

## 4.8

**ERF 1169, 5 DIRKIE UYS STREET, SANDBAAI, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF AC PENTREATH**

1169 HSB (4514/2023)

B Minnaar

(028) 313 8900

Hermanus Administration

04 September 2024

## 1. EXECUTIVE SUMMARY

An application has been received 03 November 2023 from Messrs PlanActive Town- and Regional Planners on behalf of AC Pentreath in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 1169, Sandbaai for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16(2)(f) of the By-Law, namely condition C.(a) and (c) as contained in Title Deed T29623/2023, to accommodate a second dwelling on the subject property;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to relax the north-western lateral building line from 2m to 1.347m to accommodate the existing cottage; and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to legalize the existing cottage and the associated encroachment of the north-western lateral building line of the property.

The restrictive condition as contained in Title Deed T29623/2023 to be removed, reads as follows:

Clauses C.(a) and (c)

The restrictive title conditions read as follows:

“C. VERDER ONDERHEWIG aan die volgende voorwaardes vervat in gesegde Akte van Transport Nommer T3822/1955 opgelê deur Administrateur wat soos volg lui:

- (a) *That the above erf or erven be used for residential purpose only;*
- (c) *That not 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.”*

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C. Title Deed T29623/2023 is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

### 3. BACKGROUND / SITE HISTORY

The subject property is situated in Sandbaai on Dirkie Uys Street and measures 714m<sup>2</sup> in extent. The property is zoned for Residential Zone 1: Single Residential and was purchased by the current owners in 2023. The property is developed with a double story A-frame dwelling, carport, covered stoep and a detached cottage. The cottage was formerly approved as a garage and workshop and was converted to a cottage by the previous owner.

The formerly approved garage and workshop (current cottage) was approved at 1.5m from the boundary line but was constructed 1.347m from the boundary line and thus triggered the application for departure as well as determination of an administrative penalty to legalize the unauthorized encroachments. An application for the removal of restrictive title deed conditions was also made as the property owners intend to utilize the cottage as a second dwelling for self-catering purposes which is not permitted according to the title deed.

### 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- The garage and workshop were converted to a cottage by the previous property owner.
- The property will not undergo a change in use as it will still be utilised for residential purposes.
- The building line encroachments of the cottage will not have a negative impact on the adjacent landowner or the character of the area.
- Access to the property will remain from Dirkie Uys Street with no new access points proposed.
- Adequate parking can be provided on the subject property for the main dwelling and the second dwelling.
- The property is situated in an area where services already exist and will have a minimal impact on the existing services.
- There is no heritage or environmental aspects that will negatively impact the application.
- The proposal is compatible with the character of the area.
- The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.
- The proposed removal of the restrictive title deed conditions and building line departures will not have a negative impact on the current character and land values of the surrounding erven.
- The proposal is consistent with the spatial planning strategies for the area.

### 5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising                               |     | Date published   | Closing date for comments |
|--|-----|------------------|---------------------------|
| Local Newspaper                                      | Yes | 15 December 2023 | 09 February 2024          |
| Gazette  | Yes | 14 December 2023 | 09 February 2024          |
| Notices ( <i>possibly affected property owners</i> ) | Yes | 11 December 2023 | 09 February 2024          |

|   |                               |                  |                  |
|---|-------------------------------|------------------|------------------|
| Notices ( <i>persons mentioned in title deed</i> )  | Yes                           | 11 December 2023 | 09 February 2024 |
| Internal Departments  | Yes                           | 19 December 2023 | 09 February 2024 |
| Ward councillor   | Yes                           | 19 December 2023 | 09 February 2024 |
| Total comments  | <b>One (1) late objection</b> |                  |                  |
| Total letters of support  | <b>Five (5)</b>               |                  |                  |
| Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?  |                               |                  | <b>Yes</b>       |
| Was the application processed correctly?  |                               |                  | <b>Yes</b>       |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?   |                               |                  | <b>Yes</b>       |
| In case of application for removal, amendment, or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies? |                               |                  | <b>Yes</b>       |

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

| Name                 | Date received | Summary of comments  |
|----------------------|---------------|--|
| OpenServe (Telkom)   | 19/12/2023    | Attached as Annexure G.  |
| Building Department  | 19/12/2023    | No objection. The building plan application must comply with all applicable law including fire safety distances.             |
| Fire Services        | 21/12/2023    | No objection subject to compliance with the provisions of SANS 10400 A:2016, 10400-2020 and the By-law relating fire safety. |
| Engineering Services | 13/02/2023    | Attached as Annexure H.  |

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

Five (5) letters of support and one (1) late objection was received during public participation from Mr A Viljoen (the late objection is attached as Annexure E).

The applicant was provided with an opportunity to respond to the late objection (attached as Annexure F).

See below a summary of the objection, applicant's response thereon, and also the municipal town planners' comments. (*The objection and applicants' comment were submitted in Afrikaans and were translated to English for ease of reference*).

**OBJECTION (A VILJOEN)****Point 1**

“In beginsel is ek nie ten gunste daarvan nie.”

Translation: *“In principle I do not agree with the subject application”*

**Point 2**

“Dit is duidelik dat daar gebou en verander is sonder toestemming, hoe het dit gebeur?”

Translation: *“It is clear that there was construction without the necessary approval, how is that possible?”*

**RESPONSE FROM APPLICANT**

“Met verwysing na ons motiveringsverslag word daar ‘n duidelike uiteensetting gegee dat die vorige eienaar ‘n goedgekeurde motorhuis sonder nuwe bouplanne omskep het in ‘n tweede wooneenheid en dat die spesifieke gebou goedgekeur was 1.5m vanaf die laterale grens. Die motorhuis was destyds ook verkeerdelik geplaas op die eiendom en 1.347m vanaf die laterale grens gebou.”

Translation: *“With reference to our motivation report where it is clearly outlined that the previous owner converted the approved garage to a second dwelling without building plan approval and that the garage was approved at 1.5m from the lateral boundary line. The garage was also constructed at 1.347m from the lateral boundary while it was only approved at 1.5m from the lateral boundary.”*

**TOWN PLANNERS’ RESPONSE**

The applicant’s response is noted and agreed with as the motivation of the application clearly states that building work and alterations were done by the previous owner and has only come to light as the current owner wants to legalise it.

**Point 3**

“Indien goedkeuring gegee word skep dit n president en op watter grond mag die volgende persoon dit nie doen nie.”

Translation: *“If this application is approved it will set a precedent and on what grounds are the other property owners not allowed to do it.”*

**RESPONSE FROM APPLICANT**

“Met verwysing na die Soneringskema word 2de wooneenhede toegelaat as a primêre reg maar is daar beperkende titelvoorwaardes wat dit verhoed. Die algemene publiek dra nie altyd kennis van die voorwaardes wat vervat word in titelaktes nie en is daar talle voorbeelde van gevestigde tweede wooneenhede, wettig en onwettig, op eiendomme in Sandbaai. Met die aansoek word daar nie ‘n president geskep nie.”

Translation: “Second dwellings are permitted as a primary right according to the Zoning Scheme but there are title deed conditions which restrict second dwellings. The general public are in most cases not aware of these restrictive conditions contained in the title deeds and there are many examples of existing second dwellings, legal and illegal, on properties in Sandbaai. This application does not set a precedent.”

#### **RESPONSE FROM TOWN PLANNER**

As stated by the applicant the subject application does not set a precedent as second dwellings are a primary right according to the Land Use Scheme but can be restricted in the title deed of some properties. Thus, if the title deed does not allow for a second dwelling an application similar to the subject application is required to be submitted.

#### **Point 4**

“Daar is voorskrifte oor parkering van voertuie, waar gaan die voertuie van daardie perseel parkeer?”

Translation: “There are parking parameters for vehicles, where will the vehicle of this property park?”

