

## 4.9

**ERF 214, 129 JAN VAN RIEBEEK CRESCENT, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF PD DE KOCK & WD SIMPSON**

214 HSB (3962/2021)

B Minnaar

05 September 2024

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Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application has been received on 29 December 2021 from Messrs PlanActive Town & Regional Planners on behalf of PD de Kock & WD Simpson in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 214, Sandbaai for the following:

- **removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the By-Law of condition B.2.(a), B.2.(c) & B.2.(d) contained in Title Deed T44974/2016, to accommodate more than one dwelling unit on the property and to utilise it as a self-catering unit as well as to accommodate the street building line encroachment;

The restrictive conditions as contained in Title Deed T44974/2016 to be removed, read as follows:

Clause B.(2)(a)

*“That the above erf or erven be used for residential purpose only.”*

Clause B 2.(c)

*“That not more than one dwelling together with 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 15 feet (4.72 metres) of the boundary line 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.”*

- **departure** in terms of Section 16(2)(b) of the By-Law to:
  - ❖ relax the eastern lateral building from 2m to  $\pm 1.876$ m to accommodate the dwelling unit and second dwelling unit;
  - ❖ relax the western lateral building line from 2m to  $\pm 0.963$ m to accommodate the outbuilding; and
  - ❖ relax the rear building line from 2m to  $\pm 0.957$ m to accommodate the outbuilding;

- **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to legalize unauthorized building work & unauthorised land use on the property.

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 T44974/2016 is attached as Annexure D.

## **2. DECISION AUTHORITY**

Municipal Planning Tribunal

## **3. BACKGROUND / SITE HISTORY**

Erf 214, Sandbaai is situated at 129 Jan van Riebeeck Crescent. The property is zoned as Residential Zone 1, measuring 902m<sup>2</sup> in extent and comprising of six (6) flats. The surrounding area comprises a residential neighbourhood and erven utilised as such.

The current proposal submitted by PlanActive Town- and Regional Planners stipulated that the property comprises of a double storey dwelling and an outbuilding. The motivation further stated that rooms located in the main dwelling and second dwelling is rented out to long term lodgers and the existing garage was once occupied by one of the owners.

In 2016, the erf was originally approved with a six (6) bedroom double storey house with a single garage located at the front of the house as well as a three-vehicle garage that is separate from the dwelling house situated at the rear of the property.

In 2020, the municipality received a complaint that the subject property consists of more than one dwelling unit/apartments (further stating that the Sandbaai title deeds generally restrict the property to only one dwelling unit). The land use compliance officer met with the one of the owners on 13 April 2022 to conduct a site inspection. The site inspection confirmed that there were four (4) dwelling units being rented, of which the garage was illegally converted into a dwelling unit. Furthermore, the property owner confirmed that they will convert the structures on-site as per the current application should it be approved.

Another inspection was conducted on 8 August 2024 to confirm the abovementioned. The inspection revealed that the property owners converted the six (6) bedroom dwelling house into six (6) flats.

The owner intends to legalise the unauthorised structures and land use by converting the built structures to accommodate a main dwelling, second dwelling with an outbuilding (comprising of a double garage, store-room and a workshop).

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

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

The motivation for the application is summarised as follows:

- Erf 214 Sandbaai is used for residential purposes. With a double storey dwelling and an outbuilding already established.
- The rooms located in a portion of the dwelling and second dwelling is/proposed to be rented out to long term lodgers.
- The existing garage was occupied by one of the owners that will now be changed back into a garage/storeroom and a small workshop.
- The erf is accessed from Jan van Riebeeck Crescent, Sandaai.
- Land uses that surround Erf 214 Sandbaai are single dwellings, public roads and public open spaces. It is therefore evident that Erf 214 Sandbaai is situated within a predominantly single residential area.
- The application is submitted with the intention to rectify the unauthorized building work and unauthorised land use, therefore application is made for the determination of an administrative penalty.
- The title deed restricts the proposed development with regard to the amount of dwelling units, use and a street building line restriction. Application is therefore made to remove conditions B.2.(a), B.2.(c) & B.2.(d) contained in Title Deed T44974/2016.
- The proposed garage triggers the 2m western lateral- and 2m rear building lines; and the existing dwelling house and proposed second dwelling triggers the 2m eastern lateral building line; application is therefore made for departure of the aforementioned scheme building lines.
- The proposed development is situated on an already services property with sufficient services available for the proposed use.
- The proposal is consistent with the Overstrand Municipality Spatial Development Framework as well as the Overstrand Municipality Growth Management Strategy.
- The property is not situated within the EMOZ or HPOZ.
- The planning principles will be discussed in point 10.2 of this report.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	03 June 2022	08 July 2022
Gazette	Yes	03 June 2022	08 July 2022
Notices ( <i>possibly affected property owners</i> )	Yes	30 May 2022	08 July 2022
Notices ( <i>persons mentioned in title deed</i> )	n/a	N/A	N/A
Ward councillor	Yes	03 June 2022	8 July 2022
Total comments	<b>ONE (1) letter of objection</b>		

Total letters of support	<b>NONE</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
Tourism	06/06/2022	Impact on tourism is seemingly low, no comment.
Building Department	06/06/2022	No objection. The building plan application must comply with all applicable law.
Fire Department	08/06/2022	No objection. The plan is subject to compliance with the provisions of SANS-10400-A:2016, 10400:2020 and the By Law relating to community fire safety.
Waste Management	09/06/2022	No objection.
OpenServe (Telkom)	28/06/2022	Attached as Annexure G.
Engineering Services	28/09/2022	Attached as Annexure H.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection was received during the public participation from Mr Hess, the owner of Erf 216, Sandbaai (attached as Annexure E).

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

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

### OBJECTION 1

*Mr. Hess agreed that a garage could be located closer to the rear boundary of Erf 214 Sandbaai and did not consent for it to be used as a dwelling. The garage has been used for residential purposes. A fireplace was constructed within the garage. When the fireplace is in use the smoke causes a nuisance.*

**RESPONSE FROM APPLICANT**

As mentioned in our motivation report, when the owners purchased the property only the foundations were built. The foreman utilised the garage as a temporary residence during the construction phase of the dwelling. The garage will be changed back to a double garage, storeroom and workshop as per the plans that accompanied our application. The fireplace will be removed, and the outbuilding will be used as agreed between the owners of Erf 214, Sandbaai and Mr. Hess.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. The motivational report states that the garage will be converted back into a garage as per the agreement between Mr Hess and the property owner of Erf 214 Sandbaai. This objection point has therefore been resolved.

**OBJECTION 2**

*An outside shower was constructed against the outside wall of the garage. The use of the outside shower cause damp and mould in Mr. Hess's bathroom and bedroom.*

**RESPONSE FROM APPLICANT**

The outside shower was also utilised during the construction phase of the dwelling and the shower was removed more than 2 years ago. At the time that the outside shower was in use the shower water was channelled via a gulley into the property's conservancy tank and could therefore not have caused the dampness mentioned by the objector.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. There is currently no building work taking place which does not have an impact on the application at hand. Furthermore, as stated in the motivational report, the proposal is to convert the flat at the rear of the property back into a garage. This objection point has therefore been resolved.

**OBJECTION 3**

*The standing water caused by the outside shower causes a stench and the Mr. Hess had to drain the standing water.*

**RESPONSE FROM APPLICANT**

As mentioned, the shower water was at the time channelled via a gulley to the conservancy tank. According to our client it is impossible that the shower water could have surfaced on the adjoining property.

With reference to the photographs below it is clear that the section behind the garage on Erf 214 Sandbaai is dry and that the section behind the bathroom and bedroom on Mr. Hess's property is wet as the growth of moss is clearly visible. It should also be noted that the rainwater runoff from the roof of Mr. Hess's property discharges onto the concrete slab of his property. It is therefore clear that he is causing his own problem with regards to rising damp etc.



Portion of Erf 214 Sandbaai behind the proposed garage.



Mr. Hess's property where dampness is experienced.

#### RESPONSE FROM TOWN PLANNER

The objection and the response of the applicant is noted. The application is to convert the flat at the rear back into a garage and should therefore not impact the objector's property in the same manner. The proposal to convert the rear property to a garage as well as a workshop and storage room is compliant with the scheme regulations. The objection point is therefore resolved.

#### OBJECTION 4

*During the construction phase of the dwelling located on Erf 214, Sandbaai Mr. Hess's dwelling was burgled.*

#### RESPONSE FROM APPLICANT

The owners of Erf 214, Sandbaai informed us that at the time of the burglaries one of the neighbouring residents was arrested and found guilty on burglary charges. The burglaries had nothing to do with the contractors that built the house on Erf 214, Sandbaai.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. The objection has no relevance to the proposed application.

