager,

Please find attached hereto, with the motivation report, the following for your department:

- Application Form
- Power of Attorney
- Title Deed
- Locality Plan
- Site Development Plan
- Surveyor General Diagram

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

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

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

**Kind Regards,**  
**Jaco van Schalkwyk**  
**Director of FVS Town and Regional Planners**

*Revision 2: September 2022*

05 OCT 2022



Town and Regional Planners

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## LIST OF ANNEXURES:

### Motivation Report

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



## 1. SECTION 1: INTRODUCTION

FVS Town and Regional Planners is a professional town planning consultancy based in the Western Cape of South Africa, with project experience throughout the country. We strive to deliver town planning services to individuals, companies, and communities to create sustainable environments.

We have a combined experience of 10 years in both public sector and private sector. We can assist with all varieties of land - use related issues. With a dynamic and efficient team, we can assist with the management of both large and small-town planning projects and will be able to provide our consultation services where necessary.

### 1.1 BACKGROUND INFORMATION

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

### 1.2. PLANNING BRIEF

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

1.2.1. *"Section 16 (2) (b) - Permanent departure from the provisions of the zoning scheme"*

1.2.2. *"Section 16 (2) (f) - Amendment, suspension, or deletion of restrictive conditions in respect of a land unit"*

The application entails the relaxation of the lateral boundary building line from 2m to 0m, which includes the relaxation of the lateral boundary building line from 1.5m to 0m as indicated under Section 6. (b) of the subject Title Deed.

Please refer to the following annexures for the Application Form and Power of Attorney:

**Annexure A – Application Form**

**Annexure B – Power of Attorney**

Section 3 of this motivation report will provide the reader with a full description of the proposed additions and alterations.



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## 2. SECTION 2: PROPERTY DETAILS

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

### 2.1. OWNERSHIP DETAILS

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

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

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

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

As stated under Section 1.2 of this motivation report, application is made for the removal of a restrictive Title Deed condition (Clause 6(b)(i)), contained in the abovementioned Title Deed. The restrictive clause (Clause 6(b)(i)) reads as follow:

*"(i). an outbuilding used solely for the housing of motor vehicles and not exceeding 3 metres in height measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other. outbuilding of the same height may be erected within the rear space and side for a distance of 12 metres measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12 metres shall be measured from the point furthest from the street abutting the erf;"*

The proposed carport exceeds the maximum height of 3m measured from the ground floor and is within the side boundary building line.

### 2.2. LOCALITY

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

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

Please refer to Annexure D for the Locality Plan.

### 2.3. CHARACTER OF THE SURROUNDING AREA

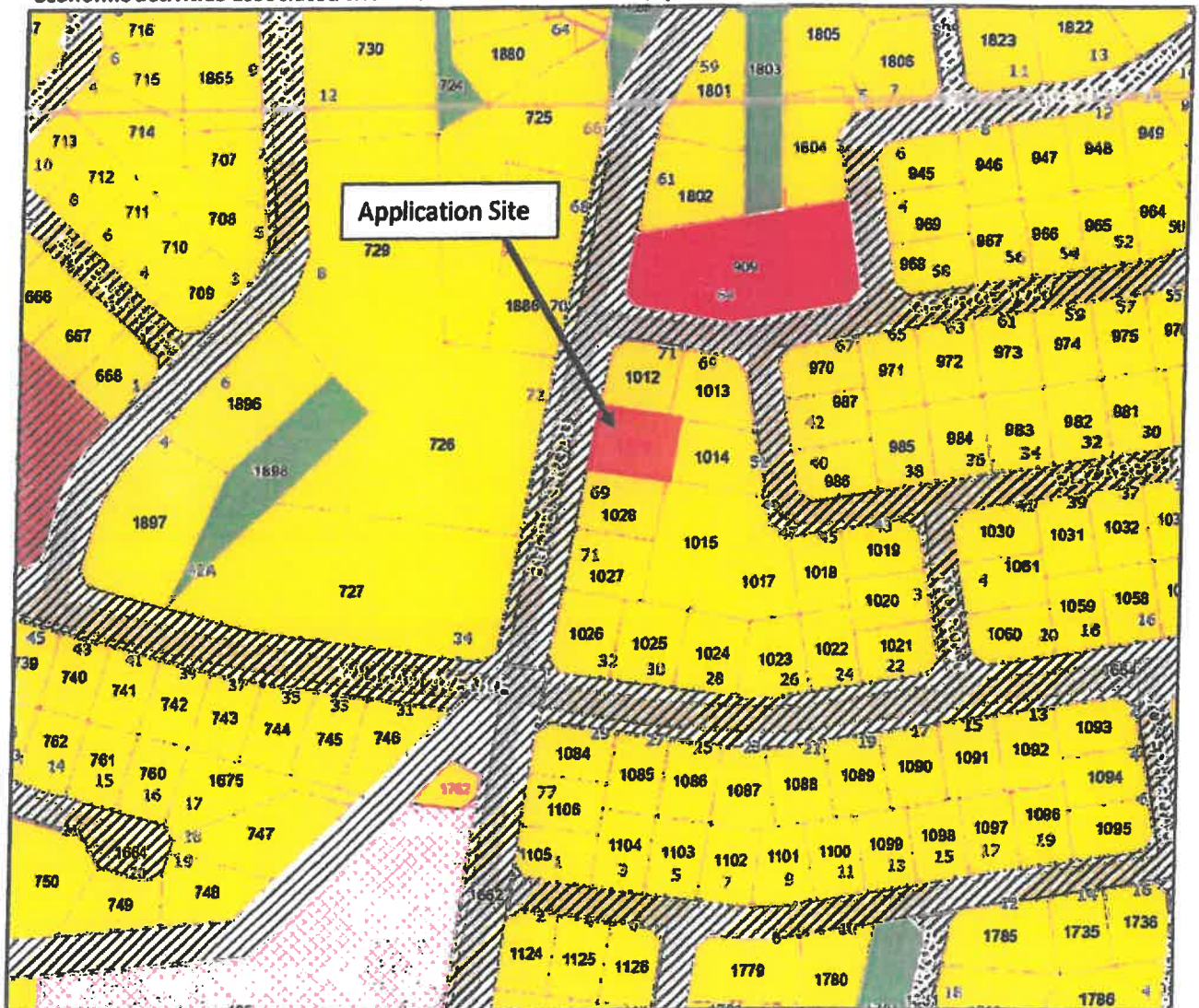
The application site is situated towards the central part of the Pringle Bay in proximity to the Central Business District (CBD). The immediate surrounding erven are zoned as Single Residential Zone 1 and is thus a predominately residential area. Due to the high number of tourists that travel to, and through, the area it is regarded as



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understandable that numerous properties in the surrounding area are utilised as both residential erven and self-catering (or similar such as B&B, Lodge, or similar types of short-term holiday) accommodation.

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



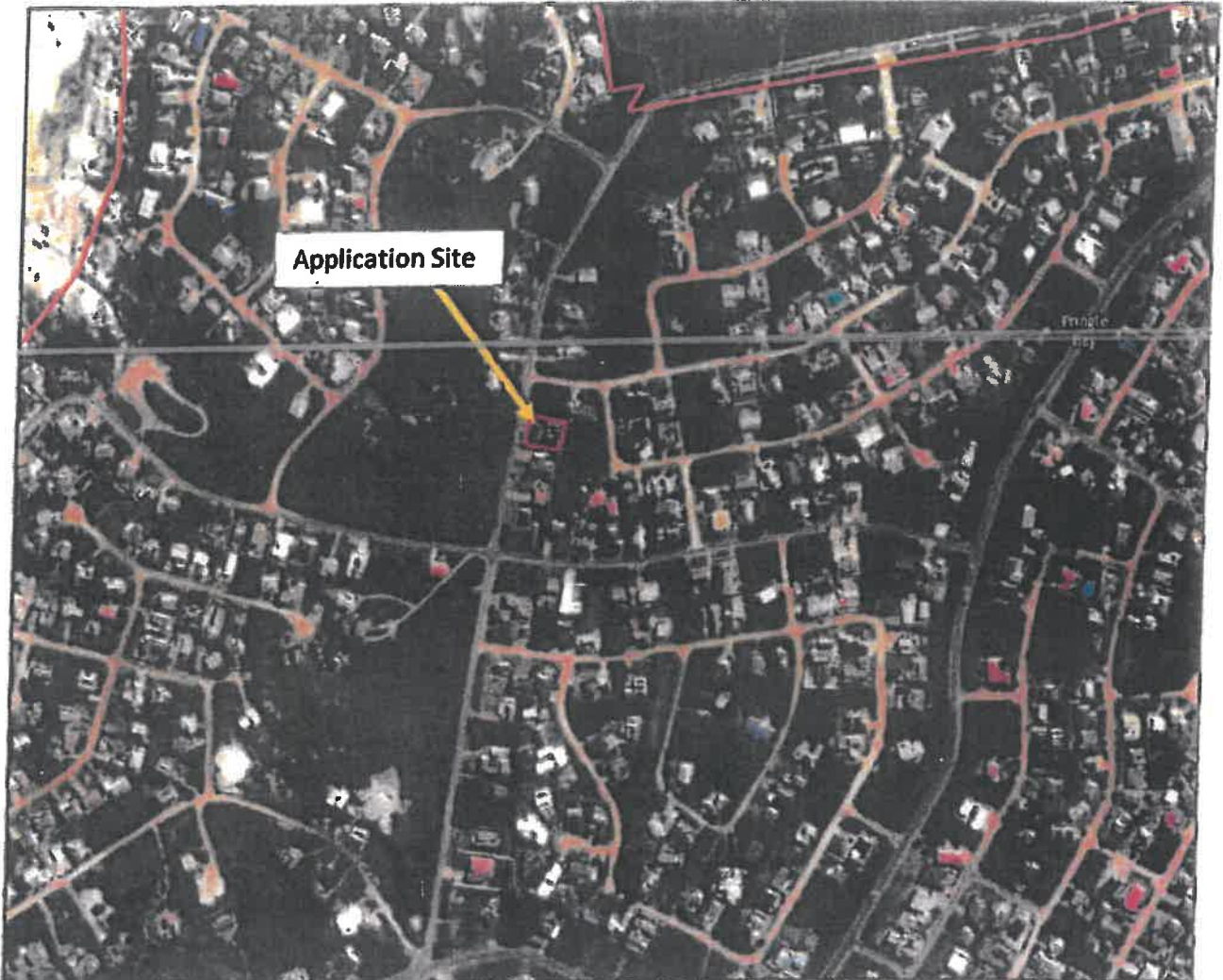


Figure 2: Aerial Photograph of application site and surrounding area (Cape Farm Mapper, April 2022)

#### 2.4. ZONING

Erf 1029, Pringle Bay is currently zoned as Single Residential Zone 1 in terms of the Overstrand Municipality Land Use Scheme 2020.