#### **Response from applicant**

“Ons heg die e-pos kennisgewing aan wat aan de beswaarmaker gestuur was. Die kennisgewing het die volledige motivering en stel planne ingesluit wat duidelik die parkering op terrein beskryf. Verwys asseblief na die volgende uittreksel uit die motivering en die bouplanne wat die aansoek vergesel het: “A carport exists that can occupy 2 motor vehicles. The carport is accessible from the gate located on the north-eastern side of the street front. Parking for the cottage will be north-west of the existing dwelling and south-west of the cottage as indicated on the set of building plans. The parking bay allocated for the cottage is accessed from the north-western side of the street front via the existing motorised gate.””

Translation: “We will attach the notice which was sent by email to the objector. The notice contained the full motivation report as well as a set of plans which clearly indicate the parking layout for the subject property. Please refer to the following extract of the motivation and building plans which accompany the application: “A carport exists that can occupy 2 motor vehicles. The carport is accessible from the gate located on the north-eastern side of the street front. Parking for the cottage will be north-west of the existing dwelling and south-west of the cottage as indicated on the set of building plans. The parking bay allocated for the cottage is accessed from the north-western side of the street front via the existing motorised gate.””

#### **Response from town planner**

The applicant’s response is agreed with as the motivation report clearly outlines that adequate parking will be provided on the property which is in line with the Overstrand Municipality Land Use Scheme (Scheme).

**Point 5**

“Die hele gebied is spesifiek beplan, indien hierdie tendens aangaan kan die infrastruktuur dit hanteer bv. verkeer, parkering, water voorsiening, elektrisiteit, riool, om net n paar te noem.”

Translation: “*The entire area is specifically planned, if this tendency persists would the infrastructure be able to handle it for example the traffic, parking, water provision, electricity, waste, just to name a few.*”

**Response from applicant**

“Die aansoek was gesirkuleer na die Ingenieurs Afdeling en is geen negatiewe kommentaar ontvang nie en vertrou ons dat daar genoegsame dienste kapasiteit is om die tweede wooneenheid te akkommodeer.”

Translation: “*The application was circulated to the Engineering Department and no negative comment was received. We trust that there is sufficient services capacity to accomodate the second dwelling.*”

**Response from town planner**

The Land Use Scheme makes provision for two dwelling units on a property and the parking requirements are two parking bays for the main dwelling and one parking bay for the additional dwelling. The proposed site plan clearly indicates that three parking bays are provided. With regard to the services required, the Engineering Department, as stated by the applicant, has no negative comment with regards to the proposal and is therefore in line with the applicable services required on site.

**Point 6**

“Die strate is baie smal en daar word alreeds probleme ondervind met verkeersvloei as parkering in die straat plaasvind, as daar nou n klomp addisionele wooneenhede bykom kan dit net net chaos veroorsaak, die motorhuis wat deel van die parkering vorm word omskep en nou kom daar nog voertuie by.”

Translation: “*The streets are considerably narrow which already creates parking and traffic flow issues. The numerous second dwelling units will only cause chaos. The garage that formed part of parking on the property is now converted, and now additional vehicles will be parked on site.*”

**Response from applicant**

“Met verwysing na Dirkie Uysstraat waarin Erf 1169 Sandbaai geleë is, is die nie 'n nou straat nie. Die padreserwe is ±25m wyd en is die sypaadjie aangrensend tot Erf 1169 Sandbaai ±8m wyd. Met die aansoek word daar geensins voorgestel dat voertuie in die straat parkeer nie en word daar in die geval genoegsame parkeerplekke op die terrein voorsien.”

Translation: “*Erf 1169 Sandbaai is situated in Dirkie Uys Street which is not a narrow street. The road reserve is ±25m wide with the sidewalk along Erf 1169 Sandbaai being ±8m wide. The subject application does not propose any on-street parking and adequate parking is provided on the property.*”

**Response from town planner**

As stated in the response point 5, the applicant provides sufficient parking bays required for the proposed development of a second dwelling unit.

**Point 7**

“Wat gebeur met die maandelikse "levies", word dit aangepas of bly dit dieselfde?”

Translation: “*What happens to the monthly levies, is it adjusted or does it remain as is?*”

**Response from applicant**

“Die Munisipale belasting sal aangepas word.”

Translation: “*The Municipal rates will be adjusted accordingly.*”

**Response from town planner**

The municipal rates for the property will be adjusted accordingly as stipulated in the Engineering Services Report.

**Point 8**

“Hierdie is net n paar gedagtes wat vinnig by my opkom , hier flikker rooiligte vir my so my standpunt is NEE.”

Translation: “These are just a few quick thoughts, red lights are flashing for me and thus my opinion is NO.”

Conclusion

It is herewith considered that the objection points stipulated in the late objection has been adequately responded to and resolved.

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

Refer to paragraph 7.

**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 proposed development will not further perpetuate historic spatial imbalances as it is situated on an existing erf of the Sandbaai Township. Similar applications have been supported previously; thus, the approval will not be spatially biased. The addition of a second dwelling is regarded as a primary right for properties zoned for single residential purposes and thus the removal will be for a condition that is more restrictive than the scheme and is thus seen as desirable.

**Spatial sustainability**

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting conservation worthy areas. The property will remain in harmony with the character of the area.

**Efficiency**

The proposed development intends to make optimal use of space on the property, thereby optimising existing resources and infrastructure.

**Spatial Resilience**

N/A

**Good administration**

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

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

The application is consistent with the planning principles.

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

Consistent since the land use remains Residential.

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

N/A

**10.6 Impact on municipal engineering services**

All services exist in the area. The proposal will not have a significant impact upon existing services. The application is supported by the Engineering Department.

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

The title deed contains restrictive conditions and application is made to remove such conditions restricting the proposed development.

## 10.8 Existing and proposed zoning comparisons and considerations

N/A

## 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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

No person or entity will be affected financially by the removal of the restrictive title deed condition.

### ***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 condition will benefit the property owner as they would be able to generate income from the cottage as it is motivated to be utilized as a self-catering unit.

### ***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:***

There is no real benefit if the conditions are kept in place as it limits the property to be developed in terms of the land use rights in terms of the scheme. By removing the condition an additional dwelling can be accommodated on the property and provide additional income for the property owners by letting the second dwelling on a short- or long-term basis.

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

Only the restrictive conditions limiting the development to one dwelling and only residential purposes will be removed. The other restrictive conditions will remain in place.

Given the above the opinion is further held that the proposal is sufficiently evaluated in terms of Section 39 (5) of LUPA, 2014 (Act 3 of 2014).

## 12. THE DESIRABILITY OF THE PROPOSAL

The subject property, Erf 1169, is located in Sandbaai and measures 714m<sup>2</sup> in extent. The property is currently developed with a double story A-frame dwelling, carport, covered stoep and a detached cottage. The detached cottage was originally approved as a garage and workshop and was constructed closer to the erf boundary than approved. The applicant has thus applied for a removal of title deed restrictive conditions, departure and the determination of an administrative penalty which is outlined as follows:

### REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

The previous owner converted the approved the garage and workshop to the cottage that currently exists on the property. The current owners purchased the property with the cottage already existing on the property and have applied to legalise the cottage as a second dwelling unit which will be utilised as a self-catering unit. However, the title deed of the property only allows one dwelling and that the property only be used for residential purposes. Thus, applicant is also made for these conditions to be removed from the title deed to accommodate the cottage and its function as a self-catering unit.

At this stage, the Overstrand Municipality Land Use Scheme allow for second dwellings on properties as a primary land use right, therefore the restrictive condition in the title deed prohibits the landowner to act on such rights.

### DEPARTURE

The applicant has thus applied for a departure to relax the north-western building line from 2m to 1.347m to accommodate the existing cottage.

The impact of the encroachment over the 2m lateral building line is minimal since the neighbouring property owner has built their garage on the shared erf boundary line and will thus not have a negative effect on the immediate surrounding neighbours. The existing structure is not invasive in nature and has been existing on the property since 2011 when the last building plan was approved (Plan no. 20707).

As there are illegal encroachments on the property this application is subject to the determination of an administrative penalty as discussed below.

### DETERMINATION OF THE ADMINISTRATIVE PENALTY

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

The encroaching structure was constructed by the previous owners and converted to a habitable space without the necessary approval. The current owner wants to legalize the position of the structure and the land use. The encroachment is  $\pm 6.13\text{m}^2$ . The use of the cottage as a second dwelling has been ongoing since 2022.

