

4.4

ERF 23, 4 COWRIE STREET, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF DIE DU TOIT FAMILIETRUST)

23 HSB (4187/2022)

B Minnaar

25 September 2024

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received from Messrs Interactive Town & Regional Planning on 27 June 2022 (complete application received on 16 January 2023) on behalf of Die Du Toit Familietrust in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 23, Sandbaai (the property) for the following:

- ❖ **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law, namely conditions B.(2)(c) and B.(2)(d) as contained in Title Deed T70129/2016 of the property, to accommodate a second dwelling unit on the property and to utilize it as a self-catering unit, as well as to accommodate the street building line encroachment.

The restrictive conditions contained in Title Deed T70129/2016 to be removed, reads as follows:

Clause B.(2)(c)

“That no more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon.

Clause B.(2)(d)

“That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.”

- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the illegal encroachment of the street building line, as well as the illegal second dwelling unit.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan (SDP) is attached as Annexure C. Title Deed T70129/2016 is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The property measures 828m² and is zoned for Residential Zone 1: Single Residential purposes. It is developed with a double storey dwelling with a garage, as well as a self-catering dwelling unit, which encroach the title deed street building line.

Application has therefore been made for the removal of restrictive title deed conditions as well as for the determination of an administrative penalty to accommodate the proposed development.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows (only the main points are conveyed – the detailed motivation report is attached as Annexure B):

INTRODUCTION

- ❖ The existing property has title deed restrictions that the owners were unaware of when they purchased the property. The current owners bought the property in 2016 where the existing dwelling on site was not built straight and already exceeds the title deed street building line. The owners wish to remove these conditions together with one dwelling on site.
- ❖ The owners wish to remove the title deed restrictions mentioned below in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

- ❖ One of the reasons for the title deed restrictions to be removed is that they are stricter than the Overstrand Municipality Zoning Scheme Regulations for single residential zoning.
- ❖ Overstrand Municipality allow 4m street building lines compared to the title deed which is 4.72m. The existing dwelling is built skew over this title deed building line.
- ❖ That is why the owner applies to remove the title deed restriction.
- ❖ Single residential also allows a second dwelling unit where the title deed restricts this possibility.
- ❖ The surrounding area is also predominantly residential uses (Single Residential 1). Approval of the conditions being removed the owners will not change the use of the property.
- ❖ The existing dwelling is already built over the street building line.
- ❖ The owner wishes to rectify this.
- ❖ The existing layout of the dwelling is perfect to have a second dwelling. This provides the owner the opportunity to have permanent residence on the property while also staying on the property.
- ❖ The existing house was built on brick columns creating a void next to the existing garage which can be perfect for a second dwelling. The owners have since then filled in the gap and wish to use the new altered space as a second dwelling unit.

- ❖ This will be beneficial for the area and owner. The owner receives security as someone is always watching their property while another family can be able to live close to the beach in a desirable area for less rent than an entire house. This is perfect for families just starting out or even students wanting some garden space and walks on the beach.
- ❖ The owner does not wish to add additional structures to the property. The current land use will not change but provide another family the opportunity to live close to the beach at Sandbaai. This will also allow the owner security as someone is always on the property.

DETERMINATION OF AN ADMINISTRATIVE PENALTY

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

Nature, duration, gravity and extent of the contravention

The existing dwelling was erroneously built over the title deed street building line by the previous owners of the property. The property was purchased in 2016 and by that time the existing dwelling already exceeded the title deed building lines.

The existing dwelling is up to 4.26m from the north-western street boundary. The area exceeding the title deed building line is 6.8m² on the ground floor and 6.4m² on the first floor including the stoep.

Conduct of the person (allegedly) involved in the contravention

The existing dwelling was constructed over the title deed building line by the previous owners of the property. The existing owners did not make any changes to structures which exceeded title deed building lines.

The existing owners wish to legalise the existing structures and is cooperative in the process to rectify the matter.

Report by quantity surveyor

Since the dwelling was constructed by a previous owner, we kindly request that the administrative penalty be waived. As a result, a report by a quantity surveyor has not been obtained.

Whether the unlawful conduct was stopped

Since the part of the structure exceeding the title deed building lines are mostly loadbearing walls and columns and is an essential structural element of the dwelling, application is made to legalise the existing dwelling.

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

The existing owners have not previously contravened the By-Law. We cannot comment on whether the previous owners have previously contravened the By-Law.

Traffic Impact, parking and access:

There is sufficient space for parking for the second dwelling. (2.5m x 5m as indicated on the site plan)

Access to the site will not be impacted as there is existing carriage way crossing.

Impact on external engineering services

The existing area is already developed, and approval will not affect the area. The owners are not planning to build any new structures but legalize their existing structures that is built over the building line. No additional services are required for the application.

Heritage value and impact

The existing dwelling is not older than 60 years and not located in a Heritage Protection Overlay Zone. The property has no heritage value and approval will not impact heritage.

Environmental impact

The proposal does not trigger any activities listed in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

Overstrand Municipal Spatial Development Framework (2020):

The owners will remain residential zoning with approval.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	10 March 2023	14 April 2023
Gazette	Yes	10 March 2023	14 April 2023
Notices (<i>possibly affected property owners</i>)	Yes	10 March 2023	14 April 2023
Notices (<i>persons mentioned in title deed</i>)	Yes	10 March 2023	14 April 2023
Internal Departments	Yes	10 March 2023	14 April 2023
Ward councillor	Yes	10 March 2023	14 April 2023
Total comments	One (1) late objection		
Total letters of support	NONE		
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
In case of application for removal, amendment, or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?	Yes

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

Name	Date received	Summary of comments
Building Department	10/03/2023	No objection. All buildings to comply with NBR and all other applicable law
Fire Services	16/02/2023	No objection subject to compliance with the provisions of SANS 10400-A:2016, 10400-T:2020 and the By-Law relating to fire safety.
Waste Management	17/03/2023	No objection.
Engineering Services	28/03/2023	Attached as Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One late objection (dated 17 April 2023) was received from the adjacent property owner of Erf 26, Sandbaai during the public participation process (attached as Annexure E). The applicant was awarded the opportunity to respond to the objection; the response was received on 24 May 2023 (attached as Annexure F).

The objection, applicants' response to the objection and the town planner's response thereto are as follows:

Objection point 1

"I would therefore firstly like to lodge an application of having exceeded the deadline by which any comment can be made on their application. The fact that the Post Office could not notify me in time to be able to comment before the deadline, should not preclude me from making representations in this regard."

Response from applicant

It is understood that the objector applies for an extension to provide comments to the application:

The legal requirements in terms of the Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) was followed by the applicant and no provision is made for any extension.

It should also be acknowledged that a site notice was displayed during the full public participation period on the front fence of the premises and notice of the application was placed in the local newspaper.

Therefore, this request is not justified and cannot be accommodated and should subsequently be omitted.

Subsequently, the objection made by Mr DF Dreyer is also invalid and should be ignored.

Response from town planner

The objection and the applicant's response to the objection is noted. The applicant is correct when referring to the legal requirements. The notification of the application has been made readily available by means of a site notice on the property; made available on the municipal website; advertising the application in the local newspaper (Village News) as well as by registered mail. Therefore, the application has been made readily available through public participation.

Objection point 2

"I formally object to any waiver of restrictive conditions and more so, against allowing the owner of Erf 23, being allowed to utilise it for self-catering accommodation purposes."

Response from applicant

As mentioned here-above, this point of objection cannot be considered as the objection was submitted late.

However, the objective of the applicant is specific to use the property partly for self-catering purposes, which is subjected to the following criteria in terms of the Chapter 6 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) being a primary land-use of the property's current zoning "Residential Zone 1: Single Residential (SR1)" and read with Section 16.10.21 which reads as follows:

Self-catering accommodation

16.10.21 The following provisions shall apply where a portion of the property is used for the purposes of self-catering accommodation:

- a) It shall be utilised for single family occupation;
- b) Self-catering shall be restricted to either the main dwelling or the second dwelling unit, if a second dwelling unit exists on the property (but not both);
- c) Self-catering will not be permitted if there is a home occupation or guest rooms;
- d) No activities constituting a source of nuisance shall be carried out, and
- e) The Municipality may impose additional conditions in order to minimise any potential public nuisance.

Self-catering is defined as follows in terms of Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law):

"self-catering accommodation" means sole occupancy unit(s) for transient guests, consisting of one or more rooms and self-contained public areas, e.g. kitchen, dining area and lounge;

Furthermore, the provision of self-catering and or second dwellings contribute to the densification of residential areas, which within an overarching perspective is a provincial as well as a local government objective. The application is thus consistent with this objective of the application.

Response from town planner

The objection and the applicant's response are noted. In terms of the Overstrand Municipal Land Use Scheme, a second dwelling and self-catering accommodation is considered a primary land use right on a single residential property. The objector does not substantiate the reason for objecting to the second dwelling and the self-catering accommodation, therefore the objection is invalid.

Objection point 3

"I furthermore request that the owner of said property be limited to the maximum number of people that may occupy the premises."

Response from applicant

The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) prescribes the occupancy of a dwelling house in terms of the definitions of the applicable uses permitted as primary rights to the property being "Residential Zone 1: Single Residential (SR1)" which allows for the following uses and the occupancy as summarized in the following table:

Land-Use	Occupancy
Crèche	No more than 5 children at any time
Dwelling House	A single family
Guest Rooms	Maximum of 2 bedrooms (5 persons) per property for paying transient guest of lodgers
Home Occupancy	No more than 3 persons in total
Second Dwelling	A single family
Self-Catering	A single family

The applicant is committed to use the proposed second dwelling 100% in compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), hence the reason for the application.

Subsequently, even though the objection is not a legal objection, given being submitted outside the comment period, the applicant will comply with the objector's requirement.

Response from town planner

The objection and the applicant's response are noted. Also note that a dwelling unit is limited to the housing of a single family. Additionally, self-catering accommodation is also limited to the housing of a single family.

Conclusion

The objection received is a late objection, however it was still evaluated / taken under consideration if the objection points are valid. Unfortunately, the objector does not substantiate the reasons why the objection points were raised. Therefore, the objection is considered invalid.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Refer to point 7 of this report.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All relevant departments provided positive comments.

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

10.1 Background

N/A

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

The application can be motivated in terms of the principles in the following manner:

Spatial Justice

The proposal will not perpetuate historic spatial imbalances since the property forms part of an erf as per the approved township establishment of Sandbaai.

Spatial sustainability

The application property is located within the urban edge and will therefore not lead to urban sprawl. No natural habitat is impacted upon, and it will have no negative influence on the environment.

Efficiency

The proposal intends to make optimal use of the property, thereby optimising existing infrastructure resources.

Spatial Resilience

The proposal intends to ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

Good administration

The application process followed the required planning procedures, and a good public participation 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 10.2 above.

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

The application is consistent with the SDF and OMGMS.

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

N/A

10.6 Impact on Municipal engineering services

All services exist. The proposal will not have a significant impact on existing services and is supported by the Engineering Services Department.

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

Not applicable.

10.8 Existing and proposed zoning comparisons and considerations

The proposal is inconsistent with title deed of the property regarding the building line encroachments and land uses, but consistent with the Overstrand Municipal Land Use Scheme, Spatial Development Framework and the Overstrand Municipal Spatial Growth Management Strategy. Application has therefore been made for the removal of title deed restrictions to accommodate the proposed development.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

The successful removal/amendment of the applicable restrictive conditions will permit the existing illegal land uses. There is no financial value to the holder of the rights (municipality).

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

There is no personal benefit for the holder of the rights.