**OBJECTION 5**

*It is alleged that Mr. de Kock, one of the owners of Erf 214, Sandbaai raised the common boundary wall between Mr. Hess's property and Erf 214, Sandbaai without his permission. The matter was raised with the Building Control Office, but no one could gain access to the site.*

**RESPONSE FROM APPLICANT**

According to the owners of Erf 214, Sandbaai, Mr. Hess requested that the common boundary between them be made higher by 2 brick layers because contractors could see into their living room and garden. The owners of Erf 214, Sandbaai agreed to the higher wall as discussed and did so at their own cost. Our clients are willing to lower the wall to the former height if Mr. Hess insists.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. The property owners of Erf 214, Sandbaai is willing to lower the boundary wall to the former height. It must be noted that in the instance that the wall height exceeds 2.1m, a land use planning application must be submitted after the current application has been finalised.

**OBJECTION 6**

*Mr. Hess hears the noise from the people living in the garage and the adjoining building.*

**RESPONSE FROM APPLICANT**

As mentioned previously, the use of the outbuilding will change back into a garage, storeroom and workshop as per the building plans that accompanied the application. The adjoining building forms part of the proposed dwelling and will be used for residential purposes. The noise generated will not be any different than the noise generated by a family residing on the property and it is acceptable.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. As mentioned previously in the response to objection points 1-3, the proposal is to convert the rear building back into a garage with a workshop and storeroom. The aforementioned uses are of a normal residential nature and should not generate noise to the effect that it causes nuisance to the surrounding property owners. The objection point is therefore considered to be resolved.

**OBJECTION 7**

*More construction works will cause more noise and more water that will run into Mr. Hess's property.*

**RESPONSE FROM APPLICANT**

It is a common phenomenon that there will be noise during the construction of a dwelling, the upgrading of dwelling or the upkeep of a dwelling. Contractors have to conform to the working hours applicable to them in order not to cause a nuisance. The noise generated is always temporary of nature until a job is completed. This cannot be used as an objection against the proposed application.

In order to make the necessary changes to the former garage to be changed back to an outbuilding it will require mostly internal changes and the changes as per the proposed building plans will definitely not cause an increase in water runoff into his property as stated by the objector.

**RESPONSE FROM TOWN PLANNER**

The objection and the response of the applicant is noted. The objection point relates to noise generate from construction and water runoff into the objectors' property. This objection point has no relevance to the application at hand and should thus be referred to the Building Control Department at the stage of construction. The objection point is therefore dismissed.

**CONCLUSION**

The applicant further states the following:

The claims made by Mr. Hess is unsubstantiated and are irrelevant to the application at hand.

We trust that you would find our comments on the objections in order and that the application will be dealt with favourably.

**RESPONSE FROM TOWN PLANNER**

The objections received from the property owner of Erf 216, Sandbaai have no relevance to the proposed application as motivated. The proposed application intends to correct the past indiscretions which is inline with the permitted land uses as per the Overstrand Municipality Land Use Scheme. Additionally, the proposal is to apply for the removal of restrictive title deed conditions applicable to the subject property which will be discussed later in this report.

It is therefore considered that the objection points 1 through 7 have been adequately discussed and resolved.

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

Refer to point 7 of this report.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

Refer to point 7 of this report.

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

N/A

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

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

Spatial Justice

The proposed removal of the restrictive title deed conditions and building line departures are compatible with the character of the area and will not perpetuate past spatial injustices.

Spatial sustainability

The removal of a restrictive title deed condition and building line departures are in line with the current character of the established residential area. The proposal will have no impact on the conservation worthy areas of Sandbaai.

Efficiency

The proposed development of a second dwelling will allow the property owners to utilise the property to its full extent and allow the second dwelling to be advertised as a self-catering accommodation which will be in line with the development rights as per the Overstrand Municipality Land Use Scheme and not as per the title deed which is more restrictive.

Spatial Resilience

The proposal to create a second dwelling on the property will allow the property owners to generate passive financial gain by means of letting the second dwelling out on long term or on a self-catering accommodation basis. The proposal will therefore promote a sustainable livelihood.

Good administration

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

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

Same as 10.2 above.

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

The application is consistent with the SDF.

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

N/A

**10.6 Impact on municipal engineering services**

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

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

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

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

The encroachment of the 2m lateral- and rear building lines in terms of the Overstrand Land Use Scheme are being addressed via the departure application.

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

Title Deed T44974/2016 applicable to Erf 214, Sandbaai contains the following restrictive condition being proposed for removal:

- Condition 2.(a) *“That the above erf or erven be used for residential purpose only.”*
- Condition 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.”*
- Condition 2.(d) *“that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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 applicant motivates the removal of the relevant restrictive title deed condition for the following reasons:

- Creation of a second dwelling: Erf 214 Sandbaai is limited to single dwelling unit in terms of Condition 2.(c).
- Utilising the second dwelling for self-catering purposes: The second unit is proposed within the existing building on ground floor. The approval will allow the property owner to develop and let the proposed second dwelling by means of self-catering accommodation which is not permitted in terms of the Title Deed Condition 2.(a).
- Covered entrance: The proposed covered entrance encroaches the 15 feet (4.72m) title deed street building line as per Title Deed Condition 2.(d).

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:***

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 to also be used for the purposes of a self-catering unit, when the need arises. The application also makes provision for the removal of the restrictive title deed condition to provide for the existing, as built covered entrance that is located 4.367m from Jan van Riebeeck Avenue. 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 rea.

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

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 Overstrand Municipality Zoning Scheme Regulations and the Overstrand Municipality Amended By-Law on Municipal Land Use Planning, 2020. The proposed removal of the restrictive title deed condition will increase the market value of the property.

***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 property owners will benefit from the removal of the mentioned title deed restrictions as it will expand the development rights available on the subject property in terms of the primary land uses defined in the Overstrand Municipal Zoning Scheme Regulations and it will also address an existing structure that encroaches the prescribed title deed street building line by 0.353m and the use of a portion of the existing dwelling as a second dwelling unit to also be used 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:***

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.

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 including the mentioned departure 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.

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

The removal of the restriction will not remove the rights completely, as the Overstrand Municipality 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 owners from utilizing the subject property to its full potential.

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 landowners 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 B.2(a), B.2(c) and B.2(d) removed are mainly to give the owners the opportunity to utilise the property for the purposes of a second dwelling and to also be used as a self-catering unit and to accommodate a portion of the covered entrance within the prescribed street building line defined in the title deed.

The covered entrance to the existing dwelling is located 4.367m from the street boundary. In terms of the title deed a 4.72m building line applies and it is therefore required that the title deed restriction B.2.(d) be removed.

### Conclusion

It is in the applicants' professional opinion that the reasons for the above-mentioned title deed restrictive conditions B.2.(a) and B.2.(c) be removed are mainly to allow the owners the opportunity to utilise the property for the purposes of a second dwelling to also be used as a self-catering unit or alternatively long-term rental. Furthermore, the covered entrance was constructed within the prescribed 4.72m street building line defined in the title deed. The covered entrance is located 4.367m from the erf boundary. Therefore, required that the title deed restriction B.2.(d) be removed.

The proposal to develop a second dwelling and to build the development footprint till 4.367m from the erf street boundary is in line with the Overstrand Municipality Land Use Scheme. Title deeds were set in place at a time when there were no zoning schemes in place. Now that the zoning schemes have been adopted, the title deed restrictive conditions applicable to residential development are considered outdated with reference to the evolution of the planning legislation.

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

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

Erf 214 is located in the residential area of Sandbaai and is 902m<sup>2</sup> in extent. The property owner intends to develop the property with a two-storey main dwelling, a second dwelling and an outbuilding (comprising of a garage, a storeroom and a small workshop). The proposal triggers a removal of title deed restrictive conditions, departure in terms of the Overstrand Municipality Land Use Scheme and the determination of an administrative penalty. The desirability of each application will be discussed below:

### **REMOVAL OF RESTRICTIVE TITLE CONDITIONS**

The desirability for the removal of restrictive conditions B.2.(a), B.2.(c) and B.2.(d) contained in Title Deed No. T.44974/2016 are adequately discussed in point 11 of this report.

**DEPARTURE**

The existing dwelling and the as-built / proposed second dwelling has been built partially over the eastern lateral 2m building line. The proposed encroachment is from 2m to  $\pm 1.876$ m. The existing uses of the main dwelling unit that encroaches the eastern lateral building line are a single garage, a tv room and a bedroom. The proposed uses of the as-built second dwelling that encroach the eastern lateral building line are the 2 bedrooms with en-suite bathrooms, open plan living / dining room and kitchen. The impact of the encroachment spans over a  $\pm 12.4$ m distance however, this impact is minimal since only the "building wall" encroaches and not the sections of each room. Therefore, the departure over the eastern lateral building line from 2m to  $\pm 1.876$ m has a minimal impact on the adjacent neighbour and is therefore considered desirable from a town planning perspective.