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

The previous owner was aware of the illegal encroachments and has agreed to pay for the application to have the encroachment as well as the land use legalized.

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

The unlawful conduct was not stopped as the cottage is still being used as a second dwelling unit and self-catering unit at times. The structure also already exists on the property and thus the unlawful encroachments could not be stopped.

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

No quantity surveyor report was submitted.

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

The current property owner has not contravened the By-law before this instance as this contravention was done by the previous owner of the property.

With the above taken into consideration, it is clear that the previous owner was aware of the contravention and only took full ownership thereof once he had sold the property to the current owner. As the owner was well aware of the contravention the opinion is held that an administrative penalty of 5% for both the unauthorised land use and building line encroachment be imposed. As the applicant did not provide a quantity surveyors report the municipal tariff for the 2023/24 book year will be used as the application was submitted then.

**Unauthorised encroachment**

|                         |   |
|-------------------------|---|
| Municipal tariff:       | R 19 107,00                                     |
| Encroachment:           | 6.13m <sup>2</sup>                              |
| Calculation:            | 6.13m <sup>2</sup> x R 19 107,00 = R 117 125,91 |
| Administrative penalty: | 5% x R 117 125,91 = R 5 856,30                  |

**Unauthorised land use**

|                               |   |
|-------------------------------|---|
| Building Value:               | R1 389 500,00   |
| Building Size:                | 177,01m <sup>2</sup>  |
| Price/m <sup>2</sup> :        | Building Value ÷ Building Size<br>= 7 849,84 price/m <sup>2</sup> |
| Unauthorised Land Use extent: | 33,34m <sup>2</sup>   |
| Unauthorised Land Use Period: | 2 years   |
| Contravention Value:          | (33,34m <sup>2</sup> x 7 849,84) = R 261 713,67                   |
| Administrative penalty:       | (5% x R 261 713,67) x 2 years = R 26 171,37                       |

Note: *Due to the fact that the administrative penalty amount is excessive and that no notice of non-compliance was served onto the property owner, it was considered that the number of years that the unauthorised activity was operating should not be factored into the calculation. Therefore, it is considered that the administrative penalty be imposed for the land use contravention, being **R13 085,69**.*

|                                    |                          |
|------------------------------------|--------------------------|
| <b>Total contravention penalty</b> | = R5 856,30 + R13 085,69 |
|                                    | = R18 941.99             |

**Conclusion**

In terms of the SDF, 2020 the area is identified for residential purposes and in terms of the Overstrand Municipality Growth Management Strategy, 2010 the area is earmarked for densification up to 10 units/ha. The development of a second dwelling unit on the subject property therefore complies with such aims.

It is therefore foreseen that approval for the cottage as a second dwelling will not have a negative impact on the character of the surrounding area or surrounding property owners.

The subject application received one late objection from a surrounding property owner during the public participation process. The objection is outlined and addressed by the applicant and town planner in paragraph 7 of this report. During the public participation process the application also received five (5) letters of support.

The application was circulated to all relevant municipal departments and no objections were received.

Permission has been granted for similar applications as the removal will not result in any negative impacts on the residents of Sandbaai and will allow property owners to utilize their properties to its full extent, while remaining compliant with the development parameter as set out in the Overstrand Municipality Land Use Scheme By-Law (2020).

In conclusion, the subject application is desirable from a town planning perspective as it does not negatively impact on any surrounding property owners and does not detract from the residential character of area.

### 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 Land Use Planning, 2020 (By-Law) for **the removal of restrictive title deed conditions** C (a) and (c) as contained in Title Deed No. T29623/2023 of Erf 1169, Sandbaai as contained in Title Deed T29623/2023, to accommodate a second dwelling, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions
3. that the application for **departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the north-western lateral building line of Erf 1169, Sandbaai from 2m to 1.347m, to accommodate the second dwelling; **be approved** in terms of the provisions of Section 61 of the By-Law
4. that the **determination of an administrative penalty** in terms of Section 90(4) of the By-Law for the unauthorised building work over building lines and unauthorised land uses on the subject property, **not be exempt** from the payment of an administrative penalty;
5. that the decisions in paragraphs 2, 3 and 4 above be subject to the following conditions:
  - (a) that this approval is only for the development as indicated on the site plan numbered *1 0506/A1/02* dated *13 October 2023* as submitted with the application;
  - (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department, be complied with at that stage
  - (c) that all the conditions from Telkom (attached as Annexure F), be adhered;

- (d) that all the conditions in the Services Report (attached as Annexure G), be complied with;
  - (e) that an **administrative penalty of R18 941.99** (being 5% for the unauthorised building work and the unauthorised land use, calculated utilising the Overstrand Municipal Budget as determined by the municipality and the land value of the property respectively), **be payable within ninety (90) days** of the decision;
  - (f) that all other development parameters as prescribed in the relevant Land Use Scheme, be complied with;
  - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
6. that the applicant and person who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

#### 14. REASONS FOR RECOMMENDATION

##### Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The late objection be noted; and that all the objection points were adequately responded to.
- ❖ The administrative penalty for the land use contravention not be multiplied by two years due to the property owner not receiving a letter of non-compliance.
- ❖ The Overstrand Land Use Scheme Regulations have sufficient control measures when it comes to second dwellings.
- ❖ The proposal is considered in line with the Municipality's SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA, as it is efficient to land and infrastructure to it maximum potential.

#### 15. ANNEXURES

|             |                             |
|-------------|-----------------------------|
| Annexure A: | Locality Plan               |
| Annexure B: | Motivation Report           |
| Annexure C: | Site Development Plan       |
| Annexure D: | Title Deed T29623/2023      |
| Annexure E: | Late objection              |
| Annexure F: | Response from applicant     |
| Annexure G: | Comment: OpenServe (Telkom) |
| Annexure H: | Service Report              |

**SIGNATURES****AUTHOR:**

Name: **B MINNAAR**

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

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

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

**REGISTERED PLANNER**

Name: **H VAN DER STOEP**

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

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

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



Motivation report

**DETERMINATION OF AN  
ADMINISTRATIVE PENALTY,  
PROPOSED REMOVAL OF RESTRICTIVE  
TITLE DEED CONDITIONS AND  
DEPARTURES**

**ERF 1169 SANDBAAI**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owner of Erf 1169 Sandbaai, Ms. A.C. Pentreath, has instructed the company Plan Active Town Planners to apply for the determination of an administrative penalty, removal of restrictive Title Deed conditions to legalise a Cottage (Second Dwelling Unit) and a departure from the north-western lateral building line applicable to Erf 1169 Sandbaai.

The owner recently purchased the property that was transferred on the 21<sup>st</sup> of July 2023. The previous owners changed the use of the outbuilding that was formerly approved as an outbuilding consisting of a workshop and single garage to a cottage (second dwelling unit). The outbuilding was approved 1.5m from the north western lateral boundary. With reference to the as-built plan, the outbuilding that was changed into a cottage (second dwelling unit) was actually constructed 1.347m from the mentioned lateral boundary and not 1.5m as per the approved building plan.

## Motivation report

It is therefore also required that we apply for a building line relaxation and the removal of restrictive Title Deed conditions in order to rectify the change of use of the outbuilding into a cottage and to also utilise the cottage as a self-catering unit.