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

The removal of the restrictive conditions will allow the property owner to enjoy the primary land use rights in which the greater Overstrand area is permitted to have. The application is therefore made to bring the current land use restrictions to be in line with the Overstrand Municipal Land Use Scheme. The upgrading of the property will therefore be in accordance with the provisions of the Overstrand Land Use Scheme, thus increasing the property value.

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

The social benefit of the restrictive conditions remaining in place or being amended will only retain the existing character of the area, whilst the removal of the restrictive conditions will enable the legalisation of the existing contraventions on the property.

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

The removal / amendment of the restrictive conditions will not change the zoning status of single residential usage of the property, thus not removing the rights of the property owners.

12. THE DESIRABILITY OF THE PROPOSAL

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

The restrictive conditions contained in Title Deed T70129/2016 to be removed, are addressed individually as follows:

Clause B.(2)(c): *“That no more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon.”*

A second dwelling unit is a primary right on a single residential property in terms of the Overstrand Municipal Land Use Scheme and the removal of the restrictive clause will permit the existing illegal second dwelling unit to align with the land use scheme.

Clause B.(2)(d): *“That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.”*

The property in question is already restricted to a 4m street building line. The removal of the clause will permit the existing building footprint to be retained and aligned with the Overstrand Municipal Land Use Scheme (Scheme). The portion of the existing building that encroach the street title deed building line is the walls of the existing building which protrude only 0.455m over the street title deed building line and not of the Scheme street building line.

In view of the above it is the opinion that the removal of the restrictive conditions B.(2)(c) and B.(2)(d) be considered positively.

DETERMINATION OF AN ADMINISTRATIVE PENALTY

In terms of the By-law the applicant must provide the information as set out in Section 90(3) of the By-Law, which was provided by the applicant in its motivation report.

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

The existing dwelling was erroneously built over the title deed street building line by previous owners of the property. The property was purchased in 2016 and by that time the existing dwelling already exceeded the title deed building lines.

The existing dwelling is 4.26m from the north-western street boundary. The area exceeding the title deed building line is 6.8m² on the ground floor and 6.4m² on the first floor including the stoep.

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

The existing dwelling was constructed over the title deed building line by the previous owners of the property. The existing owners did not make any changes to structures which exceeded title deed building lines. The existing owners have received a notice of non-compliance in 2022 (see Annexure H) for the unauthorised land use (self-catering accommodation of the second dwelling unit).

The existing owners wish to legalise the existing structures and is cooperative in the process to rectify the matter.

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

Since the dwelling was constructed by a previous owner, the applicant kindly requests that the administrative penalty be waived. As a result, a report by a quantity surveyor has not been obtained.

(d) whether the unlawful conduct was stopped

Since the part of the structure exceeding title deed building lines are mostly loadbearing walls and columns and is an essential structural element of the dwelling, application is made to legalise the existing dwelling.

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

To the best knowledge of the applicant, the property owners have not previously contravened the By-Law.

Conclusion

The onus is on the current property owners/purchasers to ensure that their property, structures on the property as well as the utilisation of the property is in line with the latest approved building plan, title deed of the property as well as the relevant legislation. Therefore, an administrative penalty be imposed for both the unauthorised utilisation as well as the unauthorised building work.

Note: The building plan dated 12/5/1998 approved the minor encroachment of the south-western 2m lateral building line, therefore, no administrative penalty be imposed for that portion of the property.

The administrative penalty be calculated as follows:

Unauthorised encroachment

Municipal tariff:	R 20 253,00
Encroachment:	6,8m ² + 6,4m ²
Calculation:	13,2m ² x R 20 253,00 = R 267 339,60

Note: Due to the notice of non-compliance being only for the unauthorised land uses, an administrative penalty of 5% is imposed for the unauthorised building work.

Administrative penalty: 5% x R 267 339,60 = R 13 366,98

Unauthorised land use

Land Value:	R951 500,00
Erf Size:	709m ²
Price/m ² :	Land Value ÷ Erf Size = R1 342,03 / m ²
Unauthorised Land Use extent:	108m ²
Contravention Value:	(108m ² x R1 342,03) = R144 939,24

Note: In the event that a property owner receives a notice of non-compliance for unauthorised land uses, an administrative penalty of 10% is impose.

Administrative penalty: (R144 939,24 x 10%) = R14 493.92

Total contravention penalty = building work + land use
= R13 366,98 + R14 493.92
= R 27 860,90

With reference to the above-mentioned, the application is therefore considered desirable from a town planning perspective. Additionally, it is considered that the property owner, **not be exempted**, from the payment of an administrative penalty.

13. RECOMMENDATION

1. that the late objection be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the removal of restrictive title deed condition B.(2)(c) and B.(2)(d), as contained in Title Deed T70129/2016, applicable to Erf 23, Sandbaai, to accommodate a second dwelling unit on the property and to utilize it for self-catering purposes, as well as to accommodate the street building line encroachment, **be approved** in terms of the provision of Section 61 of the By-Law;
3. that the decision in paragraph 2. above be subject to the following conditions:
 - (a) that this approval is to permit the development of self-catering accommodation on Erf 23, Sandbaai subject to the development parameters in terms of Section 16.10.21 of the Overstrand Municipal Land Use Scheme, 2020;
 - (b) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
 - (c) that one (1) standard on-site parking shall be provided for the self-catering unit, which parking bay must be clearly demarcated and provided with a hard surface;
 - (d) that all the conditions in the Services Report (attached as Annexure G) must be complied with;
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with; and
 - (f) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
4. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 23, Sandbaai, for the unauthorised land use and unauthorised building work, **be imposed**, and that an administrative penalty fee of **R27 860-90** be payable within ninety (90) days of this decision; and
5. that the applicant be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditional approvals.

14. REASONS FOR RECOMMENDATION

- ❖ The removal of title deed restrictive conditions will permit the development rights to be aligned with the Overstrand Municipal Land Use Scheme.
- ❖ The addition of a second dwelling (used for self-catering accommodation) will allow the property owner to gain financial benefit from the land use right.
- ❖ The application followed the correct public participation procedure.
- ❖ The objector did not substantiate their reasons for the objection and is therefore considered invalid.
- ❖ A 10% administrative penalty be imposed due to the property owner receiving a notice of non-compliance.
- ❖ A 5% administrative penalty be imposed for the unauthorised building work over the 4,72m street title deed building line.
- ❖ The internal departments did not object to the proposed application.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T70129/2016
Annexure E:	Late objection
Annexure F:	Comment on late objection
Annexure G:	Services Report
Annexure H:	Notice of Non-Compliance

SIGNATURES**AUTHOR**

Name: **B MINNAAR**

SACPLAN Reg No: **C/8630/2021**

Signature: _____

Date: _____

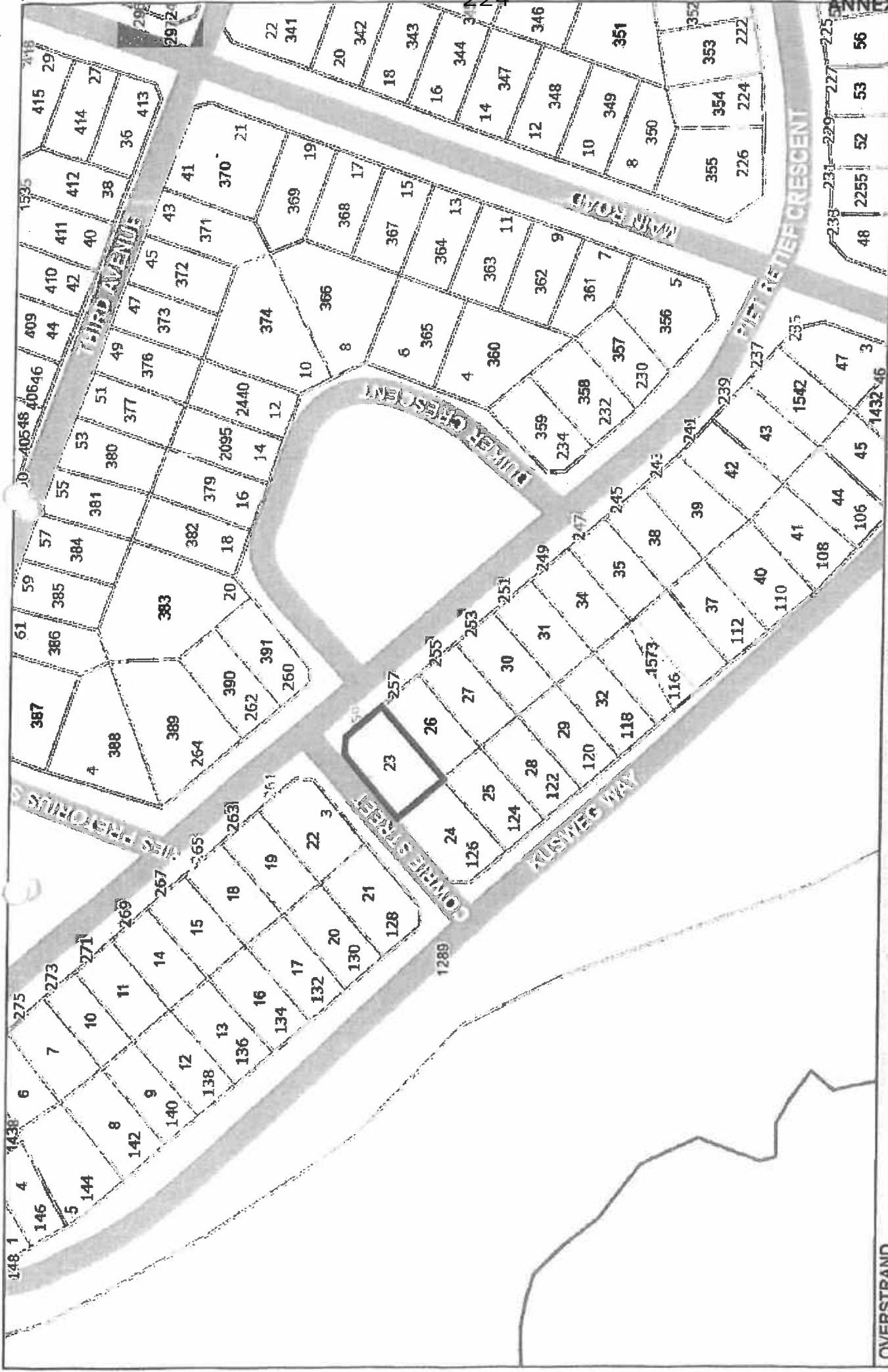
AUTHOR

Name: **H VAN DER STOEP**

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

Signature: _____

Date: _____



Date: 2022/06/28

Locality Map
Erf 23 Sandbaai



Removal of title deed restrictive conditions
for
ERF 23, 4 Cowrie Street, Sandbaai
2022-06-21

Application is hereby made in terms of the Overstrand Municipality Amendment By-Law for:

- Removal of restrictive title deed condition 2(c) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.
- Removal of restrictive title deed condition 2(d) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

Application is hereby made in terms of the Overstrand Municipality Amendment By-Law for:

- Application for an Administrative Penalty in terms of Section 16(2) (q) Overstrand Municipality Amendment By-Law.