Furthermore, the outbuilding consisting of a double garage, storeroom and a small workshop encroaches the western lateral building line from 2m to  $\pm 0.949$ m and encroaches the eastern rear building line from 2m to  $\pm 0.957$ m. These encroachments will not negatively impact the neighbouring properties since the uses that are proposed over the 2m western- and rear building lines are uses that are not associated with noise pollution. Additionally, the structures have no door or window openings along those boundaries. It is therefore considered that the aforementioned encroachments are desirable from a town planning perspective.

It must be noted however, that the small workshop does not encroach any building lines.

Note: the applicant draws attention to the existing dwelling being  $\pm 0.27$ m over the applicable 8m height restriction. The reasoning for the applicant not applying for the applicable height encroachment is due to the manner in which the height was calculated on the approved building plan of 2016. The height in the aforementioned plan was calculated from the finished floor level and not the base level. If the height of the building was calculated from the base level to the top of the roof, the 8.27m building height would have triggered a height departure. However, the building height was calculated from finished floor level to the top of the roof, the height is within the applicable 8m height parameter. Since the building plan of 2016 was approved indicating the height from finished floor level to the top of the roof, it is considered that there is no need for an 8m height departure.

**DETERMINATION OF AN ADMINISTRATIVE PENALTY**

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

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

In 2020, the Town & Spatial Planning Department received a complaint regarding the subject site having more than one dwelling unit. In 2021 the current land use planning application was submitted to rectify the contraventions. In 2022, the land use compliance officer conducted an inspection of the property which revealed that there were four dwelling units on the property of which the garage was one of them and that the property was being let to 3 long-term occupants.

Before the application was processed further, an inspection was conducted on 8 August 2024 to confirm the relevant information. The inspection revealed that the buildings on the subject property was converted into 6 flats of which the garage was one of them (see Annexure I).

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

It must be noted that the contravention continued after the current land use planning application was submitted and the extent of the contravention increased by accommodating 2 additional flats, making a total of 6 flats being let on the subject property.

The applicant was informed that a revised motivation be submitted in order to address the additional land use planning contraventions, however it was stated by the applicant that no amendments to the motivational report will be made, and that the application should be evaluated in terms of the current motivational report.

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

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

*(d) whether the unlawful conduct was stopped*

The property owner did not cease the unauthorised land use and increased the number of flat units from 4 to 6 units.

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

The property owner has previously contravened the By-Law in 2019 by permitting the keeping of bees on the subject (residential) property.

The property owner is responsible for the conversion of the existing dwelling house together with the exiting garage into 6 flats. The earliest known complaint received on the property related to 4 flats being rented on the property in 2020. After the application was submitted in 2021, the property owner then constructed / converted an additional two flats which collectively resulted in 6 flats being rented from the property. Additionally, the property was not built in accordance with the approved plans dated 20 September 2016. A portion of the main dwelling encroaches the applicable eastern lateral building line and the covered entrance encroaches the applicable street title deed building line. As a result of the aforementioned, the unauthorised encroachment of the scheme and title deed building lines triggers an administrative penalty.

The determination of an administrative penalty is therefore for both the unauthorised land use and unauthorised building work and is calculated as follows:

Unauthorised structure / land use	Encroachment / use Measurement
Covered entrance building work (main dwelling)	±0.97m <sup>2</sup>
Eastern lateral building work (main dwelling)	±2.224m <sup>2</sup>
5 Flats (existing dwelling house)	±405,32m <sup>2</sup>
1 Flat (existing outbuilding)	±54.67m <sup>2</sup>

The municipal tariff for the financial year 2023/2024 will be used due to the latest submission of outstanding information being submitted in 2023.

#### Unauthorised encroachment

Municipal tariff:	R19 107,00
Encroachment:	3.194m <sup>2</sup>
Calculation:	3.194m <sup>2</sup> x R19 107,00 = R61 027,758
Contravention penalty:	5% x R61 027,76 = R3 051.388

#### Unauthorised land use

Building Value:	R2 602 500,00
Building Size:	504,99m <sup>2</sup>
Price/m <sup>2</sup> :	Building Value ÷ Building Size = R5 153,57/m <sup>2</sup>
Unauthorised Land Use extent:	459,99m <sup>2</sup> (excl. single garage)
Unauthorised Land Use Period:	3 years
Contravention Value:	(459,99m <sup>2</sup> x R5 153,57/m <sup>2</sup> ) = R2 370 590,67
Administrative penalty:	(10% x R2 370 590,67) = R237 059,07

Note: Due to the fact that the administrative penalty amount is excessive, it was considered that the number of years that the unauthorised activity was operating should not be factored into the calculation. The property owner did attempt to adhere to this departments request and submitted a land use planning application (therefore a 5% is considered to be imposed). However, noting that the property owner created 2 additional flat units after the submission of the land use planning application, an additional 1% is considered to be imposed. Therefore, it is considered that a **6% administrative penalty** be imposed for the land use contravention, being **R142 235,44**.

**Total contravention penalty** = R3 051,388 + R142 235,44  
= R145 286,83

Note: Due to the fact that the administrative penalty amount is excessive, it was considered that the number of years that the unauthorised activity was operating should not be factored into the calculation.

#### Conclusion

In conclusion, the proposed application to revert the subject property from 6 flats to a property with main and second dwelling units, a single garage, a double garage with a storeroom and workshop is considered desirable from a planning perspective and will

not negatively impact the surrounding area and be in line with the applicable Overstrand Municipality Land Use Scheme 2020.

The property owner is required to pay an administrative penalty for the unauthorized alterations and land use on the property as calculated above.

### 13. RECOMMENDATION

1. That the objections be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the **removal of restrictive title conditions** B.2.(a), B.2.(c) & B.2.(d) as contained in Title Deed T44974/2016 applicable to Erf 214, Sandbaai, in order to accommodate a second dwelling unit on the property to be utilized as a self-catering unit, as well as to accommodate the street building line encroachment, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of By-Law for the following:
  - a) relaxation of the eastern lateral building line from 2m to  $\pm 1.876$ m to accommodate the main and second dwelling units;
  - b) relaxation of the western lateral building line from 2m to  $\pm 0.963$ m to accommodate the outbuilding; and
  - c) relaxation of the rear building line from 2m to 0.957m to accommodate the outbuilding;

**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. to 4. above be subject to the following conditions:
  - (a) that the approval is only for the development as indicated on Plan no. / 0391/A3/06 dated 28-10/2021, 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 in the Engineering Services Report and Telkom (attached as Annexures G and H), be complied with;
  - (d) that an **administrative penalty of R145 286,83** (being 5% for the unauthorised building work and 6% for the unauthorised land use, calculated utilising the land value of the property and the Overstrand Municipal Budget as determined by the municipality) **be payable** within ninety (90) days of the decision;

- (e) that building plans be submitted to the building control department (that reflect this approval) within 30 days of the date of the decision;
  - (f) that the renovations of the buildings on the subject property be done within 6 months of the date of the decision;
  - (g) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
  - (h) 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 Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use and building line parameters as opposed to the restrictive title deed conditions.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners or the character of the area.
- ❖ The objection received from the property owner of Erf 164 Sandbaai is not substantial or relevant to the intent of the property owner to rectify the contraventions and the proposed development or the impact thereof.
- ❖ That administrative penalty imposed is due to the two (2) additional flats that were constructed after submission of the land use planning application.
- ❖ Due to the excessive administrative penalty being imposed, the number of years that the unauthorised land use was operational was not factored into the calculation.
- ❖ The proposal is considered in line with the Municipality's SDF and is consistent with the planning principles in terms of LUPA and SPLUMA.

#### **15. ANNEXURES**

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Site Development Plan
- Annexure D: Title Deed 44974/2016
- Annexure E: Objection received
- Annexure F: Comment from applicant
- Annexure G: Comment: OpenServe (Telkom)
- Annexure H: Services Report
- Annexure I: Inspection dated 08 August 2024

**SIGNATURES**

**AUTHOR**

Name: **BC MINNAAR**

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

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

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

**SENIOR PLANNER**

Name: **H VAN DER STOEP**

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

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

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



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

**ERF 214 SANDBAAI**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owners of Erf 214 Sandbaai, Mr. P. D. de Kock and Mr. W. D. Simson, have instructed the company Plan Active Town Planners to apply for the determination of an administrative penalty, removal of restrictive Title Deed conditions to make provision for a second dwelling unit and a departure from the lateral and rear building lines applicable to Erf 214 Sandbaai.