Erf 1169 Sandbaai is 714m<sup>2</sup> in extent and is held by Title Deed Number T29623/2023.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the lateral building line.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;

## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

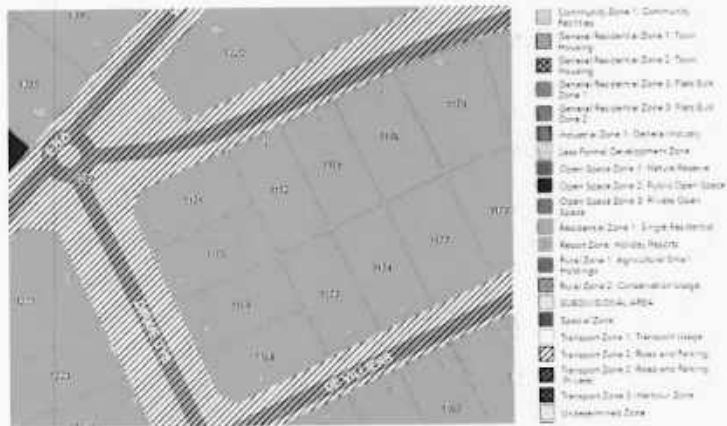
Erf 1169 Sandbaai is located at 5 Dirkie Uys Street, Sandbaai and is 714m<sup>2</sup> in extent. Please refer to the enclosed locality map and the map abstract below:

Motivation report



**3.2 ZONING**

Erf 1169 Sandbaai is zoned Residential Zone 1 and it is utilized as such. The surrounding properties are zoned for single residential purposes and public roads. Please refer to the zoning map abstract below:



Motivation report

### 3.3 LAND USE

Erf 1169 Sandbaai is used for residential purposes. A double storey A Frame house, carport, covered stoep and a cottage are established on the site. The house consists of a family room, living room, dining room, kitchen, 3 bedrooms, 2 bathrooms, and a covered stoep with a braai area. The existing carport can accommodate 2 motor vehicles. The cottage consists of an open plan kitchen and bedroom with en-suite bathroom.

The total floor areas of the various structures are as follow:

- House: 177,01m<sup>2</sup>
- Covered Stoep: 14,76m<sup>2</sup>
- Carport: 31,85m<sup>2</sup>
- Cottage: 33,24m<sup>2</sup>

Land uses that surround Erf 1169 Sandbaai are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 1169 Sandbaai is situated within a predominantly established single residential area.

### 3.4 PROPOSAL

The following are proposed:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed lateral building line.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;



#### Motivation report

garage and workshop were actually constructed 1.347m from the mentioned lateral boundary. Due to the difference in distance of the last mentioned building from the lateral boundary and the change of land use it is required that we also apply for a building line relaxation.

The Title Deed also contains restrictions with reference to a single (one) dwelling and that it may be used for residential purposes only. We are therefore also applying for the removal of restrictive Title Deed conditions.

The approved outbuilding that consisted of a single garage and workshop was changed into a cottage by the former owner without the submission of building plans. Subsequently Ms. Pentreath purchased the property in its current state and intends to legalise all the structures. In order to legalise the cottage, it will also be required that the application includes the determination of an administrative penalty.

#### **3.4.1. Proposed Removal of Title Deed restrictions**

Van Zyl Kruger Attorneys were requested to confirm by means of a conveyancing certificate if the Title Deed contains restrictive conditions that will have to be addressed. The enclosed Title Deed, T29623/2023 contains the following restrictions:

- **Page 3, paragraph (2)(a): "That the above erf or erven be used for residential purpose only"**
- **Page 3, paragraph (2)(c): "That not 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"**

Addressing the above mentioned Title Deed restrictions is due to the following reasons:

- The existing cottage, that qualifies as a second dwelling. As per requirement, the owner also intends making the cottage available as a short term rental, self-catering unit. The Title Deed restricts the land use to residential purposes only, that does not include a self-catering unit. We are therefore applying to

## Motivation report

have the following Title Deed restriction removed. **Page 3, paragraph (2)(a):**  
**"That the above erf or erven be used for residential purpose only"**

- As mentioned above, a cottage that also qualifies as a second dwelling unit is proposed. Erf 1169 Sandbaai is limited to a single dwelling only in terms of the Title Deed. The restriction read as follows: **Page 3, paragraph (2)(c): "That not 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."** We are therefore applying for the removal of this restrictive Title Deed condition to make provision for the cottage.

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

- **The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person as the owner of a dominant tenement.**

The removal of these Title Deed restrictions will allow the property to be developed as proposed in terms of the primary land use rights, as defined in terms the Overstrand Municipality Zoning Scheme Regulations. The primary right referred to is a second dwelling unit, in this case the cottage, to also be used for the purposes of a self-catering unit, when the need arises. This will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning Scheme Regulations of the Overstrand Municipal Area.

## Motivation report

- **The personal benefit which accrues to the holder of rights in terms of the restrictive conditions.**

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed conditions to be removed are concerned. None of the existing owners within the township gain anything personally by having the restrictions removed, which prevents the property to be developed to its full potential.

The proposal will have an extremely low impact on the existing built form and land use in the area, however, such changes have been supported in the area. Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of restrictive Title Deed conditions will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

- **The personal benefit which will accrue to the person seeking the removal of the restrictive conditions, if removed.**

The property owner will benefit from the removal of the mentioned Title Deed restrictions as it will expand the development rights available on the subject property. It will also legalise the existing structure and the use presented to the owner prior to purchasing the property. In terms of the primary land uses defined in the Overstrand Municipal Zoning Scheme Regulations it will also address the use of an existing structure as a second dwelling unit to also be used as a self-catering unit.

## Motivation report

- **The social benefit of the removal, suspension or amendment of the restrictive conditions remaining in place.**

The particular township has already changed with previous approved applications consisting of departures, consent uses, removal of restrictive Title Deed conditions or a combination of the last mentioned, within the township. If the conditions remain in place, the status quo will remain. If the type of conditions to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of these restrictions will add another layer to be enforced by the Overstrand Municipality, in addition to the current Zoning Scheme Regulations requirements.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions**

It can be argued that the possible social benefit of removing the restrictive Title Deed conditions and consequently allowing for an additional dwelling to also be used as a self-catering unit will be positive. Appropriate densification should be encouraged in all areas. Removing the conditions will enable the better utilization of the property in terms of modern city development, contribute to the prevention of urban sprawl and align with various policies which require a more efficient use of land and appropriate densification of land and will allow additional residents and potential future amenities/facilities (self-catering units etc) within the area.

Furthermore, the removal of these Title Deed conditions is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

## Motivation report

- **Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of the rights**

The removal of the restrictions will not remove the rights completely, as the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of restrictive Title Deed conditions will not deprive any person in the subject area of Sandbaai as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restrictions, additional people will be deprived from housing opportunities. It will also deprive the current owner from utilizing the subject property to its full potential and to make use of the established uses created by the former owner .

The application for the removal of the applicable Title Deed restrictions is made in the prescribed manner as per the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of restrictions will therefore be in the interest of the landowner and the general public. In relation to the above, the benefit of removing the Title Deed restrictions outweighs the benefits of keeping the restrictions in place.

The reasons to have the abovementioned Title Deed restrictions 2(a) and 2(c) removed are mainly to give the owner the opportunity to utilise the property for the purposes of a cottage (second dwelling) to also be used as a self-catering unit.

#### **3.4.2. Proposed Departures**

The building plans for the existing outbuilding was approved, and it was constructed 1.5m from the north-western lateral boundary as previously mentioned. The former owner changed the land use of the outbuilding consisting of a single garage and

### Motivation report

workshop to a cottage (second dwelling unit) without submitting building plans for the internal changes to the structure and its use. Smart Solution Architecture was appointed to draw as-built building plans in order to address the change of land use. Subsequently it was discovered that the approved outbuilding was actually constructed 1.347m and 1.395m from the lateral boundary and not 1.5m. The existing outbuilding, of which the use was changed to a cottage, encroaches the zoning scheme lateral building line that can be summarised as follows:

#### **The existing cottage (second dwelling):**

- Relaxation of the north-western building line from 2m to 1.347m.

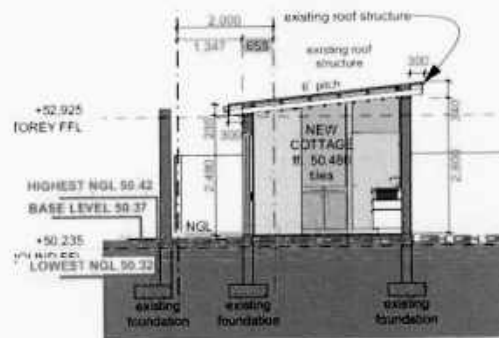
The Overstrand Zoning Scheme Regulations 2020 stipulate that a 2m lateral building line applies to Residential Zone 1: Single Residential erven larger than 400m<sup>2</sup> in extent.