**Application is hereby made for the removal of title deed conditions
as well as an
application for the determination of an administrative penalty**

ERF 23, 4 Cowrie Street, Sandbaai

2022-06-21

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Locality map
ERF 23, 4 Cowrie Street, Sandbaai

1. Introduction

1.1 Applicant: Surita Du Toit

1.2 Property Information: ERF 23, 4 Cowrie Street, Sandbaai

1.3 Background: The existing property has title deed restrictions that the owners were unaware of when they purchased the property. The current owners bought the property in 2016 where the existing dwelling on site was not built straight and already exceeds the title deed street building line. The owners wish to remove these conditions together with one dwelling on site. The owners wish to remove the title deed restrictions mentioned below in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

2. Application

2.1 Application: Application to remove title deed restrictions in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

2.2 Application: An application should also be made for determination of an administration penalty

2.3 Title deed: The restrictive title deed conditions in Title deed T 000070129/2016

ERF 23 SANDBAAI,
Located in the Overstrand Municipality
Caledon Division, Province of the Western Cape

Size: 828 (EIGHT HUNDRED TWENTY-EIGHT) Square Meters)

The restrictive title deed conditions in Title deed T 000070129/2016 are:

2 (c) That no more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half the area of any one of the above erven be built upon.

2(d) That no building shall be erected on the above erf or erven within 4,72 metre of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.

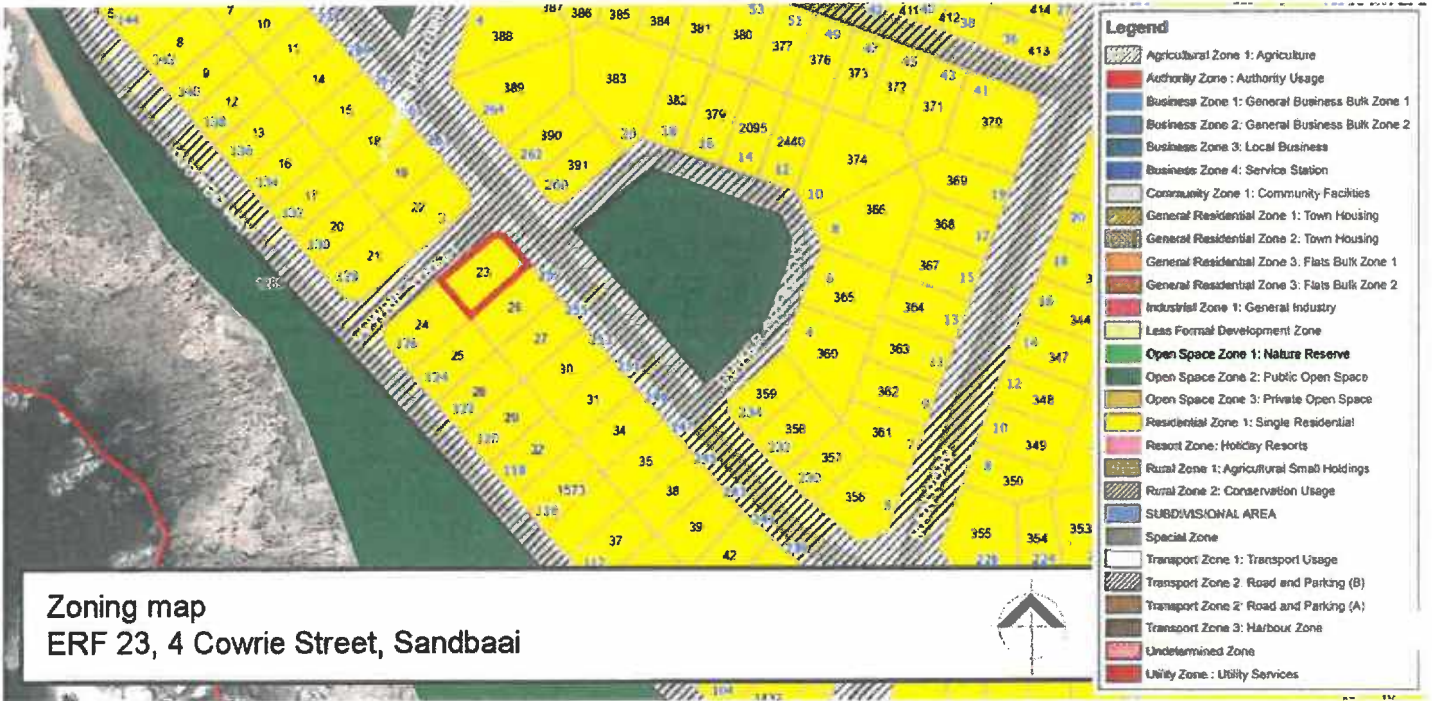
Application is hereby made in terms of the Overstrand Municipality Amendment By-Law for:

- Removal of restrictive title deed condition 2(c) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.
- Removal of restrictive title deed condition 2(d) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

Application is hereby made in terms of the Overstrand Municipality Amendment By-Law for:

- Application for an Administrative Penalty in terms of Section 16(2) (q) Overstrand Municipality Amendment By-Law.

3. Property Information



OVERSTRAND MUNICIPALITY AMENDMENT BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020

	Permissible	Actual	Proposed
Current Zoning	Residential Zone 1: Single Residential	Residential Zone 1: Single Residential	Residential Zone 1: Single Residential With self-accommodation for two dwelling
<p>Objective of Residential Zone 1: Single Residential:</p> <p>The objective of this zone is to provide for residential development where the predominant type of accommodation is a dwelling house for a single family, with each dwelling has its own land unit, and adequate outdoor space. Limited employment and additional accommodation opportunities are possible as primary, secondary or consent uses, provided that the dominant use of the property remains residential, and impacts of such uses do not adversely affect the quality and character of the surrounding residential environment.</p>			
Primary Uses	Crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering	Existing Dwelling House	Dwelling House
Consent Uses	Day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture.	Existing Dwelling House	Second dwelling unit
	That no more than one dwelling per Title deed	One dwelling	The proposal is to remove the title deed restriction regarding the one dwelling for a second dwelling on site with permission granted.
Coverage	50%	40.36%	40.36%
	Not more than one-half the area of any one of the above erven be built upon as per Title deed.	40.36%	The proposal is to remove the title deed restriction regarding the built upon area.
Height	The maximum height of a building measured from the base level to the top of the structure is 8,0m.	Existing roof height 7.93m (Refer to survey)	Existing roof will not change
Street Building line	4m	The existing dwelling is built skew; the dwelling starts at 4.72m and projects till 4.265m. 4.72m Piet Retief Street	The existing dwelling is built skew; the dwelling starts at 4.72m and projects till 4.265m. 4.72m Piet Retief Street
	4.72m Title deed building line	The existing dwelling is built skew; the dwelling starts at 4.72m and exceeds the building 4.265m at Cowrie	The proposal is to remove the title deed restriction regarding the street building line.

		Street. 4.72m Piet Retief Street	
Common Building line	2m	The existing dwelling is built skew; the dwelling starts at 2m and the one parapet wall projects to 1.374m facing Cowrie Street. 2.408m for the common building line facing Piet Retief Street.	No changes to occur to the existing dwelling regarding the common building line with approval.

4. Motivation

The restrictive title deed conditions in Title deed T 000070129/2016 that should be addressed are:

2 (c) That no more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half the area of any one of the above erven be built upon.

2(d) That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.

One of the reasons for the title deed restrictions to be removed is that they are stricter than the Overstrand Municipality Zoning Scheme Regulations for Single Residential Zoning.

Overstrand Municipality allows 4m Street building line compared to the title deed which is 4.72m. The existing dwelling is built skew over this title deed building line.

That is why the owner applies to remove the title deed restriction.

Single Residential also allows a second dwelling unit where the title deed restricts this possibility.

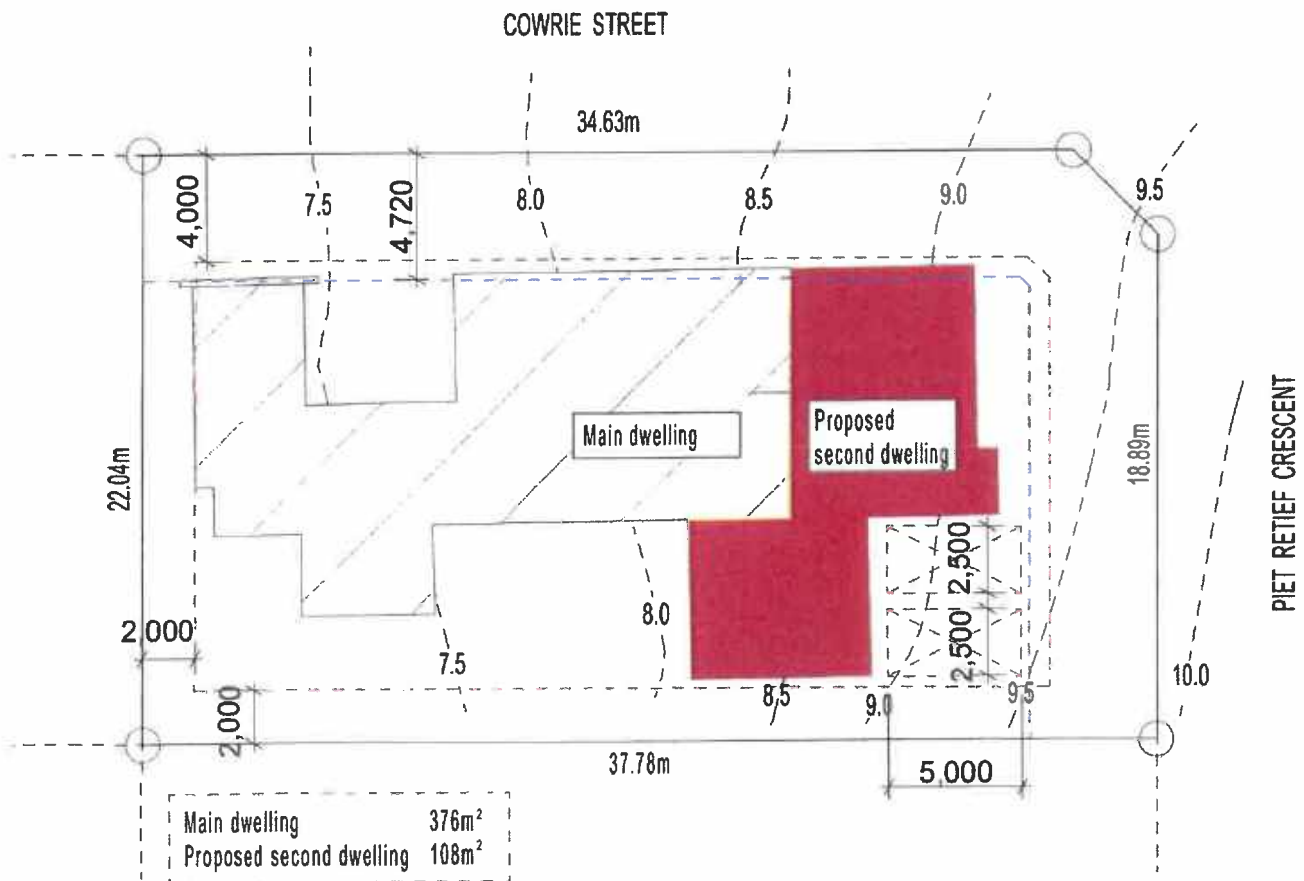
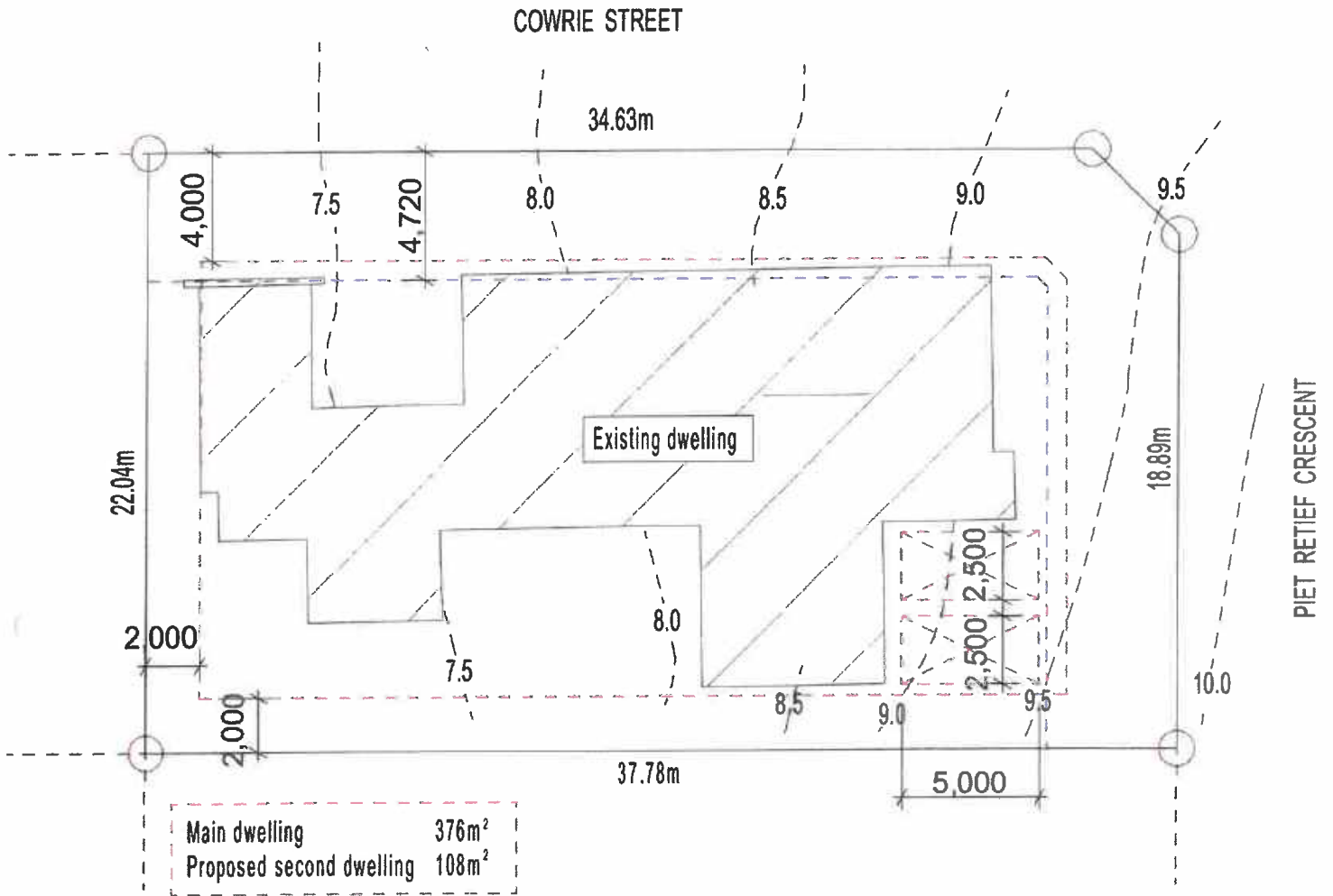
Character of the environment:

The surrounding area is also predominantly residential uses (Single Residential 1). Approval of the conditions being removed the owners will not change the use of the property.

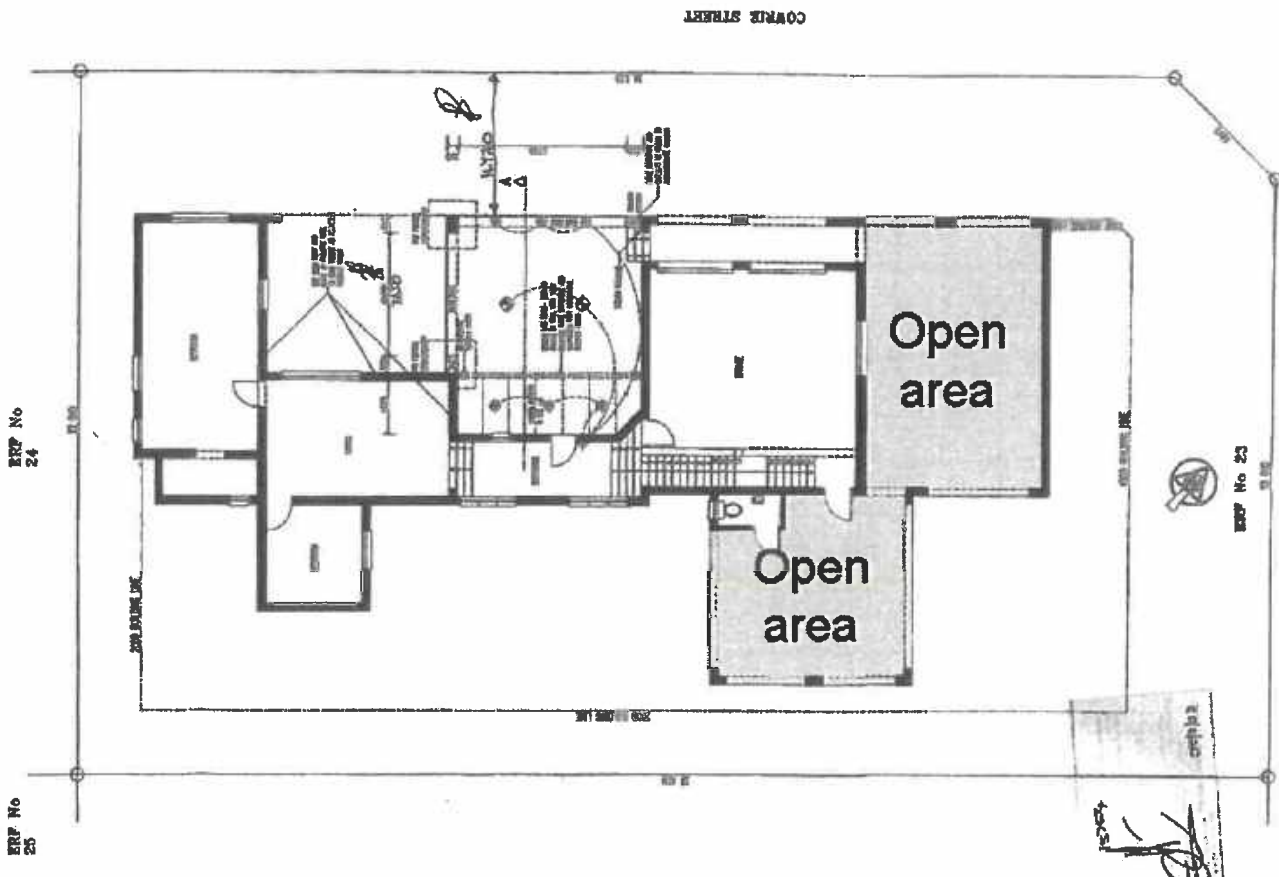
Desirability of the proposal:

The existing dwelling is already built over the street building line. (Refer below)

The owner wishes to rectify this.



The existing layout of the dwelling is perfect to have a second dwelling. This provides the owner the opportunity to have permanent residence on the property while also staying on the property.



The existing house was built on brick columns creating a void next to the existing garage which can be perfect for a second dwelling. The owners have since then filled in the gap and wish to use the new altered space as a second dwelling unit.

This will be beneficial for the area and owner. The owner receives security as someone is always watching their property while another family can be able to live close to the beach in a desirable area for less rent than an entire house. This is perfect for families just starting out or even students wanting some garden space and walks on the beach.

The owner does not wish to add additional structures to the property. The current land use will not change but provide another family the opportunity to live close to the beach at Sandbaai. This will also allow the owner security as someone is always on the property.

Administrative Penalty:

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

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

The existing dwelling was erroneously built over the title deed street building line by previous owners of the property. The property was purchased in 2016 and by that time the existing dwelling already exceeded the title deed building lines.

The existing dwelling is up to 4.26m from the north-western street boundary. The area exceeding the title deed building line is 6.8m² on the ground floor and 6.4m² on the first floor including the stoep.

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

The existing dwelling was constructed over the title deed building line by previous owners of the property. The existing owners did not make any changes to structures which exceeded title deed building lines.

The existing owners wish to legalise the existing structures and is cooperative in the process to rectify the matter.

(c) Report by a quantity surveyor in matters of unauthorised building/construction

Since the dwelling was constructed by a previous owner, we kindly request that the administrative penalty be waived. As a result, a report by a quantity surveyor has not been obtained.

(d) Whether the unlawful conduct was stopped

Since the part of the structure exceeding title deed building lines are mostly loadbearing walls and columns and is an essential structural element of the dwelling, application is made to legalise the existing dwelling.

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

The existing owners have not previously contravened the By-Law. We cannot comment on whether previous owners have previously contravened the By-Law.

Traffic Impact, Parking and Access:

There is sufficient space for parking for the second dwelling. (2.5m x 5m as indicated on the site plan)
Access to the site will not be impacted as there is existing carriage way crossing.

Impact on External engineering services:

The existing area is already developed and approval will not affect the area. The owners are not planning to build any new structures but legalize their existing structures that is built over the building line. No additional services are required for the application.

Heritage Value and Impact:

The existing dwelling is not older than 60 years and not located in a Heritage Protection Overlay Zone. The property has no Heritage value and approval will not impact heritage.

Environmental impact:

The proposal does not trigger any activities listed in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

Overstrand Municipal Spatial Development Framework (2020)

The owners will remain residential zoning with approval.

Spatial Justice:

The application will not perpetuate special injustices.

Spatial Sustainability:

The application is located within the urban edge and will thus not lead to urban sprawl. No Natural habitat is impacted upon and it will have no negative influence on the environment.

Spatial Resilience:

Second dwelling unit will ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

Efficiency:

The application will optimize the use of the property in terms of municipal services and infrastructure.

Good administration:

The application will follow the required planning procedures and a good public participation process will be followed.

Possible results of the development:

The proposed application will be advertised and provide anyone the opportunity to object. The application is good administration as the public is involved with the decision-making process.

Good Administration:

The application is of good administration to cooperate fully with the Overstrand Municipality through the entire land use planning process in a time efficient manner. The land use application will follow all steps set out in the Overstrand Municipality's Amendment By-law 2020.

Conclusion:

The application is regarded desirable within the Sandbaai surrounding area and land use set out in the Overstrand Municipality's Amendment By-law 2020.

Application is hereby made in terms of the Overstrand Municipality Amendment By-Law for:

Removal of restrictive title deed condition 2(c) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

Removal of restrictive title deed condition 2(d) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

The following points should be considered:

Removing the title deed restrictive conditions will not change the use of the property.

The property follows all the rules and regulations set out in the Overstrand Municipality's Amendment By-law 2020 and approval will not affect this.