The owners intend to create a second dwelling unit on the ground floor by means of minor alterations and to address minor building line encroachments. There are also Title Deed restrictions that need to be removed for the proposed application to be approved.

Erf 214 Sandbaai is 902m<sup>2</sup> in extent and is held by Title Deed Number T44974/2016.

## **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 and rear building lines.
- 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 214 Sandbaai is located at 129 Jan van Riebeek Crescent, Sandbaai and is 902m<sup>2</sup> in extent. Please refer to the enclosed locality plan.

### **3.2 ZONING**

Erf 214 Sandbaai is zoned Residential Zone 1 and it is utilized as such. The surrounding properties are zoned for single residential purposes, public roads and public open spaces.

### 3.3 LAND USE

Erf 214 Sandbaai is used for residential purposes. A double storey dwelling, and outbuilding are established on the site. Rooms located in a portion of the dwelling where the second dwelling is proposed is rented out to long term lodgers. The existing garage was occupied by one of the owners that will now be changed back into a garage, storeroom and small workshop. Access to Erf 214 Sandbaai is obtained from Jan van Riebeek Crescent, Sandbaai.

Land uses that surround Erf 214 Sandbaai are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 214 Sandbaai is situated within a predominantly 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 and rear building lines.
- 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;

The intention of the owners of the subject property is to create a second dwelling on the ground floor by means of making minor alterations to the existing dwelling. The proposed second dwelling unit is  $\pm 77.5\text{m}^2$  in extent and consists of the following:

- Open plan lounge, dining and kitchen area;
- 1 Bedroom and en-suite bathroom;
- 1 Bedroom.

## Motivation report

The reverted double garage with a storage area encroaches the rear building line. The existing dwelling also encroaches the eastern building line, and can be defined as a minor encroachment. The building line encroachments will be dealt with in detail under section 3.4.2 below.

The proposed primary dwelling is a double storey structure that is  $\pm 189.48\text{m}^2$  in extent and consists of the following:

### **Ground Floor**

- An entrance foyer;
- Open plan living room and kitchen;
- 2 bedrooms with en-suite bathrooms;
- 1 Ground floor bedroom;
- TV Room;
- Single Garage;
- Patio;

### **First Floor:**

- 2 bathrooms;
- 2 Bedrooms;
- 1 Bedroom with en-suite bathroom;
- Covered balcony;
- Kitchenette;
- Living room;
- Kids play room;
- Study

The above mentioned second dwelling and primary dwelling are both primary rights.

The Title Deed also contains restrictions with reference to a single (one) dwelling as well as to the street building line that is more restrictive than the prescribed street building line in terms of the Overstrand Municipality Zoning Scheme.

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

The enclosed Title Deed, T44974/2016 contains the following restrictions that are addressed:

- **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”**
- **Page 4, paragraph (C)(d): “that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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”**

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

- A second dwelling unit is proposed within the existing building on ground floor. When required, the owners also intend making the second dwelling 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 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 second dwelling unit is proposed on ground floor. Erf 214 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**

## Motivation report

upon.” We are therefore applying for the removal of this restrictive Title Deed condition to make provision for the proposed second dwelling unit.

- The covered entrance to the primary dwelling was constructed 4.367m from Jan van Riebeeck Avenue. The Title Deed contains a street building line restriction that is 4.72m, subsequently the street building line as prescribed in the Title Deed is encroached by 0.353m, but it does not encroach the 4m building line prescribed in the Overstrand Municipality Zoning Scheme. We are therefore applying to have the following Title Deed restriction removed: **“Page 4, paragraph (C)(a): “that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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.”**

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 to also be used for the purposes of a self-catering unit, when the need arises. The application also makes provision for the removal of the restrictive Title Deed condition to provide for the existing, as built covered entrance that is located 4.367m from Jan van Riebeeck Avenue. 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.

- **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 owners will benefit from the removal of the mentioned Title Deed restrictions as it will expand the development rights available on the subject property in terms of the primary land uses defined in the Overstrand Municipal Zoning Scheme Regulations and it will also address an existing structure that encroaches the prescribed Title Deed street building line by 0.353m and the use of a portion of the existing dwelling as a second dwelling unit to also be used as a self-catering unit.

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

## Motivation report

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 including the mentioned departure 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.

- **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**

## Motivation report

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 owners from utilizing the subject property to its full potential.

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 landowners 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), 2(c) & 2(d) removed are mainly to give the owners the opportunity to utilise the property for the purposes of a second dwelling to also be used as a self-catering unit and to accommodate a portion of the covered entrance within the prescribed street building line defined in the Title Deed.

The covered entrance to the existing dwelling is located 4.367m from the street boundary. In terms of the Title Deed a 4.72m building line applies and it is therefore required that the Title Deed restriction 2(d) be removed.

### **3.4.2. Proposed Departures**

The existing dwelling and outbuilding encroach the zoning scheme building lines that can be summarised as follow:

**The existing dwelling and proposed second dwelling:**

- Relaxation of the eastern lateral building line from 2m to  $\pm 1.876$ m.

**The existing outbuilding:**

- Relaxation of the **rear** building line from 2m to 0.957m to accommodate an outbuilding.
- Relaxation of the western **lateral** building line from 2m to 0.963m to accommodate an outbuilding.

The Overstrand Scheme Regulations stipulate that a 4m street building line and a 2m lateral building line apply to Residential Zone 1: Single Residential even larger than 400m<sup>2</sup> in extent.

The existing double storey dwelling has partially been constructed within the eastern lateral building line. The building line encroachment is minimal and encroaches the building line by  $\pm 12.4$ cm. Please refer to the enclosed site, ground and first storey layout.

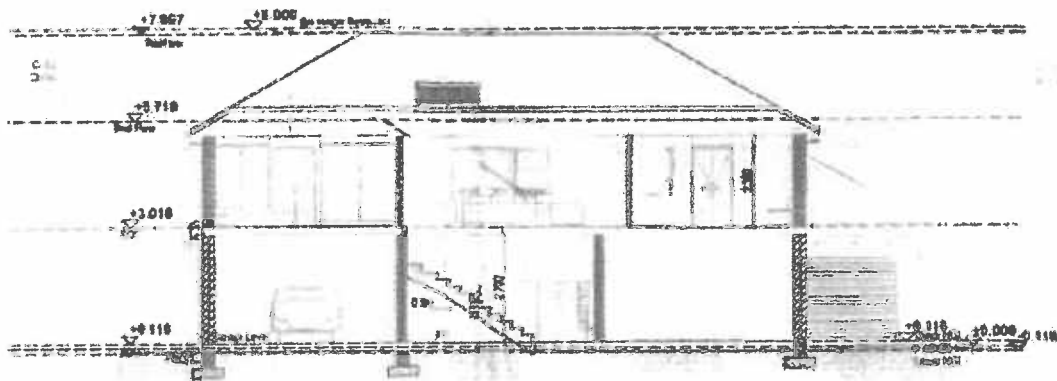
The existing and proposed uses of the existing dwelling that encroaches the eastern lateral building line are a single garage, tv room and bedroom. The existing and proposed uses of the second dwelling unit, encroaching the eastern building line, consist of 2 bedrooms with en-suite bathrooms and an open plan living / dining room and kitchen. The first-floor uses of the existing dwelling that encroaches the eastern lateral building line consist of a bedroom with an en-suite bathroom, kids playroom, bathroom and bedroom. The impact of the  $\pm 12.4$ cm building encroachment of both the ground floor and first floor is minor and will not have a negative impact on the adjacent landowner of Erf 213 Sandbaai.

Internal changes are proposed for the outbuilding in order to create a double garage, small workshop and a storeroom. The existing outbuilding encroaches the rear building line and the western lateral building line. The building plan for the outbuilding was approved 1m from the rear and lateral boundaries but is in fact located  $\pm 0.957$  from

## Motivation report

the rear boundary and  $\pm 0.949\text{m}$  from the western lateral boundary. We are therefore applying for a building line relaxation from the rear and western lateral building line from  $2\text{m}$  to  $\pm 0.957\text{m}$  and  $\pm 0.949\text{m}$  respectively. Being an existing outbuilding of which only internal changes are proposed, the changes to the outbuilding will not impact negatively on the adjoining erven. The outbuilding will also continue to be used as such. Please refer to the enclosed site and roof plan layout and sections.

We would like to bring to your attention that the existing dwelling is  $\pm 27\text{cm}$  over the height restriction. The building plan that was approved in 2016 of which we have enclosed a copy indicates the height restriction calculated from the finish floor level to the top of the roof, instead of from the base level to the top of the roof. Please refer to the abstract below from the 2016 building plan, for easy reference:



The dwelling has been constructed as per the above approved section but when the height restriction is calculated in terms of the Overstrand Municipality Zoning Scheme it now exceeds the height restriction by  $\pm 0.270\text{m}$ . This matter was discussed with Mr. H. Boshoff at the Overstrand Municipality, and it was agreed that due to the fact that the building plan has been approved, showing the height calculated from finished floor level to the top of the roof, that an application is not required to address the dwelling's minor height encroachment.