#### 2.5. IMPACT ON MUNICIPAL SERVICES

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

#### 2.6. ACCESS

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



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### 3. SECTION 3: MOTIVATION

Section 3 of the motivation report deals specifically with the type of application and what will be applied for, as well as the development particulars.

#### 3.1. THE APPLICATION

Application is hereby made in terms Section 16 (2) (b) of the Overstrand Municipal Land Use Planning By-Law for the following:

*"Permanent departure from the provisions of the zoning scheme"*

- Relaxation of the side boundary building line 2m to 0m to permit the proposed carport and storeroom
- Relaxation of the height restriction pertaining to all structures on the common boundary (Section 16.1.1.c). (ii) of the OMLUS).

The structure is at a height of 6.01m in total, however, is not deemed to exceed the 40-degree rule.

- Relaxation of the 9m (or one third) over the boundary building line restriction with a total length of 11.34m (Section 16.1.1.c). (iii) of the OMLUS).

*"Removal of restrictive Title Deed condition"*

Application further entails the relaxation of the lateral building line as prescribed in the Title Deed from 1.5 to 0m.

The property owners bought Erf 1029, Pringle Bay with a structure on the common boundary. The structure was built by the previous owners of Erf 1029, without approval from the Local Authorities. The structure is utilised for the storage of motor vehicles. The current property owners do not wish to deviate from the current usage of the proposal.

#### 3.2. THE PROPOSAL

The proposal, as mentioned above, for a structure built on the 0m common boundary building line.

- Construction of carport in front of the existing single garage/storeroom
- New wendy house
- New jacuzzi room
- New roof over proposed braai room.

Existing building on the application site:

- Dwelling house
- Single garage converted into a storeroom

Please refer to the figures below for extracts from the proposed Site Development Plan (SDP), attached hereto as Annexure E.





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### 3.3. PHOTOS OF THE SITE

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

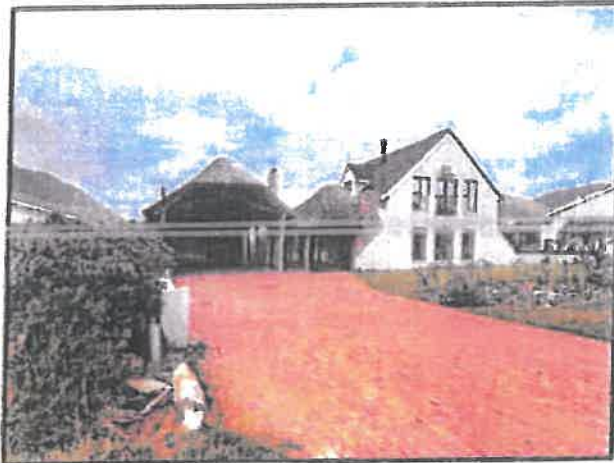


Photo 1

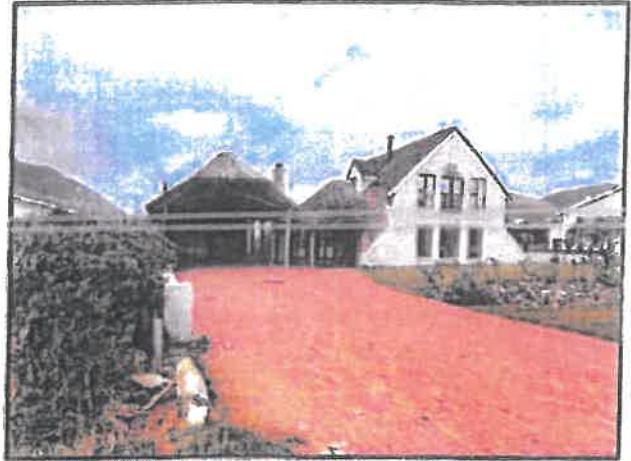


Photo 2



Photo 3



Photo 4

### 3.4. REMOVAL OF RESTRICTIVE TITLE DEED CONDITION

To reiterate Section 3.1 of this motivation report, application is made for the removal of a restrictive title deed condition, contained in the subject title deed.

In terms of Section 35 of the Amendment By-Law on Municipal Land Use Planning, 2020, the Municipality must take into consideration a few aspects upon approving or refusing the removal, suspension, or amendment of a restrictive condition. The subject title deed contains a restrictive condition that will have to be removed. The condition is as follow:

The restrictive clause (Clause 6(b)(i)) reads as follow:



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*"an outbuilding used solely for the housing of motor vehicles and not exceeding 3 metres in height measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side for a distance of 12 metres measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12 metres shall be measured from the point furthest from the street abutting the erf;"*

The application entails the construction of a carport which exceeds the maximum height of 3m as prescribed above. The proposed carport is approximately 6.01m in height, measured from the ground floor to the top of the roof.

In order for the application to be considered, the following aspects have to be taken into consideration:

The Municipality must have regard to the following:

- *The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.*  
The subject restrictive conditions do not have any significant value to a person or entity. It is deemed that the removal of the condition will not alter the character of the surrounding area.
- *The personal benefits which accrue to the holder of rights in terms of the restrictive condition.*  
The owner will enjoy the added security of his vehicles being parked under a roofed structure, thus adding value to the existing dwelling and will further aid in the safety of his property.
- *The personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed.*  
The property owner will possibly enjoy the benefit of an increase in property value which will then be in line with the retail prices of properties in the surrounding area.
- *The social benefit of the restrictive condition remaining in place in its existing form.*  
There is no social benefit to be enjoyed should the restrictive conditions remain in place. The restrictive condition serves no purpose in terms of the health, safety, and wellbeing of the surrounding community. The restrictive condition does not deter a change in land use, or similar deterrence that could have a detrimental impact on the surrounding community. In essence, the removal of the restrictive condition only limits the property owner in terms of development on their property.
- *The social benefit of the removal or amendment of the restrictive condition.*  
The property owner may enjoy the added benefit of an enlarged covered area (carport) which will provide added security for the property.
- *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.*  
This application entails the removal of a restrictive condition and will not attempt to alter the additional conditions as pertained in the subject Title Deed. Therefore, not all restrictive conditions will be removed.

As per the above, the removal of the subject condition is not deemed to impact negatively on the surrounding community or the abutting properties. This office requests the favourable consideration of this application.



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### 3.5. NEED AND DESIRABILITY

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

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

From the above it is clear that the proposal is not deemed to be out of character for that of the surrounding area and the greater Betty's Bay town. It is the opinion of this office that the proposal can thus be deemed desirable in terms of the aforesaid points.

The following aspects are also crucial to take into consideration when determining the desirability of an application:  
Section 66 of the Overstrand Municipality Amendment By-Law on Municipal Land Use planning of 2020:

- *When the Authorised Official or Municipal Planning Tribunal considers an application it must have regard to the following:*
  - *the application submitted in terms of this By-law;*
  - *the procedure followed in processing the application;*
  - *the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding proposed land uses;*
  - *the comments in response to the notice of the application and the comments received from organs of state and internal departments;*
  - *the response by the applicant to the comments referred to in paragraph (d);*
  - *investigations carried out in terms of other laws which are relevant to the consideration of the application;*
  - *a registered planner, or a planner eligible for registration, written assessment, which includes:*
    - *an amendment of a Spatial Development Framework or land use scheme*
    - *an approval of an overlay zone contemplated in the land use scheme*
    - *a phasing, amendment or cancellation of a subdivision plan or part thereof*
    - *a determination of a zoning*
    - *a rezoning*
  - *the integrated development plan and Municipal Spatial Development Framework;*
  - *the applicable Local Spatial Development Frameworks adopted by the Municipality;*
  - *the applicable policies of the Municipality that guide decision-making;*



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- *the Provincial Spatial Development Framework;*
- *where applicable, the regional spatial development framework;*
- *the policies, principles, planning and development norms and criteria set by national and provincial government;*
- *the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;*
- *the principles referred to in Chapter VI of the Land Use Planning Act; and*
- *the relevant provisions of the land use scheme.*
- *An Authorised Official or Municipal Planning Tribunal must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—*
  - *is consistent with the development parameters of the zoning;*
  - *is consistent with the development parameters of the overlay zone;*
  - *complies with the conditions of approval; and*
  - *complies with this By-law.*
- *When a site development plan is required in terms of development parameters or conditions of approval—*
  - *the Municipality may not approve a building plan if the site development plan has not been approved; and*
  - *the Municipality may not approve a building plan that is inconsistent with the approved site development plan.*

**Section 49 of the Western Cape Land Use Planning Act of 2014:**

*When a municipality considers and decides on a land use application, the municipality must have regard to at least—*

- *the applicable spatial development frameworks;*
- *the applicable structure plans;*
- *the principles referred to in Chapter VI;*
- *the desirability of the proposed land use; and*
- *guidelines that may be issued by the Provincial Minister regarding the desirability of proposed land use.*

It is the opinion of this office that the proposed application is well motivated in terms of the legislation as provided for in this motivation report and is not deemed to impose an unusual risk to the surrounding community, due to the following reasons:

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

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



#### 4. SECTION 4: LEGISLATION

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

##### 4.1. FORWARD PLANNING

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

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the Municipal Systems Act, 2000 (Act No. 32 of 2000), is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable, and habitable regions, cities, towns and residential areas.