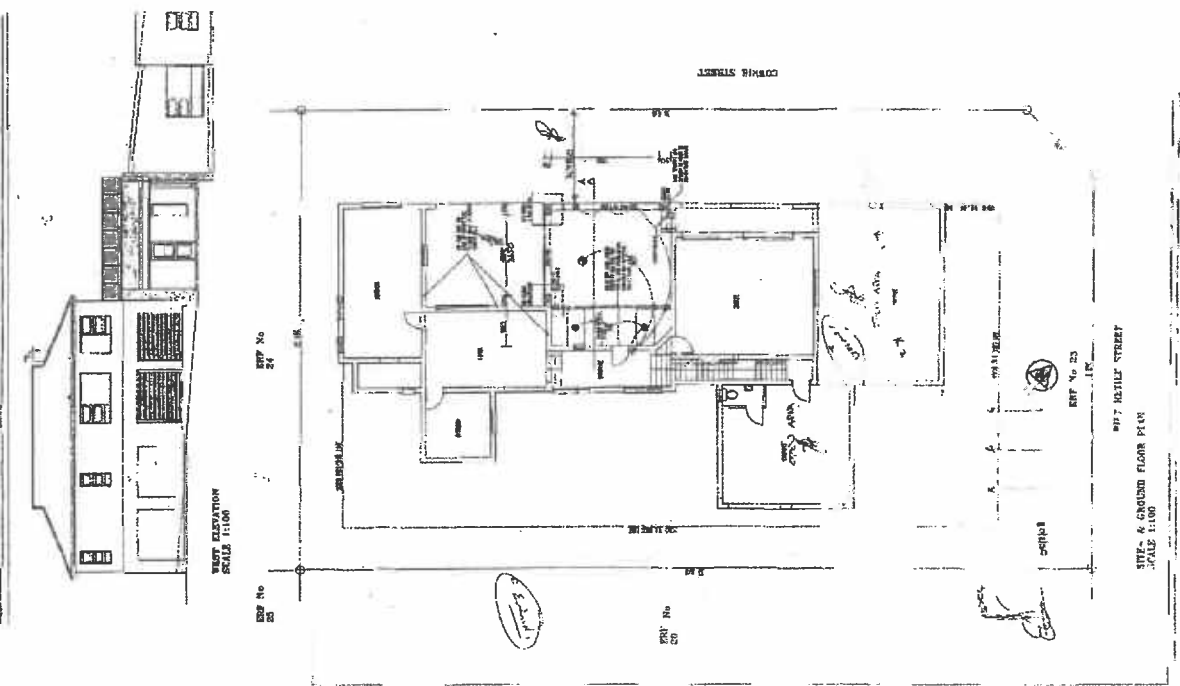
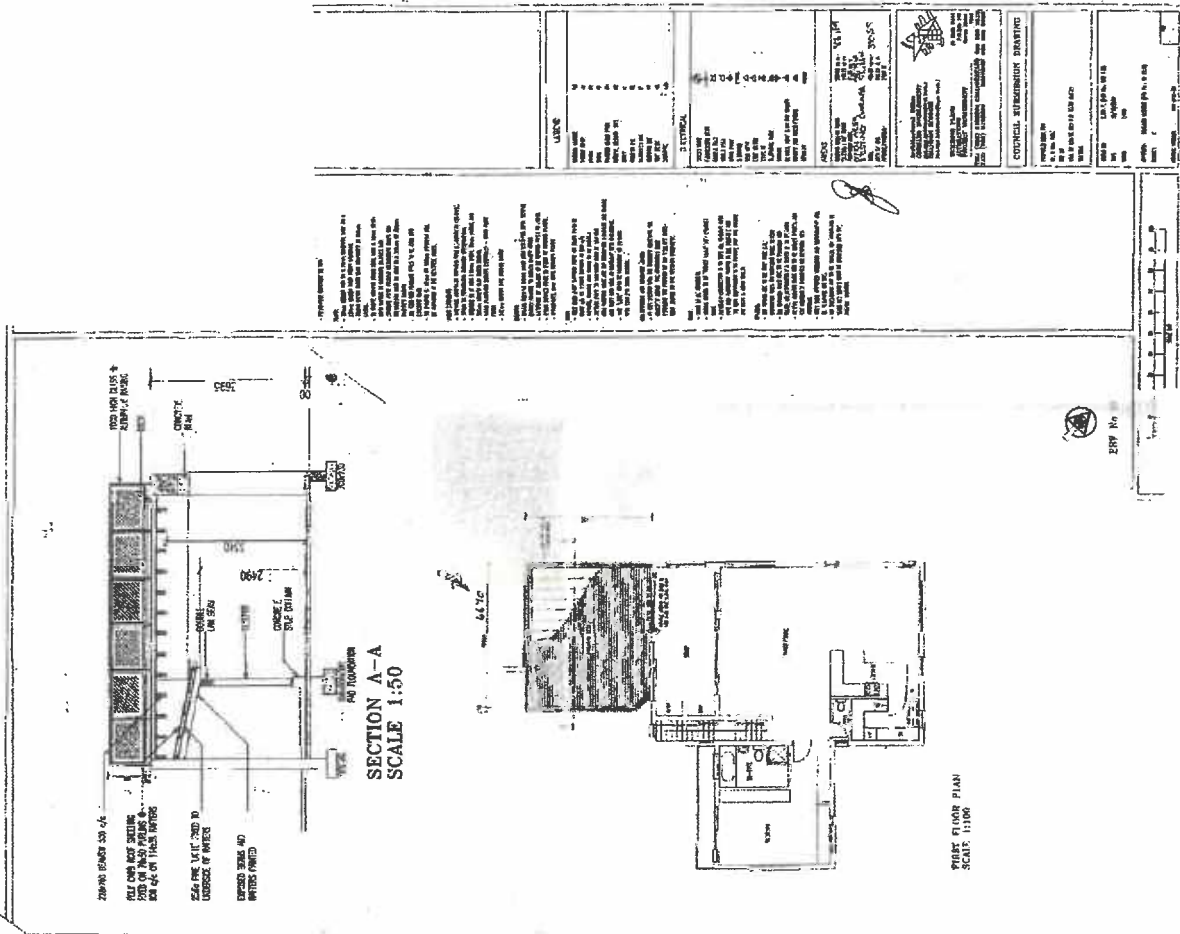
The application follows the Spatial Planning Land Use Management Act 2013 (SPLUMA) and the Land Use Planning Act 2014 (LUPA).

The existing property is already built over the restrictive building lines.

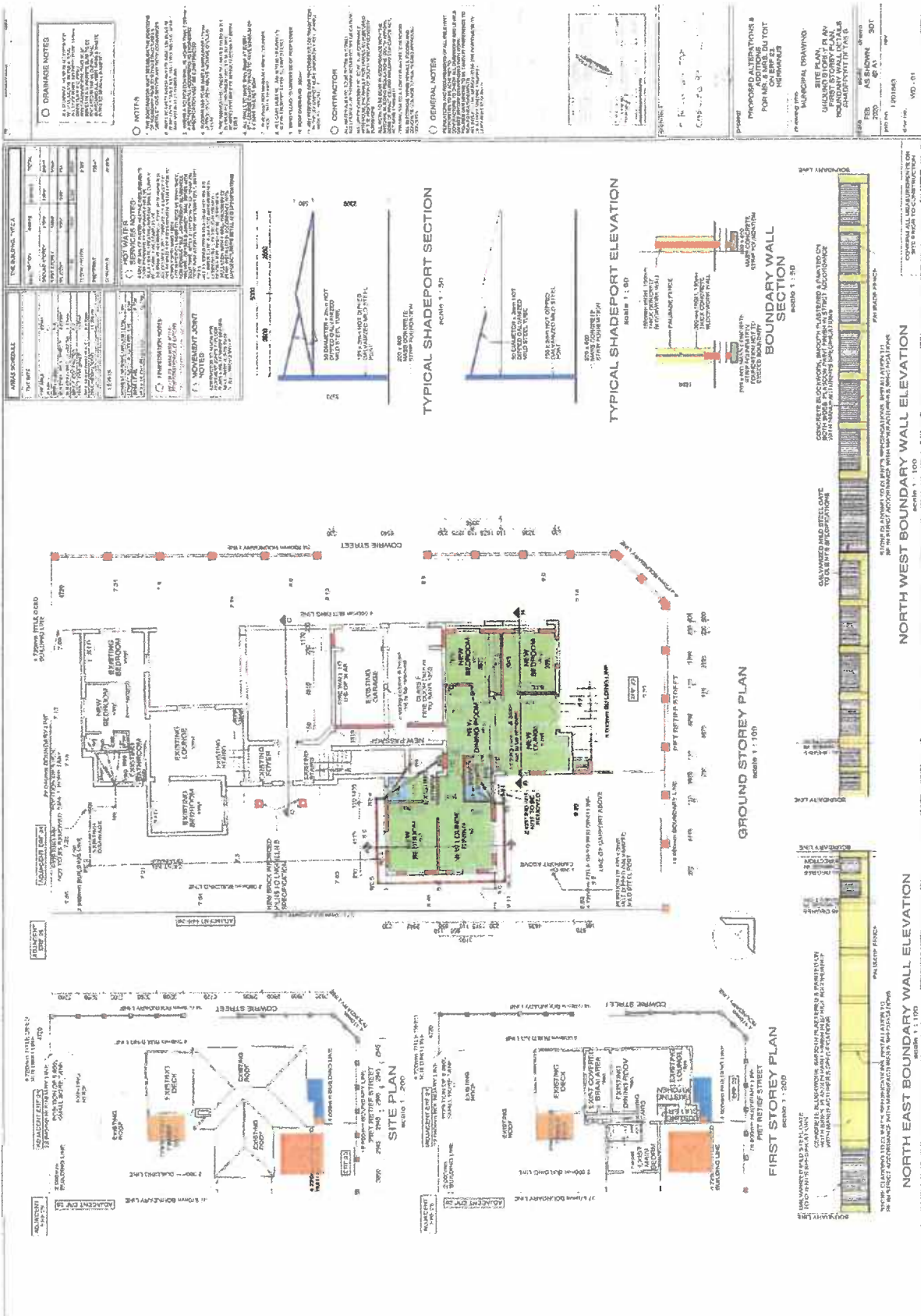
Approval will have no negative impact on the environmental/ heritage/ access or existing services.

Removing the restrictive conditions will provide another family the opportunity to live on the property. This will be beneficial for the area and owner. The owner receives security as someone is always watching their property while another family can be able to live close to the beach in a desirable area for less rent than an entire house. This is perfect for families just starting out or even students wanting some garden space and walks on the beach.

Annexure A:
Previous approved plans 2008



Annexure B: Previous approved plans 2020



DRAINAGE NOTES

- ALL DRAINAGE TO BE IN ACCORDANCE WITH THE NATIONAL STANDARD FOR DRAINAGE SYSTEMS (SANS 1040).
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NOTES

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CONTRACTOR

ALL MATERIALS TO BE FITTED IN STREET. ALL WORK TO BE IN ACCORDANCE WITH THE NATIONAL STANDARD FOR BUILDING REGULATIONS (SANS 1040).