Because of the internal changes made to the approved outbuilding to create a cottage and the fact that it was constructed closer to the lateral boundary than what it was approved at on the building plan requires that we apply for a building line relaxation of the north-western lateral building line. The existing external footprint of the building and its physical location in relation to the north-western boundary remained the same.

The area of the existing cottage that encroaches the lateral building line by 0.653m and 0.605m respectively, is partially used as an open plan kitchenette and bedroom, and a toilet. There is a door located in the kitchenette, facing the north-western boundary that opens inwards and there are no windows facing the north-western boundary. Please refer to the enclosed set of building plans.

The cottage's roof has a 6 degree mono pitch that slopes upwards in a south-eastern direction. Subsequently the lowest part of the roof is on the side of the north-western lateral boundary and is 2.715m from natural ground level. Please refer to the abstract below from the as-built building plan depicting a section of the cottage, section B-B:

## Motivation report



The impact of the 0.653m and 0.605m lateral building line encroachments of the cottage, considering the rather low mono pitch roof, will not have a negative impact on the adjacent landowner. The proposed building line departures will not have a negative impact on the character of the greater Sandbaai area. With the mentioned encroachments, a building line is still maintained, and the existing cottage is not situated right up to the relevant lateral boundary

#### **3.4.3. Determination of an administrative penalty**

When Erf 1169 Sandbaai was purchased by Ms. Pentreath all the structures and their use were already established on the property as indicated on the enclosed set of as-built building plans. She inherited the illegal use of the former approved outbuilding that was changed into a cottage by the former owner and wishes to legalise all the structures on the property. The determination of an administrative penalty also applies to the building line encroachment of the north-western lateral building line. Unintendedly the former outbuilding was constructed 1.347m & 1.395m from the lateral boundary and not 1.5m as approved on the former building plans.

The building line encroachments are minor unintentional encroachments that were caused by the former owner that constructed the outbuilding that was also later changed into a cottage. The intention of the current owner is to rectify the building line encroachments and the use of the outbuilding as a cottage, as these were inherited

#### Motivation report

from the previous owner of Erf 1169 Sandbaai and to legalise the encroachments in order to have the building plans approved that accompany our application.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 9, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

#### **3.4.3.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY**

##### **a) The Nature, duration, gravity, and extent of the contravention**

Smart Solution Architecture was appointed to compile as-built building plans that confirmed that the cottage, formerly an outbuilding, was not erected at the correct position as per the approved building plans and that the use of the cottage contradicts the prescribed Title Deed land use restrictions limiting the use of the property to a single dwelling and residential use.

The current owner wants the land use and position of the building legalised. The encroachment and land use change of the outbuilding mentioned in this application became clear with the as built building plans drawn by Smart Solution Architecture. The encroachments can be seen as unintentional minor encroachments as previously mentioned, because only small portions of the existing cottage, formerly an outbuilding encroach the prescribed building lines.



Motivation report

The owner of the subject property intends providing her full co-operation to the Overstrand Municipality to rectify the encroachments and change of land use as it is her responsibility to ensure that the buildings are constructed according to the approved building plans that are in line with what she has purchased.

The position and nature of the minor building line encroachments and change of use are unobtrusive in nature and do not impact negatively on the surrounding properties. No complaint from surrounding property owners has been received.

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

The former owner informed the new owner, Ms. Pentreath of the irregularities and they have agreed that the former owner will pay for the applications for a departure, removal of restrictive Title Deed conditions and an administrative penalty. The owner became aware of the extent of the encroachments after Smart Solution Architecture was employed to prepare as-built building plans that will be submitted for approval once this application has been finalised.

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

The outbuilding is still being used as a cottage (second dwelling unit) that functions as a self-catering unit at times. This is what the new owner has purchased and also the reason why the property was purchased. The current owner is in the process of rectifying the contravention by applying for a departure, the removal of restrictive Title Deed conditions and the determination of an administrative penalty. The building work and uses were already completed.

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

It should be considered that the current owner purchased the property with all the structure depicted on the as-built plan already constructed and used as indicated. It is therefore our opinion that the current owner cannot be held accountable for

## Motivation report

construction work done by the former owner. If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, we will submit a report from a quantity surveyor with reference to the unauthorised building works. The reason being that if there is a chance that no penalty fee is imposed in this case and that the report from a quantity surveyor will be unnecessary at this stage.

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

To the best knowledge of the applicant and as confirmed by the landowner, she has never previously contravened this By-Law or any other previous planning law.

We appeal to the Overstrand Municipality to take into consideration the low impact the unintended building line encroachments and the change of use of an outbuilding as a cottage has on the surrounding area. It should also be considered that **no** complaints from surrounding property owners has been made with regards to the encroachments and cottage. An as built survey determined that small portions of the existing cottage encroach the lateral building line prescribed in the Municipal Land Use Scheme Regulations.

With the proposed application the owner intends to rectify the encroachment and use of the outbuilding as a cottage and will also submit building plans in order to obtain the necessary approvals from the building control department as soon as the land use application has been concluded. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

Motivation report

### 3.5 ACCESS

Vehicular and pedestrian access to Erf 1169 Sandbaai is gained via 2 motorised access control gates from Dirkie Uys Street. The access controlled gates are located on the north-western and south-eastern sides of the street front and are ±2.5m in width each. No new accesses are proposed with the proposed application. With reference to the existing dwelling and the cottage, 3 parking bays are required.

A carport exists that can occupy 2 motor vehicles. The carport is accessible from the gate located on the north-eastern side of the street front. Parking for the cottage will be north-west of the existing dwelling and south-west of the cottage as indicated on the set of building plans. The parking bay allocated for the cottage is accessed from the north-western side of the street front via the existing motorised gate.

### 3.6 SERVICES

All services on Erf 1169 Sandbaai already exist, that will be sufficient to also service the proposed additional dwelling unit to be used as a self-catering unit. No additional services are required for the proposed application to be approved.

### 3.7 TITLE DEED

The Title Deed T44974/2016 has restrictions that need to be removed for the owner to utilise the subject property to its full potential as confirmed by the Conveyancer Certificate received from Van Zyl Kruger Attorneys.

The Title Deed restrictions that we are applying to have removed are:

- Page 3, paragraph (2)(a): "That the above erf or erven be used for residential purpose only"

## Motivation report

- **Page 3, paragraph (2)(c): "That not 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"**

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

There is no bond registered against Erf 1169 Sandbaai.

### 3.8 **FORWARD PLANNING**

#### **Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 that consists mainly of Sandbaai' s single residential erven. No densification of this planning unit is proposed.

The proposed application for the removal of restrictive Title Deed conditions and departure is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy.

It is therefore our opinion that the proposed departures and removal of the restrictive Title Deed conditions can be supported, and that the proposal is also in line with the current land use trends for the area.

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

In terms of the Overstrand Municipality Spatial Development Framework (May 2020) the subject property and surrounding erven are indicated as Urban Development Area. The proposed removal of restrictive Title Deed conditions and departures in order to accommodate a second dwelling unit to also be used as a self-catering unit and to address existing building line encroachments, due to

Motivation report

Internal changes to these structures, are in line with key policies directing future management and development.

**3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

**3.9.1 HERITAGE VALUE**

Erf 1169 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

In the light of the above mentioned it is evident that the proposed removal of restrictive Title Deed conditions and departures will not have a negative impact on the heritage value of the subject property or the Greater area of Sandbaai.

**3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed removal of Title Deed restrictions and departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

**3.10 PLANNING PRINCIPLES**

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

## Motivation report

**Spatial Justice:** The proposed removal of restrictive Title Deed conditions and departures are in line with the current land use tendencies. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. The previous owners changed the use of the outbuilding that was formerly approved as an outbuilding consisting of a workshop and single garage to a cottage (second dwelling unit). The intention of the current owner is also to use the cottage as a self-catering unit when the need arises. It is therefore proposed that the restrictions in terms of the Title Deed be removed and to depart from the building line restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1.

**Spatial sustainability:** The proposed removal of restrictive Title Deed conditions and departures are in line with the current character of the established residential area. The proposed applications will have no impact on the conservation worthy areas of Sandbaai. Spatially the land use will be in line with the residential character of the area.