The proposed building line departures will not have a negative impact on the neighbouring properties or the character of the greater Sandbaai area. With the mentioned encroachments, a building line is still maintained and the existing dwelling

## Motivation report

and outbuilding are not situated right up to the relevant eastern, southern and western boundary lines. Please refer to the enclosed building plans for the detail of the above mentioned structures.

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

When Erf 214 Sandbaai was purchased only the foundations of the dwelling and the outbuilding located in the southern corner of the erf were constructed. The current owners arranged for a site visit with the Building Inspector for the inspection of the foundations and outbuilding and thereafter they completed the construction of the dwelling as per the approved building plans (2004). Revised building plans were submitted and approved in 2016. According to the 2 sets of approved plans the existing covered entrance to the dwelling does not encroach the prescribed street building line in terms of the Title Deed.

According to the current landowners the existing covered entrance was constructed up to the 4.72m street building line and that the dwelling was built 2m from the eastern lateral boundary. With further inspection of the existing dwelling it came to light that there are encroachments that we have addressed in the sections above and that the covered entrance encroaches the 4.72 Title Deed building line by 0.353m, the encroachment is  $\pm 0.97\text{m}^2$  in extent and that the full extent of the dwelling on the eastern side encroaches the lateral building line by 0.124m.

With reference to Section 3.4.2 above we make mention of a number of building line encroachments and the encroachment of the height restriction. The Overstrand Municipality has requested in their letter dated 3 March 2022 that we only apply for the determination of an administrative penalty for the covered entrance that encroach the prescribed Title Deed building line. It was also requested at a later stage that we include the minor building line encroachment of the existing dwelling in our application for the determination of an administrative penalty and the letting of rooms on a longterm basis on ground floor where the second dwelling is proposed.

We will however be referring to the encroachment of building lines in this section of our report but only the encroachment of the covered entrance and eastern portion of the

## Motivation report

dwelling that was constructed into the lateral building line and the letting out of rooms on ground floor will be applicable to the determination of an administrative penalty.

The building line encroachments are minor unintentional encroachments that were caused by the former owner that set out the foundations for the dwelling that our clients completed. The intention of the current owners is to rectify these encroachments that were inherited from the previous owner of Erf 214 Sandbaai and to legalise the encroachments in order to have the building plans approved that accompany our application.

It is also their intention to rectify the rooms on ground floor that are being rented out to long term lodgers since October 2019. This portion of the dwelling is  $\pm 77.5\text{m}^2$  in extent and will be converted into a second dwelling unit with the option to also be used as a self-catering unit once an approval has been obtained.

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**

A survey was conducted that Smart Solution Architecture used to compile the building plans that confirmed that the dwelling was not erected in the correct position as per the building plans approved in 2004 & 2016, and that the covered entrance encroaches the prescribed Title Deed street building line that is 4.72m by 0.353m and that the full

## Motivation report

extent of the dwelling located on the eastern that encroaches the building line by 0.124m.

The minor building line encroachment was unknown to the current owners whom now intend to rectify the matter. All the encroachments mentioned in this application became clear with the as built survey done and the new plans drawn by Smart Solution Architecture. The encroachments can be seen as unintentional minor encroachments as previously mentioned, because only small portions of the dwelling encroach the prescribed building lines.

Without obtaining the necessary approvals the section of the dwelling that is 77.5m<sup>2</sup> in extent, behind the garage, alongside the eastern boundary, was rented out to long term lodgers since October 2019. This section of the house has 3 bedrooms. It is proposed with this application the 77.5m<sup>2</sup> of the dwelling be changed into a second dwelling with the option to also be used as a self-catering unit as per the proposed building plans that accompany this application.

The extent of the unauthorised building work that encroaches the street building line defined in the Title Deed and the lateral building line as defined in the Zoning Scheme Regulations can be tabled as follow:

### **Erf 214 Sandbaai**

Structure	Extent of unauthorised building work
Existing covered entrance transgressing the 4.72m Title Deed Building line.	±0.97m <sup>2</sup>
Eastern lateral building line encroachment of 0.124m by the existing dwelling.	±2.224m <sup>2</sup>

The extent of the unauthorised use of a section of the house on ground floor can be tabled as follows:

Structure	Extent of unauthorised building work
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## Motivation report

Portion of the dwelling located alongside the eastern boundary used for long term rental to lodgers	±77.5m <sup>2</sup>
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The owners of the subject property intend to provide their full co-operation to the Overstrand Municipality to rectify the encroachments as it was always their responsibility to ensure that the buildings are constructed according to the building plans.

The position and nature of the minor building line encroachments are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners have been received. The letting out of the 3 rooms to long term lodgers also had no negative impact on the surrounding land owners.

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

The current owners were unaware of the encroachments as mentioned earlier in this report. The owners only became aware of the extent of the encroachments after they employed Smart Solution Architecture and a survey was conducted. The owners take responsibility for the letting out of rooms to long term lodgers and will rectify the matter.

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

The owners were unaware of the fact that the covered walkway encroaches the prescribed street building line as defined in the Title Deed and the minor building line encroachment alongside the eastern boundary. They are in the process of rectifying the contravention by applying for the determination of an administrative penalty and departures. The building work is already completed. The letting out of rooms to long term lodgers will also **cease** and this portion of the house will be changed into a second dwelling unit.

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

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 landowners, they have 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 letting of 3 rooms to long terms lodgers have on the surrounding area. It should also be considered that **no** complaints from surrounding property owners have been made with regards to the encroachments and the letting out of rooms. An as built survey determined that small portions of the existing dwelling encroach building lines prescribed in the Municipal Land Use Scheme Regulations and building lines prescribed in the Title Deed.

With the proposed application the owners intend to rectify the encroachments on the subject property 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. The proposed second dwelling that will replace the rooms on ground floor that were let to long term lodgers will be utilised as a bona fide second dwelling unit or a self-catering unit and will comply with the relevant land use restrictions. We therefore respectfully request that a penalty fee **not** be imposed on the property owners for the reasons given above.

## Motivation report

**3.5 ACCESS**

Vehicular and pedestrian access to Erf 214 Sandbaai is from Jan van Riebeeck Avenue, Sandbaai and will be retained. No new accesses are proposed with the proposed application. With reference to the existing dwelling and the proposed second dwelling, 3 parking bays are required. A single garage exists that is accessed from Jan van Riebeeck Avenue on the eastern side of the property.

An existing double garage was constructed in the south western corner of Erf 214 Sandbaai of which the outbuilding is proposed to be changed to a double garage, workshop and storage area. The double garage is also accessible from Jan van Riebeeck Avenue via a driveway located adjacent to the western boundary of the site. Subsequently 3 parking bays are provided onsite by means of a single and double garage.

**3.6 SERVICES**

All services on Erf 214 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 owners to utilise the subject property to its full potential.

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

- **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**

## Motivation report

the above erven and that not more than one-half of the area of any one of the above erven be built upon”

- Page 4, paragraph (C)(d): “that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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”

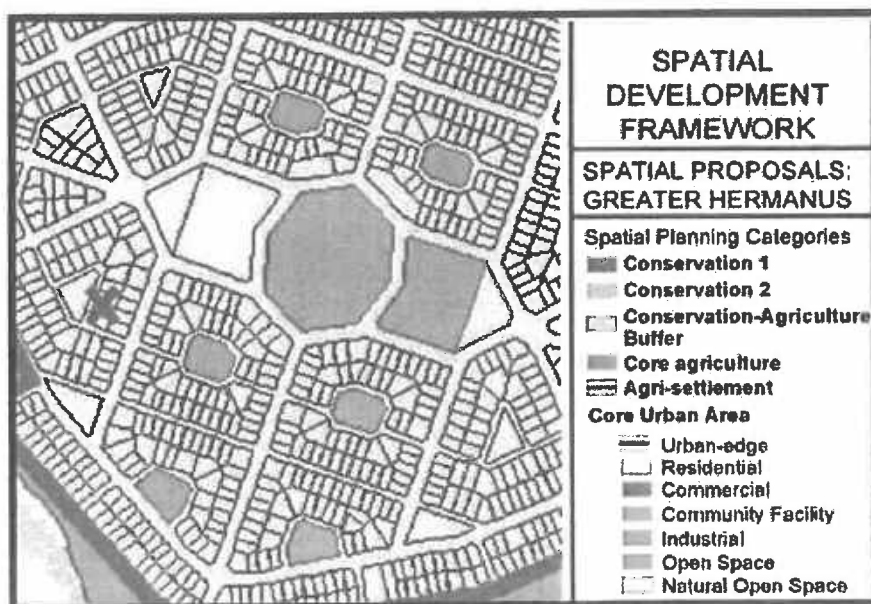
The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

There is no bond registered against Erf 214 Sandbaai. The bond was cancelled on the 21 February 2019, as per the endorsement on the mentioned Title Deed.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Wide Spatial Development Framework (2006).**

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject property will be retained after the removal of the restrictive Title Deed conditions and departure application have been concluded.