GENERAL NOTES

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PROPOSED ALTERATIONS & FOR MR. & MRS. DU TOIT ON ERF 21, HERMANUS

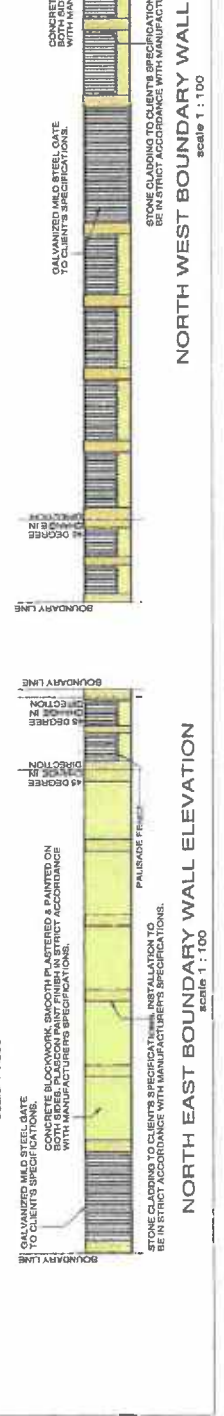
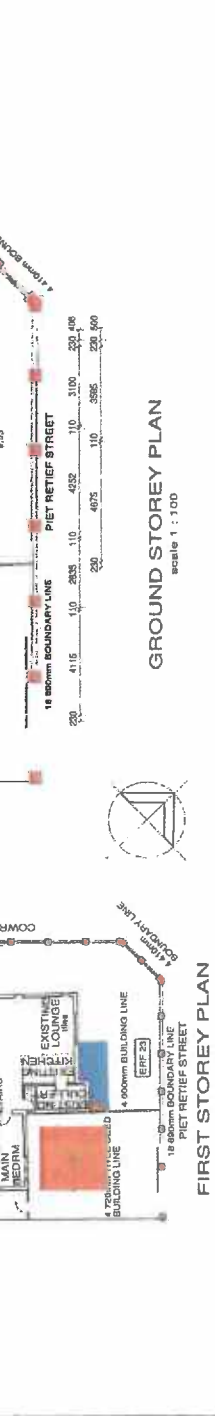
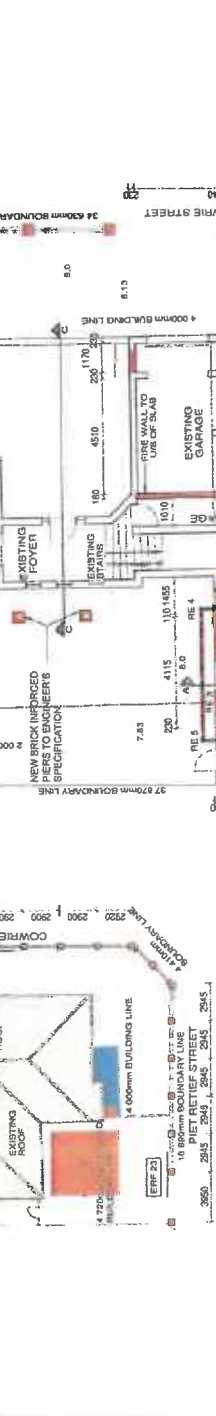
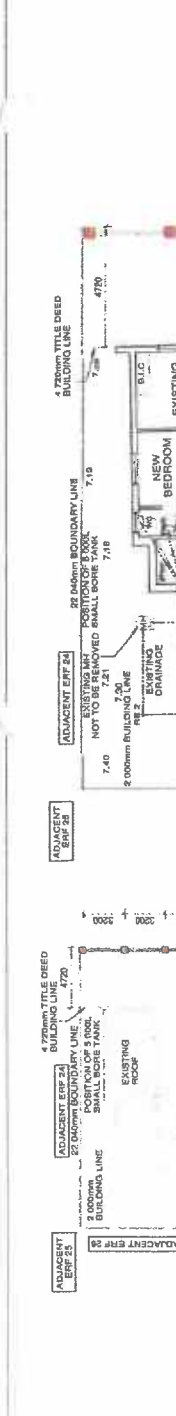
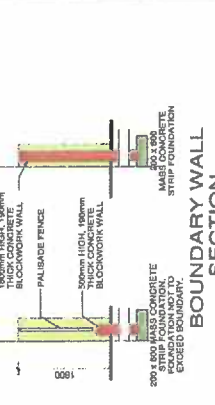
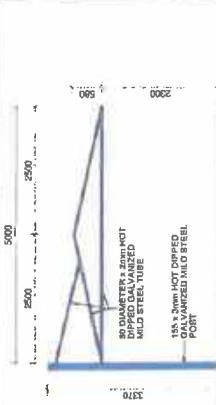
DATE: 2020
DRAWN BY: [Signature]
JOB NO.: L201843
DWG NO.: WD-01

AREAS SCHEDULE

AREA	DESCRIPTION	AREA (m²)	TOTAL
1	Garage	100	100
2	Living Room	150	250
3	Dining Room	100	350
4	Kitchen	80	430
5	Bedroom	120	550
6	Bathroom	60	610
7	Staircase	40	650
8	Porch	20	670
9	Deck	10	680
10	Roof	10	690
11	Walls	10	700
12	Windows	10	710
13	Doors	10	720
14	Paint	10	730
15	Plaster	10	740
16	Roofing	10	750
17	Electrical	10	760
18	Plumbing	10	770
19	Masonry	10	780
20	Structural	10	790
21	Other	10	800

HOY-WATER SERVICES NOTES:

- ALL HOY-WATER SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE NATIONAL STANDARD FOR HOY-WATER SERVICES (SANS 1040).
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CONFIRM ALL MEASUREMENTS ON SITE PRIOR TO CONSTRUCTION

- NOTES**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.
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 14. ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

CONTRACTOR

ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

GENERAL NOTES

ALL WORK SHALL BE IN ACCORDANCE WITH THE NATIONAL BUILDING REGULATIONS AND ALL APPLICABLE STANDARDS.

PROPOSED ALTERATIONS & ADDITIONS FOR SUBMITTAL TO CITY ENGINEER HERMANUS

MUNICIPAL DRAWING: ELEVATIONS, DRAINAGE SECTION, SECTIONS

Project: [Handwritten Name]

Scale: AS SHOWN @ A1

Date: FEB 2020

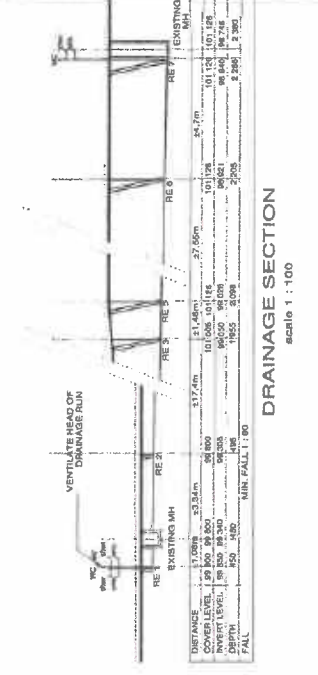
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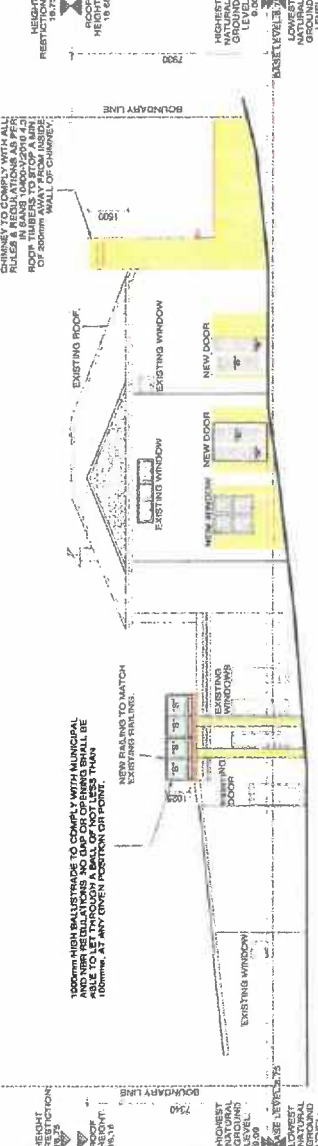
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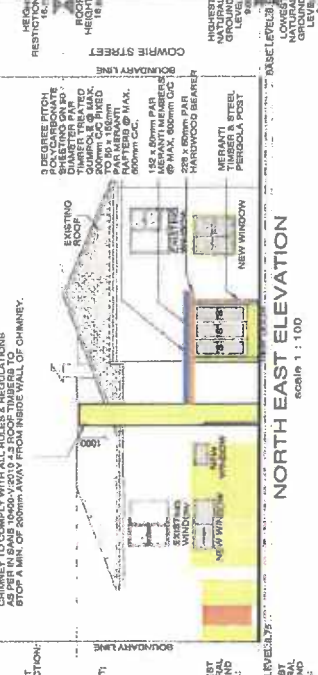
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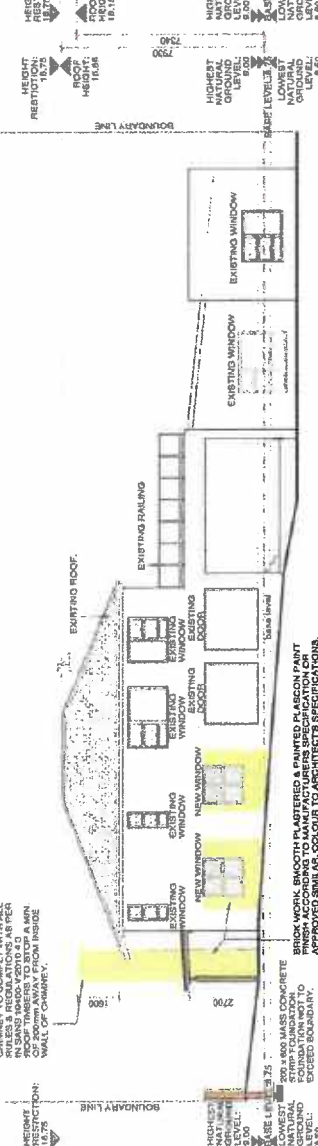
DRAINAGE SECTION
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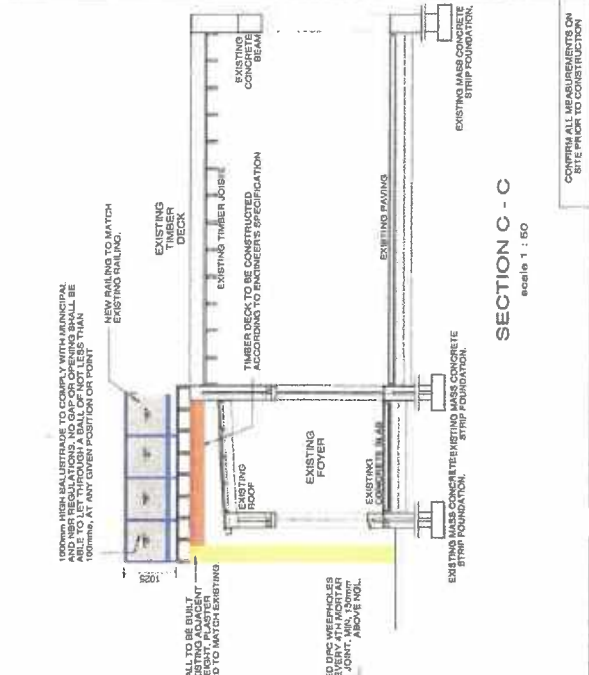
SOUTH EAST ELEVATION
scale 1 : 100



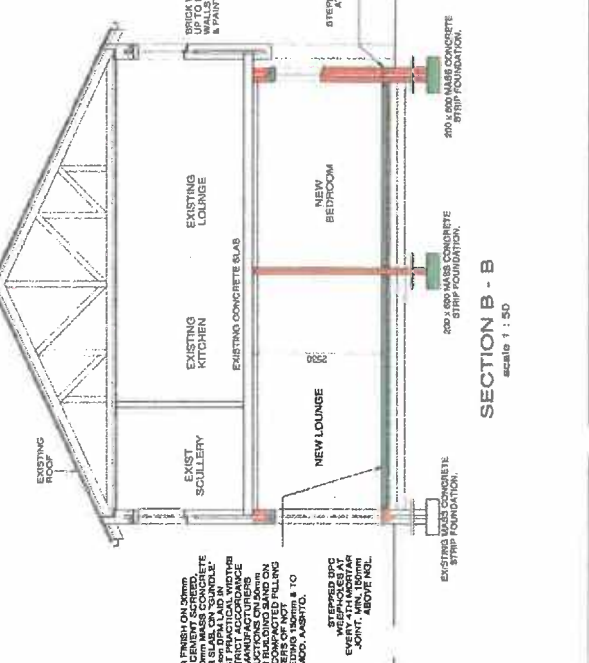
NORTH EAST ELEVATION
scale 1 : 100



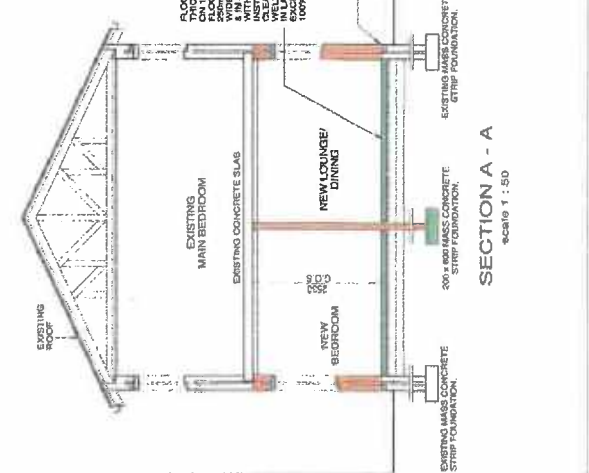
NORTH WEST ELEVATION
scale 1 : 100



SECTION A - A
scale 1 : 50



SECTION B - B
scale 1 : 50



SECTION C - C
scale 1 : 50

CONFORM ALL REQUIREMENTS ON SITE PRIOR TO CONSTRUCTION

236

Opgestel deur my,

2ste	1200,00
3de	1200,00
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5de	
6de	
7de	
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9de	
10de	

Christian Ludolph Nelson Fick
 Aktebesorger
 Christiaan Ludolph Nelson Fick

VERAND

VA
 FUI N 1500 00,00
 000030749 / 2016

B 000000507 / 2016

16 NOV 2016

Christian Ludolph Nelson Fick

T 000070129 / 2016

AKTE VAN TRANSPORT

DATA / VERIFY
 15 DEC 2016
 MURIEL LORRAINE

HIERMEE WORD BEKEND GEMAAK

DAT CHRISTIAAN LUDOLPH NELSON FICK

voor my die REGISTRATEUR VAN AKTES verskyn het te KAAPSTAD, die genoemde
 Komparant synde behoorlik daartoe gemagtig deur 'n Volmag aan hom/haar verleen
 deur

THEODORE THEUNIS PAGE
 Identiteitsnommer 420803 5052 08 8
 Wewenaar

Gedateer 15 September 2016
 en geteken te Worcester

DATA / CAPTURE
 2016 -12- 01
PUMELELA MNAMATA

1

Wilna Roux Prokureurs

EN genoemde Komparant het verklaar dat die gesegde **THEODORE THEUNIS PAGE** die ondergemelde eiendom op **16 Julie 2016** waarlik en wettiglik verkoop het en dat hy/sy in sy/haar voornoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van:

**DIE TRUSTEES INDERTYD VAN
DIE DU TOIT FAMILIETRUST**
Registrasienommer IT 4080/1997

hulle opvolgers in amp of regsverkrygendes in volkome en vrye eiendom:

Erf 23 SANDBAAL,
Geleë in die Overstrand Munisipaliteit,
Afdeling Caledon, Provinsie Wes-Kaap

GROOT: 828 (AGT HONDERD AGT EN TWINTIG) Vierkante Meter

AANVANKLIK oorgedra kragtens Transportakte Nr T15382/1945 met Kaart Nr 4409/1945 wat daarop betrekking het en nou gehou kragtens Transportakte Nr T 6656/1993.

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr T 5209/1915; en synde grond oorspronklik uitgereik kragtens 'n Grondbrief gedateer 15 Mei 1934 (Swellendam Erfpagte Boekdeel 2(1)Folio 1).

Nie onderhewig aan voorwaarde A op bladsy 2 van Transportakte Nr T 6656/1993 insover dit betrekking het op mineraleregte, welke mineraleregte voorbehou is kragtens Artikel 53 van die "Mining Titles Registration Amendment Act", Wet 24 van 2003.

B. ONDERHEWIG aan die volgende spesiale voorwaardes genoem in Transportakte Nr T15382/1945, naamlik:-

1. Opgelê vir die voordeel van Sandbaai Seaside Estate Company (Proprietary) Limited, as eienaar van die restant van Perseel Nr.3 van die Plaas Onrust River gehou kragtens Transportakte Nr T 11466/1929 en die eienaars van persele in die genoemde dorp wat alreeds oorgedra is of in die toekoms oorgedra mag word kragtens dieselfde voorwaardes, naamlik:-

(a) Die Maatskappy behou vir homself en sy opvolgers in regte die alleenreg tot alle Hotelle en Dranklisensies, en die Transportnemers/s of sy/hulle opvolgers in regte sal die reg nie hê om enige Hotel op te rig of om enige dranklisensie te besit, sonder om eers die skriftelike toestemming van die Direkteure van die Maatskappy of sy Opvolgers in regte, te verkry.

(b) Die Maatskappy en sy opvolgers sal nie geregtig wees om die grond liggende tussen die erwe as seefronterwe en die see, in erwe te verdeel en/of te verkoop nie.

(c) Dat geen gebou opgerig word op die hierbo beskrywe eiendom voordat die planne van sulke geboue nie voorgelê is aan en goedgekeur is deur die Direkteure van die gesegde Maatskappy of sy Opvolgers in regte.

- (d) Die Transportnemer/s of sy/hulle opvolgers in regte van die hierbokeskrywe eiendom sal die reg hê om enige stroom water wat oor die eiendom loop, af te keer langs enige van die lane of strate soos aangewys op die algemene plan van die dorp.
- (e) Die Maatskappy behou vir homself en sy opvolgers in regte die vrye en onbelemmerde oorgang van elektriese, telegraaf- en telefoonlyn, te enige tyd hierna oor en op enige gedeelte van die hierbokeskrywe eiendom, met die verdere reg om hulle aan enige gebou van watter aard ook te laat vassit, nie minder dan 3,15 meter van die grond af, met reg van toegang tot sulke lyn vir die doel om hulle te verwyder of in orde te hou.
- (f) Die Maatskappy behou die reg vir homself en sy opvolgers in regte, om te enige tyd hierna pype te lê en in orde te hou onder enige gedeelte van hierbo beskrywe grond of op enige ander plek, en ten alle tye reg van toegang te hê na sulke pype, vir verwydering, in orde hou of uitbreiding daarvan of vir enige ander doel en om alles te laat doen as nodig mag blyk vir die gerief van die inwoners van die Dorpsgebied in verband met die verskaffing van water aan hulle.
- (g)
- (h) Die Maatskappy behou vir homself die alleenreg tot alle water wat ontstaan of vloei oor die eiendom van die Maatskappy. Daar sal egter van hierdie voorbehou uitgesluit word enige water verkry deur 'n eienaar van die hierbokeskrywe grond deur middel van putte of boorgate op sulke grond gegrawe of geboor.

2. Opgelê deur die Administrateur toe hy die stigting van die genoemde Dorp goedgekeur het, naamlik:-

- (a) That the above erf or erven be used for residential purposes only.
- (b) That the above erf or erven be not subdivided.
- (c) That no more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half the area of any one of the above erven be built upon.
- (d) That no building shall be erected on the above erf or erven within 4,72 metre of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.

WESHALWE die Komparant afstand doen van al die regte, titel en belang wat die gesegde **THEODORE THEUNIS PAGE** voorheen op genoemde eiendom gehad het en gevolglik ook erken dat hy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie, en dat, kragtens hierdie akte, bogenoemde **DIE DU TOIT FAMILIETRUST, REGISTRASIENOMMER IT 4080/1997** hulle opvolgers in amp of regsverkrygendes tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en erken hy ten slotte dat die koopprys van die eiendom wat hiermee getranspoteer word die bedrag van **R2 800 000.00 (TWEË MILJOEN AGT HONDERD DUISEND RAND)** is. 1A

TEN BEWYSE WAARVAN EK, die genoemde Registrateur van Aktes, tesame met die Komparant hierdie Akte onderteken en dit met die Ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op *16 November 2016*



 q.q. Handtekening van komparant

In my teenwoordigheid



 Registrateur van Aktes

TP - A Theart
(Holivier)



Alida Conradie

From: Niel Dreyer <niel@dreyer@mweb.co.za>
Sent: Monday, 17 April 2023 14:57
To: Brady Minnaar
Cc: Alida Conradie
Subject: Re Notification received regarding an application for removal of restrictive title deed and determination of admin penalty: on behalf of Die Du Toit Familie Trust.

I refer to a telephone conversation with Mr H Boshoff of earlier today - in the above regard. Mr Boshoff has in turn referred me to yourselves.

I collected the registered letter from Milnerton post office this morning - after having received notification of a registered letter over the weekend.

From Mr Boshoff's explanation, I gather that the owners of erf 23, Sandbaai, street address 4 Cowrie Street Sandbaai; have lodged the application to remove the restrictive building regulations in order that they may use the illegal building as a self catering accommodation.

I am the owner of erf 26 or 257 Piet Retief Crescent, Sandbaai. My house is directly adjacent to the above property. Over the last 6 years we have had numerous occasions where weekend patrons in no 4 Cowrie have misbehaved and created unacceptable noise disturbances. This has led to a tenant of mine (who was in fact interested in buying my house) breaking lease and moving as a result of the noise. My tenant had made direct contact with the owner and requested several times for the owner not to exceed the number of guests that may be accommodated in the property; and complained to him about the noise.

I have also made telephonic contact with the owner and lodged a complaint about excessive and after hours noise.

1. I would therefore firstly like to lodge an application for condonation of having exceeded the deadline by which any comment can be made on their application. The fact that the Post Office could not notify me in time to be able to comment before the deadline, should not preclude me from making representations in this regard.
2. I formally object to any waiver of restrictive conditions and more so, against allowing the owner of erf 23, being allowed to utilise it for self catering accommodation purposes.
3. I furthermore request that the owner of said property be limited to the maximum number of people that may occupy the premises.

I trust that my representations will be heard and taken into account in the resolution of this matter.

Yours sincerely

Mr DF Dreyer

17 APR 2023

TP

FILE NO.	Erf 23- HSB
SCAN NO.	HSB 23
COLLABORATOR NO.	1846627



InterActive Town & Regional Planning

PO Box 980
Overstrand
7200

Reference: Sandbaai 23

Date: 12 May 2023



TP - A Theart
(Hollivier)

Attention Me Alida Conradie, Administrator,
Town & Spatial Planning Department
Overstrand Municipality
16 Paterson Street,
Hermanus,
7200
P O Box 20

ERF 23 SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING

With reference to your request dated 24 April 2023 please find our response to the objections for the application for the removal of restrictive title deed condition, building line departure and the determination of an administrative penalty hereby attached.

Kind Regards

Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)

FILE NO. <i>Erf 23 - HSB</i>
SCAN NO.
COLLABORATOR NO. <i>1860152</i>

1. Introduction

a. Background

An application was submitted on 27 June 2022 for an application for the removal of restrictive title deed conditions and the determination of an administrative penalty.

One objection was received.

b. Application objective

The objective of the application is to legalise the existing building which was not built correctly as laid out on the building plans and also to allow for a second dwelling.

c. Objections

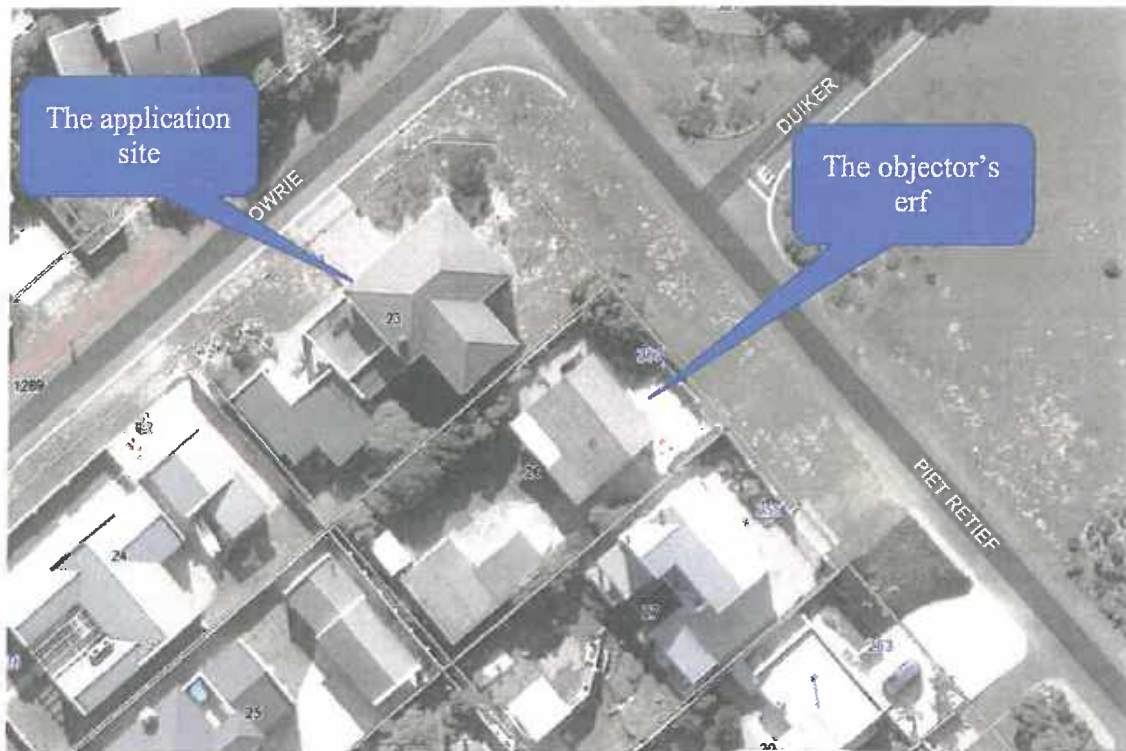
One objection was received dated 17 April 2023 from Mr. DF Dreyer the adjacent owner. The closing date for objections was 31 March 2023, thus this objection was received 17 days late by the Overstrand Municipality.

The objections read as follows:

1. I would therefore firstly like to lodge an application of having exceeded the deadline by which any comment can be made on their application. The fact that the Post Office could not notify me in time to be able to comment before the deadline, should not preclude me from making representations in this regard.
2. I formally object to any waiver of restrictive conditions and more so, against allowing the owner of erf 23, being allowed to utilise it for self-catering accommodation purposes.
3. I furthermore request that the owner of said property be limited to the maximum number of people that may occupy the premises.

i. Background to the objectors

The objector as mentioned here-above is an adjacent owner as reflected in the sketch here-below:



d. Methodology

The response to the objections are dealt with by analysing and interpreting the points of objections to which each of the analysed points are responded to.

2. Response to the objections:

- a. **Objection point 1** reads "I would therefore firstly like to lodge an application of having exceeded the deadline by which any comment can be made on their application. The fact that the Post Office could not notify me in time to be able to comment before the deadline, should not preclude me from making representations in this regard."

The response:

It is understood that the objector applies for an extension to provide comments to the application:

The legal requirements in terms of the Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) was followed by the applicant and no provision is made for any extension.

It should also be acknowledged that a site notice was displayed during the full public participation period on the front fence of the premises and notice of the application was placed in the local newspaper.

Therefore this request is not justified and cannot be accommodated and should subsequently be omitted.

Subsequently, the objection made by Mr DF Dreyer is also invalid and should be ignored.

- b. Objection point 2 reads "I formally object to any waiver of restrictive conditions and more so, against allowing the owner of erf 23, being allowed to utilise it for self-catering accommodation purposes."

As mentioned here-above, this point of objection cannot be considered as the objection was submitted late.

However, the objective of the applicant is specific to use the property partly for self-catering purposes, which is subjected to the following criteria in terms of the Chapter 6 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) being a primary land-use of the property's current zoning "Residential Zone 1: Single Residential (SR1)" and read with Section 16.10.21 which reads as follows:

Self-catering accommodation

16.10.21 The following provisions shall apply where a portion of the property is used for the purposes of self-catering accommodation:

- a) It shall be utilised for single family occupation;
- b) Self-catering shall be restricted to either the main dwelling or the second dwelling unit, if a second dwelling unit exists on the property (but not both);
- c) Self-catering will not be permitted if there is a home occupation or guest rooms;
- d) No activities constituting a source of nuisance shall be carried out, and
- e) The Municipality may impose additional conditions in order to minimise any potential public nuisance.

Self-catering is defined as follows in terms of Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law)

"self-catering accommodation" means sole occupancy unit(s) for transient guests, consisting of one or more rooms and self-contained public areas, e.g. kitchen, dining area and lounge;

Furthermore, the provision of self-catering and or second dwellings contributes to the densification of residential areas, which within an overarching perspective is a provincial as well as a local government objective. The application is thus consistent with this objective of the application.

- c. Objection 3 reads "I furthermore request that the owner of said property be limited to the maximum number of people that may occupy the premises."

The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) prescribes the occupancy of a dwelling house in terms of the definitions of the applicable uses permitted as primary rights to the property being "Residential Zone 1: Single Residential (SR1)" which allows for the following uses and the occupancy as summarized in the following table:

Land-Use	Occupancy
Crèche	No more than 5 children at any time
Dwelling House	A single family
Guest Rooms	Maximum of 2 bedrooms (5 persons) per property for paying transient guest of lodgers
Home Occupancy	No more than 3 persons in total
Second Dwelling	A single family
Self-Catering	A single family

The applicant is committed to use the proposed second dwelling 100% in compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), hence the reason for the application.

Subsequently, even though the objection is not a legal objection, given being submitted outside the comment period, the applicant will comply with the objector's requirement.

3. Conclusion:

The objection received is not valid given that it was submitted outside the comment period.

However, in summary the objector is concerned about nuisance from occupants / holiday-makers from the property.

The objective of the application is inter alia via the application of the removal of the restrictive title conditions, to make provision for a second dwelling to accommodate a family, leasing the second dwelling portion of the dwelling house in accordance with the requirements of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law).

In the light of the above it is requested that this application for the following be approved:

Removal of restrictive title deed condition 2(c) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

Removal of restrictive title deed condition 2(d) from Title deed T 000070129/2016 in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality Amendment By-Law.

to legalise the existing building which was erroneously built over the title deed building lines as well as allowing the primary uses of a Residential Zone 1: Single Residential (SR1)" property with specific reference to a second dwelling to accommodate a self-catering unit.

Kind Regards



Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)
Tel: 082 466-0490

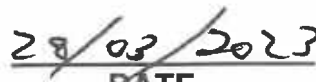
**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS &
DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF 23, SANDBAAI
(4187/2022)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through Erf 23, Sandbaai, unobstructed;
7. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN PLANNING

ENQUIRIES | NAVRAE: N Gerber
FILE REFERENCE | LEËRVERWYSING: 23 HSB
DATE | DATUM: 9 June 2022



Attention: Die Du Toit Familietrust
259 Piet Retief Crescent
SANDBAAI
7200

REGISTERED MAIL

Dear Sir / Madam

NOTICE OF NON-COMPLIANCE

UNAUTHORISED LAND USE: ERF 23 SANDBAAI, 4 COWRIE STREET, SANDBAAI

1. My e-mail correspondence dated 23 March 2022 refers.
2. The Municipality has reason to suspect that you are **transgressing Section 84(1)(a) and (c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 (By-Law)** as follows: (a) Utilises land in a manner other than prescribed by a land use scheme; (c) Utilises land in a manner other than prescribed by a land use scheme.
3. In terms of transgressions of Section 84(1), as stipulated in the By-Law, you are guilty of an offence and **liable upon conviction to a fine or imprisonment** not exceeding a period of 20 years or to both a fine and such imprisonment.
4. The subject property is zoned **Residential Zone 1: Single Residential (SR1)**. In terms of the zoning, self-catering accommodation is permitted as a primary land use right, **subject to certain conditions as per Section 16.10.21 of the Overstrand Municipality Land Use Scheme 2020 (Scheme)**, read together with the definitions of 'self-catering accommodation' and 'single family'. The title deed of your property only permits one dwelling (and to be used as such). As per advertisements it seems that a separate unit has been created for accommodation purposes. Also, building plan approval on the property contained a condition that the building may only be used as a single dwelling by a single family. Additionally, complaints have been received that the use of the property is a source of nuisance.

5. As per Section 16.10.21 of the Scheme, the following provisions apply where a portion of the property is used for the purposes of self-catering accommodation:
 - a) It shall be utilised for **single family** occupation.
 - b) Self-catering shall be restricted to either the main dwelling or the second dwelling unit, if a second dwelling unit exists on the property (but not both).
 - c) Self-catering will not be permitted if there is a home occupation or guest rooms.
 - d) No activities constituting a **source of nuisance** shall be carried out.
 - e) The Municipality may impose additional conditions in order to minimise any potential public nuisance.

6. "Self-catering accommodation" is defined in terms of the Scheme as: sole occupancy unit(s) for transient guests, consisting of one or more rooms and self-contained public areas, e.g. kitchen, dining area and lounge.

7. "Single family" is defined in terms of the Scheme as:
 - a) one person maintaining an independent household; or
 - b) two or more persons related by blood, marriage or civil union maintaining a common household;
or
 - c) not more than five unrelated persons without dependants maintaining a common household; but does not exclude up to six foster children, or dependants under legal guardianship as part of a household.

8. Non-compliance with any of the conditions relating to self-catering accommodation as per paragraphs 5 – 7 above, or the title deed conditions, renders the self-catering accommodation land use unlawful and in contravention of the Scheme.

9. You are hereby requested in terms of Section 85 of the By-Law, to ensure compliance with the conditions related to self-catering accommodation and rectify any contraventions. **Within seven days of this notice**, please provide me with an affidavit confirming that the conditions and definitions as per the Scheme and the title deed will be adhered to in execution of self-catering accommodation.

10. Please note that failure to comply with the above requests will result in further action, legal or otherwise, being taken against you in terms of Section 88 of the By-Law.

11. In terms of **Section 88 of the By-Law**, *if a person fails to comply with a compliance notice the Municipality may— (a) lay a **criminal charge** against the person; (b) apply to a Court of competent jurisdiction for an order restraining that person from continuing the illegal activity, and/or to demolish, remove or alter any building, structure or work illegally erected or constructed and/or to rehabilitate the land concerned without the payment of compensation or to rehabilitate the land concerned; or, (c)*

in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and take any of the other steps contemplated in Section 85.

12. Please ensure compliance with the National Building Regulations and Standards, the approved building plans, as well as the conditions contained in the title deed of your property.
13. The matter will be monitored to ensure that the required steps as requested have been taken.

Yours faithfully

PP 

S MULLER
DIRECTOR: INFRASTRUCTURE & PLANNING