The key statutory requirements of the SDF are as follows:

- Give effect to the principles, norms, and standards.
- Include a written and spatial representation of a five-year spatial development plan for the Municipality.
- Include a longer spatial development vision statement.
- Identify current and future structuring elements of the Municipal spatial form (i.e., development corridors, activity spines, economic nodes, etc.).
- Include population growth estimates for the next five years.
- Include estimates for the demand of housing units and the planned location and density of future housing developments.
- Include estimates of economic activity and employment trends and locations in the Municipality for the next five years.
- Identify, quantify, and provide location requirements of engineering infrastructure and services provision for the next five years.
- Identify the designated areas where a national or provincial inclusionary housing policy may be applicable.
- Include a strategic assessment of the environmental pressures.
- Create opportunities (incl. spatial location of environmental sensitivities, high potential agricultural land, and coastal strips).
- Identify areas in which more detailed local plans must be developed and shortened land use procedures may be applicable.
- Provide spatial expression of integration of municipal sectoral policies.
- Determine a capital expenditure framework for the Municipal development programmes depicted spatially.
- Include an implementation.

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

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



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Overstrand Integrated Development Plan (May 2020)

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

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

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

Overstrand Municipal Growth Management Strategy (2010)

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

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

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

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

- When the Authorised Official or Municipal Planning Tribunal considers an application, it must have regard to the following:
  - the application submitted in terms of this By-law;
  - the procedure followed in processing the application;
  - the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding proposed land uses;
  - the comments in response to the notice of the application and the comments received from organs of state and internal departments;
  - the response by the applicant to the comments referred to in paragraph (d);
  - investigations carried out in terms of other laws which are relevant to the consideration of the application;
  - a registered planner, or a planner eligible for registration, written assessment, which includes:
    - an amendment of a Spatial Development Framework or land use scheme
    - an approval of an overlay zone contemplated in the land use scheme
    - a phasing, amendment or cancellation of a subdivision plan or part thereof
    - a determination of a zoning
    - a rezoning



- the integrated development plan and Municipal Spatial Development Framework;
- the applicable Local Spatial Development Frameworks adopted by the Municipality;
- the applicable policies of the Municipality that guide decision-making;
- the Provincial Spatial Development Framework;
- where applicable, the regional spatial development framework;
- the policies, principles, planning and development norms and criteria set by national and provincial government;
- the matters referred to in Section 42 of the Spatial Planning and Land Use Management Act;
- the principles referred to in Chapter VI of the Land Use Planning Act; and
- the relevant provisions of the land use scheme.
- An Authorised Official or Municipal Planning Tribunal must approve a site development plan submitted to the Municipality for approval in terms of applicable development parameters or conditions of approval if the site development plan—
  - is consistent with the development parameters of the zoning;
  - is consistent with the development parameters of the overlay zone;
  - complies with the conditions of approval; and
  - complies with this By-law.
- When a site development plan is required in terms of development parameters or conditions of approval—
  - the Municipality may not approve a building plan if the site development plan has not been approved; and
  - the Municipality may not approve a building plan that is inconsistent with the approved site development plan.

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

#### 4.2. PLANNING PRINCIPLES

The proposed development supports the principles of Chapter VI (Article 59) of the Land Use Planning Act (LUPA), Act 3 of 2014, and Chapter 2 (Article 7) of the Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013, as follows:

##### Spatial Justice

*Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services, and land.*

The proposed application will not contribute to the perpetuation of past apartheid spatial development imbalances.

##### Spatial Sustainability

*A spatially sustainable settlement will be one which has an equitable land market while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity-rich areas, as well as scenic and cultural landscape and ultimately limits urban sprawl.*

The proposed development will continue to protect any environmentally sensitive areas and cultural landscapes, as it is in an already developed residential area, and will thus not alter any environmentally sensitive areas.



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**Efficiency**

*Efficiency refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources, and land.*

The proposed development will optimally harness the potential that sustainably exists on the subject property as is evident on the proposed SDP.

**Spatial Resilience**

*Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to be able to resist, absorb and accommodate economic and environmental shocks and to recover from these shocks in a timely and efficient manner.*

The proposed development is well aligned with the spatial plans and policies and that will enable the subject property to be able to resist, absorb and accommodate environmental and economic shocks and recover from shocks in a timely and efficient manner.

**Good Administration**

*Good administration in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure a joint planning approach is pursued.*

The proposed development will promote consultative planning as the Municipality will advertise the proposal to the public to allow the comments of the public to be taken into consideration. FVS Town and Regional Planners will also respond to the comments of the public and take the comments into consideration in the planning of the project.

This section outlines how the proposed development is aligned with the core planning principles as outlined in SPLUMA and LUPA. The proposed can therefore be viewed as encompassing and promoting all planning principles.



## 5. SECTION 5: CONCLUSION

### 5.1. REASONS FOR APPROVAL

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

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

*Approval for the proposed building line relaxation and relaxation title deed building line in terms of the Overstrand Municipality Land Use Planning By-law on Erf 1029, Pringle Bay.*

Kind Regards,

A handwritten signature in black ink, appearing to read 'Jaco van Schalkwyk', is written over a horizontal line.

**Jaco van Schalkwyk**  
**Director of FVS Town and Regional Planners**



Town and Regional Planners

TP. N. Theak  
(H. vd Stoep)



FVS Town and Regional Planners  
175 Fifth Avenue  
Kleinmond  
7195

28 February 2023

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

FILE NO.	ERF 1029
	Pringle Bay
SCAN NO.	
COLLABORATOR NO.	1822031

To whom this may concern:

**ERF 1029, 67 BUFFELS ROAD, PRINGLE BAY: APPLICATION FOR DEPARTURE AND RELAXATION OF TITLE DEED: FVS TOWN AND REGIONAL PLANNERS (obo W & R VALENTE)**

On 21st of February 2023 this office received a request for additional information letter pertaining to the abovementioned application. This office has summarised the concerns raised and subsequently responds as follow:

<i>Comment from Overstrand Municipality</i>	<i>Response from FVS Town Planners</i>
Why the existing garage is not a garage anymore	<p>The owners converted the garage to a domestic quarter for the purpose of adding additional bedrooms to the existing dwelling. The property was bought as a family holiday home which is not only used by the property owners, but their extended family as well and serves as a private unit for guests.</p> <p>The owner indicated to this office that her father-in-law would utilise the domestic quarters on an occasional basis.</p> <p>Please note that the property owners have no intention of letting the domestic quarters to anyone for financial gain. It is to be stipulated that the domestic quarters is purely for the purpose of additional bedrooms to the existing dwelling. Under no circumstances is it to be used for any other purposes.</p> <p>In addition to the aforesaid, the owners took the liberty of removing the sink from the domestic quarters to indicate to Overstrand Municipality of their intention</p>

03 MAR 2023



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	<p>to utilise the subject area for purely residential purposes.</p> <p>Lastly, the owners also indicated that they do not need a garage and do not foresee a need for a garage as they are not at the property at all times.</p>
The heigh of the carport	5.850m

Thank you for the favourable consideration of this application.

Kind Regards,

Jaco van Schaikwyk  
FVS Town and Regional Planners

**NOTES**  
 1. ALL DIMENSIONS TO FACE UNLESS OTHERWISE SPECIFIED.  
 2. ALL WORK TO BE ACCORDING TO THE NATIONAL BUILDING REGULATIONS.  
 3. ALL WORK TO BE ACCORDING TO THE NATIONAL ELECTRICAL REGULATIONS.  
 4. ALL WORK TO BE ACCORDING TO THE NATIONAL PLUMBING REGULATIONS.  
 5. ALL WORK TO BE ACCORDING TO THE NATIONAL MECHANICAL REGULATIONS.  
 6. ALL WORK TO BE ACCORDING TO THE NATIONAL FIRE REGULATIONS.  
 7. ALL WORK TO BE ACCORDING TO THE NATIONAL SAFETY REGULATIONS.  
 8. ALL WORK TO BE ACCORDING TO THE NATIONAL ENVIRONMENTAL REGULATIONS.  
 9. ALL WORK TO BE ACCORDING TO THE NATIONAL HEALTH REGULATIONS.  
 10. ALL WORK TO BE ACCORDING TO THE NATIONAL SOCIAL REGULATIONS.

**DESCRIPTION**  
 1. ROOF CONSTRUCTION: METAL ROOF SHEET ON TIMBER RAFTERS.  
 2. METAL ROOF SHEET: R-VALUE 0.3.  
 3. AIR GAP: R-VALUE 0.05.  
 4. CEILING: GYPSUM BOARD.  
 5. INSULATION: 125mm POLYSTYRENE.  
 6. GYPSUM CEILING: R-VALUE 0.52.  
 7. TOTAL R-VALUE OF ROOF ASSEMBLY = 5.448.  
 8. EXTERNAL WALL: BRICK WITH ALUMINUM WINDOW & DOOR.  
 9. INTERNAL WALL: GYPSUM BOARD.  
 10. FLOOR: POLYURETHANE INSULATION ON CONCRETE SLAB.

**PLUMBING**  
 1. ALL PLUMBING TO BE ACCORDING TO THE NATIONAL PLUMBING REGULATIONS.  
 2. ALL PLUMBING TO BE ACCORDING TO THE NATIONAL WATER REGULATIONS.  
 3. ALL PLUMBING TO BE ACCORDING TO THE NATIONAL SEWER REGULATIONS.  
 4. ALL PLUMBING TO BE ACCORDING TO THE NATIONAL GAS REGULATIONS.  
 5. ALL PLUMBING TO BE ACCORDING TO THE NATIONAL HEATING REGULATIONS.

**ELECTRICAL**  
 1. ALL ELECTRICAL TO BE ACCORDING TO THE NATIONAL ELECTRICAL REGULATIONS.  
 2. ALL ELECTRICAL TO BE ACCORDING TO THE NATIONAL WIRING REGULATIONS.  
 3. ALL ELECTRICAL TO BE ACCORDING TO THE NATIONAL LIGHTING REGULATIONS.  
 4. ALL ELECTRICAL TO BE ACCORDING TO THE NATIONAL POWER REGULATIONS.  
 5. ALL ELECTRICAL TO BE ACCORDING TO THE NATIONAL COMMUNICATIONS REGULATIONS.

**MECHANICAL**  
 1. ALL MECHANICAL TO BE ACCORDING TO THE NATIONAL MECHANICAL REGULATIONS.  
 2. ALL MECHANICAL TO BE ACCORDING TO THE NATIONAL HEATING REGULATIONS.  
 3. ALL MECHANICAL TO BE ACCORDING TO THE NATIONAL COOLING REGULATIONS.  
 4. ALL MECHANICAL TO BE ACCORDING TO THE NATIONAL VENTILATION REGULATIONS.  
 5. ALL MECHANICAL TO BE ACCORDING TO THE NATIONAL EXHAUST REGULATIONS.

**ENVIRONMENTAL**  
 1. ALL ENVIRONMENTAL TO BE ACCORDING TO THE NATIONAL ENVIRONMENTAL REGULATIONS.  
 2. ALL ENVIRONMENTAL TO BE ACCORDING TO THE NATIONAL SOUND REGULATIONS.  
 3. ALL ENVIRONMENTAL TO BE ACCORDING TO THE NATIONAL VIBRATION REGULATIONS.  
 4. ALL ENVIRONMENTAL TO BE ACCORDING TO THE NATIONAL POLLUTION REGULATIONS.  
 5. ALL ENVIRONMENTAL TO BE ACCORDING TO THE NATIONAL CLIMATE REGULATIONS.

**SAFETY**  
 1. ALL SAFETY TO BE ACCORDING TO THE NATIONAL SAFETY REGULATIONS.  
 2. ALL SAFETY TO BE ACCORDING TO THE NATIONAL FALL PROTECTION REGULATIONS.  
 3. ALL SAFETY TO BE ACCORDING TO THE NATIONAL FIRE SAFETY REGULATIONS.  
 4. ALL SAFETY TO BE ACCORDING TO THE NATIONAL EMERGENCY REGULATIONS.  
 5. ALL SAFETY TO BE ACCORDING TO THE NATIONAL SECURITY REGULATIONS.

**FINISHES**  
 1. ALL FINISHES TO BE ACCORDING TO THE NATIONAL FINISHES REGULATIONS.  
 2. ALL FINISHES TO BE ACCORDING TO THE NATIONAL PAINT REGULATIONS.  
 3. ALL FINISHES TO BE ACCORDING TO THE NATIONAL CARPET REGULATIONS.  
 4. ALL FINISHES TO BE ACCORDING TO THE NATIONAL TILE REGULATIONS.  
 5. ALL FINISHES TO BE ACCORDING TO THE NATIONAL STONE REGULATIONS.

**GENERAL**  
 1. ALL WORK TO BE ACCORDING TO THE NATIONAL BUILDING REGULATIONS.  
 2. ALL WORK TO BE ACCORDING TO THE NATIONAL ELECTRICAL REGULATIONS.  
 3. ALL WORK TO BE ACCORDING TO THE NATIONAL PLUMBING REGULATIONS.  
 4. ALL WORK TO BE ACCORDING TO THE NATIONAL MECHANICAL REGULATIONS.  
 5. ALL WORK TO BE ACCORDING TO THE NATIONAL FIRE REGULATIONS.

**DATE**  
 2016/23

**PAGE**  
 1/1



**ARCHITECT**  
 Jonathan Innes  
 081 075 265 5094  
 Fax: 081 088 7198  
 101/11, 25/12, DUNOP, ST1020

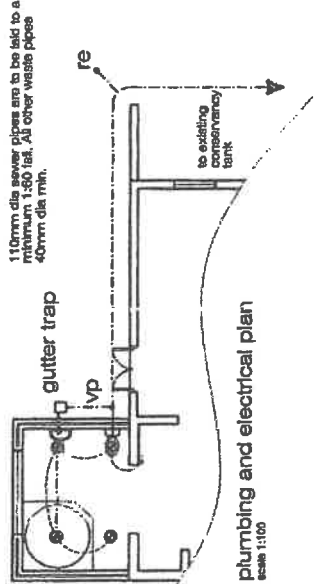
**CLIENT**  
 VAN HOUTSTEEN

**ADDRESSES & ALTERATIONS TO EXISTING DWELLING UNIT H4**

**MUNICIPALITY DRAWINGS**  
 Buffalo Road  
 Buffalo Bay  
 ST1020

**FLOOR PLAN**

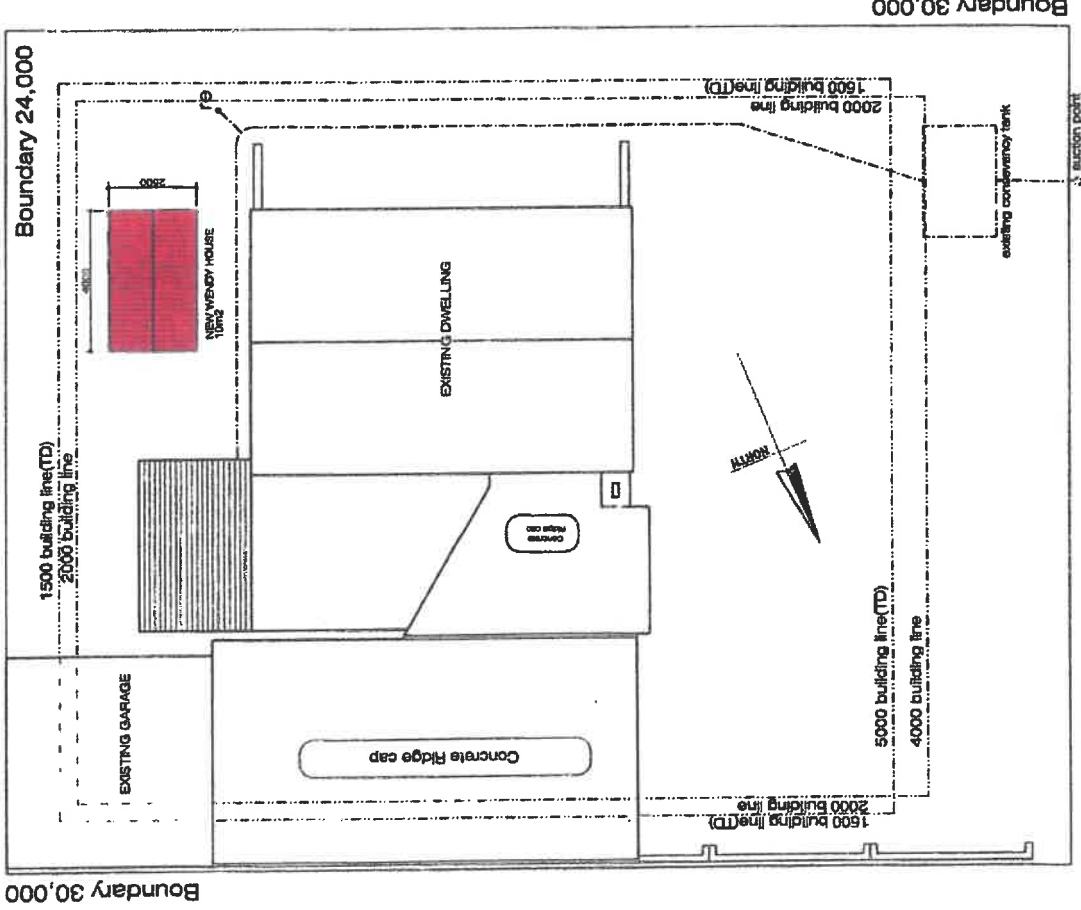
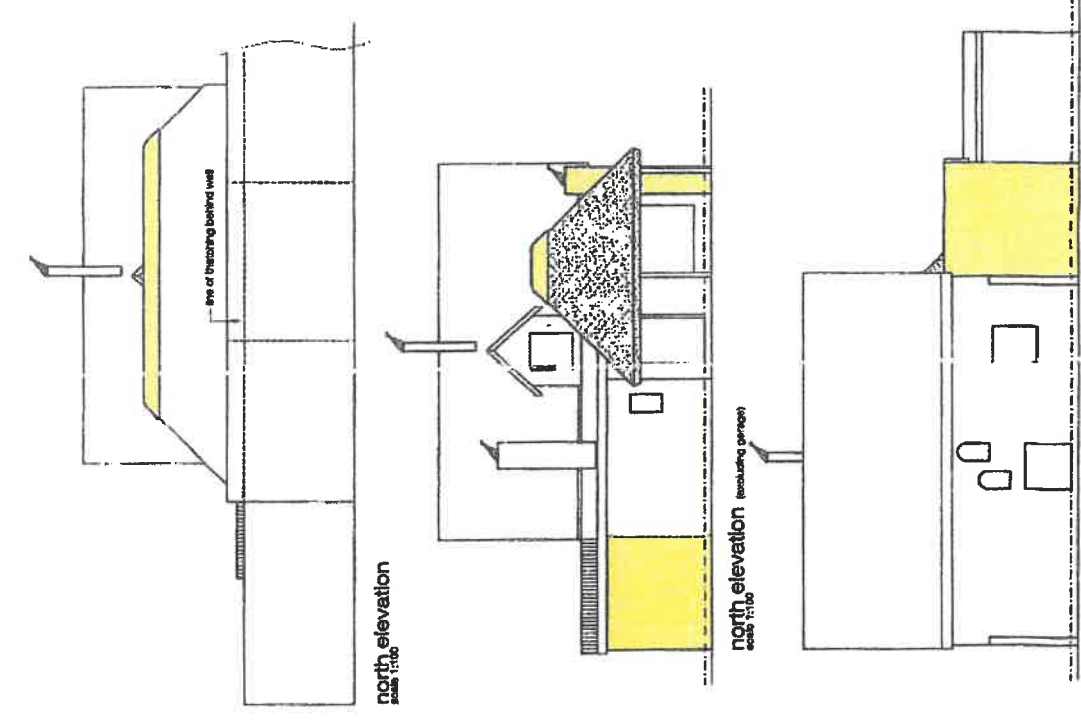
All dimensions to be confirmed on site. Any discrepancies to be discussed with architect prior to proceeding.



SYMBOL	DESCRIPTION
□	Door
○	Window
△	Light Switch
◇	Light
□	Outlet
○	Water Meter
△	Water Tap
◇	Water Valve
□	Water Trap
○	Water Tank
△	Water Pipe
◇	Water Fitting
□	Water Connection
○	Water Valve
△	Water Tap
◇	Water Valve
□	Water Trap
○	Water Tank
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<p><b>NOTES:</b></p> <p>1. The Client is responsible for providing all necessary information and data for the design of the project. The Client is also responsible for obtaining all necessary permits and approvals from the relevant authorities.</p> <p>2. The design is based on the information provided by the Client. The Client is responsible for any discrepancies or errors in the information provided.</p> <p>3. The design is subject to change without notice. The Client is responsible for any changes to the design.</p> <p>4. The design is for informational purposes only. It is not intended to be used for any other purpose.</p> <p>5. The design is the property of INES DESIGN and shall remain confidential.</p>	<p><b>CLIENT:</b></p> <p>HOUSE VAN HOUTSTEN</p> <p><b>ADDRESS &amp; EXTENSIONS TO EXISTING DWELLING cdl-14</b></p> <p>MUNICIPALITY DRAWINGS</p> <p>St. James Road St. James D11 029</p>	<p><b>DATE:</b> 2016/02/23</p> <p><b>DESCRIPTION:</b></p>	<p><b>INES DESIGN</b> architectural</p> <p>Local: 018 255 5854 Cell: 089 659 7198 Fax: 089 659 7198</p> <p>EMAIL: info@inesdesign.co.za WWW: www.inesdesign.co.za</p>	<p><b>SCALE:</b> 1:100</p> <p><b>SECTION: SITE PLAN</b></p>
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All dimensions to be confirmed on site any discrepancies to be discussed with architect prior to proceeding



Boundary 24,000  
Boundary 30,000  
Site Plan  
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## NOTES AND COMMENTS

### CURING DEFECTS OF NATURAL JUSTICE BY APPEAL

The recent appearance in the law reports of two British Commonwealth decisions (*Calvin v Carr* [1979] 2 All ER 440 (PC) and *Pollock v Alberta Union of Provincial Employees* (1979) 90 DLR (3d) 506 (Alberta SC)) provides an opportunity to consider some of the interesting problems raised by the question whether a defect of natural justice at a first hearing may be cured by a domestic or appeal body at a later stage. It is necessary to canvass the status of the first decision as well as the pragmatic and logical difficulties presented by a possible appeal against such a decision. However, each of these issues constitutes a complex problem in its own right. This note merely seeks to draw attention to them and to put forward some tentative suggestions and criticisms. A consideration of the Commonwealth cases is useful, since it is from similar cases that our Appellate Division has drawn assistance when considering these issues.

#### *The Effect of an Appeal*

*The general principle.* Where an administrative organ or domestic tribunal is required to observe the principles of natural justice and fails to do so, its act is invalid and this invalidity cannot be cured by a subsequent appeal or in any other manner short of a hearing *de novo*. This was made quite clear by the Appellate Division in *Turner v Jockey Club of South Africa* 1974 (3) SA 633 (A), where the respondents had argued (*inter alia*) that even if they had not given a jockey a fair hearing at an initial inquiry, they had subsequently afforded him ample opportunity to put his side of the case during the appeals that he made within the appeal mechanism of the Jockey Club rules. Botha JA (delivering the unanimous judgment) found that the initial hearing had not been in accordance with the 'fundamental principles of justice' and that it should have been set aside by the appellate organs within the Jockey Club. Failure by them to do so, even though they might have remitted the matter for further hearing or, indeed, heard further evidence themselves, could not cure the defect:

'Where the decision of an inquiry board is vitiated by a disregard of the fundamental principles of justice, the matter cannot be corrected by a remittal or by further evidence, or in any other manner short of a hearing *de novo*; and the person affected can always seek redress in the ordinary courts of law . . . (at 655D).

. . . I conclude that the finding of the stipendiary stewards against the appellant . . . was vitiated by a disregard of the requirements of natural justice, and that it

was not cured or remedied in the hearing of the appeal before the Local Executive Stewards or the Head Executive Stewards, and must accordingly be set aside' (at 659D-E).

In reaching this conclusion, the court referred with approval to a Privy Council decision, *Annamunthodo v Oilfield Workers' Trade Union* [1961] AC 945 (PC), and the judgment of Megarry J in *Leary v National Union of Vehicle Builders* [1971] Ch 34, both of which provide direct support for the principle. A Canadian decision, *King v University of Saskatchewan* [1969] SCR 678, (1969) 6 DLR (3d) 120, which had been used by the respondent's counsel to support the contrary view, had been distinguished by Megarry J in *Leary*, and Botha JA accepted the distinction (at 659C-D of the *Turner* report). *Annamunthodo* and *Leary* were cited extensively by Botha JA. It is of interest and relevance to South African law to note that the same issue has recently been afforded considerable attention by the Privy Council in *Calvin v Carr* [1979] 2 All ER 440 (PC) and the Alberta Supreme Court in *Pollock v Alberta Union of Provincial Employees* (1979) 90 DLR (3d) 506 (Alberta SC).

*A qualification to the general principle.* In *Pollock* delegates to a union convention had voted to increase the monthly dues charged to members. Mrs Pollock, who was a member of the union (but not a delegate to the convention), had circulated a petition for signature by members seeking to have the increase suspended until the question could be voted upon at a general referendum. She also wrote letters to certain newspapers complaining about the increase in rather strong terms. For this she was suspended conditionally by the union discipline committee upon the basis of various disciplinary charges. She appealed to the provincial executive of the union and later to the full union convention, but the suspension conditions were modified only slightly. She then renewed her appeals on the basis that in neither of the previous appeals had she been given a fair hearing, and the Provincial Executive agreed to hear her again. The appeal was partially successful this time, but she was still suspended for one year. She then sought relief in the courts.

After reviewing the authorities which make it clear that domestic tribunals must observe the principles of natural justice where this is not expressly excluded by contract (at 512-13; cf *Turner* 1974 (3) SA 633 (A) at 644-6), Laycraft J found that the first two appeals were not in accordance with 'general standards of fair play' (at 513). In determining whether this failure could have been cured by the second hearing before the provincial executive, he considered both *King* and *Leary* (*supra*), distinguishing the former (in which the Supreme Court of Canada had held that a fair hearing on appeal had cured earlier defects) on the ground that the appeal body in that case was not really an appeal body at all, but had 'original jurisdiction as the triers of fact' ((1979) 90 DLR (3d) at 515-16). This was the ground upon which *King* had been distinguished by Megarry J in *Leary*, and Laycraft J pointed

out that this distinction has been adopted in British Columbia and Nova Scotia (at 516). Thus it is important to ascertain whether the 'appeal body' is really an *appeal* body at all. For it may well be that such a body is capable of affording the aggrieved person a 'hearing *de novo*'. This point would appear to have been accepted by the court in *Turner*, where Botha JA found Megarry J's reasoning in distinguishing *King* to be 'adequate' and 'convincing'.

Of course, if the appeal body does not have 'original jurisdiction', then, as Megarry J said, 'a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body' ([1971] Ch 34 at 49F).

*Is there a general principle at all?* What has become clear, therefore, is that not all 'appeals' may be viewed simply as such by the court; and where the court concludes that the appeal itself constituted a rehearing, it may find that any defects which may have occurred at the first hearing could be cured by the 'appeal'. This, indeed, was the position taken by the Privy Council in *Calvin's* case.