### **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 departures 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 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 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 214 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).

## Motivation report

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:

**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 owners of Erf 214 Sandbaai want to make alterations to the existing dwelling and outbuilding to accommodate a second dwelling unit to also be used as a self-catering unit and to address building line encroachments. 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.

## Motivation report

**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 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, building line departures and the determination of an administrative penalty will not have a negative impact on the current character and land values of the surrounding erven.
- All the buildings exist and the proposed second dwelling unit, to also be used as a self-catering unit, will be accommodated by means of internal alterations to the existing dwelling. The building line restrictions applicable to the existing dwelling, proposed second dwelling and outbuilding are a result of the dwelling not being set out correctly by the former owner and proposed internal changes to the existing dwelling.
- The proposed removal of restrictive Title deed conditions and departures of Erf 214 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 Title Deed conditions, the building line departures and the determination of administrative penalty of Erf 214 Sandbaai.

MUNICIPAL REQUIREMENTS AND THOSE OF OTHER AUTHORITIES ARE TO BE CHECKED AND NOTED ON THESE DRAWINGS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES. THE DESIGNER ACCEPTS NO LIABILITY FOR ANY DAMAGE TO PROPERTY OR PERSONS ARISING FROM THE USE OF THESE DRAWINGS. AND COPYRIGHT THEREOF IS RESERVED BY THEM.

REVISIONS:	DESCRIPTION:
REV NO. DATE:	REVISIONS:
00	00

<b>DRAWING STAGE:</b>
COUNCIL SUBMISSION
DEPARTURE APPLICATION
SKETCH PROPOSAL
TENDER DRAWING
WORKING DRAWING

<b>SITE RESTRICTIONS:</b>
STREET BUILDING LINE 4.000m
LATERAL BUILDING LINE 2.000m
REAR BUILDING LINE 2.000m
HEIGHT RESTRICTION 8.000m
TITLE DEED BUILDING LINES see drawings' 1' yes

<b>ZONE APPLICABLE:</b>
EMERALD HOUSING (ERF 1)
TOWN HOUSING - ZONE 1 (GR1)
TOWN HOUSING - ZONE 2 (GR2)
FLATS - ZONE 3 (GR3 and DR4)
LESS FORMAL DEVELOPMENT (LFD)

**SMART SOLUTIONS ARCHITECTURE**  
 111 SANDRA STREET, SANDRA, SANDRA  
 TEL: 021 450 1111  
 WWW.SMARTSOLUTIONSARCHITECTURE.CO.ZA

**PROJECT NAME:**  
 ALTERATIONS AND ADDITIONS  
 MR PD DE KOCK & MR WID SIMPSON  
 ERF 214  
 129 JAN VAN RIEBEEK CRESENT  
 SANDBAAN  
 7200

**DWG TITLE:**  
 PROPOSED DWELLING  
 UNITS DIAGRAMS

**DATE:** 28-10-2021  
**DRAWN BY:** D SWART  
**CHECKED BY:** PSAT24749037  
**DRAWING SCALE:** AS SHOWN  
**DRAWING SCALE:** LANDSCAPE  
**DRAWING NO.:** 10391/A3/06  
**REV NO.:** 0



site and ground storey layout  
 scale 1:200

MUNICIPAL APPROVAL STAMP



outbuilding  
 54.67m<sup>2</sup>

proposed second dwelling  
 77.50m<sup>2</sup>

primary dwelling  
 189.48m<sup>2</sup>

MUNICIPAL REQUIREMENTS AND THOSE OF OTHER AUTHORITIES ARE TO CHECK ALL DIMENSIONS AND LEVELS ON THE BUILDING SITE WORKS COMPASS MUST BE USED FOR ALL DIMENSIONS. LARGE SCALE DETAILS SUPPLEMENT SMALL SCALE DRAWINGS. THE DESIGNER SHALL BE RESPONSIBLE FOR THE ACCURACY OF AND COPYRIGHT THEREOF IS RESERVED BY THEM.

REV. NO.	DATE	DESCRIPTION
00	28-10-2021	ISSUE

DRAWING STAGE:	
COUNCIL SUBMISSION	
DEPARTURE APPLICATION	
SKETCH PROPOSAL	
TENDER DRAWING	
WORKING DRAWING	

SITE RESTRICTIONS:	
STREET BUILDING LINE	4.000m
LATERAL BUILDING LINE	2.000m
REAR BUILDING LINE	2.000m
HEIGHT RESTRICTION	8.000m
TITLE DEED BUILDING LINES (see drawings)	

ZONE APPLICABLE:	
SINGLE RESIDENTIAL - GR1	
TOWN HOUSING - ZONE 1 (GR1)	
TOWN HOUSING - ZONE 2 (GR2)	
PLAYS - ZONE 3 (GR3 and DR4)	
LESS FORMAL DEVELOPMENT (LFD)	



PROJECT NAME:  
ALTERATIONS AND ADDITIONS  
MR PD DE KOCK & MR WD SIMPSON  
ERF 214  
129 JAN VAN RIEBEEK CRESENT  
SANDBAAL  
7200

DWG TITLE:  
PROPOSED DWELLING  
UNITS DIAGRAMS

DATE:	28-10-2021
DRAWN BY:	D SWART
CHECKED BY:	SACAP REG D SWART
DRAWING SCALE:	AS SHOWN
DRAWING NO.:	10391/A3/07
REV. NO.:	0



site and first storey layout  
scale 1:200

MUNICIPAL APPROVAL STAMP









VIR ENDOSEMENTE KYN BLADSY  
FOR ENDORSEMENTS SEE PAGE

5

340

DYKES VAN HEERDEN SLABBERT  
HOPKINS  
Unit E4/2  
Edward IV  
120-122 Edward Road  
Bellville 7530  
South Africa

Prepared by me

*[Signature]*  
CONVEYANCER  
LISE COETZEE

Fee endorsement		Office fee
Amount		
Purchase price/Value	R. 490 000,00	R. 550,00
Mortgage capital Amount	R. ....	R. ....
Reason for exemption	Exempt i.t.o Cat..... section.....Act.....	

BC000006444 / 2016  
GEMANSKELLEER  
CANCELLED  
REGISTRAR/REGISTRAR  
21 FEB 2019

VERBIND MORTGAGED  
VR FOR R. 294 000,00  
B 000019032 / 2016  
25 JUL 2016  
REGISTRAR/REGISTRAR

B000044974 / 2016

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT  
LISE COETZEE

DATA / VERIFY  
05 AUG 2016  
VAN TONDER ELIZABETH

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed respectively at RONDEBOSCH EAST on 29 February 2016 and at PRETORIA on 26 February 2016 granted to him by

1. ELSIE SOPHIA RINQUEST  
Identity Number 520622 0095 085  
Unmarried  
1/2 (One Half) share
2. WILHELMUS WERNER VAN DALEN  
Identity Number 780505 5045 087  
Married out of community of property  
1/4 (One Quarter) share

DATA / CAPTURE  
04 AUG 2016  
LEEJWD

3. **MADRE VAN DALEN (formerly RINQUEST)**  
**Identity Number 840412 0133 083**  
**Married out of community of property**  
**¼ (One Quarter) share**

And the appearer declared that his said principal had, on 11 January 2016, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**PIETER DANIEL DE KOCK**  
**Identity Number 610921 5135 081**  
**Unmarried**

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

ERF 214 SANDBAAI  
 IN THE OVERSTRAND MUNICIPALITY  
 DIVISION CALEDON, PROVINCE WESTERN CAPE

IN EXTENT 902 (NINE HUNDRED AND TWO) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T 4367/1946 with Diagram No. 971/1946 annexed thereto and held by Deed of Transfer Number T585/2011 and Deed of Transfer Number T25579/2013

- A. ....
- B. SUBJECT to the following special conditions contained in Deed of Transfer No. 4367 dated 29<sup>th</sup> March 1946, viz:-
1. IMPOSED FOR THE BENEFIT OF THE TRANSFEROR COMPANY (SANDBAAI SEASIDE ESTATE COMPANY PROPRIETARY LIMITED, as owners of the remaining extent of Lot No. 3 of the farm ONRUST RIVER held by them by Deed of Transfer No. 11466 of 1929, and the owners of the Lots in the said Township, already transferred or which may at any future date be transferred subject to similar conditions, namely:-
    - (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/her 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 hand 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 no building shall be erected on any stand unless and until the plans for such buildings have been submitted to and approved by the Directors of the said Company or the successors in title of the said Company.

- (d) The Transferee/s and his/their successors in title of the hereinabove described property shall have the right to divert any stream of water running on the said property so as to run alongside any of the avenues or streets as laid down on the General Plan of the Township.
- (e) The Company reserves to itself and 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 ten (10) feet from the ground with access any time to such wires for the purpose of removal or maintenance.
- (f) The Company further reserves to itself and its successor in title the right at any time hereafter to lay and to maintain piping under any portion of the above land or elsewhere and at all times to have access to such piping for removal, maintenance, extension or any other purpose and to do all such acts and things as shall be required for the convenience of the inhabitants of the Township in regard to supplying them with water.
- (g) .....
- (h) The Company reserves to itself the sole right to all water arising on or flowing over the Company's property. There shall, however, be excluded from this reservation any water obtained by the owner of the above land by means of well or boreholes sunk on such land.

2. IMPOSED BY THE ADMINISTRATOR:

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

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

1. ELSIE SOPHIA RINQUEST, Unmarried
2. WILHELMUS WERNER VAN DALEN, Married as aforesaid
3. MADRE VAN DALEN (FORMERLY RINQUEST), Married as aforesaid

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


**PIETER DANIEL DE KOCK, Unmarried**

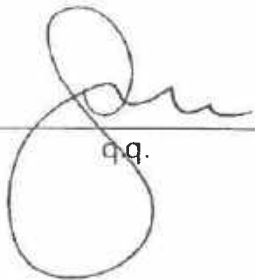
his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R490 000,00 (FOUR HUNDRED AND NINETY THOUSAND RAND).

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

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

2016 -07- 25

In my presence 

  
\_\_\_\_\_  
qq.


REGISTRAR OF DEEDS

✓  
qq

15


q

1/2 SHARE

GETRANSPORTEER AAN W. D. SIMPSON.		TRANSFERRED TO
REST. REMAINDER		
T 000006665 / 2019		
21 FEB 2019		
		REGISTRATEUR/REGISTRAR

SHARE OF P. D. DE KOCK

W.O.P

VERBIND		MORTGAGED
VIA FOR R 2 450 000,00		
B 000003580 / 2019		
21 FEB 2019		
		REGISTRATEUR/REGISTRAR

Erf 214 SB 1074 Piet Retief Singel ANNEXURE E 1/2



TP. n. Theat  
(H. Olivier)

SANDBAAI  
HERMANUS  
7200  
06 JULIE 2022

FILE NO.	Erf 214 ✓
	Sandbaai
SCAN NO.	HES
COLLABORATOR NO.	1710534

GEAGTE HEER / DAME

HIERMEE MAAK EK, ANDRÉ JOHN HESS KAPSIE TITEL =  
VOORWAARDE TE VERSLAP EN AF TE WYK VAN BESTAADE  
TITEL AKTE. DIE TITEL AKTE MOET BEHOU WORD SOOS DIT IS.

REDES:

EK HET TOESTEMMING GEGEE VIR DIE BOU VAN 'N GARAGE  
VANDER AAN DIE GRENSLYN, NIE VIR 'N WONING NIE.

MR P. DE KOCK HET GARAGE OMSKEP IN WONING WAAR DIT  
INMENG MET MY PRIVAATHEID. HY HET 'N KAGEL INGEROU  
IN GARAGE WAT SO ROOK DAT EK ELKEKEER MY VENSTERS  
MOET TOEGMAAK. WANT ONS AS GESIN HET SINUS PROBLEME  
WAAR ONS NIE VUURROOK KAN INNEEM NIE.

HY HET OOK 'N BUITESHOWER TEEEN DIE GARAGE AAN =  
ZEBRING WAAR EK NOU SIT MET MUF IN MY BADSKAMER  
ASOOK SLAAPKAMER. DIT STINK BEHOORLIK SYKANT VAN DIE  
STAANDE WATER. EK MOES EEN AAND SY STINK WATER  
WEGLY WAAR DIE VROU WAT IN GARAGE BLY SE' HAAR  
PLEK STINK SO BINNE AGV DIE WATER LOOP NIE  
WEG NIE.

-7 JUL 2022 TP

MY WONING HET OOK DEUR GELOOP DEUR STELERY TERWYL  
DIE BOUERY BESIG WAS. DIT WAS DIE EERSTE INBRAAK  
IN DIE 15 JAAR WAT ONS HIER BLY.

MNR DE KOCK HET OOK SONDER TOESTEMMING DIE GRENSMUUR  
WAT EK GEBOU HET, MY KANT KOM VERHOOG EN ONKLAAR  
MYKANT GELOS. EK WAS BY DIE MUNISIPALITEIT OOR DIT  
MAAR GEEN NIKS WAS SEDOEN AAN DIT NIE.

EK WAS OOK BY LAW ENFORCEMENT MAAR HULLE GEEN  
TOEGANG KON KRY OP MNR P. DE KOCK SE PERSEEL NIE.  
DIE HEK WAS ALTYD ~~§~~ GESLUIT EN IN ROTWEIEN  
HOUD HET HULLE WEG GEHOU. HULLE KON MNR DE  
KOCK NOOIT IN DIE HANDE KRY NIE.

OP DIE OOMBLIK KAN EK DIE GERAAS ALREEDS HOOR  
VAN DIE MENSE IN DIE GARAGE ASOOR ~~LAAFS~~ DIE GEBOU  
LANGS DIE GARAGE.

MEER GEBOUERY NADER SAL MEER GERAAS BETEKEN, MEER  
MENSE EN MEER WATER WAT AFLOOP MY KANT.

SO EK VOLSTAAN BY DIE TITEL ARTE SE REELS

DIE UWE

A. J. HESS (A. J. Hess)



TP- A Theart  
(H Boshoff)



6 Magnolia St / Str  
PO Box / Posbus 296  
HERMANUS  
7200  
Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email:

TOWN & REGIONAL PLANNERS  
STADS-EN STREEKSBEPLANNERS

[planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)  
Website: [www.planactive.co.za](http://www.planactive.co.za)

Our reference: PA20058

25 July 2022

The Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus  
7200

FOR ATTENTION: MR. H. BOSHOFF

Sir

**ERF 214 SANDBAAI: PROPOSED REMOVAL OF TITLE DEED RESTRICTIONS AND AN ADMINISTRATIVE PENALTY**

Reference is made to our application dated 15 December 2021 as well as your email dated 13 July 2022.

The objections received from Mr. A.J. Hess refer and can be summarized as follow:

- *Mr. Hess agreed that a garage could be located closer to the rear boundary of Erf 214 Sandbaai and did not consent for it to be used as a dwelling. The garage has been used for residential purposes. A fireplace was constructed within the garage. When the fireplace is in use the smoke causes a nuisance.*

As mentioned in our motivation report, when the owners purchased the property only the foundations were built. The foreman utilised the garage as a temporary residence during the construction phase of the dwelling. The garage will be changed back to a double garage, storeroom and workshop as per the plans that accompanied our application. The fireplace will be removed, and the outbuilding will be used as agreed between the owners of Erf 214 Sandbaai and Mr. Hess.

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active  
Reg. No. 2006/030921/07  
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr.10908; SACPLAN Tch.Pln B/8250/2014  
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009  
Darren Adams: BTech (Town and Regional Planning) CPUT; SACPLAN Pr.Pln A/3002/2021

1 AUG 2022

FILE NO. EL 214-HSB	<input checked="" type="checkbox"/>
SCAN NO. HSB 214	
COLLABORATOR NO.	
1724519	

- *An outside shower was constructed against the outside wall of the garage. The use of the outside shower cause damp and mould in Mr. Hess's bathroom and bedroom.*

**The outside shower was also utilised during the construction phase of the dwelling and the shower was removed more than 2 years ago. At the time that the outside shower was in use the shower water was channelled via a gulley into the property's conservancy tank and could therefore not have caused the dampness mentioned by the objector.**

- *The standing water caused by the outside shower causes a stench and the Mr. Hess had to drain the standing water.*

**As mentioned, the shower water was at the time channelled via a gulley to the conservancy tank. According to our client it is impossible that the shower water could have surfaced on the adjoining property.**

**With reference to the photographs below it is clear that the section behind the garage on Erf 214 Sandbaai is dry and that the section behind the bathroom and bedroom on Mr. Hess's property is wet as the growth of moss is clearly visible. It should also be noted that the rainwater runoff from the roof of Mr. Hess's property discharges onto the concrete slab of his property. It is therefore clear that he is causing his own problem with regards to rising damp etc.**



Portion of Erf 214 Sandbaai behind the proposed garage.