**Efficiency:** The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. The proposed second dwelling unit to also be used as a self-catering unit and the street building line encroachment contradict the Title Deed restrictions and are the main reasons why these restrictions must be removed.

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic

#### Motivation report

infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

**Good administration:** Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

#### 4. **RECOMMENDATION**

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

- The proposed removal of the restrictive Title Deed conditions and building line departures will not have a negative impact on the current character and land values of the surrounding erven.
- All the buildings exist including the cottage (second dwelling unit), to also be used as a self-catering unit. The building line restriction applicable to the lateral boundary is encroached as a result of an outbuilding changed into a cottage and not being set out correctly by the former owner.
- The proposed removal of restrictive Title deed conditions and departures of Erf 1169 Sandbaai fall within the existing land use tendencies in the area;
- No additional services are required for the proposed application to be approved;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

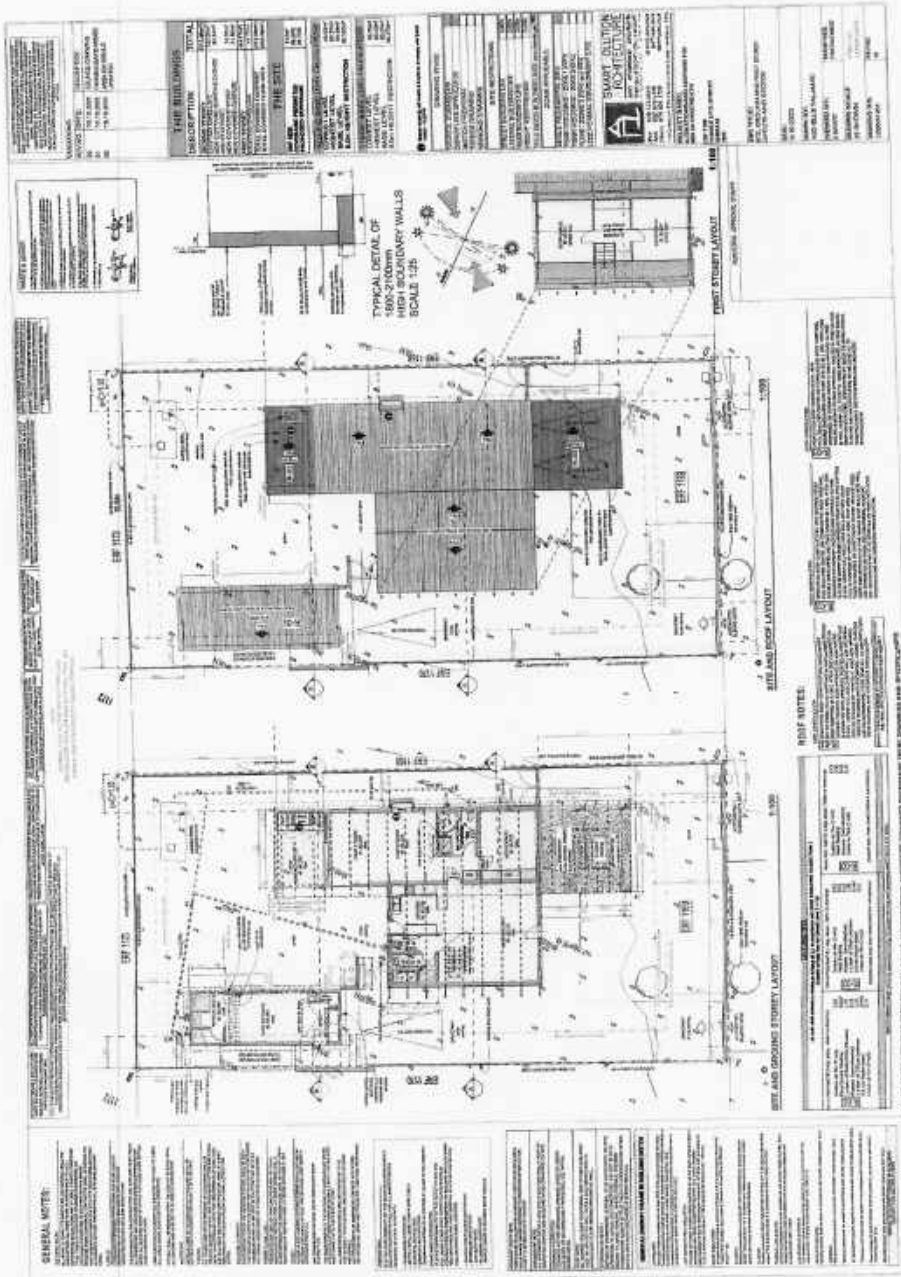
With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of the restrictive

Motivation report

Title Deed conditions, the building line departures and the determination of an administrative penalty of Erf 1169 Sandbaai.








ALL DIMENSIONS UNLESS OTHERWISE SPECIFIED ARE IN METERS



ANNEXURE D 1/4

Opgestel deur my

  
 TRANSPORTBESORGER  
 ALAN CHARL ELS (86249)

| Deeds Office Registration fees as per Act 47 of 1937 |                    |  |
|--|--------------------|--|
|  | Amount             | Office Fee                             |
| Purchase Price                                       | R. 2 550 000.00    | R. 2 016.00                            |
| Reason for exemption                                 | Category Exemption | Exemption i t o<br>Sec/Reg<br>Act/Proc |

DATA / VERIFY  
 28-07-2023  
 ATHI DAMOYI

T 000029623 / 2023

## TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT LARA-KIRSTEN CLAASSEN  
 (LPC NUMBER 92932)  
 voor my verskyn het, REGISTRATEUR VAN AKTES te KAAPSTAD, hy/sy die genoemde  
 komparant synde behoorlik daartoe gemagtig kragtens 'n Volmag aan hom/haar verleen  
 deur

1. GLADWYN SELWYN LINDEMANN  
 Identiteitsnommer 810305 5069 08 6  
 Getroud buite gemeenskap van goed

wat Volmag geteken het te Port Elizabeth op 18 Mei 2023

2. CHANTELE LINDEMANN  
 Identiteitsnommer 830403 0074 08 0  
 Getroud buite gemeenskap van goed

wat Volmag geteken het te Hermanus op 30 Mei 2023

DATA / CAPTURE  
 28-07-2023  


Bladsy 2

En genoemde Komparant het verklaar dat sy/haar prinsipaal, op 8 Mei 2023, waarlik en wettiglik verkoop per Privaat Ooreenkoms, en dat hy/sy, in sy/haar voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

**ANITA CHRISTINE PENTREATH**  
 Identiteitsnommer 540717 0147 18 7  
 Ongetroud

haar Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volkome en vrye eiendom

ERF 1169 SANDBAAI, IN DIE OVERSTRAND MUNISIPALITEIT  
 AFDELING CALEDON  
 PROVINSIE WES-KAAP

GROOT 714 (SEWE HONDERD EN VEERTIEN) Vierkante meter

OORSPRONKLIK oorgedra kragtens Transportakte Nommer T3822/1955 met Kaart Nommer 12863/1954 wat daarop betrekking het en gehou kragtens Transportakte Nommer T1375/2020

- A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nommer T9461/1973.
- B. VERDER ONDERHEWIG aan die volgende spesiale voorwaardes vervat in gemelde Akte van Transport Nommer T3822/1955 opgelê vir die voordeel van SANBAAI SEASIDE ESTATE COMPANY (PROPRIETARY) LIMITED as eienars van die restant van Perseel Nommer 3 van die plaas Onrust River gehou deur hulle onder Akte van Transport Nommer T11466/1929 en die eienaars van Persele in die genoemde Dorp wat alreeds of wat nog op enige toekomstige datum getransporteer mag word onderhewig aan soortgelyke voorwaardes naamlik:
- (a) The Company reserves to itself and its successors in title the sole right to all Hotels and all Liquor Licences and the Purchaser's (Transferee/s) or his/their successors in title shall not have the right to erect any hotel or hold any liquor licence, without the written consent of the Directors of the Company, or its successors in title, first had and obtained.
- (b) The Company and its successors shall not have the right to subdivide and/or sell in erven the land between lots sold as Seafront lots and the sea.
- (c) That not building shall be erected on any stand unless and until the plans for such buildings have been submitted to and approved by the Directors of the said Company or its successors in title of the said Company.
- (d) The Transferee/s and his/their successors in title of the hereinabove described property shall have the right to divert any stream of water running on the said property so as to run alongside any of the avenues or streets as laid down on the General Plan of the Township.