Calvin was the owner of a New Zealand-bred racehorse which had been entered for a race in New South Wales, Australia. Although the horse was well bred, had shown good form in New Zealand, and was popular in the betting, it ran a poor fourth. An inquiry was instituted by the stewards, who came to the *prima facie* opinion that the horse had not run a straight course and that the jockey had not run the horse in the proper manner. On this basis, they brought charges under the Rules of Racing of the Australian Jockey Club, which required that every horse should be run on its merits and that a jockey should take all reasonable measures to ensure that the horse gives of its best. They found that the jockey was guilty of an offence and that the appellant was a party to the breach. The jockey was suspended for a year and the appellant was barred from running horses for a year, and was also deprived of his membership of the Australian Jockey Club.

The parties appealed to the committee of the Australian Jockey Club. After a full hearing the committee dismissed the appeals of Calvin and the jockey (although they allowed the appeal of a foreman, who had also been disqualified in connection with the offence).

Calvin then commenced action in the New South Wales Supreme Court against the chairman, committee and stipendiary stewards for declarations that his purported disqualification by the stewards and the purported dismissal of his appeal were void, and for an injunction restraining the respondents from acting on the basis that the purported disqualification was valid.

Calvin raised a number of grounds to support his action, but these were unsuccessful. However, although the trial judge found against Calvin, he accepted that in certain respects the stewards had failed to observe the principles of natural justice. But he held that the proceedings before the committee constituted a hearing *de novo* and that the defects

in the stewards' inquiry were thereby cured.

In the appeal to the Privy Council, the parties were not requested to argue whether the finding that the first hearing was defective was correct. The Board requested argument on the second aspect first, that is, whether any defect in natural justice could be cured by the appeal before the committee, and found that it was able to come to a decision by dealing with this question alone. It proceeded on the assumption that the first finding was correct, although Lord Wilberforce, delivering the opinion of the Board, did point out that 'a substantial argument could be put forward that there was no failure of natural justice at all' ([1979] 2 All ER 440 at 444).

Dealing with the second point, Lord Wilberforce stated:

'... their Lordships recognise and indeed assert that no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi-judicial, can be "cured" through appeal proceedings. The situations in which this issue arises are too diverse, and the rules by which they are governed so various, that this must be so' (at 447h).

Lord Wilberforce mentioned that counsel had suggested that the decisions on this matter were in conflict, and that special emphasis in this regard had been laid upon an apparent conflict between *Annamunthodo v Oilfields Workers' Trade Union* (*supra*) (one of the cases approved by Botha JA in *Turner*) and *Pillai v Singapore City Council* [1968] 1 WLR 1278 (PC), both Privy Council cases. However, Lord Wilberforce thought that many of the inconsistencies would disappear or at least diminish on analysis, and that although it was not possible to lay down any general principle which would apply to all situations, it was possible to discern 'a number of typical situations as to which some general principle can be stated' (at 448).

- (a) On the one hand, 'there are cases where the rules provide for a rehearing by the original body, or some fuller or enlarged form of it'. Examples of such a situation are likely to be found in relation to social clubs, for example where 'the first hearing is superseded by the second, or, putting it in contractual terms, the parties are taken to have agreed to accept the decision of the hearing body, whether original or adjourned'.
- (b) On the other hand, or 'at the other extreme', said Lord Wilberforce, there 'are cases where, after examination of the whole hearing structure, in the context of the particular activity to which it relates (trade union membership, planning, employment etc) the conclusion is reached that a complainant has the right to nothing less than a fair hearing both at the original and at the appeal stage'.

It was *in this context only* that the Board accepted Megarry J's statement in *Leary*:

'If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? . . . As a general rule . . . I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body' ([1971] Ch 34 at 49).

For if this statement really purported to be a general principle, it was, in their lordships' opinion, too broadly stated:

'It affirms a principle which may be found correct in a category of cases; these may very well include trade union cases, where movement solidarity and dislike of a rebel, or renegade, may make it difficult for appeals to be conducted in an atmosphere of detached impartiality and so make a fair trial at the first (probably branch) level an essential condition of justice. But to seek to apply it generally overlooks, in their Lordships' respectful opinion, both the existence of the first category, and the possibility that, intermediately, the conclusion to be reached, on the rules and on the contractual context, is that those who have joined in an organisation, or contract, should be taken to have agreed to accept what in the end is a fair decision, notwithstanding some initial defect' (at 448e-f of the report of *Calvin's* case).

Lord Wilberforce emphasized that such intermediate cases do exist and that the court should always consider all the circumstances surrounding the 'appeal'.

Having made the distinction, his lordship went on to analyse a number of Australian, Canadian and New Zealand cases, showing that, in terms of the above distinction, most of these apparently conflicting cases could be reconciled. (See the report at 449-50.) So, for example, *Annamunthodo* ([1961] AC 945 (PC)), which was a trade union case in which it had been decided that an appeal could not cure a defect of natural justice at the first hearing, was not in conflict with *Pillai* ([1968] 1 WLR 1278 (PC)) after all; the latter case, which concerned the dismissal of an employee by an administrative body, was one where, even if natural justice should have been observed, a failure to do so had been cured by 'a rehearing by way of evidence *de novo*'.

In the light of this analysis, the Board found that the defects, if any, of the first inquiry by the stewards had been cured by the appeal to the committee. When the proceedings were looked at as a whole, the appellant's case had 'received, overall, full and fair consideration' (at 452 of the *Calvin* report).

### *Evaluation*

Is the reasoning of the Board really acceptable? On the face of it, the articulation of a range of categories, from the case where the appeal falls within a fairly rigid appeal structure to the case where the appeal (when viewed against the context of all the circumstances) is really a complete rehearing *de novo*, would appear to be a logical development of the dicta in cases such as *Turner* and *Pollock*. But the Board's reasoning is open to objection on at least two grounds:

(a) In the first place, by criticizing Megarry J's statement of a general rule, their lordships were really begging the question. Megarry J had

said: 'If the rules and the law combine to give the member the right to a fair trial *and the right of appeal* . . .' (my emphasis). When one finds that the 'appeal' was really a hearing *de novo*, and one concludes that—after a consideration of the rules (and the contract, if necessary)—the complainant must be 'taken to have agreed to accept the decision of the hearing body, whether original or adjourned' (see Lord Wilberforce at 448*a* of the *Calvin* report), there is obviously no right of appeal in existence at all.

(b) But if, after considering 'the rules and the law', one concludes that the complainant has a right to a *trial and an appeal*, 'why should he be told that he ought to be satisfied with an unjust trial and a "fair appeal"?' (Megarry J at 49E of the *Leary* report). For, as Megarry J went on to say: 'Even if the appeal is treated as a hearing *de novo*, the [complainant] is being stripped of his *right to appeal to another body* from the effective decision to expel him' (*ibid*; my emphasis). This difficulty was ignored by the Board, perhaps as a result of its failure to appreciate the tautology outlined in (a) above. Yet it is surely a fundamental point, and to ignore it introduces the danger that a right of appeal will disappear by sleight of hand.

#### *Further Problems*

Other questions of great relevance to our law are raised by these Commonwealth decisions. Some will be discussed briefly here, although each merits considerable attention in its own right.

*The duty to exhaust domestic or administrative remedies.* Is a party who claims that he has been denied natural justice at the first hearing required to exhaust his domestic remedies before approaching the court for relief?

Commentators have pointed out that the courts have not been clear on this point. (See, for example, Marinus Wiechers *Administratiefreg* (1973) 280ff; L A Rose Innes *Judicial Review of Administrative Tribunals in South Africa* (1963) 76ff. Cf P Jackson *Natural Justice* (1973) 71ff.) *Turner* is, however, cited in South Africa as authority for the principle that a party need not exhaust his domestic remedies unless obliged to, expressly or impliedly, *by contract*. (See *Moodley v Shri Siva Subramanier Aulayam* 1979 (2) SA 696 (SE) at 698–700.) This was also the view taken by the Privy Council in *White v Kuzych* [1951] AC 585 (at 594–5), a case which was noted and distinguished by Laycraft J in *Pollock* (1979) 90 DLR (3d) (at 514–15). In South Africa there seems no dearth of authority for this view. (See the cases reviewed by Wiechers *loc cit* and Rose Innes *loc cit*. See also Marinus Wiechers 'Administrative Law' in *The Law of South Africa* ed W A Joubert I (1976) para 89 p 60.) Furthermore, it is recognized that this proposition can be extended to administrative remedies as well, if this is clear from the relevant statutory provisions. (See, for example, Rose Innes *op cit* 76–8.) Indeed, the ambit of statute and contract is so wide that the principle is stated the

other way round by both Rose Innes and Wiechers: that the general principle is that a complainant has a duty to exhaust his domestic or administrative remedies except in certain circumstances. (For the exceptions, see Rose Innes *op cit* 81ff; Wiechers in *LAWSA I* para 89 pp 60-1.)

Now the question I am concerned with here is whether a complainant should be obliged to exercise his right to *appeal* to a domestic or administrative appeal organ where the original hearing organ has failed to observe the principles of natural justice. Obviously, where this is required by the terms of a contract, the complainant has waived his right to approach the court. And where it is required by statute, the statute has ousted the jurisdiction of the court until such time as the administrative remedies have been exhausted. Apart from these situations, however, several policy reasons have been suggested as to why the general principle should apply in other situations: these remedies are often cheaper, perhaps quicker, than an application to court; and the appellate body may well reverse the decision, thereby removing the cause for complaint. (*Jockey Club of South Africa v Feldman* 1942 AD 340, 362. Cf Rose Innes *op cit* 76; Wiechers in *LAWSA I* para 89 p 60.) But it is also a time-wasting and futile pursuit if the appellate organ dismisses the appeal. To reiterate the point made by Megarry J in *Leary's* case:

'If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? . . . Even if the appeal is treated as a hearing *de novo*, the member is being stripped of his right to appeal to another body from the effective decision to expel him' ([1971] Ch 34 at 49).

But not only is the complainant being stripped of his right to more than one *fair* hearing, there is also an important policy argument against allowing *any* appeal from a hearing at which the principles of natural justice were not observed: that the appeal is by its very nature inevitably affected by what took place at the first hearing, unless it is a complete rehearing (in which case it is not an appeal in the present sense). To adopt a phrase used by Botha JA in *Turner* (at 658D of the report), the taint of the hearing is *carried forward* to the appeal. Where natural justice has been denied, the record of the first hearing will be fundamentally defective either because one party was not allowed to present his case and evidence adequately, or because the decision-maker was biased and his or its interpretation of the evidence will be coloured by this bias. The normal appeal is usually heavily influenced by the record of the original decision-making body. (For an analysis of the distinction between appeals in the wide sense and appeals in the ordinary sense, see A Rabie 'Administratiefregtelike Appelle' (1979) 12 *De Jure* 128.)

It is worth noting that the general principle is quite the reverse in England: there a complainant has no duty to exhaust domestic or

administrative remedies before approaching the court for review, except in certain special circumstances. (See H W R Wade *Administrative Law* 4 ed (1977) 561ff; S A de Smith *Judicial Review of Administrative Action* 3 ed (1973) 374-6.)

*The void/voidable distinction.* Intertwined with this question is the void/voidable issue. Is a decision reached in breach of natural justice void, or is it merely voidable; or is this even a meaningful distinction? If it is void *ab initio* would there be any decision from which to appeal? This point is recognized by Wiechers, who balks at the logical consequences of allowing immediate review of all *ultra vires* decisions. (See *Administratiefreg* 282.)

In South Africa it is said that decisions which are in substance *ultra vires* are void *ab initio*, but that decisions made in breach of natural justice are merely voidable. (See Rose Innes op cit 93-4, 157; Wiechers op cit 237 and in *LAWSA* I para 82 p 51.)

Rose Innes justifies the distinction on two grounds: (a) because natural justice is a requirement of the common law, whereas substantive *vires* are usually determined by statute (op cit 93); and (b) an affected party may waive or forfeit his right to object to a decision reached in breach of natural justice, in which case the decision stands; whereas an '*ultra vires* proceeding or decision which is void *ab initio* . . . cannot be cured by waiver, acquiescence or default' (op cit 157).

Wiechers relies rather on case authority and cites two cases: *Winter v Administrator-in-Executive Committee* 1973 (1) SA 873 (A) at 891A-C and *Adjunk-Minister van Landbou v Heatherdale Farms (Pty) Ltd* 1970 (4) SA 184 (T) at 195E. It is clear that the *Heatherdale Farms* case does support Wiechers:

'Dit is waar dat die respondente nie enige regte as gevolg van die appellant se beslissing verkry het nie, maar dit is nie omdat die beslissing *ipso iure* nietig was nie. Die nie-nakoming van die *audi alteram partem*-reël het wel die beslissing aanvaardbaar gemaak, maar dit was nie sonder meer nietig nie' (per Trengrove J at 195E-F of the report).

However, the *Winter* case is not in point: in this case Ogilvie Thompson CJ (for the unanimous court) specifically held that the rule *audi alteram partem* did not apply to the facts of the case—he did not hold that the rule did apply but that in this case the failure to observe it did not invalidate the decision:

' . . . the exercise of those powers is, by reason of the various features I have mentioned, not subject to the maxim *audi alteram partem* and . . . , consequently, the issue of the deportation orders was not invalidated by the circumstance that no prior opportunity was accorded to the appellants to make representations against such issue' (1973 (1) SA 873 at 891C-D).

And in any event, the Chief Justice was concerned with an ouster clause removing the court's jurisdiction (s 1(3) of Proclamation 50 of 1920 (SWA) as amended) and the possibility of getting around this on the grounds of 'manifest absence of jurisdiction'.

So far as other cases are concerned, the courts here do not seem to have directed their attention to the question, although Jansen JA in *Theron v Ring van Wellington van die NG Sendingkerk in Suid-Afrika* 1976 (2) SA 1 (A) has perhaps provided some (albeit ambiguous) support for the contrary view:

'Dat die fundamentele beginsels van geregtigheid hier in gedrang gekom het en dat derhalwe die beslissing van die Algemene Sindale Kommissie *nietig* verklaar moet word, skyn duidelik te wees' (at 29D; my italics).

(Cf Jerold Taitz 'But 'Twas a Famous Victory' 1978 *Acta Juridica* 109 at 121.)

So it is worth considering the apparent underlying justifications (as put forward by Rose Innes and outlined above) for the distinction between the status of a substantively *ultra vires* decision and one reached in breach of natural justice.

*Common law and statutory vires.* The mere fact that an official or body is required to observe requirements which are stipulated by the common law (and not excluded by statute), for example, the requirements of natural justice, does not render the requirements any the less important or necessary to fulfil than the requirement of *vires*. It is merely that these requirements originate from a different legal source. Common law and statute law act symbiotically to determine the extent of the *vires* of the official or body and hence the legality of his or its acts. Thus it seems to me that this distinction is not a satisfactory ground for describing decisions reached in breach of natural justice as voidable, not void.

*The right to natural justice may be waived or forfeited.* The real reason for the distinction between the status of acts made in breach of natural justice and other *ultra vires* acts is, I believe, the fact that a right to object to a violation of natural justice may be waived or forfeited. It does seem to be inconsistent to state that an *ultra vires* act is a 'mere nullity'—'there has been no decision at all'—while accepting that where it is only natural justice that has been ignored such a decision still stands unless and until it is set aside on review or declared void by the court. But even this 'justification' is unacceptable once it is appreciated that *any ultra vires* act has legal effect until it is set aside.

Even where a party chooses to ignore the act, he will be obliged to prove its invalidity when raising its invalidity as a defence. Just as an affected party may waive his right to object to a decision reached in breach of natural justice, so he may accept as valid an *ultra vires* decision affecting him. The only difference is that in the latter case another party (for instance, the state) may have *locus standi* to attack the act or decision.

This truth has been recognized in England, where the void/voidable distinction has been the subject of considerable dispute. (See the references in S H Bailey, C A Cross and J F Garner *Cases and Materials in Administrative Law* (1977) 570, as well as Wade *Administrative Law* 296–301, 560–1 and Jackson *Natural Justice* chap 6.) There, although it

was said in some cases that an act done in breach of natural justice was only voidable (for example, *Dimes v Grand Junction Canal* (1852) 3 HLC 759 (10 ER 301) and *Durayappah v Fernando* [1967] 2 AC 337 (PC)), since *Ridge v Baldwin* [1964] AC 40 (HL) it has been clear that the English courts accept such an act as void:

'Then there was considerable argument whether in the result the . . . decision is void or merely voidable. Time and again in the cases I have cited it has been stated that a decision given without regard to the principles of natural justice is void, and that was expressly decided in *Wood v Woad* (1874) LR 9 Exch 190. I see no reason to doubt these authorities. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case' (per Lord Reid in *Ridge* at 80).

Jackson (*Natural Justice* 69–70) relies upon the fact that Lords Evershed and Devlin (in *Ridge* at 86 and 141–2 respectively) regard the decision as only voidable, for the view that the issue is not yet settled. And there have been other academic adherents to the 'voidable' school in the case of natural justice. (See A Rubinstein *Jurisdiction and Illegality* (1965) 221, a most important study of the question, and D M Gordon 'Certiorari and the Revival of Error in Fact' (1926) 42 LQR 521 at 523.) However, despite occasional aberrations to the contrary (see the discussion by H W R Wade (1977) 93 LQR 8 at 10–11 and N P Gravells 'Time Limit Clauses and Judicial Review—The Relevance of Context' (1978) 41 *Modern LR* 383 at 392–3), since the brilliant analysis of the issue by Wade in a two-part article ('Unlawful Administrative Actions: Void or Voidable?' (1967) 83 LQR 499, (1968) 84 LQR 95, especially 101ff) it has become accepted by the courts and even former dissenters (see, for instance, Lord Denning in his book *The Discipline of Law* (1979) 77–8) that an act done in breach of natural justice is void, not voidable. The major obstacle was that it seems awkward that a void act may have legal consequences unless and until set aside. But, as Wade has pointed out,

' . . . once the court condemns [an order] as being void, it is seen to have been destitute of all legal effect from the outset. An order which is merely voidable, on the other hand, has legal effect up to the time when it is quashed, and in respect of that period it remains a valid order even after being quashed' (*Administrative Law* 297).

Even if the act or order is void, it is a matter of factual necessity that a court order must be obtained declaring this to be the case, failing which it will have legal effect just as if it were valid. And this is equally true of acts contrary to natural justice and other illegal acts. It is not necessary that the act be absolutely void in the sense that it has no effect whatsoever. Thus a void act may even have legal effect *ad infinitum* where, for instance, a remedy is denied (for example, where prescription prohibits the claimant from approaching the court).

This reasoning has now been fully accepted by the Privy Council in *Calvin's case*:

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'The first issue arising in this appeal is whether the committee had any jurisdiction to enter on the appeal. The appellant's proposition is that it had not, for the reason that the stewards' "decision" was, on the assumption stated, void. A condition precedent, it was said, of an appeal was the existence of a real, even though voidable, decision.

"This argument led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships' opinion would be, if it became necessary to fix on one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court, it may have some effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non-existent. So to hold would be wholly unreal. The decision of the stewards resulted in disqualification, an effect with immediate serious consequences for the appellant. This was a fact: the appellant's horses could not run in, or be entered for any race; the appellant lost his membership of the Australian Jockey Club and could be excluded from their premises. These consequences remained in effect unless and until the stewards' decision was challenged and, if so, had sufficient existence in law to justify an appeal' ([1979] 2 All ER 440 (PC) at 445-6).

Lord Wilberforce went on to give the example of a criminal trial during which took place serious irregularities but the judgment of which nevertheless had legal effect until set aside on appeal, even though the trial was 'in truth no trial at all'.

What is the conclusion to be drawn from this way of looking at the meaning of 'void' for the purposes of natural justice? In effect, it means that although the decision or act is void (since the official or body had no power to act without observing natural justice), it must be declared to be so in order to strip the act of its ostensible legal respectability and effect. Thus the act is not necessarily a mere nullity with no existence at all: it may even acquire legal respectability through the operation of prescription or the refusal of a court (in its discretion) to grant, say, a mandatory interdict. (Cf the discussion of this discretion in *Cape Town Municipality v Abdulla* 1974 (4) SA 428 (C) at 437; and cf Wade *Administrative Law* 566ff; De Smith *Judicial Review* 130ff.) Needless to say, the same effect applies in the case of ouster clauses and the waiving or forfeiture of rights by a complainant.

In addition, although the act or decision is void, it can be appealed against, since it exists and has effect. Thus there is no anomaly in appealing to a domestic appeal body where there has been a failure of natural justice in connection with the original decision. However, the complainant may equally seek a declaration that the original decision is void.

What is the importance of the distinction between void and voidable? Jackson suggests that such a distinction provides no useful guide. (See *Natural Justice* 69; and cf Lord Evershed in *Ridge* [1964] AC 40 (HL) at 86.) But this view ignores two important consequences of considering the act or decision void and not voidable:

(a) If it is void, then it is possible for the complainant to approach the court immediately without exhausting his domestic remedies, and to obtain relief by means of a declaratory order only, without the need to obtain any other order as well (*Standard Bank of SA Ltd v Trust Bank of Africa Ltd* 1968 (1) SA 102 (T) at 105-6).

(b) To regard an act as void has the effect of encouraging a court to strike it down for want of jurisdiction: for ultimately the question whether an act is void or voidable boils down to the view one takes of jurisdiction. (See M Akehurst 'Void or Voidable?—Natural Justice and Unnatural Meanings' (1968) 31 *Modern LR* 2, 138. Cf the approach of Ogilvie Thompson CJ in *Winter* 1973 (1) SA 873 (A) at 891B and Innes CJ in *Union Government v Fakir* 1923 AD 466 at 469-70, and *Narainsamy v Principal Immigration Officer* 1923 AD 673 at 675.) There is no space here to go into the question of jurisdiction. However, though it is plain that our courts take a much narrower view of jurisdiction than do the English courts (compare Muller JA in *Theron* 1976 (2) SA 1 (A) at 35B-D and Taitz op cit 1978 *Acta Juridica* 109 at 116-19 with *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 and—more drastically—*Pearlman v Keepers and Governors of Harrow School* [1979] QB 56; Lord Denning *The Discipline of Law* 74ff), I have tried to show that it is inconsistent to contend that while a body or official has no power (jurisdiction) to act 'substantively *ultra vires*', it does have power (jurisdiction) to disregard the common law (viz the requirements of natural justice) unless the affected party objects.

(c) One may well ask: since any 'void' act may have to be declared to be so by the courts, why are they not all voidable? Rubinstein (*Jurisdiction and Illegality passim*) distinguishes between void and voidable acts on this very basis: viz that acts which require to be set aside are only voidable, whereas a 'void' act can only be one which is utterly void and which requires no setting aside at all. But to those whose ideological bent is in favour of strict legality on the part of the administration, this approach carries with it the danger of affording the court an additional opportunity to validate an act which, even though not in conformance with the strict principles of legality, the court feels should stand, perhaps because the court suspects that the organ concerned would have reached the same decision anyway. (See Wade op cit (1968) 84 *LQR* 95 at 110-15.)

### Conclusion

(a) There is a general principle in our law that a defect of natural justice cannot be cured by a domestic or administrative appeal. What is required is a hearing *de novo*. Although such a general principle has been doubted by the Privy Council in *Calvin's* case, there is no reason to assume that the principle is in any doubt in South Africa.

(b) However, a hearing *de novo* should not be accepted as a substitution for the right to appeal from a decision. This important point

made by Megarry J in *Leary* appears to have been fully accepted by our Appellate Division in *Turner*.

(c) Although our case law and commentators clearly indicate that, as a general principle, a complainant should exhaust his domestic and administrative remedies before seeking relief in the courts, I have suggested that where there has been a defect of natural justice this principle is undesirable for at least two pragmatic reasons: first, it expects a complainant to be satisfied with an unjust hearing and a fair appeal; and, secondly, the taint of the unjust hearing is inevitably carried forward to the appeal.

(d) Furthermore, there is the interesting logical problem concerning the status of the act or decision that is defective by reason of failure to observe the principles of natural justice. The position in our law appears to be that such a decision is voidable, not void. However, I have suggested that this would be anomalous and that there is no difficulty with the proposition that failure to observe natural justice constitutes a void act. In doing so, I have made special reference to the recent developments in England, but am acutely aware that this issue requires much fuller consideration than space here provides.

L G BAXTER

**Loretta Gillion**

**From:** Bertie Vorster <bvvossie04@gmail.com>  
**Sent:** Monday, 24 February 2025 19:15  
**To:** Annelie Rabie; Loretta Gillion  
**Cc:** chairman@pringlebayratepayers.co.za; Heather Morkel  
**Subject:** DECISION LETTER - Erf 1029 Pringle Bay (4112/2022): PBRA Appeal  
**Attachments:** Erf 1029 - PBRA APPEAL (FINAL - 24 February 2025).pdf;  
 SKM\_C55825020614580.pdf; PBRA ERF 1029 Jan 30 2025 MPT Agenda.pdf;  
 Annexures, Erf 1029 Pringle Bay.pdf; PBRA Erf 1029 Comments (19 July 2023-  
 FINAL).pdf; Curing Defects of Natural Justice by Appeal-1.pdf; PBRA APPEAL ERF  
 1029 - 2024 - 2025 APPEAL FORM (14 Feb 2025).pdf; PBRA Erf 1029 Appeal Fee -  
 Payment Notification.pdf

**Attention:** Appeal Authority (Executive Mayor)

Please refer to the OM MPT Decision Letter related to Erf 1029 as per the Agenda of the MPT meeting of 30 January 2025.

As per the decision letter Paragraph 5, attached hereto please find our appeal and supporting documentation as follows:

1. Our Appeal Motivation attached hereto as "Erf 1029 - PBRA APPEAL (FINAL - 24 February 2025).pdf"
2. Decision Letter dated 6 February 2025, OM File Reference: 1029 KPRB, Application ID: 4112/2022 (Attached hereto as: "SKM\_C55825020614580.pdf")
3. Municipal Planning Tribunal Agenda: 30 January 2025 (attached hereto as "PBRA ERF 1029 Jan 30 2025 MPT Agenda.pdf")
4. "Annexures, Erf 1029 Pringle Bay.pdf"
5. The PBRA letter with comments/objections **dated 19 July 2023**, attached hereto as "PBRA Erf 1029 Comments (19 July 2023- FINAL).pdf"
6. "CURING DEFECTS OF NATURAL JUSTICE BY APPEAL" by L G BAXTER.
7. Duly Completed Appeal Form (Attached hereto as "PBRA APPEAL ERF 1029 - 2024 - 2025 APPEAL FORM (14 Feb 2025).pdf")
8. Proof of Payment of Appeal Fee (Attached hereto as "PBRA Erf 1029 Appeal Fee - Payment Notification.pdf")

Please be so kind to acknowledge receipt by return email and CC to [chairman@pringlebayratepayers.co.za](mailto:chairman@pringlebayratepayers.co.za) and [secretary@pringlebayratepayers.co.za](mailto:secretary@pringlebayratepayers.co.za)

Kind Regards

Bertie Vorster  
 obo: PBRA

On 06 Feb 2025, at 15:03, Loretta Gillion <[loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)> wrote:

# Memo

## Office of the Executive Mayor

**To** : MR R KUCHAR, *Divisional Manager: Town and Regional Planning*

**Cc** : Dr DGI O'NEILL, *Municipal Manager*  
S MÜLLER, *Chief Engineer: Infrastructure Services*

**Date** : 23 July 2025

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

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In an appeal against a decision of the Municipal Planning Tribunal (MPT) the onus is on the appellant to show that the MPT erred in reaching its decision and set out the reasons why there is a belief that the MPT erred.

The appeal document was scrutinized and after due consideration of the reasons provided by the Municipal Planning Tribunal and the arguments of the appellant it is herewith resolved that:

1. the Appeal Authority revoke the decision of the Municipal Planning Tribunal dated 30 January 2025 in terms of Regulation 26.(1)(b) of SPLUMA referred to above; and
2. the Appeal Authority remit the matter back to the Municipal Planning Tribunal in terms of Regulation 26.(2) of SPLUMA for its further consideration.

Yours Sincerely



**Cllr A KLAAS**  
**EXECUTIVE MAYOR**

*bs/b178/Appeal Erf 1029-Pringle BayW&R Valente*