Mr. Hess's property where dampness is experienced.

- *During the construction phase of the dwelling located on Erf 214 Sandbaai Mr. Hess's dwelling was burgled.*

**The owners of Erf 214 Sandbaai informed us that at the time of the burglaries one of the neighbouring residents was arrested and found guilty on burglary charges. The burglaries had nothing to do with the contractors that built the house on Erf 214 Sandbaai.**

- *It is alleged that Mr. de Kock, one of the owners of Erf 214 Sandbaai raised the common boundary wall between Mr. Hess's property and Erf 214 Sandbaai without his permission. The matter was raised with the Building Control Office, but no one could gain access to the site.*

**According to the owners of Erf 214 Sandbaai Mr. Hess requested that the common boundary between them be made higher by 2 brick layers because contractors could see into their living room and garden. The owners of Erf 214 Sandbaai agreed to the higher wall as discussed and did so at their own cost. Our clients are willing to lower the wall to the former height if Mr. Hess insists.**

- *Mr. Hess hears the noise from the people living in the garage and the adjoining building.*

**As mentioned previously, the use of the outbuilding will change back into a garage, storeroom and workshop as per the building plans that accompanied our application. The adjoining building forms part of the proposed dwelling and will be used for residential purposes. The noise generated will not be any different than the noise generated by a family residing on the property and it is acceptable.**

- *More construction works will cause more noise and more water that will run into Mr. Hess's property.*

**It is a common phenomenon that there will be noise during the construction of a dwelling, the upgrading of dwelling or the upkeep of a dwelling. Contractors have to conform to the working hours applicable to them in order not to cause a nuisance. The noise generated is always temporary of nature until a job is completed. This cannot be used as an objection against the proposed application.**

**In order to make the necessary changes to the former garage to be changed back to an outbuilding it will require mostly internal changes and the changes as per the proposed building plans will definitely not cause an increase in water runoff into his property as stated by the objector.**

The claims made by Mr. Hess is unsubstantiated and are irrelevant to the application at hand.

We trust that you would find our comments on the objections in order and that the application will be dealt with favourably.

Yours faithfully

A handwritten signature in black ink, appearing to read "John Mc Lachlan", written in a cursive style.

John Mc Lachlan



TP. n. (heard)  
(H. Olivier)

**Division of Telkom SA SOC Ltd**

10 Jan Smuts Drive  
Pinelands  
7404

**I Peters**

Tel: 021 414 5614  
Fax: 086 480 0617  
Email: ihlaamp@openserve.co.za

Our Ref.: WWIP\_WONR2325\_22  
Your Ref.: 214 HSB

28 June 2022

**Attention: H Boshoff**  
**TOWN PLANNER**  
**OVERSTRAND MUNICIPALITY**  
**HERMANUS**

Dear Sir /Madam

**SERVICES AFFECTED**

FILE NO.	ERF 214
	Sandbaai ✓
SCAN NO.	
	HSB 214
COLLABORATOR NO.	
	1703451

**APPLICATION FOR WAYLEAVE – ERF 214, 129 JAN VAN RIEBEECK CRESCENT, SANDBAAI**

With reference to your application dated June 2022.

As important cables are affected, please contact our representative MELT VAN AS at telephone number **0813927083/EliasS1@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.

R 28 JUN 2022

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,  
Private Bag X881, Pretoria, Gauteng, 0001

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

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

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

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

All Open Serve rights remain reserved.

Yours faithfully



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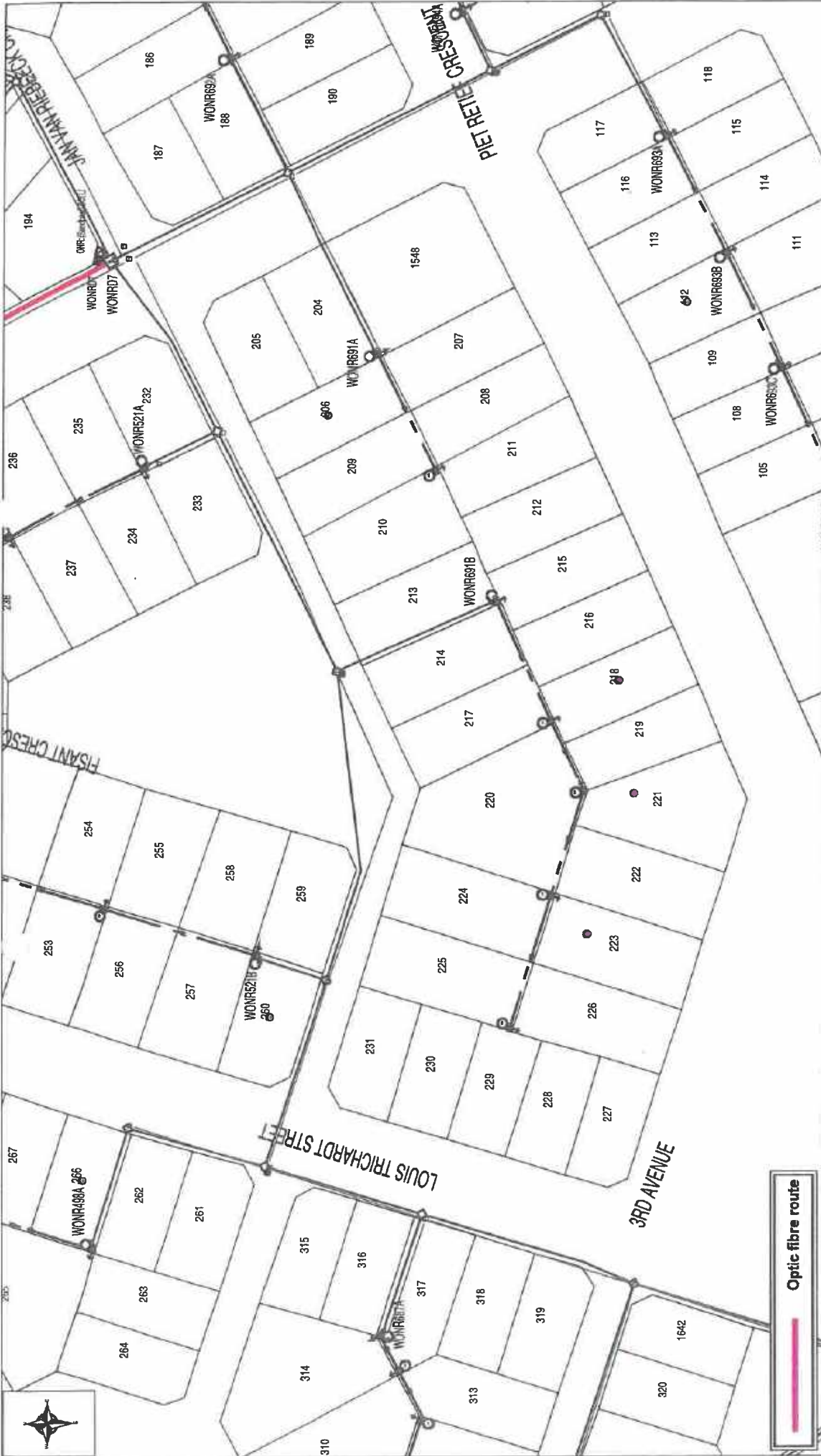
**Ihlaam Peters**

FOR

**Selwyn Bowers**

**Operations Manager**

**Wayleave Management: Western Region**



**Optic fibre route**

<b>TELKOM REGIONAL EXECUTIVE</b>	
Compiled By	I Peters
Client	See Part a blueprint
Client ref	28/06/2022
Details	WWIP_WONR2325_22
SERVICES AFFECTED	
Page Size	A4

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

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF  
214, SANDBAAI (3962/2021)**

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 214, Sandbaai, unobstructed;
7. that no on-street parking be allowed.

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

  
**DATE**

INSPECTION – 8 AUGUST 2024

ERF 214 SANDBAAI, 129 JAN VAN RIEBEEK CRESCENT, OVERSTRAND MUNICIPAL AREA

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Flat 1:



Flat 2:



INSPECTION – 8 AUGUST 2024

ERF 214 SANDBAAI, 129 JAN VAN RIEBEEK CRESCENT, OVERSTRAND MUNICIPAL AREA

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Flat 3:



Flat 4:



INSPECTION – 8 AUGUST 2024

ERF 214 SANDBAAI, 129 JAN VAN RIEBEEK CRESCENT, OVERSTRAND MUNICIPAL AREA

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Flat 5:



Flat 6:

The keys to the door did not work and the tenants were not at home to open flat-6.