## Bladsy 3

- (e) The Company reserves to itself and its successors in title the right at any time hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over and upon any portion of the property hereby purchased, with further right of causing them to be affixed to any building or erection not less than 3,05 metres from the ground with access at any time to such wires for the purpose of removal or maintenance.
- (f) The Company further reserves to itself and its successors in title the right at any time hereafter to lay and to maintain piping under any portion of the above land or elsewhere, and at all times to have access to such piping for removal, maintenance, extension or any other purpose, and to do all such acts and things as shall be required for the convenience of the inhabitants of the Township in regard to supplying them with water.
- (g) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the owner of the above land by means of wells or boreholes sunk on such land.
- C. VERDER ONDERHEWIG aan die volgende voorwaardes verval in gesegde Akte van Transport Nommer T3822/1955 opgelê deur die Administrateur wat soos volg lui:
- (a) That the above erf or erven be used for residential purposes only.
- (b) That the above erf or erven be not subdivided.
- (c) That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one half of the area of any one of the erven be built upon.
- (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.

Bladsy 4

WESHALWE die komparant afstand doen van al die regte en titel wat

1. **GLADWYN SELWYN LINDEMANN , Getroud soos vermeld**
2. **CHANTELLE LINDEMANN , Getroud soos vermeld**


voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat hulle geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde


**ANITA CHRISTINE PENTREATH , Ongetroud**

haar Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken sy dat die verkoopprijs die bedrag van R2 550 000,00 (TWEË MILJOEN VYF HONDERD EN VYFTIG DUISEND RAND) beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die Ampseel bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te KAAPSTAD op hede die 21 JUL 2023

2023 

  
q.q.

In my teenwoordigheid

  
\_\_\_\_\_  
**REGISTRATEUR VAN AKTES**

**Alida Conradie**

**From:** Albertus Viljoen <ajviljoen@soetfontein.co.za>  
**Sent:** Thursday, 29 February 2024 14:38  
**To:** planactive@maxitec.co.za  
**Cc:** Alida Conradie  
**Subject:** RE: ERF 1169 SANDBAAI: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES

Goeie dag

Ek kon die erf sien en die brief, ek weet glad nie wat die bouplanne behels en hoe dit daar lyk nie.

- 1) In beginsel is ek nie ten gunste daarvan nie.
- 2) Dit is duidelik dat daar gebou en verander is sonder toestemming, hoe het dit gebeur?
- 3) Indien goedkeuring gegee word skep dit n president en op watter grond mag die volgende person dit nie doen nie.
- 4) Daar is voorskrifte oor parkering van voertuie, waar gaan die voertuie van daardie perseel parkeer?
- 5) Die hele gebied is spesifiek beplan, indien hierdie tendens aangaan kan die infrastruktuur dit hanteer bv. verkeer, parkering, water voorsiening, elektrisiteit, riool, om net n paar te noem.
- 6) Die strate is baie smal en daar word alreeds probleme ondervind met verkeers vloei as parkering in die straat plaasvind, as daar nou n klomp addisionele wooneenhede bykom kan dit net net ghaos veroorsaak, die motorhuis wat deel van die parkering vorm word omskep en nou kom daar nog voertuie by.
- 7) Wat gebeur met die maandelikse "levies", word dit aangepas of bly dit dieselfde?
- 8) Hierdie is net n paar gedagtes wat vinnig by my opkom, hier flikker rooiligte vir my so my standpunt is NEE.

Groete

*Albertus Viljoen ...* 

Cell : 082 808 4168  
 Tel : 053 313 1949  
 eFax : 086 519 2033  
 ajviljoen@soetfontein.co.za  
 www.soetfontein.co.za  
 SKYPE : Soetfontein

**From:** planactive@maxitec.co.za <planactive@maxitec.co.za>  
**Sent:** Tuesday, December 12, 2023 10:03 AM  
**To:** planactive@maxitec.co.za  
**Subject:** FW: ERF 1169 SANDBAAI: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES

To whom it may concern

You are regarded as a potentially affected property owner.

Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) requires that notice must be given, and Section 49 allows for a period of not less than 30 days from the date on which notice was given to affected persons to submit comments, objections, or representations in

**Townplan**

**From:** Alida Conradie  
**Sent:** Wednesday, 04 September 2024 14:33  
**To:** Townplan  
**Subject:** FW: ERF 1169 SANDBAAI: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES  
**Attachments:** FW: ERF 1169 SANDBAAI: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES

**Alida Conradie**

*Administrative Officer, Town- and Spatial Planning*  
*Directorate: Planning & Development, Overstrand Municipality, Hermanus*  
 A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20  
 T: 028 313 8900 | F: 028 313 2093 | E: [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)

**From:** [planactive@maxitec.co.za](mailto:planactive@maxitec.co.za) <[planactive@maxitec.co.za](mailto:planactive@maxitec.co.za)>  
**Sent:** Monday, March 18, 2024 9:06 AM  
**To:** Alida Conradie <[alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)>  
**Subject:** FW: ERF 1169 SANDBAAI: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURES

Goeiedag Alida, ons kommentaar op die laat beswaar is as volg:

1. In beginsel is ek nie ten gunste daarvan nie.
2. Dit is duidelik dat daar gebou en verander is sonder toestemming , hoe het dit gebeur?  
 Met verwysing na ons motiveringsverslag word daar 'n duidelike uiteensetting gegee dat die vorige eienaar 'n goedgekeurde motorhuis sonder nuwe bouplanne omskep het in 'n tweede wooneenheid en dat die spesifieke gebou goedgekeur was 1.5m vanaf die laterale grens. Die motorhuis was destyds ook verkeerdelik geplaas op die eiendom en 1.347m vanaf die laterale grens gebou.
3. Indien goedkeuring gegee word skep dit n president en op watter grond mag die volgende person dit nie doen nie .  
 Met verwysing na die Sonering Skema word 2de wooneenhede toegelaat as a primêre reg maar is daar beperkende Titelvoorwaardes wat dit verhoed. Die algemene publiek dra nie altyd kennis van die voorwaardes wat vervat word in Titelaktes nie en is daar talle voorbeelde van gevestigde tweede wooneenhede, wettig en onwettig , op eiendomme in Sandbaai. Met die aansoek word daar nie 'n president geskep nie.
4. Daar is voorskrifte oor parkering van voertuie , waar gaan die voertuie van daardie perseel parkeer?  
 Ons heg die e-pos kennisgewing aan wat aan de beswaarmaker gestuur was. Die kennisgewing het die volledige motivering en stel planne ingesluit wat duidelik die parkering op terrein beskryf. Verwys asseblief na die volgende uittreksel uit die motivering en die bouplanne wat die aansoek vergesel het: "A carport exists that can occupy 2 motor vehicles. The carport is accessible from the gate located on the north-

eastern side of the street front. Parking for the cottage will be north-west of the existing dwelling and south-west of the cottage as indicated on the set of building plans. The parking bay allocated for the cottage is accessed from the north-western side of the street front via the existing motorised gate."

5. Die hele gebied is spesifiek beplan , indien hierdie tendens aangaan kan die infrastruktuur dit hanteer bv. verkeer , parkering , water voorsiening , elektrisiteit , riool , om net n paar te noem . Die aansoek was gesirkuleer na die Ingenieurs Afdeling en is geen negatiewe kommentaar ontvang nie en vertrou ons dat daar genoegsame dienste kapasiteit is om die tweede wooneenheid te akkommodeer.

6. Die strate is baie smal en daar word alreeds probleme ondervind met verkeers vloei as parkering in die straat plaasvind , as daar nou n klomp addisionele wooneenhede bykom kan dit net net ghaos veroorsaak , die motorhuis wat deel van die parkering vorm word omskep en nou kom daar nog voertuie by.

Met verwysing na Dirkie Uysstraat waarin Erf 1169 Sandbaai geleë is, is die nie 'n nou straat nie. Die padreserwe is ±25m wyd en is die sygaardjie aangrensend tot Erf 1169 Sandbaai ±8m wyd. Met die aansoek word daar geensins voorgestel dat voertuie in die straat parkeer nie en word daar in die geval genoegsame parkeerplekke op die terrein voorsien.

7. Wat gebeur met die maandelikse "levies", word dit aangepas of bly dit dieselfde?

Die Munisipale belasting sal aangepas word.

8. Hierdie is net n paar gedagtes wat vinnig by my opkom , hier flikker rooiligte vir my so my standpunt is NEE.

Ons vertrou dat ons kommentaar hierbo in orde sal wees en dat die aansoek gunstig oorweeg sal word.

Vriendelike groete

John Mc Lachlan  
Tch.Pln B/B250/2014  
MSAPI Nr.10908



Town & Regional Planners  
Stads- en Streeksbeplanners

Tel: 028 313 1673  
Fax: 028 312 1351  
web: [www.planactive.co.za](http://www.planactive.co.za)



**OPENSERVE (PTY)LTD – Western Cape**  
Jan Smuts Drive, Pinelands

*TP - A Theart  
(Holliver)*

Contact Person: Ihlam Peters  
Tel: 081 347 7443  
Email: [ihlaamp@openserve.co.za](mailto:ihlaamp@openserve.co.za)

**Our Ref:** WWIP\_WHMN4909\_23

**Your Ref:** 1169 HSB

19 December 2023

Attention: Mr H Boshoff

Town Planner  
Overstrand Municipality  
Hermanus

|                  |                     |
|------------------|---------------------|
| FILE NO.         | <i>Erf 1169-HSB</i> |
| SCAN NO.         |                     |
| COLLABORATOR NO. | <i>1970425</i>      |

Dear Sir/Madam

**OPTIC FIBRE CABLE SERVICES AFFECTED**

**APPLICATION FOR WAYLEAVE: ERF 1169, 5 DIRKIE UYS STREET, SANDBAAI, HERMANUS**

With reference to your application dated December 2023.

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

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

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

Approval is granted, subject to the following conditions.

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

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

Openserve Proprietary Limited: Reg no 2010/087225/07. Directors: S Tackenberg (Chairperson), AC Eskies (CEO), C Poets (CFO), DJ Reysink  
Company Secretary: AC Celis

*TP*  
19 DEC 2023

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

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

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

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

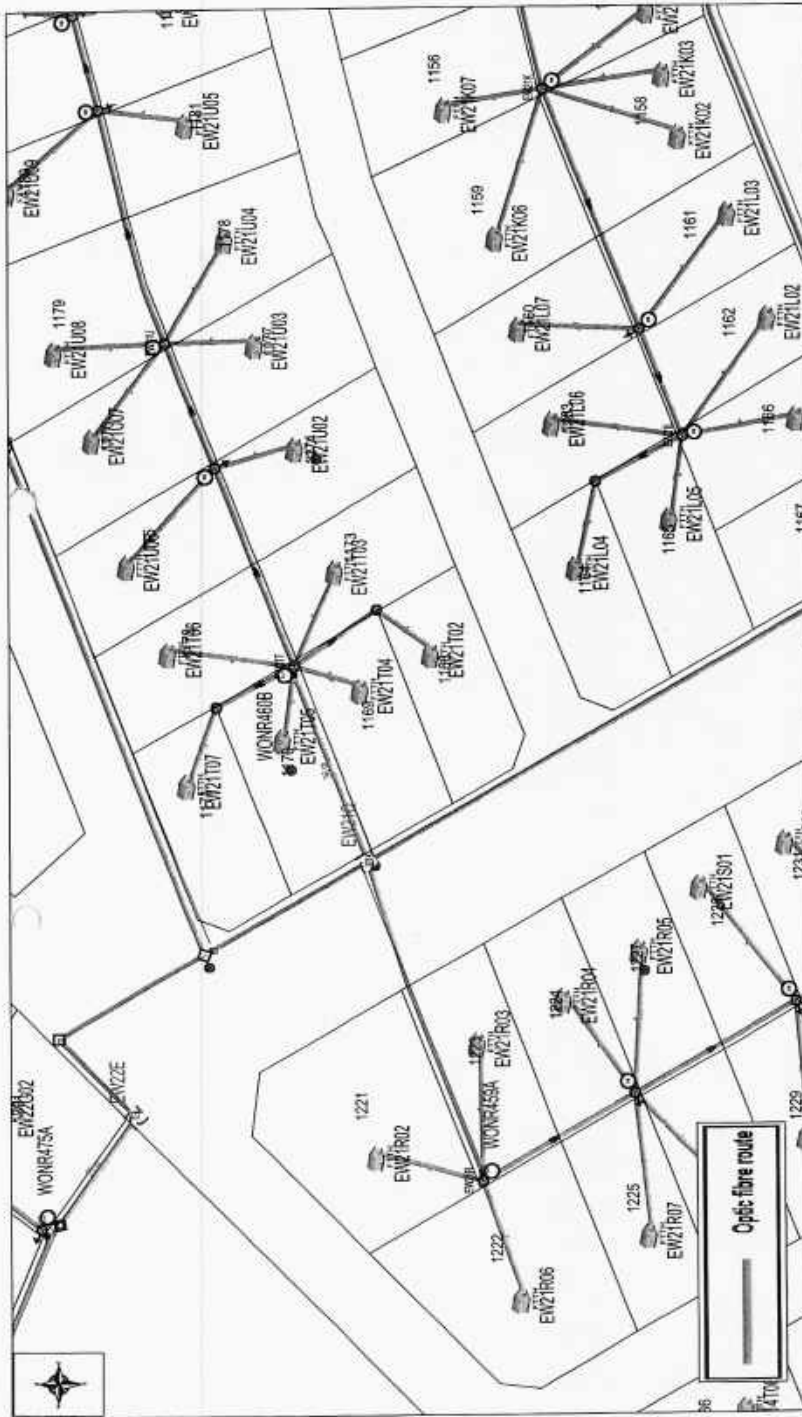
All Open Serve rights remain reserved.

Yours sincerely



---

Ihlaam Peters  
for  
Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region



|                                  |                               |
|----------------------------------|-------------------------------|
| <b>TELKOM REGIONAL EXECUTIVE</b> |                               |
| Completed By                     | Peters                        |
| Client                           | 98123023                      |
| Client ref                       | WWF_VINWU00R_23               |
| Details                          | OPTIC FIBRE SERVICES AFFECTED |
| Page Size                        | A4                            |

| Legend | Existing SDC         | Existing Inlet DP    | Existing Underground Route        |
|--------|----------------------|----------------------|-----------------------------------|
|        | Existing SDC         | Existing Inlet DP    | Existing Underground Route        |
|        | Planned SDC          | Planned Inlet DP     | Planned Underground Route         |
|        | To Be Recovered SDC  | To Be Recovered DP   | To Be Abandoned Underground Route |
|        | Existing Jct         | Existing DP          | Existing Overhead Route           |
|        | Planned Jct          | Planned DP           | Planned Overhead Route            |
|        | To Be Abandoned Jct  | To Be Recovered DP   | To Be Recovered Overhead Route    |
|        | Existing P/B         | Existing Pole        | Existing May OADT                 |
|        | Planned P/B          | Planned Pole         | Planned May OADT                  |
|        | To Be Abandoned P/B  | To Be Recovered Pole | Planned New OADT                  |
|        | Existing Str and Ety |                      |                                   |

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF  
1169, SANDBAAI (4514/2023)**

|                   |   |                     |
|-------------------|---|---------------------|
| Stormwater (SW)   | : | Refer to conditions |
| Electricity       | : | Refer to conditions |
| Water             | : | Refer to conditions |
| Sewer             | : | Refer to conditions |
| Roads and traffic | : | Refer to conditions |

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that 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 no reservation of on-street parking be allowed;
7. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
8. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE