

4.3

**ERF 518, 24 STREAM ROAD, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,
DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: J DOUGLAS
ON BEHALF OF HJ KILIAN - THE EXECUTOR OF LATE ESTATE EK SNYMAN**

518 KPRB (4635/2024)

H van der Stoep

13 June 2025

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 12 April 2024 from J Douglas on behalf of HJ Killian – The Executor of Late Estate EK Snyman - on Erf 518, Pringle Bay for the following:

- ❖ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed condition A.(d) as contained in Title Deed T13250/1982 of the property to accommodate the existing laundry room on the property.

The restrictive title deed condition read as follows:

“A. As synde ten gunste van die geregistreerde eienaar van enige erf in die dorp en onderheweig aan wysiging of regstelling deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie 33 van 1934.

(d) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 1,57 to the lateral boundary common to any adjoining erf.”

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the southern lateral building line from 2m to 1,22m and 1,77m respectively to accommodate the existing laundry room and garage on the property.
- ❖ **Determination of an Administrative Penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised land use as mentioned above.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The owner of the erf indicated that the existing dwelling, garage and laundry on the subject property were built during 1982, after the building plan approval. According to the owner, the screen wall was converted into a laundry at that stage.

The Building Control Department records of the development on the erf are as follows:

1984: The building was constructed and approved in November 1984. The site plan indicates the building lines as follows: street building line: 5m, lateral building lines: 1,5m and rear building line: 3m. Important to note, that the Title Deed building lines were not depicted on the site plan. The dwelling was located in the centre on the erf.

1986: Additions were made to the dwelling consisting of a garage and guest room. The site plan indicated the 1986 street building line: 5m and no indication of the rear and or the lateral building lines. The site plan also confirms that the locality of the building on the erf has changed.

1987: Additions were made to the dwelling consisting of a kitchen screen wall and barbeque shelter. The latter entails the roofing of the area between the dwelling and guest room. The building plan was approved August 1987. The site plan does not have any building lines depicted.

1988: A building plan was approved for a boundary wall in July 1988.

All of the above-mentioned plans were approved by the Caledon Divisional Council.

2023: The owner and applicant requested for an as built cadastral survey. The surveyed plan indicates the transgressions (conversion of the screen wall in a laundry and the garage) which resulted in the application.

4. SUMMARY OF APPLICANT'S MOTIVATION

CONTEXTUAL INFORMATION

Description:

| | |
|--------------------|--------------------|
| Zoning of Erf: | Residential 1 |
| Area in extent: | 1279m ² |
| Title Deed Number: | T13250/1982 |

DEVELOPMENT PROPOSAL

DEPARTURES:

To accommodate the As Built structure an application is submitted for a departure to relax the lateral building line from 2m to 1,22m and 1,77m respectively to accommodate the As Built laundry and garage.

The proposed application has a low to no impact on the character and property values of the surrounding properties.

It is submitted that the existing structure is compatible with the character of the area, does not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

SERVICES

No additional services will be required. The erf has access to Municipal services.

REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

Title deed no. T13250/1982, paragraph A.(d):

“A. As synde ten gunste van die geregistreerde ienaar van enige erf in die dorp onderheweig aan wysiging of regstelling deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie 33 van 1934.

(d) That no building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf.”

The aforementioned restrictive condition does not allow any structure or building on the property over the building lines, except with the approval of the Administrator and needs to be removed.

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

The value of the rights in terms of the restrictive condition vests in the property owners of the Township of Pringle Bay (Division Caledon). The removal of the restrictive condition will allow the property owner to accommodate the addition of a laundry room located alongside the kitchen and the encroachment of the garage. The financial benefit of removing the right is that the addition will increase the value of the property (as any addition will increase the value of the land) and will allow the current property owner to increase the asking price when placed on the market. Additionally, by having the title deed building line parameters removed, the purchaser of the subject property will benefit by not going through a removal or title deed relaxation process if they decide to develop the residential property further.

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

The restrictive title deed conditions were imposed by the Administrator for the benefit of the property owners of the Township Pringle Bay (Division Caledon). With most municipalities adopting their own land use scheme the only benefit that accrues to the holder of these rights is that the property owners have more restrictive land use parameters in place when developing their property. Keeping the restrictive condition in place will not benefit the administrator, the applicable municipality (Overstrand Municipality) nor will it benefit the property owner.

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

The removal of the restrictive condition will benefit the property owner by legalising the existing laundry room and the garage encroaching the title deed building line. However, the structures will still be subject to provisions of the Overstrand Municipal Land Use scheme.

The social benefit of the restrictive condition remaining in place.

There is no social benefit if the restrictive condition is to remain in place.

The social benefit of the removal of the restrictive condition.

The removal of the restrictive conditions will allow the scheme building line regulation to set the guidelines for future development on the subject property. The social benefit will only be for the property owner as it will allow them to keep the existing addition and garage that encroaches the lateral title deed building line on the subject property and will allow future developments constructed to be in line with the scheme building line regulations only.

Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The removal of the restrictive conditions will not remove the rights enjoyed by the owner, as it will expand the value of the property by accommodating the existing structures where applicable and will not have an impact on the rights of anyone or the character of the area.

CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:

o **Spatial Justice**

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the removal of title deed restrictions does not perpetuate apartheid spatial development imbalances.

o **Spatial Sustainability**

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.

o **Spatial Efficiency**

This proposal intends to maximize the usage of the subject property by legalising the existing laundry room and garage.

- **Spatial Resilience**

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality

- **Good Administration**

The Overstrand Municipality has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

POLICY DOCUMENTS:

Overstrand Wide Development Framework, 2020

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the MSA, is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas. The proposed application is located within the urban edge and is indicated as part of the “urban development area”. The proposed changes and additions to the residential zoned property is therefore in line with this forward planning document.

Overstrand Growth Management Strategy, 2010

The Growth Management Strategy promotes the longer-term sustainability of the municipal area and its subregions. The property falls within the planning unit 1; this section of Pringle Bay is predominantly for residential use. Since the proposed additions are of a normal residential nature, the proposal is therefore in line with the OMSGMS strategy.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:

The nature, duration, gravity and extent of the contravention

The property owner made an addition of a laundry room (7.43m²). The building footprint will change but the addition has no negative effect on the surrounding area.

The conduct of the person involved in the contravention

After the appointment of the private town planner the property owner was informed that a condition in the title deed restricts the existing addition and therefore must undergo a removal of title deed conditions to legalise the laundry room. It was also discovered that the garage has shifted which triggered a departure application as well as a determination of an administrative penalty. It must be noted that the property owner was under the impression that these additions were within the applicable zoning parameters of the property.

Whether the unlawful conduct was stopped

According to the property owner, they took ownership of the property in 1982. The property owner then had plans drawn up for the house with a screen wall and a single garage. The plans were approved in that same year (1982).

According to the property owner, they constructed an addition (conversion of the screen wall into a laundry room) in that same year the plans were approved in 1982. However, when viewing the property on a time laps on google earth aerial imagery, the earliest date the laundry room was clearly visible was in 2017. In this instance, there are two timeframes in which the contravention can be calculated. The earliest timeframe of 1982 would indicate that the structure has existed for approximately 42 years. If it is considered that the construction of the laundry room was done in 2017 then the structure has existed for 7 years.

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

No report by a quantity surveyor is submitted and the property owner has opted to utilize the municipal tariff of 2023/2024 in order to calculate the administrative penalty.

Whether a person involved in the contravention ha previously contravened this By-law or previous planning law29

After the consultation with the property owner and to my knowledge the property owner has not previously contravened this By-Law or any other By-Law. As per the aforementioned, the addition will increase the building footprint. With that said the property owner was under the impression that the addition was within the applicable parameters.

Unfortunately, the house and the garage shifted, encroaching the lateral scheme building line triggering a land use application. The property owner still requests that the administrative penalty be waived, however if the administrative penalty is imposed, then a reduced penalty is requested as the property owner had not received complaints or notices regarding the unauthorised structures.

5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising | | Date published | Closing date for comments |
|-----------------------------|-----|----------------|---------------------------|
| Local newspaper | Yes | 8 August 2024 | 13 September 2024 |
| Government Gazette | Yes | 8 August 2024 | 13 September 2024 |
| Email notices & site notice | Yes | 8 August 2024 | 13 September 2024 |
| Internal departments | Yes | 8 August 2024 | 13 September 2024 |
| Ward Councillor | Yes | 8 August 2024 | 13 September 2024 |

| | |
|---|------------------|
| Total comments | SEVEN (7) |
| Total letters of support | EIGHT (8) |
| Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning? | Yes |
| Was the application processed correctly (if no, elaborate below): | Yes |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below) | Yes |








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

| Name | Date received | Summary of comments |
|----------------------|---------------|---|
| Building Control | 08/08/2024 | No objection. Building plan application must comply with all applicable law including fire safety regulation distances. |
| Fire Department | 22/08/2024 | No objection subject to compliance with the provisions of SANS 10400 A:2016, 10400 T:2024 and the By-Law relating to fire safety. |
| Engineering Services | 20/12/2024 | Annexure G. |

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

The application was duly advertised in the local newspaper and Government Gazette. E-mail notifications and registered letters were also sent out to all owners who did not have an e mail address as well as hand delivered. A notice board was also placed on-site by the applicant's consultant.

Seven (7) letters of objection were received forthcoming the public participation process. Eight (8) no-objection / support letters were also received. See list below.

| OBJECTIONS | SUPPORT / No-OBJECTION: |
|--|--------------------------|
|  Pringle Bay Ratepayers Association | • P Molchin |
|  JA Jooste | • L Toerien (AMIT Trust) |
|  A Kruger | • G Harrison |
|  E Bardin | • R Williams-Short |
|  Pethemida Investment | • HJ van der Berg |
|  Dr & Mrs JM Cornell | • J Kritzinger |
|  Dr GW Linder | • E Wessels |
| | • L Steenkamp |

The applicant was provided with an opportunity to respond to the objections. See Annexures E and F respectively.

The objections, the applicant's reply and the Municipal Town Planners response thereon can be summarized as follows:

OBJECTION (Pringle Bay Ratepayers Association)

SHOULD THE ENCROACHING LAUNDRY ROOM BE DEMOLISHED?

If the laundry room, built as recently as 2017 illegally by the present owner, without an approved building plan, should be demolished, no change to the title deed condition is required. This aspect is dealt with under the heading: Motivation that the encroaching illegal addition (comment will be dealt with under the headings as a laundry room) be demolished.

In the event that the Municipal Planning Tribunal does not accept our request for demolition, we motivate under the heading: Which is advisable: an amendment of a title deed condition or its complete removal that the encroachment by the laundry room be legalised by an amendment to the title deed condition, in respect of the boundary line with Erf 519 only, instead of a complete removal of the title deed condition in respect of all boundaries, as is presently applied for.

The amendment reads as follows:

“A(d) that no building s or structure of any portion thereof, except boundary walls and fences shall be erected nearer than 1,57m to the lateral boundary common to any adjoining er, except for a portion of the existing dwelling with a width of (to be inserted) meters, which may front or abut not less than 1,22 to the adjoining erf”.

APPLICANT'S RESPONSE

The objector does not provide a reason for the request to demolish the laundry room. This objection point should therefore be disregarded.

TOWN PLANNER'S RESPONSE

The comment will be dealt with under the headings as indicated by the objector on the various aspects.

OBJECTION (Pringle Bay Ratepayers Association)

WHICH IS ADVISABLE: AN AMENDMENT OF A TITLE DEED CONDITION OR ITS COMPLETE REMOVAL?

- *We object against the complete removal of the present title deed condition, instead of merely amending the title deed condition to accommodate the encroachment of the laundry room addition.*
- *We object against the apparent practice of the overbroad removal of title deed conditions, an action that affects all erf owners as holders of praedial rights in the present Pringle Bay township extension. Instead of applying for the amendment only of the title deed condition, a complete removal is unnecessarily applied for in the present case. We request the OM not to allow the overbroad removal of title deed conditions, where an amendment would suffice, as in the present.*

- *In a previous appeal decision by the OM Appeal Authority, it was rightly pointed out, in line with common professional knowledge, that “Restrictive conditions on a title deed are placed for a specific reason and the removal of these conditions should not be considered lightly”. The building lines and height restriction per the title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay. We submit that it is especially not desirable that a title deed restriction be removed in order to legalise an illegal structure.*
- *Furthermore, the OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf.*

As per the present application, subsequent to demolition of the laundry as requested, there is no transgression of the title deed condition building lines.

Alternatively, there will be no further transgression if the title deed condition is amended for the encroaching portion of the laundry, instead of the whole title deed condition apparently being completely removed in the present application.

- *We draw the attention of the Municipal Planning Tribunal to the common knowledge/understanding within the planning profession that the title deed condition and scheme regulations serve different purposes, and that a title deed condition cannot be removed, as the applicant would suggest, because a scheme regulation cover the building lines (a non-allowable so-called “blanket removal”, on the basis that more restrictive building lines in the scheme regulations “cover” the situation) of removing it completely:*
- *We propose the following insertion in the title deed, instead of removing it completely: **“A(d): That no buildings or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf, except for a portion of the existing dwelling with a width of (to be inserted) meters, which may front or abut not less than 1,22 to the adjoining erf 519.”***

APPLICANT’S RESPONSE

Firstly, it is noted that the property owner did construct the laundry room without the necessary land use / building plan approval. Secondly, the reason for the removal is to accommodate the previously mentioned laundry room at its current position. Thirdly, the reason for the removal is due to the fact that the property owner wants to sell the property and requires all land use approvals and building plans to be in place before the property is transferred into another owner’s name.

Furthermore, the reason for the laundry room to be constructed and approved at its current position is due to the practicality in relation to the design of the house. The position of a laundry room could only be placed in this position rather than redesigning the house to accommodate the laundry room at a position that does not make practical sense. The laundry room was also constructed to be in line with the current position of the dwelling house footprint; therefore, it encroaches the Overstrand Municipality Land Use Scheme building line parameter as well as the applicable title deed lateral building line parameter.

It must be noted that the position of the current house was approved at 2,5m from the erf boundary. As the Overstrand Municipality as well as the Pringle Bay Ratepayers Association are aware, that most of the houses within the Pringle Bay Area are not built in accordance with the approved building plans due to the incorrect units of measurement / datum used to set out the building footprint of the dwelling house and associated structures. With the technology of today such as GIS viewers, it is evident that the houses were not built as per the approved building plan.

The removal of the restrictive title deed condition is requested in order for the development parameters to be in line with that of the Scheme only. In this way the property will be more restricted, however will not incur the absurd application and administrative fees applicable to the removal of title deed conditions. By not removing the title deed restrictive condition, the current property owner and the future property owners will be deprived of the right and burden of being more restricted in terms of development parameters compared to the that of the Overstrand Municipal erven at large.

With regards to the so-called special character of the Pringle Bay Area, the Ratepayers Association do not substantiate the reason for the Pringle Bay area having a special character. The only character that the Pringle Bay area has is that it is similar to other residential neighbourhoods which it simply is a residential neighbourhood. The houses within the Pringle Bay area each has its own character as per the Developer or Property Owners unique design inputs.

The Pringle Bay Ratepayers Association stipulates that the application is for a "blanket removal" which is not the case. The only condition that is proposed to be removed is condition A(d). The comment is therefore not applicable.

TOWN PLANNER'S RESPONSE

- Noted and is discussed under the last bullet point.
- The request from the objector to amend the title deed condition rather than to remove the condition to deal with the transgression is noted. It is also indicated that the removal of the condition will affect all the erf owners as holders of praedial rights in Pringle Bay Proper. All owners in Proper were notified and very few have commented. The objections of individual erf owners received are a total number of six of which two dealt with stormwater, eight owners supported the application, and the remainder has not responded at all. It is thus unclear how the removal of the lateral title deed condition will affect the property owners, since the objector did not elaborate on the impact (how the residents will be affected). The applicant did indicate that the removal is preferred in order to erect structures as per the Overstrand Land Use Scheme. The latter makes provision for neighbours consent and or a land use application process and relates to uses such as water tanks, non-habitable structures in response on climate change and needs of households. The mentioned structures are single story and will have less impact versus double storey built structure on a 1,57m lateral building line as proposed by the title deed.

The PBRA indicated the following: “that building lines and height restriction per title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay”. The Township Establishment Conditions of 1941, heights are not a restrictive condition on any of the erven as approved. This was the case of erf 506 which was recommended by the PRPA where the 8m height restriction was transgressed with a meter. Their comments were as follows: *“We understand that the illegality of the buildings may have resulted from changing site conditions as is described on page 7, paragraph 3.4.2 of the application. In this regard we agree with the applicant’s motivation that it was not done intentionally as is stated in the application. We agree with the statement in the summary of the reference court case (refer to point 2.7.1 above), that the ordering of demolition in this particular case would be an unfair alternative to consider. As per paragraph 3.4.1 of the application, we understand that the OM has not ordered/applied or has the intention to order/apply for a demolition directive. We are in agreement that the ordering of such a drastic step under these circumstances is inappropriate.... .*

The court case referenced: *The legal precedent of the Bet-el Faith Mission v Motthamme and Others (5306/2017) [2020] ZAFSHC 6, as summarised in an article by Ashersons Attorneys titled “Your Neighbour Builds Without Plans – Can You Get a Demolition Order” dated April 2020, which among other states* is being referenced in both cases. Erf 506 was recommended for approval. The recommendation of Erf 506 was for a newly constructed building that was not in line with the approved building plan which transgresses the 8m height with a meter.

The same court case and interpretation is being referenced by the PBRA requesting the demollishment of a 7, 43sq laundry, of which only 0,35m transgresses the title deed lateral building line of 1,57m, a single storey structure in existence for a minimum of 9 years. It is unclear why in the latter application the ruling of unfairness is not applicable taking into consideration that the laundry is part of the spatial character of Pringle Bay. The reasoning that the deviations of an approved building plan of Erf 506, transgressing the height with a meter will not impact the spatial character of Pringle Bay is not clear. This aspect was not properly addressed by the objector.

- It is also correct, in applications received where sufficient land is available for development, the municipality does require the reasons for transgressing the building lines. Applications are dealt with on merit and the laundry at its present location is part and parcel of the spatial character of Pringle Bay for almost 38 years. It would be unreasonable and without merit to expect the laundry to be demolished or relocated even if sufficient space is available. The laundry makes use of existing infrastructure such a water connection, wastewater removal. The alternative to relocate the laundry will result in new building work and redesign of internal infrastructure to comply with the 1,57m title deed lateral building line, has no merit or benefit to the owner or residents of the community.

- It is correct that the title deed conditions and the land use scheme development parameters have different intentions when drafted. In drafting the Overstrand Land Use Scheme, the Municipality did take the title deed conditions into consideration in determine the development parameters of each zoning category. One aspect of importance is that a height restriction is rarely addressed and inserted as a restrictive condition. Due to the insufficient safety measure in 1940, this aspect is addressed by the Land Use Scheme. The difference between the title deed conditions and development parameters of each zoning category, were mitigated to average out the different title conditions to ensure uniformity in the jurisdiction area of the Overstrand Municipality.
- The title deed conditions, and scheme regulations serves different purposes and this notion stems from various court cases. Pringle Bay Proper was established in the early 1940's and the Township Establishment Conditions were gazetted in 1941. These conditions were inserted in the title deeds of the erven which stipulates development parameters of each erf. The conditions served as the land use schemes in the absence of Municipal land Use Schemes. The latter is constantly amended to adapt and reflect human progression and development, some of which would have been inconceivable in the 1940's.

The applicant is correct; the Land Use Scheme parameters are more restrictive. The reasoning of the objector, that the title of the 1,57m lateral building will protect the spatial character of Pringle Bay since structures are restricted to boundary fences and walls that may be erected within the 1,57m lateral building line, is debatable. The implications are that every owner can build an 8m high habitable structures on the 1,57m building line without due consideration of privacy, view corridors and or public participation. The same apply to boundary walls or fences which height is not stipulated in the title deed conditions. Thus, the land use scheme parameters are more in line with modern planning practices and legislation to safe guard residents against the outdated restrictive conditions which does not protect their privacy, view corridors and the requirement of public participation relating to developments.

- The proposed amendment of the objector is noted, however not supported. The applicant submitted an application for the removal of the condition to legalize the existing laundry but also motivated that it intends to make use of the land use scheme parameters allowing structures over the lateral building line with neighbour's consent or processes without going through the removal of restrictive conditions application for every possible development. In terms of the land use scheme garages/ carports can be applied for with neighbours' consent and if not obtained, a departure application is applicable. The same applies to any other outbuildings. Important to note that most Land Use applications are subject to public participation, especially the affected neighbouring properties.

The more restrictive conditions of the Land Use Scheme are more conducive to safeguard the spatial character of Pringle Bay Proper than the title deed lateral building line of 1,57m.

OBJECTION (Pringle Bay Ratepayers Association)***IS THE GARAGE BUILT WITHIN THE TITLE DEED CONDITION BUILDING LINE?***

PBRA does not generally object against building departures from the scheme regulations, provided the proposed building is within the building lines of the title deed conditions.

Except if the drawing numbered STG 4-1/7 by RCB Architecture is incorrect, contrary to the Applicant's opinion, this will in actual fact be the case with the existing garage, which was built fractionally over the Zoning Scheme regulations building line (230mm), but not over the Title Deed building line.

No change to the title deed condition A(d) is therefore required for the garage.

APPLICANT'S RESPONSE

The Pringle Bay Ratepayers Association should please refer to the Overstrand Municipality Land Use Scheme which details that garages may be built over the applicable lateral building line.

TOWN PLANNER'S RESPONSE

The applicant throughout the motivation references the laundry over the title deed building line and not the garage. However, the garage does transgress the 2m Land Use Scheme building line and can be approved with neighbour's consent. In this case the neighbour did not respond to any communication and therefore it is included in the application to ensure public participation via notices and advertisement.

OBJECTION (Pringle Bay Ratepayers Association)**GENERAL COMMENT**

The application is not helpful in that it contains a number of specious statements on planning law that are not in accordance with common professional knowledge/understanding within the planning profession. The application manifests a lack of knowledge of the legal nature of praedial rights and the interaction with town planning zoning scheme regulations, as per precedents set by our courts.

The application appears to have been prepared by an individual who appears on the register of the South African Council for Planners as a Candidate Planner, who is in training, and who has to work subject to the supervision of either a Technical Planner or a Professional Planner.

The Applicant states in paragraph 10 of the Motivation report:

"Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) (Sic) Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" list 5 development principles based on which any development application must be evaluated.

The principles referred to are as follows:

Spatial Justice

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the removal of title deed restrictions does not perpetuate apartheid spatial development imbalances.

Spatial Sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.

Spatial resilience

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality.

Efficiency

This proposal intends to maximize the usage of the subject property by legalising the existing laundry room and garage.“

We submit that the Applicant takes the time to study the literature on land use planning law, such as excellently discussed in “Planning Law” by Prof Jeannie van Wyk, published by Juta, which is available to persons training to become professionals and to professionals alike. The Applicant will find that statements such in “1. Spatial Justice” above are just not applicable. Title Deeds and restrictive title deed conditions were in use long before apartheid and are until present day still regarded as solid and valuable legal frameworks irrespective of attributions the justify the statement made by the applicant.

Restrictive conditions of title are not simply a relic of the past. As was stated in Camps Bay Ratepayers Association v Minister of Planning, Western Cape (supra-324):

“Indeed, a theme running through the arguments put up by the developer in support of the removal application is that restrictive conditions are a relic of the past and should be abolished in favour of the zoning scheme. However, this is not the philosophy of the Act, and it was inappropriate and irregular for the Minister to have allowed himself to be swayed by this consideration. In my view the Minister’s approach in this regard is fundamentally unsound.”

Furthermore, to make a statement such as in “2: Spatial Sustainability” above (This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.) shows disrespect to other title deed holders in the same township who, contrary to the statement, regard their title deeds as important and valuable.

In “4. Efficiency” the applicant is mistakenly trying to motivate maximization of the usage of land beyond parameters in both the Scheme Regulations as well as the Title Deed conditions, to try and legalise illegal buildings. The spirit of the Title Deed conditions is exactly to define efficient land use by highlighting certain development parameters which, when purchasing a property in the subject township, must be taken cognisance of because it is also in favour of the praedial rights of other owners in the township and was established to ensure efficient land use for the benefit of all, and not only one, in the subject township.

*Referring to paragraph 2.4, we wish to emphasise that the restrictions are imposed by the developer in order to establish and maintain the character of a township and are usually registered against the title deeds of all the properties in the township (see generally *Swiss Hotels (Pty) Ltd v Pederson* 1966 1 SA 197 (C); and *Hayes v Minister of Finance and Development Planning*, WC 2003 4 SA 598 (C)). The conditions may be imposed in favour of a specific individual only, or in favour of all owners in the township. In the latter event the restrictive conditions constitute praedial servitudes whereby each erf in the township is simultaneously both a servient tenement and a dominant tenement (*Camps Bay Ratepayers Association v Minister of Planning*, Western Cape 2001 4 SA 294 (C) 324J). The implications of this were set out as follows in *Malan v Ardconnel Investments (Pty) Ltd* (1988 2 SA 12 (A) 37U): “Where the registered restrictive title conditions are, however, praedial servitudes each erf becomes simultaneously both a servient tenement and a dominant tenement. It is a servient tenement encumbered by the restrictive title conditions in its own title deed in favour of all the other erven as dominant erven. But it is also a dominant tenement in respect of the restrictive title conditions inserted in the title *Diocesan Trustees* 1936 TPD 21 at 26, *Cannon v Picadilly Mansions (Pty) Ltd* 1934 WLD 187 at 191. This result flowed from the circumstance that it was an important element of the general scheme, relating to the sale of erven and the establishment of the township, to insert the restrictive title conditions in all the title deeds of erven in the township for their reciprocal benefit in order to preserve the essential character of the township.” (Orbiter 2007 - P.122)*

Finally, referring to paragraph 2.4, we draw the applicant’s attention to the fact that it is not sufficient merely to get the municipality to have the relevant building plans approved as required by the town planning scheme. The law in this respect is quite clear:

- (a) A municipality’s zoning scheme does not override title deed conditions (*Camps Bay Ratepayers Association v Minister of Planning*, Western Cape supra-324).*
- (b) A consent by a local authority in terms of a town planning scheme does not per se authorise the use of an erf contrary to its registered restrictive title conditions (*Malan v Ardconnel Investments (Pty) Ltd* supra 40E).*

We question whether it is not the responsibility of the OM Planning Department to distribute the Application/Notice to all relevant parties? With the Applicant apparently having sent out emails to all landowners in Pringle Bay (erven 1 to 542), we question where the applicant had obtained the personal email information from, if the application is lodged by a private entity/individual acting on behalf of the owner (or Executor)? Was this compliant with the POPI Act?

We also wish to point out that it has become standard procedure for the OM to require replacing “French drains / soakaways” with conservancy tanks once alterations or additions to existing buildings are applied for. It is however not clear what exactly the requirement is that triggers the replacement of the French Drains with that of a Conservancy Tank. In fairness to other residents, this requirement must also be highlighted in the subject application. It should clearly be pointed out whether a replacement is required or not and what the motivations are for it, to allow the Municipal Planning Tribunal to properly consider this application and to record it for approval either in full or in part.

APPLICANT’S RESPONSE

The general comments are noted.

TOWN PLANNER’S RESPONSE

The book: “Planning Law” by Prof Jeannie van Wyk, was published by Juta in 2012, before the enactment of SPLUMA and subsequent Planning Legislation. The book is a thorough academic discussion on the history and development trends in South Africa before 2012. It does not address current planning trends and development within the planning fraternity, 13 years later.

Spatial Justice as per the motivation is correct and deals with the principle in SPLUMA and not the title deed condition, but as a matter of fact it indicates that the township establishment conditions of 1941 inherently does not perpetuate apartheid spatial development imbalances of the past.

Spatial sustainability in the motivation relates to viable communities and maximise its use of the property. It is not clear where the disrespect for the title deed comes into play as indicated by the objector. The application is to remove only the lateral building line; all other conditions remain in place and the development parameters is applicable to the property as per the Overstrand Land Use Scheme. The disrespect contemplated by the objector is the objector disrespect towards the younger generation to be forced to adhere to outdated standards and viewpoints from the 1940’s. It seems that the PRPA intention is to change and recreate Pringle Bay into the 1940’s, but with modern amenities which they deemed fit for Pringle Bay.

Efficiency relates to the application to go beyond the title deed and scheme regulations to maximize the use of the property. The application needs to be read in context. Its present location in relation to the kitchen making use of the water and discharge connections etc. is more efficient than to demolish the structure of 7,43m and relocate the laundry.

The objector reference various court cases which deal with title deed conditions versus land use schemes applicability. In these cases, the main theme is that the title conditions inserted in title deeds is to preserve the essential character of the township. The objector does not address the essential character of Pringle Bay Proper which will be impacted upon by the application. Title deed restrictions have been accepted over the years as the base line conditions and that the land use scheme cannot overrule title deed conditions. The applicant indicated that the main reason for the 1,57m title deed restriction removal is to accommodate the laundry, but it will be conducive to the property to be able to make use of development parameters of the Land Use Scheme pertaining structures allowable over building

lines. Any other uses allowed as per the Land Use Scheme will have to be applied for and the latter take due cognisance of the title deed conditions. However, legislation does provide a mechanism for conditions to be removed, amended etc through a planning process or High Court. Irrespective of the title deed conditions intentions, conditions can be removed if applied for on merit. The proposed removal of the 1,57m title deed restriction line will have little impact on the spatial character of Pringle Bay Proper due to the restrictions contained in the Overstrand Land Use Scheme for structures over building lines.

Notification is the responsibility of the Municipality which is in line with the POPI Act. For one after all the years of being responsible for comments on land use planning matters for the PBRA, surely the notification for a removal of restrictive conditions being the applicant's responsibility should be known. Regarding the POPI Act, yes, it is compliant. The question of French drains and soak away has no bearing in this case. If the laundry was in the house, it would have made no difference. Details about the requirements of conservancy tanks can be directed to the Building Department of which the author has access to.

OBJECTION (Pringle Bay Ratepayers Association)

MOTIVATION THAT THE ENCROACHING ILLEGAL ADDITION (A LAUNDRY ROOM) BE DEMOLISHED.

In practice two options are usually available to authorities to rectify building restriction deviations, namely:

Demolition of illegal structures or Levying of an Administrative Penalty which goes hand in hand with the legal aspects that need to be put in place to legalise the deviation without jeopardising the intention of the applicable restrictive title deed conditions, law(s) and by-law(s).

Building lines are governed by the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2020, Schedule 2, specifically Chapter 6, Section 6.1.

We also considered the following legal opinions which we believe have direct bearing on this application:

The legal precedent of the Bet-el Faith Mission v Motthamme and Others (5306/2017) [2020] ZAFSHC 6, as summarised in an article by Ashersons Attorneys titled "Your Neighbour Builds Without Plans – Can You Get a Demolition Order" dated April 2020, which among other states:

"In this respect said the Court (emphasis supplied) "the encroaching owner's own conduct plays an important role" and "while one is acutely aware of the financial implications, inconvenience and disruption which the partial demolition will cause the [couple], the upholding of the doctrine of legality, a fundamental component of the rule of law, must inevitably trump such personal considerations."

Commenting on the couple's "obstructive behaviour" in this case and finding that they "are indeed in legal and administrative breach of the law ... to allow them to keep the structures where they are, would be to perpetuate the illegality", the Court ordered the couple to demolish their illegal garage within 90 days."

The OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf. We request please that this precedent be adhered to for the laundry room.

An article by Schindler's Attorneys titled "Illegal Buildings", Dated September 2020 which states all the applicable legislation and also addresses the following salient points:

- a) *Responsibility for Enforcement*
- b) *Can Neighbours/Communities/Ratepayers' Associations Enforce Building Laws*
- c) *Type of Court Order Applied For. The article states:*

"Regardless of whether the local authority or another interested party, such as a neighbour or community, approaches the court, the type of order normally sought to deal with an illegal building would be either a prohibitory interdict preventing the offending builder from continuing to build illegally, or a mandatory interdict requiring the demolition of the illegal building or illegal portion thereof."

- d) *Will a Court really grant us a Demolition Order?*

"It has been assumed for many years that courts are reluctant to grant demolition orders on the basis that it will cause severe financial harm to the owner of the property be demolished. Van der Walt, however, argues that from an analysis of the relevant case law, it appears that this is not true, and that more often than not when a proper case is made out for a demolition order of illegal buildings, the court will grant these types of orders.

Sometimes people think that if they rush to complete the illegal building, a court won't be able to do anything about it – for example, they won't be able to make an order that the illegal building stop, because the building is already complete. This thinking is flawed. The idea that a court will not grant a demolition order of an illegal building that has already been completed has not found favour in our law; and in fact, was expressly struck down by our courts.

A court can and will order demolition where a proper case for same has been made out, and the fact that the illegal building is complete has no bearing at all on this. There is thus good reason to believe that when you are seeking a demolition order, provided that you are legally entitled to same, you should be able to obtain it from the courts."

- e) *What if I am Unhappy with the Approved Building Plans?*
- f) *What if I am Happy with the Approved Building Plans, but the building is not Built in Line with them?*
- g) *An Amicable Alternative, which states the following:*

"It is possible to approach the builder or owner of an illegal building with a view to coming to an agreement that measures will be put in place to relieve the impact of the illegal building. When this happens, the aggrieved neighbour may be satisfied that he is no longer being affected by the illegal building works and may do away with the need for expensive court action. However, just because the neighbour is no longer unhappy with the illegal building, this does not make it lawfully compliant. An illegal building will remain illegal until such time as it becomes compliant with the relevant building laws. The neighbour's consent to the illegal building works similarly

does not render those building works lawful. It is thus no defence to claim that building works are not illegal because the neighbour knew about them and consented to them or knew about them and did not complain about them.” (our emphasis)

Taking cognisance of the abovementioned, we wish to comment as follows:

We recognise and appreciate the Applicant’s intentions to rectify illegal structures on his/her property. We consider the Garage encroachment as an example where leniency can be considered but the case of the Laundry Room is somewhat different.

We are of the opinion that since it has been constructed at the earliest in 2017, well after the publishing of the Land Use Scheme in 2015, it was a deliberate/negligent/ignorant action by the owner. It is our submission that it should not become yet another example of allowing an initially illegally built structure only being rectified afterwards through an insignificant Administrative Penalty. It is our submission that the laundry room rather warrants consideration for issuance of a demolition order as is highlighted in paragraph 7.3.1. above.

It would appear to be a resorted to strategy in South Africa that an owner quickly builds an illegal structure and then pleads that it cannot be removed due to the costs involved and the extent of the built structure. Paragraph 7.3.3.(d) above makes it clear that it is not unusual for a court to grant a demolition order under circumstances as in the subject matter. In the present case that does not apply – the illegally added laundry room can easily, without much cost, be removed.

We submit that it would be appropriate for the OM to require the demolition of the illegal laundry room, or the illegal portion thereof as is highlighted on paragraph 7.3.3 (c) above.

We find no proof in the application that the Applicant has approached the neighbours directly impacted by the illegal buildings. We wish to point out that the Overstrand Municipality must ensure compliance in this regard as is stated in their “Notification to affected property owners” that accompanied the subject application. The onus of verification of compliance in this regard thus remains with the OM.

We also concur with the statement by Schindler’s Attorneys as is highlighted in point 5.3.3 (g) above that the outcome above does not constitute legalising the illegality of the building. The necessary departures in terms of the applicable bylaws must be completed.

We agree that it remains the duty and function of the Overstrand Municipality to determine an applicable, fair and equitable administrative penalty in accordance with the relevant laws and by-laws. We submit that using the cost related to ONLY the part of the building that is illegal, does not pose a fair penalty. In the words of the applicant, the value of the property is substantially increased as a result of the illegal building and we argue that the value of the increase should rather be the basis from which the penalty is to be determined.

CONCLUSIONWe conclude as follows:

We have no objection to a departure of the OM Scheme Regulations regarding the encroachment by the garage. We submit that no removal, amendment or suspension of a title deed condition is necessary for this. We request please that the laundry room be demolished. We request please that no removal, amendment or suspension of a title deed condition be approved.

APPLICANT'S RESPONSE

The case referred to in the objection point regarding the encroachment over the boundary line is not applicable to this application since the structures on the subject property do not encroach the erf boundary. The Pringle Bay Ratepayers Association's argument is therefore flawed, seeking a demolition order. Furthermore, the argument from the objectors therefore seems targeted at the property owner by stating case law that has no relevance to the application at hand and rather seeks to delay the proper administrative planning process by any means necessary.

If the laundry room were to encroach the property building line (of which no proof has been submitted by the ratepayers) it would make sense that the structure should be demolished since development on the boundary is restricted to the boundary of the subject erf (apart from the building lines applicable).

It must be kept in mind that there is a specific formula the municipality utilises to calculate the administrative penalty. Furthermore, only those section that encroach the applicable building lines be it of the Scheme or the Title Deed will be subject to the determination of an administrative penalty.

It must be noted that ratepayers are there to serve as a buffer, which helps assist property owners within a township to understand the relevant planning laws and processes (in relation to a town planning application). It seems as if the Pringle Bay Ratepayer's Association seeks to enforce building laws (with specific reference to 7.3.3.(b) of the objection) in which they have no legal standing. The objection by the ratepayers should therefore be disregarded since the basis on which the ratepayers who seek the demolition of the laundry room are flawed.

GENERAL COMMENT BY APPLICANT

The laundry room is situated over 1m from the property boundary and does not have windows or other openings that are closer than 1m from the erf boundary. Furthermore, a laundry room is not a habitable space in which noise, or any other disturbances will occur and should therefore not be considered for demolition.

The case law and arguments put forth by the ratepayers cannot be correlated with this application since the basis of the arguments made refer to other forms of developments such as guesthouses (refer to point 2.4 of the objection) and boundary line encroachments (refer to point 7.3.1 of the objection) which is not the case with this application. It is therefore requested that an individual that serves on the Pringle Bay Ratepayers Association (that has the relevant planning qualification or proper town planning knowledge) prepare an objection since the objection made by the current author is clearly misleading.

TOWN PLANNER'S RESPONSE

The question of demolition is determined on various factors and in this case the owner indicated that the laundry was built in 1982 when the dwelling was constructed. However, the actual house was built in 1984 but the screen wall that was transformed into the laundry which was constructed in 1987. The Google historical imagery shows some construction since 1987, however due the distortion of the imagery it is unclear when the structure was constructed. The 2017 Google imagery clearly indicates a structure. Therefore, should the laundry of 7,43sq be demolished? If it has been built in the 1980's as per the owner admission and has been part of Pringle Bay Proper's character for the past 38 years, will it be reasonable to request the demolition in order to comply with a title deed restriction dated back to the 1940's?

The objector allows for leniency for the garage since it does not transgress the 1,57m title deed building line. It does indicate that the leniency does not extend to the laundry. The objector held the opinion that since it has been constructed at the earliest in 2017, well after the publishing of the Land Use Scheme in 2015, it was a deliberate/negligent/ignorant action by the owner. The opinion held by the objector is not fact, since it is impossible to establish when the laundry was built. The structure in terms of built material is similar to the structures constructed in the 1980's, which supports the owner's speculation that it has been built during the 1980's when all renovations on the property took place.

The objector requests the Municipality to require the demolition of the laundry or portion thereof. The request is noted, but it will be irresponsible of the Municipality to lodge an application at the High Court for the demolition of a transgression of 0,35m utilising taxpayers' money.

The objector indicated that it has found no proof that the applicant approached the neighbours. The public participation is a Municipal administrative function and is not required to provide proof to the PBRA. Important to note that the application was subject to a full public participation process, which included, notices, advertisement and site notice. The adjacent owners did not respond and or objected against the application.

If the transgression has such a major impact on the spatial character of Pringle Bay Proper, why has the PRPA not lodged a complaint, objection or requested any information on the transgression before the application was circulated.

OBJECTION (JA Jooste)

I do not support the application, since Stream Road has problems especially storm water, which needs to be address first before any developments be approved.

APPLICANT'S RESPONSE

Please note that your query regarding the infrastructure of stormwater pipelines should be directed to the Operational Department of Overstrand Municipality and the objection has no relevance to this application.

The existing unauthorised structures have been built already, and the property owner seeks to rectify the unauthorised building work by means of submitting this application.

TOWN PLANNER'S RESPONSE

Noted and agree with the applicant.

OBJECTION (E Bardin)

Flooding and the request for a flooding plan.

APPLICANT'S RESPONSE

Your query regarding flooding should be directed to the Operational Department of Overstrand Municipality and the objection has no relevance to this application.

TOWN PLANNER'S RESPONSE

Noted and agree with the applicant.

OBJECTION (Pethemida Investment)

Plans have to be submitted before encroaching building lines. How did the property shift or plans not followed? An administrative fine should be paid, and alterations should be made in accordance with the title deed.

APPLICANT'S RESPONSE

As stipulated in the application, the property owner constructed the structures with the necessary land use or building plan approval, therefore this application has been submitted.

As mentioned in the previous response to the PBRA, structures were not built according to plan due to incorrect datum or units of measurements when construction took place which is the case in most of the properties in the Pringle Bay area. An application for an administrative penalty has been submitted

TOWN PLANNER'S RESPONSE

Noted and agree with the applicant. The area of Pringle Bay, many houses is not precisely located as indicated on the building plans. Various applications have been received by the Municipality to rectify the unintentionally transgressions. The reason being that it was not until middle 2000's that title deeds and topographical surveys were requested to form part of the building plan process.

OBJECTION (J Cornel)

No adverse comment on regarding the case. An administrative penalty should be a token as the current was ignorant of the situation.

APPLICANT'S RESPONSE

An administrative penalty application has been submitted.

TOWN PLANNER'S RESPONSE

Noted.

OBJECTION (Dr W Lunder)

Everyone must adhere to building plans. Approving illegal buildings afterwards create a loophole for all not to adhere to building rules. This application will create a precedent.

APPLICANT'S RESPONSE

This application will not create a precedent since there are and have been multiple similar application and situations specifically in the Pringle Bay Area. An application has however been made to rectify the situation and is motivated for approval with the consideration of practicality of the flow of the existing dwelling and the type of structure being proposed for approval.

TOWN PLANNER'S RESPONSE

Each and every application is based on merit; however it is imperative to note that a number of structures in Pringle Bay are placed incorrectly. This is evident when new owners request surveyed diagrams regarding placement of structures or when building plans are submitted indicating that the original buildings were incorrectly placed on the property.

In the past the verification of erf pegs and surveyed diagrams indicating structure placement were not required. Copies of Title Deeds were also not a requirement to form part of the building plan submission process. This is evident in this case as indicated in the history of the building plans submission dated from 1984 to 1988.

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 is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

The application will not contribute to past apartheid development trends.

Spatial Sustainability

The building does not impede on natural resources or high potential agricultural land.

Efficiency

The cost implication for the applicant should a demolition order be issued is duly noted. The laundry does not impact on existing municipal services and the location of the laundry next to the kitchen ensures efficient use of existing plumbing and connection to the existing infrastructure on the erf.

Spatial Resilience

The garage and laundry will be in accordance with the National Building Regulations and SANS requirements to limit the impact of climate change.

Good Administration

The Consultant followed due procedure as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

The application is in line with the SDF 2020.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services are provided by the Municipality.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The application for the removal of a restrictive condition can be accommodated in terms of the Overstrand By-Law.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement

There is no financial value to be gained by the community of Pringle Bay should the restrictive condition be removed.

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

The residents of Pringle Bay Proper will gain little benefit should the lateral building line of 1,57m remains intact.

The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed

The owner will accrue financial benefit in that the structure does not need to be demolished and rebuilt.

The social benefit of the restrictive condition remaining in place

The social benefit should the condition remain in place that the status quo remain in place. However, there is no social benefit for residents of Pringle Bay Proper who has bought properties with transgressions, unknowingly.

The social benefit of the removal of the restrictive condition

The social benefit is inconsequential in this application since the structure have been part of Pringle Proper character for the past 43 years if built in 1982. The latter which has not been disputed by any objector.

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

The rights of the beneficiaries will not be impacted upon, except Erf 519, adjacent owner who has not responded to the notices served.

12. THE DESIRABILITY OF THE PROPOSAL

REMOVAL OF RESTRICTIVE CONDITION

The application is for the removal of a restrictive title deed condition from 1,57m to 1,22m to accommodate a Laundry. The property is to be sold, and a Land Surveyor was requested to ensure compliance with the building plan. It has come to light that the laundry, which was added during the construction of the dwelling, is transgressing the title deed building line of 1,57m as indicated by the Land Surveyors diagram. The Municipality in general is not in favour of dwellings transgressing the title deed or land use scheme building lines, however exception to this rule does exist. In this case the laundry is not a habitable space which can impede the privacy and or create a noise factor for the adjacent owner, it is a single storey structure and is only 7,43sq in extent.

It is clear from the motivation, the owner's statement that the laundry has been constructed in 1982, bearing in mind that the actual screen wall adjacent to the kitchen has been constructed in 1987. The laundry is located next to the kitchen and makes use of the same plumbing. The laundry is accessible from the kitchen, which is convenient for the applicant. In order to demolish the laundry of 7,43m² that has been in existence either 38 years (constructed in 1987) or 9 years (2017 google imagery) will have no impact on the character of Pringle Bay. The structure has no windows on the area transgressing the building line and is not habitable, thus the impact on the adjacent neighbour is negligible.

An aspect to take into consideration is that should no land use scheme be in existence, the result would have been that any owner could in theory built an 8m high building on the 1,57m lateral building of which the impact would be much more severe than a single storey laundry. Title deed building lines as per the Township establishment conditions in effect is more detrimental to the character of Pringle Bay Proper.

Should the condition be removed, the property will be subject to the 2m lateral building line of the Overstrand Land Use Scheme and uses allowed with neighbour's consent.

It should be noted that the Pringle Bay Ratepayers comments are two-fold: One is that the laundry should be demolished and request the Municipality to seek a court order to enforce such a demolition. Should the MPT not be in favour of such an order consideration should be given for the proposed amendment of the condition to allow only for the transgression of the laundry and not to remove the whole condition. The application for the removal is to accommodate the transgression but also made the lateral building lines subject to the Land Use Scheme. The latter does allow other uses over the building lines through a departure process of which the adjacent owners play a critical role in the process to determine the impact of the departure application.

DEPARTURE

The departure of the lateral building line from 2m to 1,22m (laundry) and 2m to 1,77m (garage) is to legalize the existing structures.

The garage can be dealt with by obtaining neighbours' consent since it does not transgress the title deed building line. However, the applicant could not obtain the consent as the adjacent owner did not respond on any communication. With the non-responsiveness of the adjacent owner, the applicant was forced to include the garage in the application to comply with the public participation process.

The laundry does transgress the 2m lateral building line but is deemed inconsequential to the character of the area and adjacent properties, especially taking into consideration the time it has been in existence. The building is a single storey building of 7,43m², which has no windows on the lateral building line and is also not habitable. The actual transgression over the title deed building line of 1,57m is 0,35m, which is deemed negligible. Although the Municipality in general does not approve dwellings over the building line, the merit of the application is as such that it will have no benefit and or purpose to request a demolition.

CONCLUSION:

Building lines are there for a reason in order to;

Ensuring Safety and Accessibility

One of the primary purposes of building lines is to ensure the safety and accessibility of properties. Setbacks provide space for emergency services, pedestrian walkways, and vehicular access, contributing to the overall safety and functionality of the built environment.

Preserving Aesthetic Appeal and Privacy

Building lines also play a role in preserving the aesthetic appeal of neighbourhoods and ensuring privacy between properties. By establishing uniform setbacks, building lines help create a cohesive and visually pleasing streetscape while providing adequate space between structures for light, ventilation, and privacy.

This is also called a setback. Its purpose is to avoid crowding the street and make the neighbourhood look nicer and more consistent.

The application addresses the abovementioned in terms of privacy, not to allow the Title Deed as the only base document, since it allows double storey buildings up to 1,57m, whilst the Land Use Scheme protects the privacy with a more restrictive 2m lateral building line.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:***The nature, duration, gravity and extent of the contravention:***

The extent of the transgression as proposed by the applicant relates to the laundry: 7,43m² and the garage 0,23m². The duration is unclear since the original owner has passed away.

The conduct of the person involved in the contravention

The present owner immediately responded to the notification of the transgression.

Whether the unlawful conduct was stopped

No, since it may have been erected in 1987.

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

The applicant is subject to the penalty as per the Budget.

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

No.

ADMINISTRATIVE PENALTY:

The administrative penalty is calculated as follows:

Budget 2025/2026 - Formal Structure –non habitable (erven larger than 150m²):

- Transgression: 7,66m²
- Total value: R20253x 7,66m² = R155 137,98
- 5% of R155 137,98 = R7 756,89

Total administrative penalty: R7 756,98

IN CONCLUSION:

The determination of 5% of the total value was used since the owner immediately submitted an application to rectify the situation.

The removal of restrictive condition is recommended for approval since the Land Use Scheme has a stricter lateral building line and the difference of 0,35m between the title deed condition and the transgression will have little impact on the area.

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 on Erf 518, Pringle Bay for the removal of restrictive title deed condition A.(d) as contained in Title Deed T13250/1982 of the property on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 518 Pringle Bay for a departure to relax the southern lateral building line from 2m to 1,22m and 1,77m respectively to accommodate the existing laundry room and garage on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the above approvals in Points 2 and 3 be subject to the following conditions:
 - (a) that this approval is not an approval in terms of any other legislation;
 - (b) that this approval is only for the development as indicated on plan number RCBA-630 dated 27 March 2024, as submitted with the application;
 - (c) that a building plan be submitted indicating the transgression on the lateral building line of 1,22m (laundry) and 1,77m (garage);
 - (d) that a building plan be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
 - (e) that the amended title deed be submitted for record purposes to the Municipality;
 - (f) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
 - (g) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (h) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with, and

- (i) that all the conditions in the Services Report (attached as Annexure G), be complied with.
5. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 518, Pringle Bay for the unauthorized building line encroachments as stipulated above, **be imposed**, and that an administrative penalty fee of **R7756,98** be payable within sixty (60) days of this decision.
6. that the applicant and objectors 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 decision.

14. REASONS FOR RECOMMENDATION

POINT 2

- ❖ The title deed condition building line restrictions are more restrictive in terms of the street building lines, but more lenient in terms of the lateral building lines.
- ❖ The difference between the building line of the title deed condition and the transgression are approximately 0,35m in total and thus would have very little impact on the character of Pringle Bay Proper
- ❖ The removal of restrictive condition A(d) will ensure that better protection of privacy, built structures and uses through an official process of public participation.
- ❖ The lateral building lines of 1,57m of the title deed is more lenient than the 2m of the Land Use Scheme. Thus, should only the Title Deed be applicable the impact of an 8m high building on the 1,57m building line will be much more detrimental to adjacent owners than a single storey laundry. The Land Use Scheme building line (2m) ensures privacy and view corridors *vis a vie* the Title Deed building line of 1,57m.
- ❖ The demolition of the structure of 7,43sq and relocation of the laundry is not viable since it is connected to the water and discharge infrastructure on the erf. A relocation of the laundry will entail structural changes which has financial implications for the owner and change the existing character of the area.
- ❖ All the other conditions remain in place.

POINT 3

- ❖ The 0,78m (laundry) and 0,23m (garage) difference between the Land Use Scheme and transgression will have little impact on the street view and character of the immediate surroundings.

15. ANNEXURES

- Annexure A: Locality Plan
 Annexure B: Motivation Report
 Annexure C: Site Development Plan
 Annexure D: Title Deed T13250/1982
 Annexure E: Objections & support letters received
 Annexure F: Applicant's response to the objections received
 Annexure G: Services Report
 Annexure H: Approved building plans

SIGNATURE

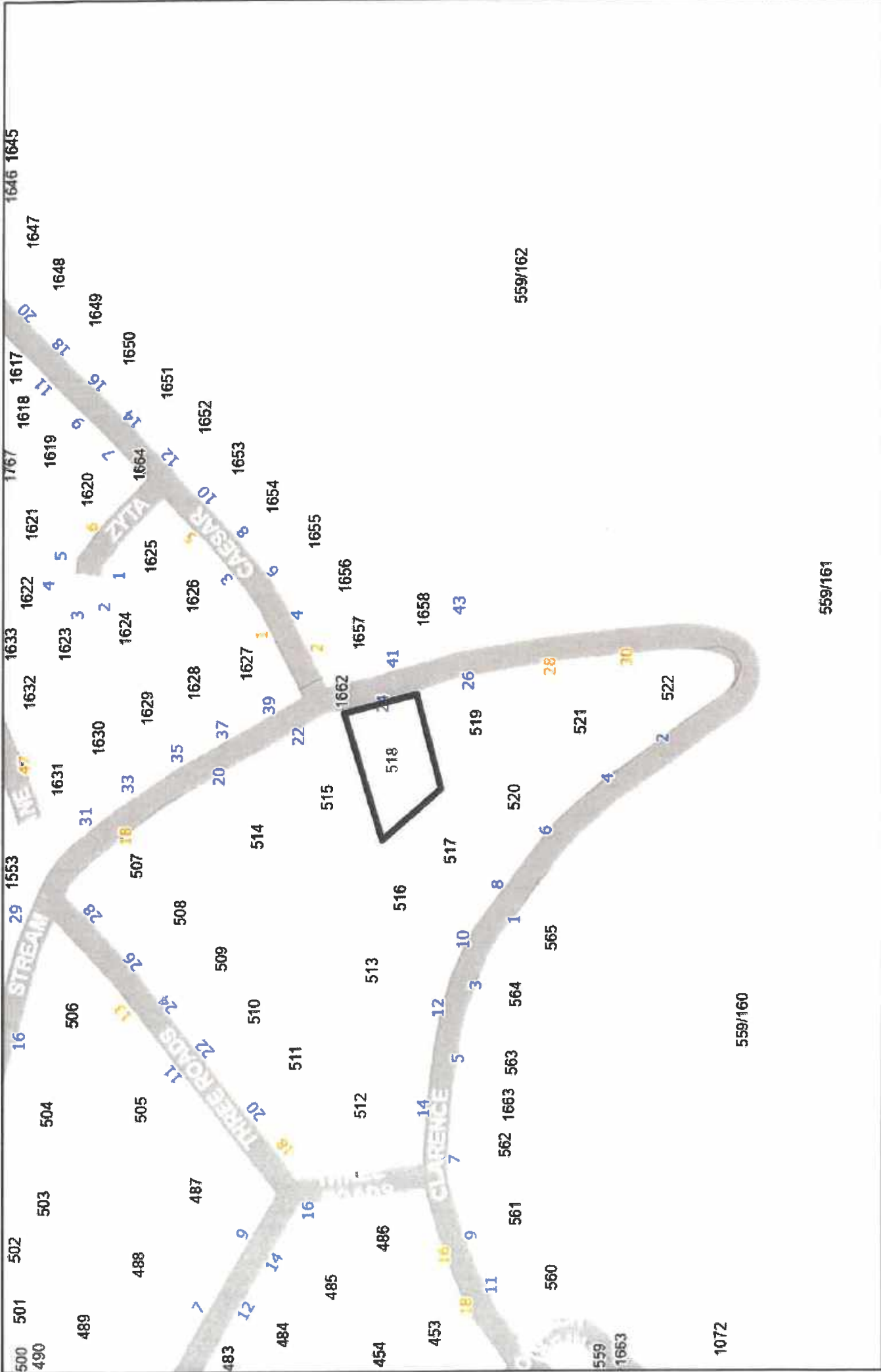
REGISTERED PLANNER

Name: **H VAN DER STOEP**

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

Signature: _____

Date: _____



Locality Map
Erf 518 Pringle Bay



1. Introduction

The subject property, Erf 518 Pringle Bay, is in the name of the late Elizabeth Kotze Snyman. Helena Jacoba Killian, the daughter of the late Elizabeth Kotze is appointed as the Executor of the Estate. Helena Jacoba Killian duly appointed Jeané Douglas to submit the necessary land use planning application applicable to subject property (Erf 518 Pringle Bay) on her behalf.

The application forms are attached as Appendix A, the Executors letter is attached as Appendix D and the Power of Attorney is attached as Appendix C.

2. Background

Erf 518 is situated in the residential neighbourhood of Pringle Bay and is located along Stream Road with an extent of 1279m². According to the zoning map & Overstrand Municipal Land Use Scheme, 2020 the property is zoned as Residential Zone I: Single Residential (SRI).

The property is developed with a three-bedroom single dwelling house with a garage and a laundry room (existing addition), with access gained from Stream Road.

The property owner is in the process of selling the property and requires approved building plans to do so. The property owners consulted the relevant professional to ensure that their building plans are up to date. It was then discovered that the position of the house and the garage shifted and as a result, the garage encroached the southern 3m lateral scheme building line. Additionally, a laundry room was constructed adjacent to the kitchen which was not indicated on a building plan. Due to the shift in position of the existing house, the laundry room encroaches both the applicable title deed building line as well as the lateral scheme building line.

Subsequently, it is the intent of the property owner to legalise the above-mentioned encroachments to accommodate the laundry room and the garage on its current location.

3. Application

Application is hereby submitted in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- Application in terms of section 16(2)(f) for the removal of title deed restrictions to accommodate the laundry room.
- Application in terms of Section 16(2)(b) for the relaxation of the southern lateral building line;
 - from 2m to 1.22m in order to accommodate the laundry room; and
 - from 2m to 1.77m in order to accommodate the garage.
- Application in terms Section 16(2)(q) of the By-Law for the determination of an administrative penalty in order to accommodate the encroachment of the following over the southern 2m land use scheme building line:
 - The laundry; and
 - The garage

4. Locality

The subject property is situated within the Overstrand Municipality, located at 24 Stream Road, Pringle Bay. The location of the property is shown in the figure below as figure 1.

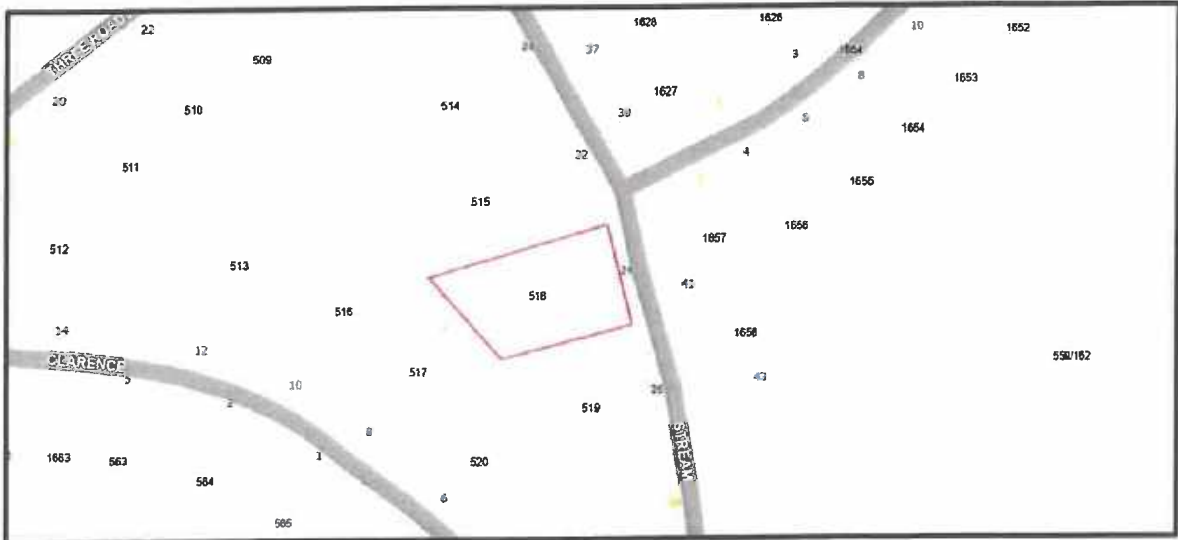


Figure 1: Locality Map of Erf 518, Pringle Bay

5. Land Use Environment

The property is situated in the residential neighbourhood of Pringle Bay where the predominant use of the area is for residential purposes. The zoning of the subject erf and the surrounding properties are Residential Zone 1: Single Residential Zone (SR1). The zoning of the area is shown below as Figure 2 and Appendix E.



Figure 2: Surrounding Zoning

6. Land Use Scheme Parameters

The property is zoned Residential Zone 1: Single Residential Zone (SR1) in terms of the Overstrand Municipality Land Use Scheme, 2020. The table below indicates the applicable parameters in terms of the zoning and the proposed departure.

| | Scheme Parameters | Proposed Development | Departure Required |
|--|-------------------|---|--------------------|
| Coverage | 50% | 16% | No |
| Street Building Line | 4m | Not applicable, as the proposal does not encroach the street building line. | No |
| Title Deed Street Building Line | 4.72m | Not applicable, as the proposal does not encroach the street building line. | No |
| Rear Title Deed Building Line | 1.75m | Not applicable, as the proposal does not encroach the rear building line. | No |
| Rear Building Line | 2m | Not applicable, as the proposal does not encroach the rear building line. | No |
| Southern side Title Deed Building Line | 1.57m | Applicable, as laundry room is encroaching title deed building line. | Yes |
| South side building line | 2m | Applicable, as the laundry room and garage are encroaching scheme building line | Yes |
| Northern side title deed building line | 1.57m | Not applicable, as the proposal does not encroach the side building line. | No |
| Northern side building line | 2m | Not applicable, as the proposal does not encroach the side building line. | No |

7. Title Deed & Power of Attorney

In terms of the Title Deed No T/ 13250/1982, Erf 518 Pringle Bay is registered in the name of the late Elizabeth Kotze Snyman with the executor of the estate being Helena Jacoba Killian. Condition A(d) of the stipulated in the afore-mentioned title deed restricts the positioning of the existing structures on the subject property. It is therefore proposed that Section A(d) be removed in the title deed. The section to be removed reads as follows:

“A(d). That no buildings or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf.”

The Title Deed is attached hereto as Appendix F.

Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the “removal, suspension or amendment of a restrictive condition”:

- **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 vest in the person as the owner of a dominant tenement**

The value of the rights in terms of the restrictive condition vests in the property owners of the Township of Pringle Bay (Division Caledon). The removal of the restrictive condition will allow the property owner to accommodate the addition of a laundry room located alongside the kitchen and the encroachment of the garage. The financial benefit of removing the right is that the addition will increase the value of the property (as any addition will increase the value of the land) and will allow the current property owner to increase the asking price when placed on the market. Additionally, by having the title deed building line parameters removed, the purchaser of the subject property will benefit by not going through a removal or title deed relaxation process if they decide to develop the residential property further.

- **The personal benefits which accrue to the holder of rights in terms of the restrictive conditions**

The restrictive title deed conditions were imposed by the Administrator for the benefit of the property owners of the Township Pringle Bay (Division Caledon). With most municipalities adopting their own land use scheme the only benefit that accrues to the holder of these rights is that the property owners have more restrictive land use parameters in place when developing their property. Keeping the restrictive condition in place will not benefit the administrator, the applicable municipality (Overstrand Municipality) nor will it benefit the property owner.

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

The removal of the restrictive condition will benefit the property owner by legalising the existing laundry room and the garage encroaching the title deed building line. However, the structures will still be subject to provisions of the Overstrand Municipal Land Use scheme.

- **The social benefit of the restrictive conditions remaining in place in its existing form.**

There is not social benefit if the restrictive condition is to remain in place.

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

The removal of the restrictive conditions will allow the scheme building line regulation to set the guidelines for future development on the subject property. The social benefit will only be for the property owner as it will allow them to keep the existing addition and garage that encroaches the lateral title deed building line on the subject property and will allow future developments constructed to be in line with the scheme building line regulations only.

- **Whether the removal of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights.**

The removal of the restrictive conditions will not remove the rights enjoyed by the owner, as it will expand the value of the property by accommodating the existing structures where applicable and will not have an impact on the rights of anyone or the character of the area.

8. Engineering Services

The subject property is connected to the existing Overstrand Municipality services network which includes electricity, water, sewage and solid waste. No problems are anticipated.

9. Policies and Regulations

Overstrand Municipal Spatial Development Framework, 2020 (MSDF)

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the MSA, is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas.

The proposed application is located within the urban edge and is indicated as part of the "urban development area". The proposed changes and additions to the residential zoned property is therefore in line with this forward planning document.

Overstrand Municipality Spatial Growth Management Strategy, 2010 (OMSGMS)

The Growth Management Strategy promotes the longer-term sustainability of the municipal area and its sub-regions. The property falls within the planning unit 1; this section of Pringle Bay is predominantly for residential use. Since the proposed additions are of a normal residential nature, the proposal is therefore in line with the OMSGMS strategy.

10. Planning Principles

Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)

Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" list 5 development principles based on which any development application must be evaluated.

The principles referred to are as follows:

1. Spatial Justice

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the removal of title deed restrictions does not perpetuate apartheid spatial development imbalances.

2. Spatial Sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.

3. Spatial resilience

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality.

4. Efficiency

This proposal intends to maximize the usage of the subject property by legalising the existing laundry room and garage.

5. Good administration

The Overstrand Municipality has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

10. Administrative Penalty

In terms of Section 90 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 the following is applicable: "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. "

The administrative penalty applicable to the property is evaluated in terms of section 90 (3) (a-e), as follows:

- (a) **the nature, duration, gravity and extent of the contravention;**
The property owner made an addition of a laundry room (7.43m²). The building footprint will change but the addition has no negative effect on the surrounding area.
- (b) **the conduct of the person (allegedly) involved in the contravention;**
After the appointment of the private town planner the property owner was informed that the title deed restriction conditions in the title deed is restricting the existing addition and therefore has to undergo a removal of title deed conditions to legalise the laundry room. It was also discovered that the garage has shifted which triggered a departure application as well as a determination of an administrative penalty. It must be noted that the property owner was under the impression that these additions were within the applicable zoning parameters of the property.
- (c) **a report by a quantity surveyor in matters of unauthorised building/construction;**
No report by a quantity surveyor is submitted and the property owner has opted to utilize the municipal tariff of 2023/2024 in order to calculate the administrative penalty.
- (d) **whether the unlawful conduct was stopped;**
According to the property owner, they took ownership of the property in 1982. The property owner then had plans drawn up for the house with a screen wall and a single garage. The plans were approved in that same year (1982).

According to the property owner, they constructed an addition (conversion of the screen wall into a laundry room) in that same year the plans were approved in 1982. However, when viewing the property on a time laps on google earth aerial imagery, the earliest date the laundry room was clearly visible was in 2017. In this instance, there are two timeframes in which the contravention can be calculated. The earliest timeframe of 1982 would indicate that the structure has existed for approximately 42 years. If it is considered that the construction of the laundry room was done in 2017 then the structure has existed for 7 years.
- (e) **whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.**
After the consultation with the property owner and to my knowledge the property owner has not previously contravened this By-Law or any other By-Law.

As per the aforementioned, the addition will increase the building footprint. With that said the property owner was under the impression that the addition was within the applicable parameters. Unfortunately, the house and the garage shifted, encroaching the lateral scheme building line triggering a land use application. The property owner still requests that the administrative penalty be waived, however if the administrative penalty is imposed, then a reduced penalty is requested as the property owner had not received complaints or notices regarding the unauthorised structures.

11. Need and Desirability

The proposed application requirement arose when the property owner decided to sell the subject property. In order for the property to be sold, it is a requirement that the building plans are up to date in relation to the existing structures on the property. It was discovered that the house was not built according to the approved building plan in relation to its positioning. This has become an increasing occurrence which could be a result of the various datums used or a change in calculation by the land surveyors in the past years.

Now that it is clear that the house has shifted a town planning application was triggered due to the minor encroachment over the southern lateral building line. Additionally, due to the house not being built as per the positioning on the approved building plan, the encroachment over the applicable building lines triggers an application for the determination of an administrative penalty and ultimately the removal of title deed restrictive conditions.

It is hereby requested that the administrative penalty be waived or alternatively be evaluated with the consideration of the above-mentioned error being a common occurrence in the Pringle Bay area. Additionally, it is requested that the removal of the title deed restrictive condition be considered favourably due to the above-mentioned error.

This proposal is in harmony with all relevant planning principles and forward planning documents and is therefore considered desirable from a town planning point of view.

12. Recommendations

Based on the abovementioned motivation, it is recommended that the following be approved:

Application is hereby submitted in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- Application in terms of section 16(2)(f) for the removal of title deed restrictions to accommodate the laundry room.
- Application in terms of Section 16(2)(b) for the relaxation of the southern lateral building line;
 - from 2m to 1.22m in order to accommodate the laundry room; and
 - from 2m to 1.77m in order to accommodate the garage.
- Application in terms Section 16(2)(q) of the By-Law for the determination of an administrative penalty in order to accommodate the encroachment of the following over the southern 2m land use scheme building line:
 - The laundry; and
 - The garage

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| MICRO FILMED | | OVERFILM |
| DATE-DATUM | OPERATOR-OPERATEUR | |
| 1982-04-28 | SRS | |

R 3500 00

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DECEL

SEARCHED N.

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T 13250 1982

Transportakte

(Uit krag van 'n Prokurasie)

MOVSOWITZ & KAHN
Prokureurs Notarisse en
Aktebesorgers
Voortrekkerweg 109
BELLVILLE

Opgestel deur my:
[Signature]
Transportbesorger.

BENAMING: DANVALE

OPREKENINGS

DEBTAAFWERKING

[Signature]

Hierby word bekendgemaak

DAT JEFFREY FAINSTEIN
voor my, Registrateur van Aktes,
verskyn het, te KAAPSTAD hy, die genoemde
Komparant synde behoortlik daartoe gemagtig deur 'n volmag aan
hom verleen deur

JACOBUS JOHANNES GELDENHUYS
(gebore op 9 Julie 1958)
Blanke groep

gedatcer die 2de dag van FEBRUARIE 1982
en geteken te MALMESBURY

EN /

EN die Komparant het verklaar dat sy voormelde Prinsipaal op 25 Januarie 1982 waarlik en wettiglik verkoop het en dat hy, die Komparant, in sy voormelde hoedanigheid hiermee in volle en vrye eiendom sedeer en transporteer aan en ten gunste van

ELIZABETH KOTZÉ SNYMAN

(gebore VENTER op 1 Oktober 1931). getroud buite gemeenskap van goedere met PHILIPPUS WILHELMUS GERHARDUS SNYMAN, maritale mag uitgesluit (HVK 2213 /82)

- BLANKE GROEP -

haar erfgename, Eksekuteurs, Administrateurs of Regsverkrygendes

SEKER stuk opgehefte erfpaggrond geleë in die plaaslike gebied van Pringlebaai, Afdeling Caledon, synde Erf 518 Pringlebaai;

GROOT : 1 279 (Eenduisend tweehonderd nege en sewentig) vierkante meter;

UITSTREKKENDE soos meer volledig sal blyk uit Transportakte No. 20199 gedateer 3 September 1948 met Kaart No. 7261/48 daarby aangeheg, gemaak ten gunste van JOHN HENRY NIELSEN en daaropvolgende Transportakte die laaste waarvan No. 49151 gedateer 12 November 1981 gemaak is ten gunste van JACOBUS JOHANNES GELDENHUYS.

1. ONDERHEWIG aan die voorwaardes waarna vewys word in Sertifikaat van Dorpstitel No. 12278 gedateer 22 November 1941:

11. /

11. ONDERHEWIG aan die reservering ten gunste van Die Staat van alle regte met betrekking tot die myn van goud, silwer en edelgesteentes vermeld in Artikel (4) van die Proklamasie van Sir John Cradock gedateer 6 Augustus 1813.
111. GEREGTIG op die voordeel van die voorwaardes waarna verwys word in die serwituut endossement gedateer 24 Junie 1940 op Sertifikaat van Verenigde Titel No. 3720 gedateer 17 April 1937, wat as volg lees :
- "By Deed of Transfer No. 6068/40 dated 24th June 1940, certain conditions relating to:
- (a) Prohibition of petrol station on land;
 - (b)
 - (c) wood and iron buildings;
- slaughter poles, cattle kraals, manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title to the remainder of the property held hereunder, as will more fully appear on reference to the said Deed of Transfer."
- IV. GEREGTIG op die voordeel van die voorwaardes waarna verwys word in die serwituut endossement gedateer 12 April 1944 op gemelde Sertifikaat van Dorpstitel No. 12278/41 welke endossement as volg lees :
- "By Notarial Deed No. 109/44 dated 24th February 1944 the owners of the land held by Certificate of Consolidated Title No. 3720/1937 (remainder) have been granted to and in favour of the land held hereunder certain water rights and certain other rights ancillary thereto. Subject to the conditions as will more fully appear on reference to said Notarial Deed. Vide copy annexed hereto."
- V. ONDERHEWIG aan die spesiale voorwaardes bevat in in die voormelde Transportakte No. 20199/1948 opgelê ten tye van die stigting van Pringlebaai Dorpsuitbreiding soos meer volledig uiteengesit onder A, B, C en D hieronder en aan die volgende spesiale voorwaardes opgelê deur die Administrateur van die Provinsie Kaap die Goeie Hoop ten opsigte van A, B en C hieronder:

"That /

"That the words and expressions used in these conditions shall have the meanings assigned to them in the regulations published under Provincial Notice No. 401 dated 17th October 1935."

- A. As synde ten gunste van die geregistreerde eienaar van enige erf in die dorp en onderhewig aan wysiging of regstelling deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie 33 van 1934.
- (a) That this erf be used for residential purposes only, but no building, other than one dwelling, together with such outbuildings as are ordinarily required to be used therewith, may be erected thereon.
 - (b) That not more than one-half of the area of this erf be built upon.
 - (c) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, provided that this condition shall not apply to erven Nos. 193 to 213 and 294 to 311.
 - (d) That no buildings or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf.
- B. As synde ten gunste van die Administrateur :
- (e) That this erf be not subdivided except with the consent in writing of the Administrator.
- C. As synde ten gunste van die Plaaslike Owerheid :
- (f) That the owner of this erf shall be obliged to allow the drainage or sewerage of any other erf to be conveyed over this erf if deemed necessary by the local authority.
 - (g) That the owner of this erf shall be obliged to receive material to give a proper slope to the bank if this erf is below the level of the adjoining street, and if this erf is above the level of the adjoining street, he shall in like manner permit a safe slope to the bank, unless in either case he shall elect to build retaining walls to the satisfaction
of /

of the local authority and within a period to be determined by the local authority.

- (h) That pending the establishment of a local authority for this township, the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank on this erf if the nature of the soil permits of the use of a septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. On the establishment of such local authority the owner of any erf or erven served by a septic or vacuum tank, shall be required by such local authority be obliged, without compensation, to remove the septic tank or vacuum tank, after three months notice in writing has been given by such local authority.

D. As synde ten gunste van die geregistreerde eienaar van enige erf in die dorp :

- (b) No wood or iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes.
- (c) No slaughter poles, cattle kraals, pig-sties or cow-sheds shall be erected or carried on by any person whomsoever on this erf.
- (d) Save with the consent in writing of the Company and of any Local Authority the owner shall not have the right to make or cause to be made upon this erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or stone thereon.
- (e) No building shall be erected on this erf at a cost of less than R800,00 exclusive of the cost of the land.
- (f) No noxious trade or noxious business shall be carried out on this erf.
- (g) The transferee shall not camp overnight or light fires on the erf save with the written consent of the Company.
- (h) No garage or service station may be erected or carried on, on the land hereby conveyed.

VAN /

- 6 -

VAN die voorafgaande voorwaardes is D (b) (c) (d) (e)
(f) (g) (h) opgelê deur HANGKLIP BEACH ESTATES LIMITED,
vir sy voordeel as eienaar van die restant van die dorps-
gebied deur hom gehou kragtens gemelde Sertifikaat van
Dorpstittel No. 12278/1941, en vir die voordeel van enige
erf in die dorp.

DIE /

DIE Komparant doen dus hiermee afstand van al die regte, aanspraak en titel wat **TRANSPORTGEWER**

voorheen op genoemde eiendom gehad het, en gevolglik erken die Komparant ook dat **TRANSPORTGEWER** geheel en al van die besit daarvan onthef en nie meer daarop geregtig is nie, en dat kragtens hierdie akte, bogenoemde **TRANSPORTNEMER**

haar Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die Regte van die Staat; en ten slotte erken hy dat die hele Koopsom ten bedrae **R3 500,00 (DRIEDUISEND VYFHONDERD RAND)**

behoorlik betaal of verseker is.

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

ALDUS GEDOEN en verly op die Kantoer van die Registrateur van Aktes, te **KAAPSTAD** op hede die **15de** dag van **April** in die jaar van ons Heer, Eenduisend Negehoenderd en twee-en-tagtig (1982)

g.g. sy Prinsipaal/ale.

In my teenwoordigheid,

REGISTRATEUR VAN AKTES.

Geregistreer in die **Lowe** Register van **Bonghe Bay** Boekdeel Folio **518**

Klerk-in-Bevel

J. Esterhuysen

| | | |
|--|-----------------------|----------------|
| 1. Hereregte Kwitansie Nr. | UITSSTELLING | uitgereik |
| te | BELLVILLE | |
| op | 23/2/82 | vir |
| R | | |
| 2. Belastinguitklaringsertifikaat uitgereik deur | REDELIWES RAAD | CALEDON |
| geldig tot: | 30/6/82 | |
| Nagemaal. | | |



PRINGLE BAY RATEPAYERS' ASSOCIATION
PRINGLEBAAI BELASTINGBETALERSVERENIGING

SARS Reg. 9101/138/16/3

NPO Reg. 214-205

www.pringlebayratepayers.co.za

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

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

The Municipal Manager
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200

OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

12 SEP 2024

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

12 SEPTEMBER 2024

PER EMAIL: loretta@overstrand.gov.za

*TP - A Theart
(H vld Stoep)*

SUBJECT: ERF 518, 24 STREAM ROAD PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: J DOUGLAS ON BEHALF OF HJ KILIAN - THE EXECUTOR OF THE ESTATE OF LATE EK SNYMAN

PREAMBLE

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

1. ORGANISATION

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

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

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

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| FILE NO. <i>ERF 518 - KPRB</i> |
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| SCAN NO. |
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| COLLABORATOR NO. |
| <i>2119651</i> |

TP
12 SEP 2024



2. BACKGROUND

2.1. The Executor of the Estate of late EK Snyman, in whose name the subject property is currently registered, wishes to legalise building structures which, after completion of construction thereof, are considered to be illegal buildings:

- a) A garage and laundry partially built over the building lines as per the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2020; and
- b) A laundry partially built over the building lines as per the restrictive Title Deed Conditions.

2.2. The application thus addresses three aspects:

- a) Departure from the requirements of the Scheme Regulations for Building Lines which state a two meter building line. This part relates to both the garage as well as the laundry room.
- b) Removal of a restrictive Title Deed Condition which requires that no building be built closer than 1.57m from the lateral boundary line. This part only relates to the Laundry Room.
- c) The determination of an Administrative Penalty necessary to legalise the illegal building structures, in terms of Chapter 10, Section 90 of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2020.

2.3. Our comments follow in five parts, namely:

PART A: SHOULD THE ENCROACHING LAUNDRY ROOM BE DEMOLISHED?

PART B: WHICH IS ADVISABLE: AN AMENDMENT OF A TITLE DEED CONDITION OR ITS COMPLETE REMOVAL?

PART C: IS THE GARAGE BUILT WITHIN THE TITLE DEED CONDITION BUILDING LINE?

PART D: GENERAL COMMENTS

PART E: MOTIVATION THAT THE ENCROACHING ILLEGAL ADDITION (A LAUNDRY ROOM) BE DEMOLISHED.

2.4. Acknowledgement of author: Certain of the comments in the following paragraphs have been extracted from the article on the website of the Nelson Mandela University, by Prof Henk Delpont, professor of law: "THE ESTABLISHMENT OF A GUESTHOUSE ON A RESIDENTIAL PROPERTY: COMPLYING WITH RESTRICTIVE CONDITIONS OF TITLE AND TOWN PLANNING SCHEME PROVISIONS: OBITER 2007".



3. PART A: SHOULD THE ENCROACHING LAUNDRY ROOM BE DEMOLISHED?

- 3.1. We motivate below in PART E our request that the encroaching illegal addition (a laundry room) be demolished.

If the laundry room, built as recently as 2017 illegally by the present owner, without an approved building plan, should be demolished, no change to the title deed condition is required.

- 3.2. In the event that the Municipal Planning Tribunal does not accept our request for demolition, we motivate below in PART B that the encroachment by the laundry room be legalised by an amendment to the title deed condition, in respect of the boundary line with erf 519 only, instead of a complete removal of the title deed condition in respect of all boundaries, as is presently applied for. **Please see par 4.10 for the proposed amendment.**

4. PART B: WHICH IS ADVISABLE: AN AMENDMENT OF A TITLE DEED CONDITION OR ITS COMPLETE REMOVAL?

- 4.1. We object against the complete removal of the present title deed condition, instead of merely amending the title deed condition to accommodate the encroachment of the laundry room addition.

- 4.2. We object against the apparent practice of the overbroad removal of title deed conditions, an action that affects all erf owners as holders of praedial rights in the present Pringle Bay township extension.

Instead of applying for the amendment only of the title deed condition, a complete removal is unnecessarily applied for in the present case.

- 4.3. We request the OM not to allow the overbroad removal of title deed conditions, where an amendment would suffice, as in the present.

- 4.4. In a previous appeal decision by the OM Appeal Authority, it was rightly pointed out, in line with common professional knowledge, that "*Restrictive conditions on a title deed are placed for a specific reason and the removal of these conditions should not be considered lightly*". The building lines and height restriction per the title deed restriction are in our opinion essential for maintaining the spatial character of Pringle Bay.

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

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



- 4.7. As per the present application, subsequent to demolition of the laundry as requested, there is no transgression of the title deed condition building lines.
- 4.8. Alternatively, there will be no further transgression if the title deed condition is amended for the encroaching portion of the laundry, instead of the whole title deed condition apparently being completely removed in the present application.
- 4.9. We draw the attention of the Municipal Planning Tribunal to the common knowledge/understanding within the planning profession that the title deed condition and scheme regulations serve different purposes, and that a title deed condition cannot be removed, as the applicant would suggest, because a scheme regulation cover the building lines (a non-allowable so-called "blanket removal", on the basis that more restrictive building lines in the scheme regulations "cover" the situation).
- 4.10. We propose the following underlined insertion in the title deed condition, instead of removing it completely:

"A(d) That no buildings or structure or any portion thereof, except boundary walls and fences shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf, except for a portion of the existing dwelling with a width of (to be inserted) meters, which may front or abut not less than 1,22 to the adjoining erf 519."

5. PART C: IS THE GARAGE BUILT WITHIN THE TITLE DEED CONDITION BUILDING LINE?

- 5.1. PBRA does not generally object against building line departures from the zoning scheme regulations, provided the proposed building is within the building lines of the title deed conditions.
- 5.2. Except if the drawing numbered STG 4-1/7 by RCB Architecture is incorrect, contrary to the Applicant's opinion, this will in actual fact be the case with the existing garage, which was built fractionally over the Zoning Scheme regulations building line (230mm), but not over the Title Deed building line.
- 5.3. No change to the title deed condition A(d) is therefore required for the garage.

6. PART D: GENERAL COMMENT

- 6.1. The application is not helpful in that it contains a number of specious statements on planning law that are not in accordance with common professional knowledge/understanding within the planning profession. The application manifests a lack of knowledge of the legal nature of praedial rights and the interaction with town planning zoning scheme regulations, as per precedents set by our courts.

The application appears to have been prepared by an individual who appears on the register of the South African Council for Planners as a Candidate Planner, who is in



training, and who has to work subject to the supervision of either a Technical Planner or a Professional Planner.

The Applicant states in paragraph 10 of the Motivation report:

"Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA) (Sic)

Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" list 5 development principles based on which any development application must be evaluated.

The principles referred to are as follows:

1. Spatial Justice

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the removal of title deed restrictions does not perpetuate apartheid spatial development imbalances.

2. Spatial Sustainability

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.

3. Spatial resilience

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality.

4. Efficiency

This proposal intends to maximize the usage of the subject property by legalising the existing laundry room and garage.

.... "

We submit that the Applicant takes the time to study the literature on land use planning law, such as excellently discussed in "Planning Law" by Prof Jeannie van Wyk, published by Juta, which is available to persons training to become professionals and to professionals alike. The Applicant will find that statements such in "1. Spatial Justice" above are just not applicable. Title Deeds and restrictive title deed conditions were in use long before apartheid and are until present day still regarded as solid and valuable legal frameworks irrespective of attributions the



applicant wishes to attach to it. We find no evidence in the subject Title Deed to justify the statement made by the applicant.

Restrictive conditions of title are not simply a relic of the past. As was stated in *Camps Bay Ratepayers Association v Minister of Planning, Western Cape (supra 324)*:

“Indeed, a theme running through the arguments put up by the developer in support of the removal application is that restrictive conditions are a relic of the past and should be abolished in favour of the zoning scheme ... However, this is not the philosophy of the Act and it was inappropriate and irregular for the Minister to have allowed himself to be swayed by this consideration. In my view the Minister’s approach in this regard is fundamentally unsound.”

Furthermore, to make a statement such as in “2: Spatial Sustainability” above (*This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.*) shows disrespect to other title deed holders in the same township who, contrary to the statement, regard their title deeds as important and valuable.

In “4. Efficiency” the applicant is mistakenly trying to motivate maximization of the usage of land beyond parameters in both the Scheme Regulations as well as the Title Deed conditions, to try and legalise illegal buildings. The spirit of the Title Deed conditions is exactly to define efficient land use by highlighting certain development parameters which, when purchasing a property in the subject township, must be taken cognisance of because it is also in favour of the praedial rights of other owners in the township and was established to ensure efficient land use for the benefit of all, and not only one, in the subject township.

Referring to paragraph 2.4, we wish to emphasise that the restrictions are imposed by the developer in order to establish and maintain the character of a township and are usually registered against the title deeds of all the properties in the township (see generally *Swiss Hotels (Pty) Ltd v Pederson* 1966 1 SA 197 (C); and *Hayes v Minister of Finance and Development Planning, WC* 2003 4 SA 598 (C)). The conditions may be imposed in favour of a specific individual only, or in favour of *all* owners in the township. In the latter event the restrictive conditions constitute praedial servitudes whereby each erf in the township is simultaneously both a servient tenement and a dominant tenement (*Camps Bay Ratepayers Association v Minister of Planning, Western Cape* 2001 4 SA 294 (C) 324J). The implications of this were set out as follows in *Malan v Ardconnel Investments (Pty) Ltd* (1988 2 SA 12 (A) 37U):

“Where the registered restrictive title conditions are, however, praedial servitudes each erf becomes simultaneously both a servient tenement and a dominant tenement. It is a servient tenement encumbered by the restrictive title conditions in its own title deed in favour of all the other erven as dominant erven. But it is also a dominant tenement in respect of the restrictive title conditions inserted in the title



deeds of all the other erven as servient tenements. Compare Ex parte Johannesburg Diocesan Trustees 1936 TPD 21 at 26, Cannon v Picadilly Mansions (Pty) Ltd 1934 WLD 187 at 191. This result flowed from the circumstance that it was an important element of the general scheme, relating to the sale of erven and the establishment of the township, to insert the restrictive title conditions in all the title deeds of erven in the township for their reciprocal benefit in order to preserve the essential character of the township." (Orbiter 2007 - P.122)

Finally, referring to paragraph 2.4, we draw the applicant's attention to the fact that it is not sufficient merely to get the municipality to have the relevant building plans approved as required by the town planning scheme. The law in this respect is quite clear:

- (a) A municipality's zoning scheme does not override title deed conditions (*Camps Bay Ratepayers Association v Minister of Planning, Western Cape supra 324*).
- (b) A consent by a local authority in terms of a town planning scheme does not *per se* authorise the use of an erf contrary to its registered restrictive title conditions (*Malan v Ardconnel Investments (Pty) Ltd supra 40E*).

6.2. We question whether it is not the responsibility of the OM Planning Department to distribute the Application/Notice to all relevant parties? With the Applicant apparently having sent out emails to all land owners in Pringle Bay (erven 1 to 542), we question where the applicant had obtained the personal email information from, if the application is lodged by a private entity/individual acting on behalf of the owner (or Executor)? Was this compliant with the POPI Act?

6.3. We also wish to point out that it has become standard procedure for the OM to require replacing "French drains / soakaways" with conservancy tanks once alterations or additions to existing buildings are applied for. It is however not clear what exactly the requirement is that triggers the replacement of the French Drains with that of a Conservancy Tank. In fairness to other residents, this requirement must also be highlighted in the subject application. It should clearly be pointed out whether a replacement is required or not and what the motivations are for it, to allow the Municipal Planning Tribunal to properly consider this application and to record it for approval either in full or in part.

7. PART E: MOTIVATION THAT THE ENCROACHING ILLEGAL ADDITION (A LAUNDRY ROOM) BE DEMOLISHED.

7.1. In practice two options are usually available to authorities to rectify building restriction deviations, namely:

7.1.1. Demolition of illegal structures, or



- 7.1.2. Levying of an Administrative Penalty which goes hand in hand with the legal aspects that need to be put in place to legalise the deviation without jeopardising the intention of the applicable restrictive title deed conditions, law(s) and by-law(s).
- 7.2. Building lines are governed by the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2020, Schedule 2, specifically Chapter 6, Section 6.1.
- 7.3. We also considered the following legal opinions which we believe have direct bearing on this application:

- 7.3.1. The legal precedent of the *Bet-el Faith Mission v Motthamme and Others* [5306/2017] [2020] ZAFSHC 6, as summarised in an article by Ashersons Attorneys titled "Your Neighbour Builds Without Plans – Can You Get a Demolition Order" dated April 2020, which among others states:

"In this respect said the Court (emphasis supplied) "the encroaching owner's own conduct plays an important role" and "while one is acutely aware of the financial implications, inconvenience and disruption which the partial demolition will cause the [couple], the upholding of the doctrine of legality, a fundamental component of the rule of law, must inevitably trump such personal considerations."

Commenting on the couple's "obstructive behaviour" in this case, and finding that they "are indeed in legal and administrative breach of the law ... to allow them to keep the structures where they are, would be to perpetuate the illegality", the Court ordered the couple to demolish their illegal garage within 90 days."

- 7.3.2. The OM Municipal Planning Tribunal is on record as not allowing the departure from building line restrictions where there is adequate space available for building within the allowable space on the erf. **We request please that this precedent be adhered to for the laundry room.**
- 7.3.3. An article by Schindler's Attorneys titled "*Illegal Buildings*", Dated September 2020 which states all the applicable legislation and also addresses the following salient points:
- a) Responsibility for Enforcement
 - b) Can Neighbours/Communities/Ratepayers' Associations Enforce Building Laws
 - c) Type of Court Order Applied For. The article states:

"Regardless of whether the local authority or another interested party, such as a neighbour or community, approaches the court, the type of order normally sought to deal with an illegal building would be either a prohibitory interdict preventing the offending builder from continuing to build illegally, or a



mandatory interdict requiring the demolition of the illegal building or illegal portion thereof."

- d) Will a Court really grant us a Demolition Order?

"It has been assumed for many years that courts are reluctant to grant demolition orders on the basis that it will cause severe financial harm to the owner of the property be demolished. Van der Walt, however, argues that from an analysis of the relevant case law, it appears that this is not true, and that more often than not when a proper case is made out for a demolition order of illegal buildings, the court will grant these types of orders.

Sometimes people think that if they rush to complete the illegal building, a court won't be able to do anything about it – for example, they won't be able to make an order that the illegal building stop, because the building is already complete. This thinking is flawed. The idea that a court will not grant a demolition order of an illegal building that has already been completed has not found favour in our law; and in fact, was expressly struck down by our courts. A court can and will order demolition where a proper case for same has been made out, and the fact that the illegal building is complete has no bearing at all on this. There is thus good reason to believe that when you are seeking a demolition order, provided that you are legally entitled to same, you should be able to obtain it from the courts."

- e) What if I am Unhappy with the Approved Building Plans?
 f) What if I am Happy with the Approved Building Plans, but the Building is not Built in Line with them?
 g) An Amicable Alternative, which states the following:

"It is possible to approach the builder or owner of an illegal building with a view to coming to an agreement that measures will be put in place to relieve the impact of the illegal building. When this happens, the aggrieved neighbour may be satisfied that he is no longer being affected by the illegal building works and may do away with the need for expensive court action. However, just because the neighbour is no longer unhappy with the illegal building, this does not make it lawfully compliant. An illegal building will remain illegal until such time as it becomes compliant with the relevant building laws. The neighbour's consent to the illegal building works similarly does not render those building works lawful. It is thus no defence to claim that building works are not illegal because the neighbour knew about them and consented to them, or knew about them and did not complain about them." (our emphasis)

7.4. Taking cognisance of the abovementioned, we wish to comment as follows:

- 7.4.1. We recognise and appreciate the Applicant's intentions to rectify illegal structures on his/her property. We consider the Garage encroachment as an example where leniency can be considered but the case of the Laundry Room is somewhat different.



We are of the opinion that since it has been constructed at the earliest in 2017, well after the publishing of the Land Use Scheme in 2015, it was a deliberate/negligent/ignorant action by the owner. It is our submission that it should not become yet another example of allowing an initially illegally built structure only being rectified afterwards through an insignificant Administrative Penalty. It is our submission that the laundry room rather warrants consideration for issuance of a demolition order as is highlighted in paragraph 7.3.1. above.

It would appear to be a resorted to strategy in South Africa that an owner quickly builds an illegal structure and then pleads that it cannot be removed due to the costs involved and the extent of the built structure. Paragraph 7.3.3.(d) above makes it clear that it is not unusual for a court to grant a demolition order under circumstances as in the subject matter .

In the present case that does not apply – the illegally added laundry room can easily, without much cost, be removed.

- 7.4.2. We submit that it would be appropriate for the OM to require the demolition of the illegal laundry room or the illegal portion thereof as is highlighted on paragraph 7.3.3 (c) above.
- 7.4.3. We find no proof in the application that the Applicant has approached the neighbours directly impacted by the illegal buildings. We wish to point out that the Overstrand Municipality must ensure compliance in this regard as is stated in their *“Notification to affected property owners”* that accompanied the subject application. The onus of verification of compliance in this regard thus remains with the OM.
- 7.4.4. We also concur with the statement by Schindler’s Attorneys as is highlighted in point 7.3.3 (g) above that the outcome above does not constitute legalising the illegality of the building. The necessary departures in terms of the applicable bylaws must be completed.
- 7.4.5. We agree that it remains the duty and function of the Overstrand Municipality to determine an applicable, fair and equitable Administrative penalty in accordance with the relevant laws and by-laws. We submit that using the cost related to ONLY the part of the building that is illegal, does not pose a fair penalty. In the words of the applicant, the value of the property is substantially increased as a result of the illegal building and we argue that the value of the increase should rather be the basis from which the penalty is to be determined.



8. CONCLUSION

We conclude as follows:

- 8.1. We have no objection to a departure of the OM Scheme Regulations regarding the encroachment by the garage. We submit that no removal, amendment or suspension of a title deed condition is necessary for this.**
- 8.2. We request please that the laundry room be demolished. We request please that no removal, amendment or suspension of a title deed condition be approved.**

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

Kind regards

A handwritten signature in black ink, appearing to read "AW Vorster".

AW Vorster
Obo: Pringle Bay Ratepayers' Association

12/26

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| 05 SEP 2024 |
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| OVERSTRAND MUNICIPALITY |

Loretta Gillion

From: Annette Jooste <>
Sent: Monday, 02 September 2024 20:40
To: Jeane Douglas
Cc: Loretta Gillion
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY-LAND USE APPLICATION

Goeienaand

Ek keur nie die versoek goed nie. Stream Road het vele probleme wat 'n impak het op my laer af teen dieselfde stroom en dis baie belangrik dat die infrastruktuur van stormwaterpype ensomeer eers beplan en asgebri g word voordat enige bou-uitbreidings plaad ind wat hierdie planne moontlik kan kortwiek.

Mev JA Jooste
Erf 1783

Sent from my iPhone

> On 9 Aug 2024, at 13:01, Jeane Douglas <jeaned04@outlook.com> wrote:
 >
 >
 > <Annexures_Erf 518 Pringle Bay (ROR, Departure, Admin Penalty)(8Aug24).pdf>

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5.8 2024

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| OVERSTRAND MUNICIPALITY |
| REKORDBEHEER |
| 26 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

Loretta Gillion

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 14:50
To: Alison Kruger
Cc: Loretta Gillion
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Hi Alison

I trust you are well .

My client (previous owner of Erf 518 Pringle Bay) sold the property, unfortunately the property had illegal structures that had to be legalised and therefore had submit an application to the Overstrand Municipality Planning Department.

The email was sent on behalf of my client (Erf 518 Pringle Bay) who had to submit an application regarding the removal of their title deed restrictions as well as departure and administrative penalty application to the Overstrand Municipality, Town Planning Department.

According to my client's title deed it was required of me to inform all property owners in the Pringle Bay area about the proposal. If you have any objections towards the proposal, you are welcome to send an email to Loretta Gillion which I have mentioned in the previous email.

Kind Regards
Jeané Douglas

From: Alison Kruger < >
Sent: Tuesday, August 13, 2024 5:39:54 PM
To: Jeane Douglas <jeaned04@outlook.com>
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Please advise what exactly are they planning on building - PB is losing its country feeling.

Alison Kruger

On Tue, 13 Aug 2024, 09:02 Jeane Douglas, <jeaned04@outlook.com> wrote:

Good Day

I trust you are well.

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| FILE NO. Erf 518-KPRB |
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| SCAN NO. Alison |
| |
| COLLABORATOR NO. |
| 2108354 |

26 AUG 2024

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OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

26 AUG 2024

DOCUMENT CONTROL

Loretta Gillion

OVERSTRAND MUNICIPALITY

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

From: Elizabeth Bardin <
Sent: Saturday, 24 August 2024 20:25
To: Jeane Douglas
Cc: Loretta Gillion
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

TP- A Theart
(H v id Stoep)

thank you for clarifying. regards Elizabeth

WhatsApp (+27)

On 24 Aug 2024, at 14:36, Jeane Douglas <jeaned04@outlook.com> wrote:

Hi Elizabeth

I trust you are well.

The email was sent on behalf of my client (Erf 518 Pringle Bay) who had to submit an application regarding the removal of their title deed restrictions as well as departure application to the Overstrand Municipality, Town Planning Department.

According to my client's title deed it was required of me to inform all property owners in the Pringle Bay area about the proposal. If you have any objections towards the proposal, you are welcome to send an email to Loretta Gillion which I have mentioned in the previous email.

Kind Regards
Jeané Douglas.

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| FILE NO. Erf 518- KPRB |
| SCAN NO. Bardin |
| COLLABORATOR NO. 2108190 |

From: Elizabeth Bardin <
Sent: Sunday, August 11, 2024 6:51:31 PM
To: Jeane Douglas <jeaned04@outlook.com>
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Hi there

I am not sure that this email is meant for me? I have not been involved with this matter as far as I am aware

I did send an email a while ago to PBRA about concerns after our recent flooding and what action is being taken for the municipality to take some action and create a flood prevention plan?

blessings and regards, Elizabeth Bardin 32 Barbara Road

217

15/26

OVERSTRAND MUNICIPAL

REKORDBEHEER

22 AUG 2024

Loretta Gillion

From: Pethemida Investment <
Sent: Thursday, 22 August 2024 07:09
To: Loretta Gillion
Subject: REQUEST FOR COMMENT ERF 518

Pringle Bay

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OVERSTRAND MUNICIPAL

Surely the owner should have submitted plans to be approved by Overstrand before encroaching over the building line? How did the property shift or were the plans not followed? I think the administrative fine should be paid and alterations should be made in accordance with the title deed.

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| COLLABORATOR NO. |
| 2106604 |

22 AUG 2024

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| 19 AUG 2024 |
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| OVERSTRAND MUNICIPALITY |

Loretta Gillion

From: jonathan cornell < >
Sent: Thursday, 15 August 2024 15:18
To: Loretta Gillion
Subject: Erf 518

TP-A Theart
(H vld Stoep)

I have no adverse comment with regard to this case . It is not as if it is a new application for a departure to build a new structure. I also think the administrative penalty should be a token as the current owner was ignorant of the situation.

Dr and Mrs JM Cornell
170 HANGKLIP RD.

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| FILE NO. Erf 518- KPRB |
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| SCAN NO. |
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| COLLABORATOR NO. |
| 2104298 |

TP

19 AUG 2024

17/26

Loretta Gillion

From: Dr. Wulf Linder <[redacted]>
Sent: Wednesday, 14 August 2024 11:46
To: Loretta Gillion
Cc: jeaned04@outlook.com
Subject: Application for removal, etc.

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| OVERSTRAND MUNISIPALITEIT REKORDBEHEER 15 AUG 2024 DOCUMENT CONTROL OVERSTRAND MUNICIPALITY |
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*TP - A Theart
(Huid Stoeper)*

Good morning,

I object to the application. Everybody has to adhere to the building rules. You cannot allow owners to circumvent those by approving the illegal building afterwards. This is creating a loophole for all not to adhere to the building rules and then asking for a removal, etc.

An approval of the application will create a precedence case for those who are not adhering to the building rules. They will always refer to this current application when it will be approved.

Kind regards

DR GW Linder, erf 41 Pringle Bay

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| 2103029 |

15 AUG 2024

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18/26

REKORDBEHEER

26 AUG 2024

DOCUMENT CONTROL

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Loretta Gillion

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 14:39
To: Loretta Gillion
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

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From: Peter Molchin < >
Sent: Tuesday, August 13, 2024 9:15:19 am
To: 'Jeane Douglas' <jeaned04@outlook.com>
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

No objections. Thanks.
 ERF1598
 Peter Molchin

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Friday, August 9, 2024 15:33
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Good Day

I trust you are well.

The below email, refers.

Good Day

I trust you are well.

The below email, refers.

| | |
|------------------|----------------|
| FILE NO. | Erf 518-KPRB ✓ |
| SCAN NO. | Peter |
| COLLABORATOR NO. | 2108328 |

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith please find the attached public notice for your attention, comment or objection regarding the above mentioned land use application. The public notice comprises of the notice itself, locality plan, motivational report and supporting site plan.

The municipality will be publishing similar notices in the Overstrand Herald and in the Official Gazette on 8 August 2024.

Please note that all comments or objections must be submitted to the Overstrand Municipality: Town and Spatial Planning Department, Loretta Gillion (loretta@overstrand.gov.za), on or before 13 September 2024.

Should you have any queries please contact the Overstrand Municipality at the aforementioned email address.

Kind Regards,

19/26

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|-------------------------|
| REKORDBEHEER |
| 15 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

Loretta Gillion

From: Louw Toerien < >
Sent: Thursday, 15 August 2024 10:35
To: Jeane Douglas
Cc: Loretta Gillion
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

I have no objection as the adjustments are small.
 To my knowledge many(?) properties in Pringle Bay have been resurveyed to accommodate various adjustments to the boundary lines.
 This could be an option here in negotiation with owners of erf 519 but probably not worth the cost and effort.
 However the checking and signing off of building plans and the completed building into the approved plans has been lax in the past.
 I trust that this process is now being applied diligently to avoid such incidents in the future.

Louw Toerien
 for the AMIT trust
 Erfs 224 and 225
 High level road
 Pringle Bay

On Mon, Aug 12, 2024 at 10:51 PM Jeane Douglas <jeaned04@outlook.com> wrote:

Good Day

I trust you are well.

The below email, refers.

| |
|-----------------------|
| FILE NO. erf 518-KPRB |
| |
| SCAN NO. |
| |
| COLLABORATOR NO. |
| 2103056 |

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith please find the attached public notice for your attention, comment or objection regarding the above mentioned land use application. The public notice comprises of the notice itself, locality plan, motivational report and supporting site plan.

The municipality will be publishing similar notices in the Overstrand Herald and in the Official Gazette on 8 August 2024.

15 AUG 2024 TP

Loretta Gillion

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 14:50
To: Loretta Gillion
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

[Get Outlook for Android](#)

From: Gordon Harrison <>
Sent: Tuesday, August 13, 2024 9:20:40 AM
To: Jeane Douglas <jeaned04@outlook.com>
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Dear Jeane'

Thank you for your email.

Thank you for bringing this to our attentions, I honestly don't see any reason to object.

Regards

Gordon

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Monday, August 12, 2024 8:40 PM
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Good Day

I trust you are well.

The below email, refers.

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith please find the attached public notice for your attention, comment or objection regarding the above mentioned land use application. The public notice comprises of the notice itself, locality plan, motivational report and supporting site plan.

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| FILE NO. Erf 518- KPRE |
| |
| SCAN NO. Gordon |
| |
| COLLABORATOR NO. |
| 2108286 |

21/26

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| REKORDBEHEER |
| 26 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

Loretta Gillion

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 14:51
To: Loretta Gillion
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

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From: Rowan Williams-Short <
Sent: Wednesday, August 14, 2024 5:13:51 AM
To: Jeane Douglas <jeaned04@outlook.com>
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Good morning

Thank you for taking the trouble to bring this matter to the attention of all property owners in Pringle Bay.

The request has been well motivated, and I have no objections.

Kind regards,
Rowan

R Williams-Short
Erf 294 and Erf 213, Pringle Bay

| |
|--------------------------|
| FILE NO. Erf 518-KPRB ✓ |
| SCAN NO. Rowan |
| COLLABORATOR NO. 2108279 |

From: Jeane Douglas <jeaned04@outlook.com>
Sent: 12 August 2024 23:10
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Good Day

I trust you are well.

The below email, refers.

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith please find the attached public notice for your attention, comment or objection regarding the above mentioned land use application. The public notice comprises of the notice itself, locality plan, motivational report and supporting site plan.

The municipality will be publishing similar notices in the Overstrand Herald and in the Official Gazette on 8 August 2024.

Please note that all comments or objections must be submitted to the Overstrand Municipality: Town and Spatial Planning Department, Loretta Gillion (loretta@overstrand.gov.za), on or before 13 September 2024.

22/26

Loretta Gillion

| |
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| REKORDBEHEER |
| 26 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 17:41
To: Loretta Gillion
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

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| OVERSTRAND MUNISIPALITEIT |
| REKORDBEHEER |
| 26 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

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From: H.J.van der Berg <>
Sent: Saturday, August 24, 2024 4:38:19 pm
To: 'Jeane Douglas' <jeaned04@outlook.com>
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Dear Me Douglas,

I have no objection to the change in land use of Erf 518, Pringle Bay.

Kind regards

H. J. van der Berg

From: Jeane Douglas [mailto:jeaned04@outlook.com]
Sent: 24 August 2024 14:35
To: H.J.van der Berg
Cc: loretta@overstrand.gov.za
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Hi Mr van der Berg

I trust you are well.

The email was sent on behalf of my client (Erf 518 Pringle Bay) who had to submit an application regarding the removal of their title deed restrictions as well as departure application to the Overstrand Municipality, Town Planning Department.

According to my client's title deed it was required of me to inform all property owners in the Pringle Bay area about the proposal. If you have any objections towards the proposal, you are welcome to send an email to Loretta Gillion which I have mentioned in the previous email.

Kind Regards
Jeané Douglas.

| |
|--------------------------|
| FILE NO. Erf 518-KPRB ✓ |
| SCAN NO. Douglas |
| COLLABORATOR NO. 2108204 |

From: H.J.van der Berg <>
Sent: Monday, August 12, 2024 1:51:08 PM

22/26

Loretta Gillion

From: Johan Kritzinger <[redacted]>
Sent: Tuesday, 13 August 2024 12:58
To: Loretta Gillion
Cc: Jeane Douglas
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLCATION
Attachments: Annexures_Erf 518 Pringle Bay (ROR, Departure, Admin Penalty)(8Aug24).pdf

Johan Kritzinger

Email:

Mobile:

TP - A Theart
(H vld Stoep)

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| OVERSTRAND MUNISIPALITEIT |
| REKORDBEHEER |
| 15 AUG 2024 |
| DOCUMENT CONTROL |
| OVERSTRAND MUNICIPALITY |

From: Johan Kritzinger <j>
Sent: Tuesday, August 13, 2024 12:51:27 pm
To: 'Franscoise Kritzinger' <[redacted]>
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLCATION

No objection from me to this application

Johan Kritzinger

Email:

Mobile:

| |
|------------------------|
| FILE NO. Erf 518- KPRB |
| SCAN NO. |
| COLLABORATOR NO. |
| 2103061 |

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Tuesday, August 13, 2024 9:22:04 am
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLCATION

Good Day

I trust you are well.

The below email, refers.

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Herewith please find the attached public notice for your attention, comment or objection regarding the above mentioned land use application. The public notice comprises of the notice itself, locality plan, motivational report and supporting site plan.

The municipality will be publishing similar notices in the Overstrand Herald and in the Official Gazette on 8 August 2024.

20 15 AUG 2024

12 AUG 2024

DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Loretta Gillion

24/26

From: Elize Wessels <
Sent: Saturday, 10 August 2024 12:16
To: Loretta Gillion
Cc: jeaned04@outlook.com
Subject: Fwd: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION [ATSPHERE-0082208]
Attachments: Annexures_Erf 518 Pringle Bay (ROR, Departure, Admin Penalty)(8Aug24).pdf; ATT00001.htm



Good day Loretta

I live in 84 Caesar Road (Plot 1377) Pringle Bay and I have no objections to the attached land use application.

Kind regards

Elize Wessels

Intern Property Consultant | Registered with the PPRA

Tel: (028) 273 8418 - **Cell:** (082) 554 2688
Email: elize@gtproperty.co.za - **Fax:** (028) 273 8492

Address:
P.O. Box 37, Hermanus, 7200 | Docex 1 Caledon

VAT No: 4800235196

GUTHRIE & THERON
EIGENDOMME PROPERTIES

GUTHRIE & THERON PROPERTIES

www.gtproperty.co.za

The risk of **CYBER CRIME** is real and emails/electronic communications are regularly intercepted by criminals. It is therefore imperative and absolutely necessary to **VERIFY** our banking details telephonically or in person with us **BEFORE** making any **PAYMENT** into our trust account. Bank verifications are strongly recommended before doing an EFT.

Begin forwarded message:

From: Elize Wessels <insure@sphereconsult.co.za>
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION [ATSPHERE-0082208]
Date: 10 August 2024 at 12:13:10 SAST
To: elize@gtproperty.co.za

----- Forwarded Message -----

From: jeaned04@outlook.com

| |
|-----------------------|
| FILE NO. ERF 518-KPRB |
| |
| SCAN NO. |
| |
| COLLABORATOR NO. |
| 2100516 |



25/26

To: 'Jeane Douglas' <jeaned04@outlook.com>
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Me Douglas,

There must be some misunderstanding!
 I do not know how you have associated me with Erf 518, because I have never owned this property.

Kind regards
 H.J. van der Berg
 Cel no

From: Jeane Douglas [mailto:jeaned04@outlook.com]
Sent: 10 August 2024 17:43
To: H.J.van der Berg
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Hi Mr van der Berg

Please see attached report that was submitted to the Overstrand Municipality, Town Planning Department regarding an application submitted on behalf of my client.

Kind Regards
 Jeane Douglas

From: H.J.van der Berg < >
Sent: Saturday, August 10, 2024 5:32 PM
To: 'Jeane Douglas' <jeaned04@outlook.com>
Subject: RE: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Dear

From: Jeane Douglas [mailto:jeaned04@outlook.com]
Sent: 09 August 2024 15:38
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLICATION

Good Day

I trust you are well.

The below email, refers.

Good day Jeané,

Please give me more information with regard to ERF 518 mentioned in your email below?

Regards
 H.J. van der Berg

I trust you are well.

The below email, refers.

26/26

Loretta Gillion

From: Jeane Douglas <jeaned04@outlook.com>
Sent: Saturday, 24 August 2024 14:56
To: Stoney-Linta Steenkamp
Cc: Loretta Gillion
Subject: Re: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLCATION

Hi Linta

I trust you are well

Cut off is the 13 of September.

The application is for an existing structure that has to be legalized.

There are no height restrictions involved in the application, only title deed restrictions that the client has to remove to legalise the existing laundry.

Regards
Jeané Douglas

FILE NO. *ErF 518 - KPRB*

SCAN NO. *Linta*

COLLABORATOR NO.

2108278

From: Stoney-Linta Steenkamp <
Sent: Wednesday, August 14, 2024 2:36:08 pm
To: Jeane Douglas <jeaned04@outlook.com>
Subject: REQUEST FOR COMMENT: ERF 518 PRINGLE BAY- LAND USE APPLCATION

Good day Jeane
 Thank you for the notification.
 We are no 60 Pringle Bay. Do you have a cut off date for our reply?

I would also like to know are there any height restrictions involved in die renovations?

Regards
Linta Steenkamp

On 13 Aug 2024, at 10:19, Jeane Douglas <jeaned04@outlook.com> wrote:

Good Day

I trust you are well.

The below email, refers.

REQUEST FOR COMMENT: ERF 518 PRINGLE BAY, APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Annexure F 1/4

Loretta Gillion

From: Jeane Douglas <jeanedgls@gmail.com>
Sent: Wednesday, 20 November 2024 20:42
To: Loretta Gillion
Subject: Erf 518 Pringle Bay Objections
Attachments: Objections Received.pdf

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| <p>OVERSTRAND MUNISIPALITEIT</p> <p>REKORDBEHEER</p> <p>21 NOV 2024</p> <p>DOCUMENT CONTROL</p> <p>OVERSTRAND MUNICIPALITY</p> |
|--|

TP - A Theart
(H vld Stoep)

Hi Loretta

Please see attached objections received with comments.

Kind regards
Jeane

| |
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| FILE NO. Erf 518-KPRB |
| <input type="text"/> |
| SCAN NO. |
| <input type="text"/> |
| COLLABORATOR NO. |
| 2557687 |

TP 21 NOV 2024

**PART A:
SHOULD THE LAUNDRY ROOM BE DEMOLISHED?**

RESPONSE:

The objector does not provide a reason for the request to demolish the laundry room. This objection point should therefore be disregarded.

**PART B:
WHICH IS ADVISABLE: AN AMENDMENT OF A TITLE DEED CONDITION OR ITS COMPLETE REMOVAL?**

RESPONSE:

Firstly, it is noted that the property owner did construct the laundry room without the necessary land use / building plan approval. Secondly, the reason for the removal is to accommodate the previously mentioned laundry room at its current position. Thirdly, the reason for the removal is due to the fact that the property owner wants to sell the property and requires all land use approvals and building plans to be in place before the property is transferred into another owner's name.

Furthermore, the reason for the laundry room to be constructed and approved at its current position is due to the practicality in relation to the design of the house. The position of a laundry room could only be placed in this position rather than redesigning the house to accommodate the laundry room at a position that does not make practical sense. The laundry room was also constructed to be in line with the current position of the dwelling house footprint, therefore it encroaches the Overstrand Municipality Land Use Scheme building line parameter as well as the applicable title deed lateral building line parameter.

It must be noted that the position of the current house was approved at 2,5m from the erf boundary. As the Overstrand Municipality as well as the Pringle Bay Ratepayers Association are aware, that most of the houses within the Pringle Bay Area are not built in accordance with the approved building plans due to the incorrect units of measurement / datum used to set out the building footprint of the dwelling house and associated structures. With the technology of today such as GIS viewers, it is evident that the houses were not built as per the approved building plan.

The removal of the restrictive title deed condition is requested in order for the development parameters to be in line with that of the Scheme only. In this way the property will be more restricted, however will not incur the absurd application and administrative fees applicable to the removal of title deed conditions. By not removing the title deed restrictive condition, the current property owner and the future property owners will be deprived of the right and burden of being more restricted in terms of development parameters compared to the that of the Overstrand Municipal Erven at large.

With regards to the so-called special character of the Pringle Bay Area, the Ratepayers Association do not substantiate the reason for the Pringle Bay area having a special character. The only character that the Pringle Bay area has is that it is similar to other residential neighbourhoods which it simply is a residential neighbourhood. The houses within the Pringle Bay area each has its own character as per the Developer or Property Owners unique design inputs.

The Pringle Bay Ratepayers Association stipulates that the application is for a blanket removal which is not the case. The only condition that is proposed to be removed is condition A(d). The comment is therefore not applicable.

**PART C:
IS THE GARAGE BUILT WITHIN THE TITLE DEED BUILDING LINE?**

RESPONSE:

The Pringle Bay Ratepayers Association should please refer to the Overstrand Municipality Land Use Scheme which details that garages may be built over the applicable lateral building line

PART D: GENERAL COMMENTS

RESPONSE:

The general comments are noted.

**PART E:
MOTIVATION THAT THE ENCROACHING ILLEGAL ADDITION (A LAUNDRY ROOM) BE
DEMOLISHED**

RESPONSE:

The case referred to in the objection point regarding the encroachment over the boundary line is not applicable to this application since the structures on the subject property do not encroach the erf boundary. The Pringle Bay Ratepayers Association's argument is therefore flawed, seeking a demolition order. Furthermore, the argument from the objectors therefore seems targeted at the property owner by stating case law that has no relevance to the application at hand and rather seeks to delay the proper administrative planning process by any means necessary.

If the laundry room were to encroach the property building line (of which no proof has been submitted by the ratepayers) it would make sense that the structure should be demolished since development on the boundary is restricted to the boundary of the subject erf (apart from the building lines applicable).

It must be kept in mind that there is a specific formula the municipality utilises to calculate the administrative penalty. Furthermore, only those section that encroach the applicable building lines be it of the Scheme or the Title Deed will be subject to the determination of an administrative penalty.

It must be noted that ratepayers are there to serve as a buffer, which helps assist property owners within a township to understand the relevant planning laws and processes (in relation to a town planning application). It seems as if the Pringle Bay Ratepayer's Association seeks to enforce building laws (with specific reference to 7.3.3.(b) of the objection) in which they have no legal standing. The objection by the ratepayers should therefore be disregarded since the basis on which the ratepayers who seek the demolition of the laundry room is flawed.

GENERAL COMMENT BY APPLICANT:

The laundry room is situated over 1m from the property boundary and does not have windows or other openings that are closer than 1m from the erf boundary. Furthermore, a laundry room is not a habitable space in which noise, or any other disturbances will occur and should therefore not be considered for demolition.

The case law and arguments put fourth by the ratepayers cannot be correlated with this application since the basis of the arguments made refer to other forms of developments such as guesthouses (refer to point 2.4 of the objection) and boundary line encroachments (refer to point 7.3.1 of the objection) which is not the case with this application. It is therefore requested that an individual that serves on the Pringle Bay Ratepayers Association (that has the relevant planning qualification or proper town planning knowledge) prepare an objection since the objection made by the current author is clearly misleading.

OBJECTION: BY ANNETTE JOOSTE

OBJECT TO THE APPLICATION DUE TO THE IMPACT CAUSED ON THE INFRASTRUCTURE AND STORMWATER PIPE. BUILDING PLANS SHOULD ALSO BE SUBMITTED AND APPROVED BEFORE ANY ADDITIONS TAKE PLACE.

RESPONSE:

Please note that your query regarding the infrastructure of stormwater pipelines should be directed to the Operational Department of Overstrand Municipality and the objection has no relevance to this application.

The existing unauthorised structures have been built already and the property owner seeks to rectify the unauthorised building work by means of submitting this application.

OBJECTION: BY ELIZABETH BARDIN

AN EMAIL WAS SENT TO THE PBRA ABOUT CONCERNS REGARDING RECENT FLOODS AND WHAT ACTION IS BEING TAKEN BY THE MUNICIPALITY.

RESPONSE:

Your query regarding flooding should be directed to the Operational Department of Overstrand Municipality and the objection has no relevance to this application.

OBJECTION: BY PETHEMIDA INVESTMENT

SURELY PLANS HAVE TO BE SUBMITTED TO THE OVERSTRAND MUNICIPALITY BEFORE ENCROACHING OVER BUILDING LINES. HOW DID THE PROPERTY SHIFT OR WERE PLANS NOT FOLLOWED. I THINK AN ADMINISTRATIVE PFINE SHOULD BE PAID AND ALTERATIONS SHOULD BE MADE IN ACCORDANCE WITH THE TITLE DEED.

RESPONSE:

As stipulated in the application, the property owner constructed the structures with the necessary land use or building plan approval, therefore this application has been submitted.

As mentioned in the previous response to the PBRA, structures were not built according to plan due to incorrect datum or units of measurements when construction took place which is the case in most of the properties in the Pringle Bay area.

An application for an administrative penalty has been submitted.

OBJECTION: BY JONATHAN CORNELL

NO ADVERSE COMMENT ON REGARDING THE CASE. AN ADMINISTIVE PENALTY SHOULD BE A TOKEN AS THE CURRENT OWNER WAS IGNORANT OF THE SITUATION.

RESPONSE:

An administrative penalty application has been submitted.

OBJECTION: BY DR WOLF LUNDER

EVERYONE MUST ADHERE TO THE BUILDNG RULES. APPROVING ILLEGAL BUILDINGS AFTERWARDS CREATE A LOOPHOLE FOR ALL NOT TO ADHERE TO BUILDING RULES. THIS APPLICATION WILL CREATE A PRECEDENT.

RESPONSE:

This application will not create a precedent since there are and have been multiple similar application and situations specifically in the Pringle Bay Area. An application has however been made to rectify the situation and is motivated for approval with the consideration of practicality of the flow of the existing dwelling and the type of structure being proposed for approval.

**COMMENTS FROM THE PROJECT MANAGEMENT DIVISION FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS, DEPARTURE & DETERMINATION OF AN
ADMINISTRATIVE PENALTY: ERF 518, PRINGLE BAY (4635/2024)**

| | | |
|-------------------|---|---------------------|
| Electricity | : | Eskom Area |
| Water | : | Refer to conditions |
| Sewer | : | Refer to conditions |
| Stormwater | : | Refer to conditions |
| Roads and traffic | : | Refer to conditions |

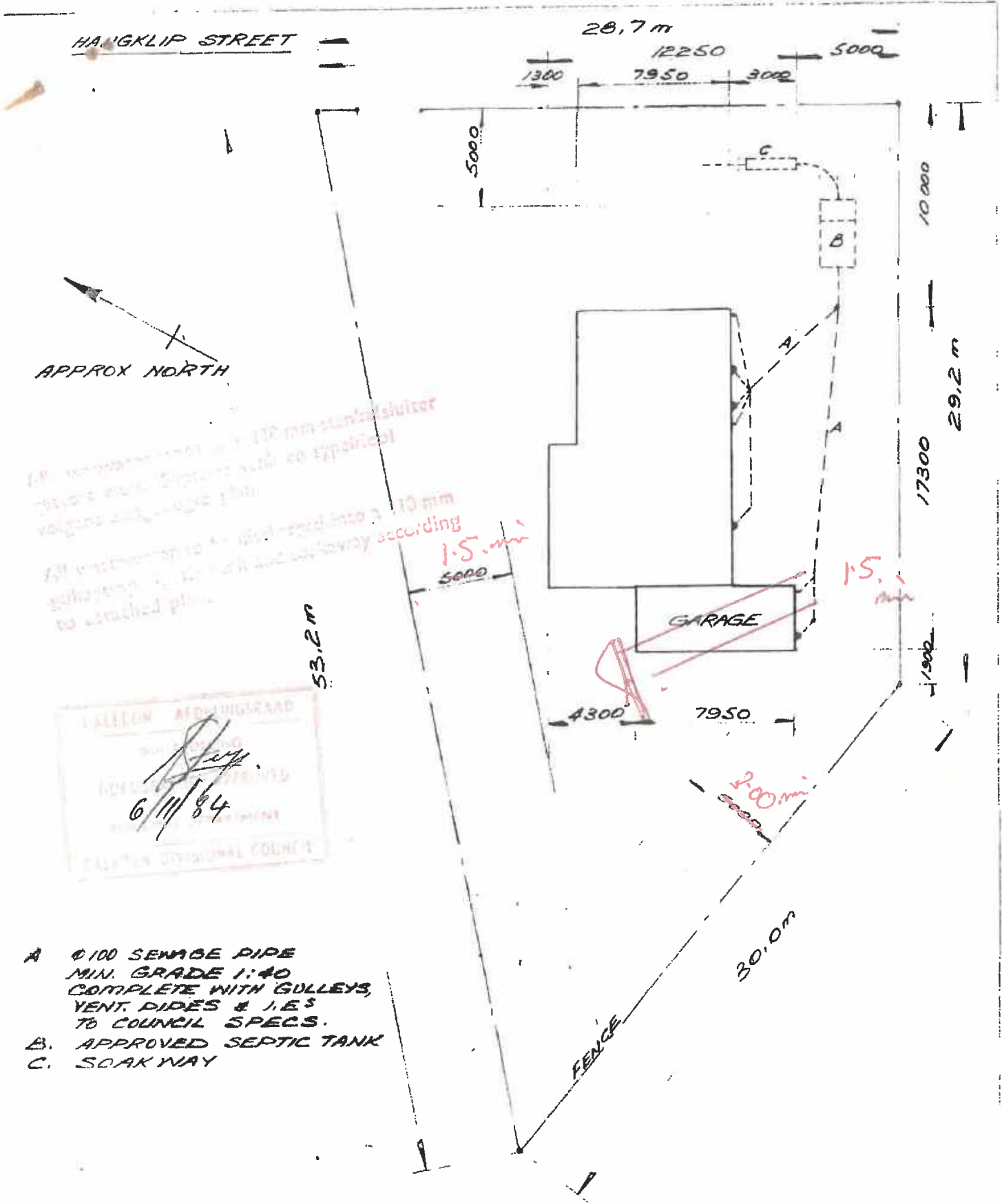
Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Principal Technologist: Kleinmond for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that no reservation of on-street parking be allowed;
7. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
8. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if require



**RICARDO ANDREW
PRINCIPAL TECHNOLOGIST:
DEVELOPMENT CONTROL**

20/12/2024
DATE



All water services to be 100 mm standard size
 100 mm standard size with appropriate
 voltage and pipe size
 All water services to be laid into a 10 mm
 guttering to be laid in a 10 mm
 to attached plot

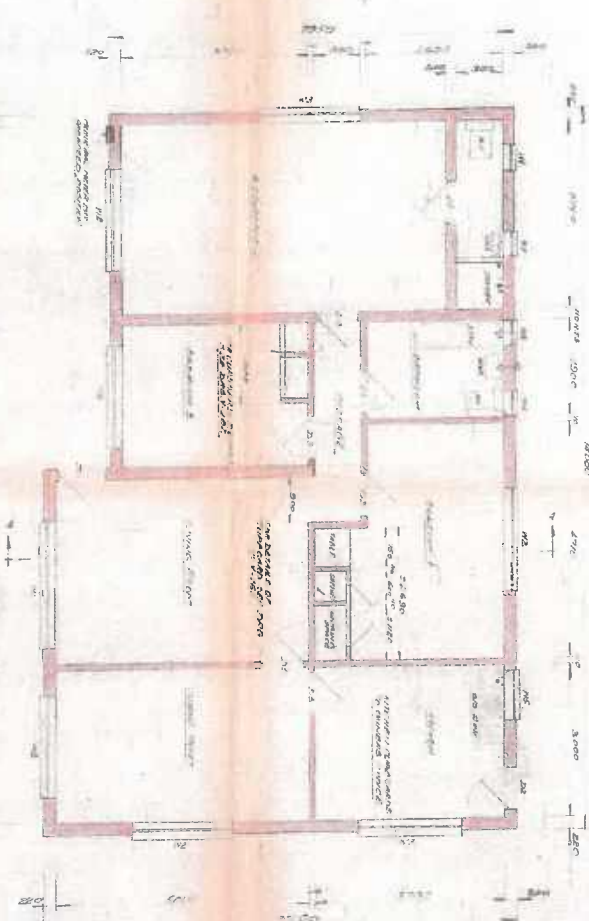
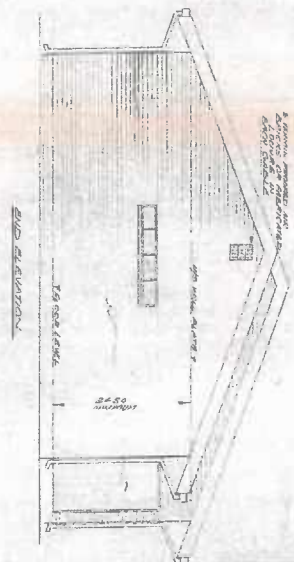
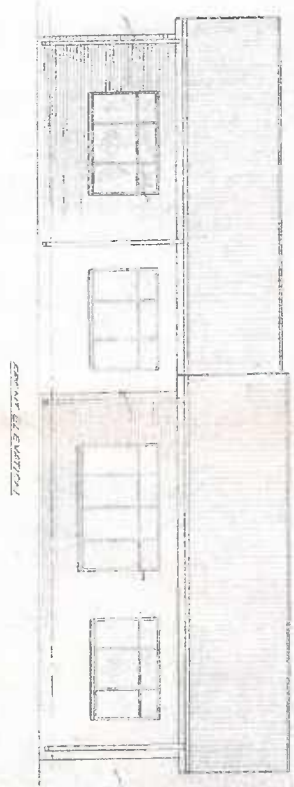
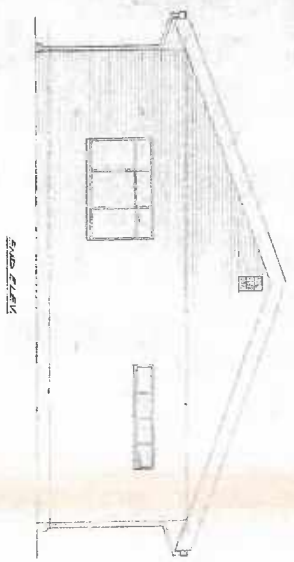
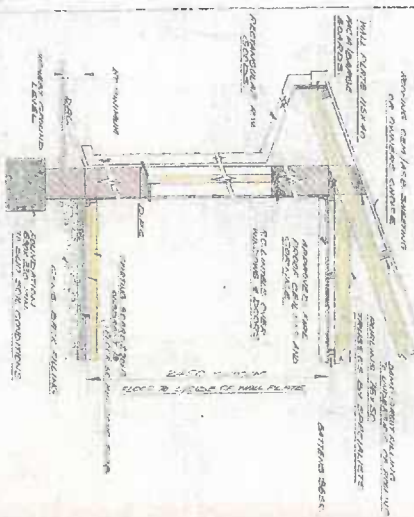
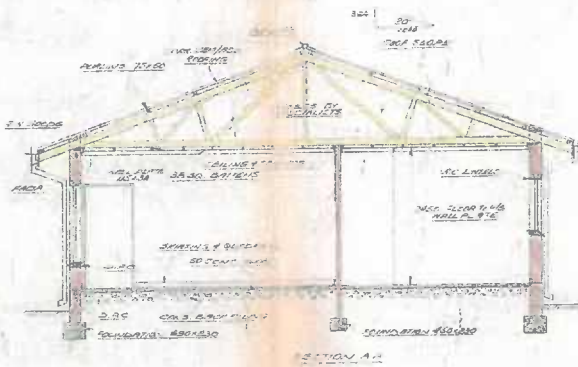
CALEDON AFDDELINGSRAAD
 6/11/84
 CALEDON DIVISIONAL COUNCIL

- A. 100 SEWAGE PIPE
 MIN. GRADE 1:40
 COMPLETE WITH GULLEYS,
 VENT. PIPES & J.E'S
 TO COUNCIL SPECS.
- B. APPROVED SEPTIC TANK
- C. SOAKWAY

THE DIMENSIONS OF THIS PLOT WERE TAKEN BY THE OWNER TO PER-
 MIT ME TO DO THE SITE PLAN. ON RECEIPT OF THE PROPER DRAW-
 ING FROM C. TOWN A REVISED COPY OF THIS DRAWING WILL FOLLOW.

ERF 518 PRINGLE BAY DIVISIONAL COUNCIL - CALEDON

PROPOSED SITE PLAN OF COTTAGE FOR MRS. E.K. SNYMAN
 AS PER DRAWINGS V-155 & V-159



Handwritten signature and date: *[Signature]* 6/11/84

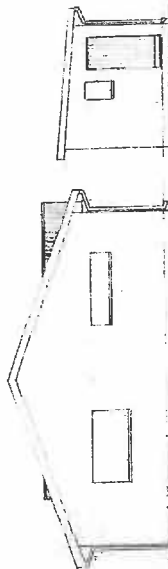
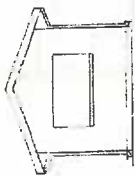
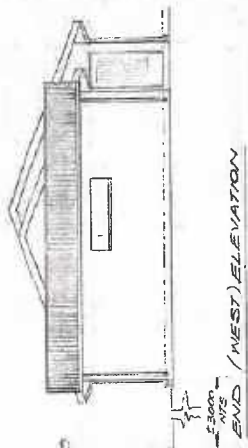
NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL BUILDING CODES AND ALL APPLICABLE LOCAL ORDINANCES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND INSURANCE.
3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL BUILDING DEPARTMENT.
4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
5. ALL UTILITIES SHALL BE PROTECTED AND MARKED PRIOR TO ANY EXCAVATION WORK.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
7. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND THE PUBLIC.
9. ALL MATERIALS SHALL BE STORED PROPERLY AND PROTECTED FROM THE ELEMENTS.
10. THE CONTRACTOR SHALL MAINTAIN A NEAT AND ORDERLY WORK SITE AT ALL TIMES.

Architect's Seal:
 [Seal of the Architect]
 [Name of Architect]
 [Professional Title]

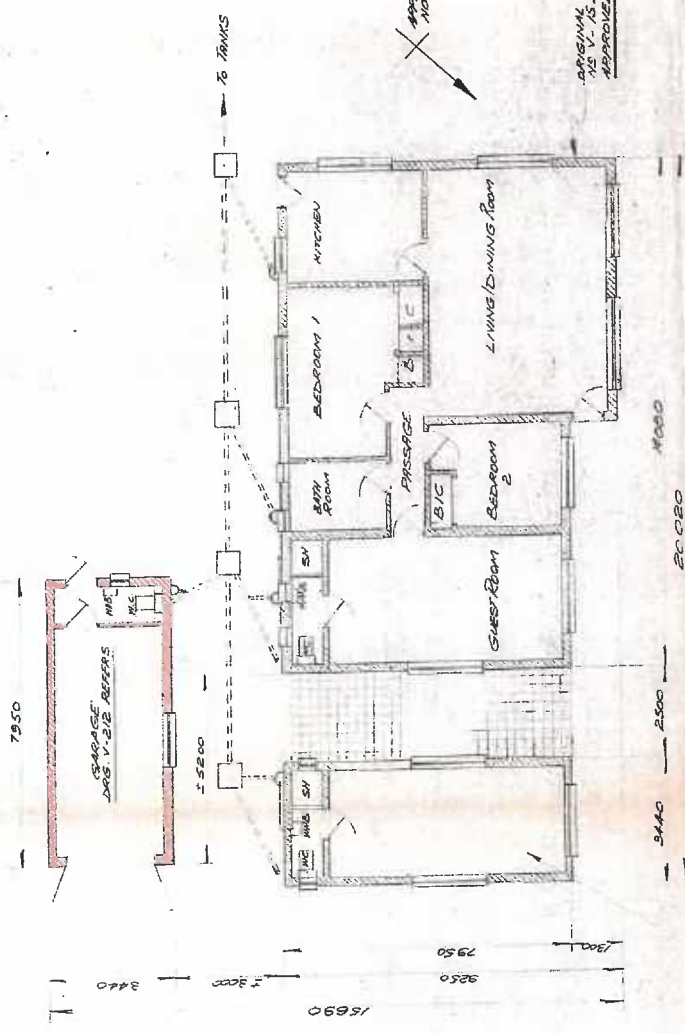
PREPARED BY:
 [Name of Designer]
DATE:
 [Date]

PROJECT:
 [Project Name]
CLIENT:
 [Client Name]



1:3000
MRS
MRS

1:3000
MRS
MRS



INTENDED GARAGE
CHANGED TO LIVING
QUARTERS.
DRAWING NO. 223
APPROVED 8/19/18

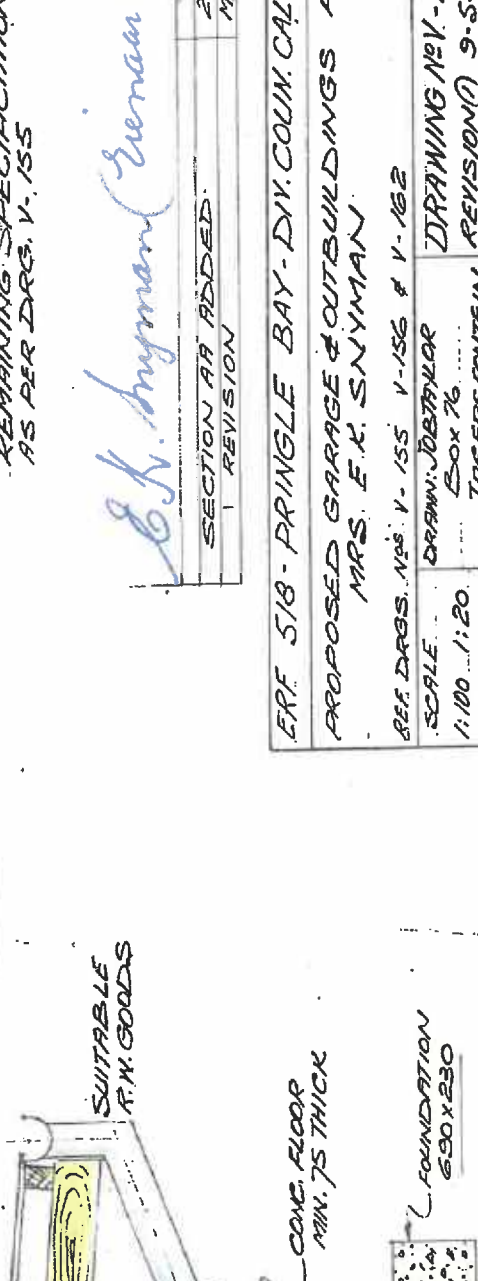
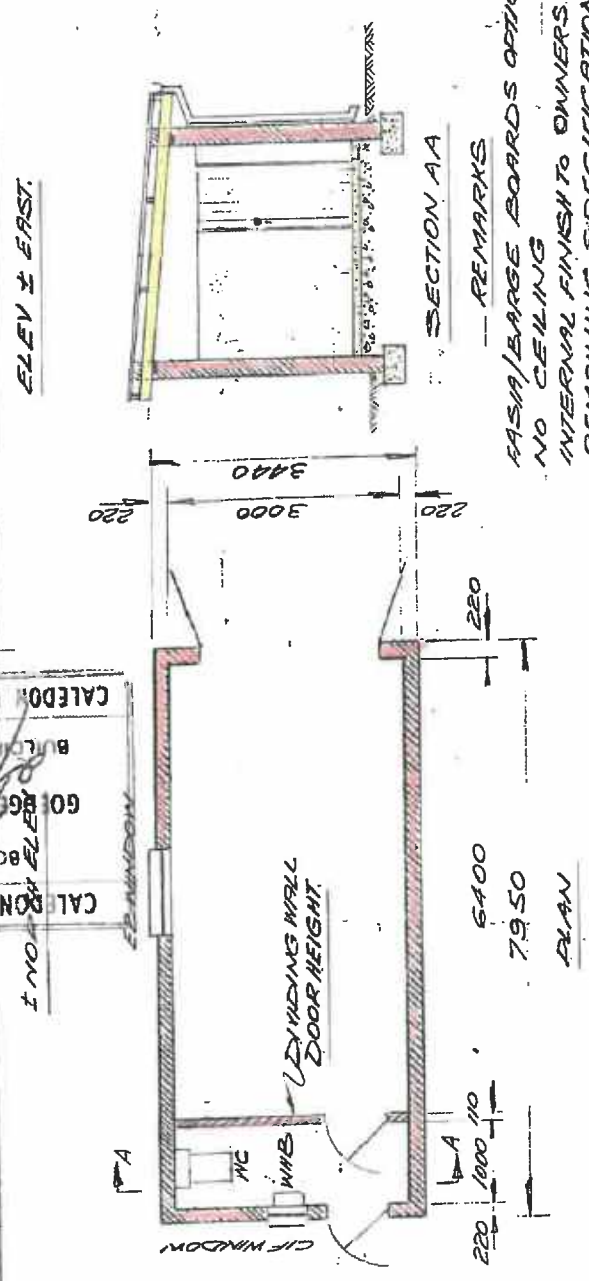
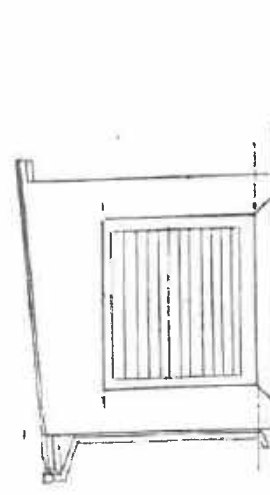
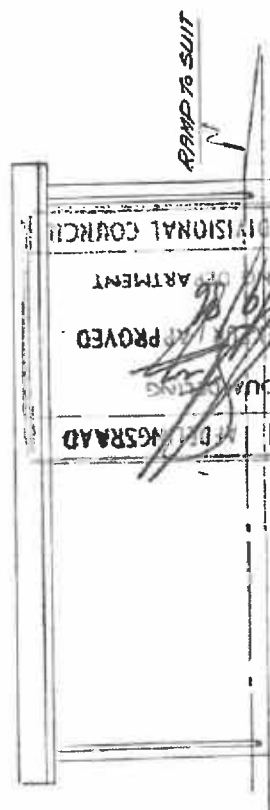
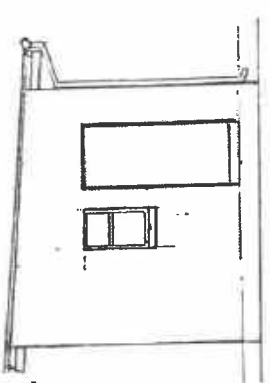
All wastewater from 110 mm trunkwater
restroom work. Septic tank on approved
volgens mangelgatte plan.

All wastewater to be discharged into a 110 mm
Sulleytrap. Septic tank and soakaway according
to attached plan.

INGRAAD
CALLEDON DIVISIONAL COUNCIL
APPROVED
MRS
MRS

CALLEDON, NEW ZEALAND
GENERAL PRACTISING
LANDREVEIL RECOMMENDED
HEALTH DEPARTMENT
CALLEDON DIVISIONAL COUNCIL

NINE UT BEIDINGEN ROOF
BESTAANDE IN SWART
PLOT 518 - PRANGLE BAY. DIV. COUNCIL. CALLEDON C.P.
GENERAL ARRANGEMENT OF HOUSE & OUTBUILD.
MRS MRS
DRAWING NO. V. 217
SCALE 1:100
MRS MRS
JANSEN



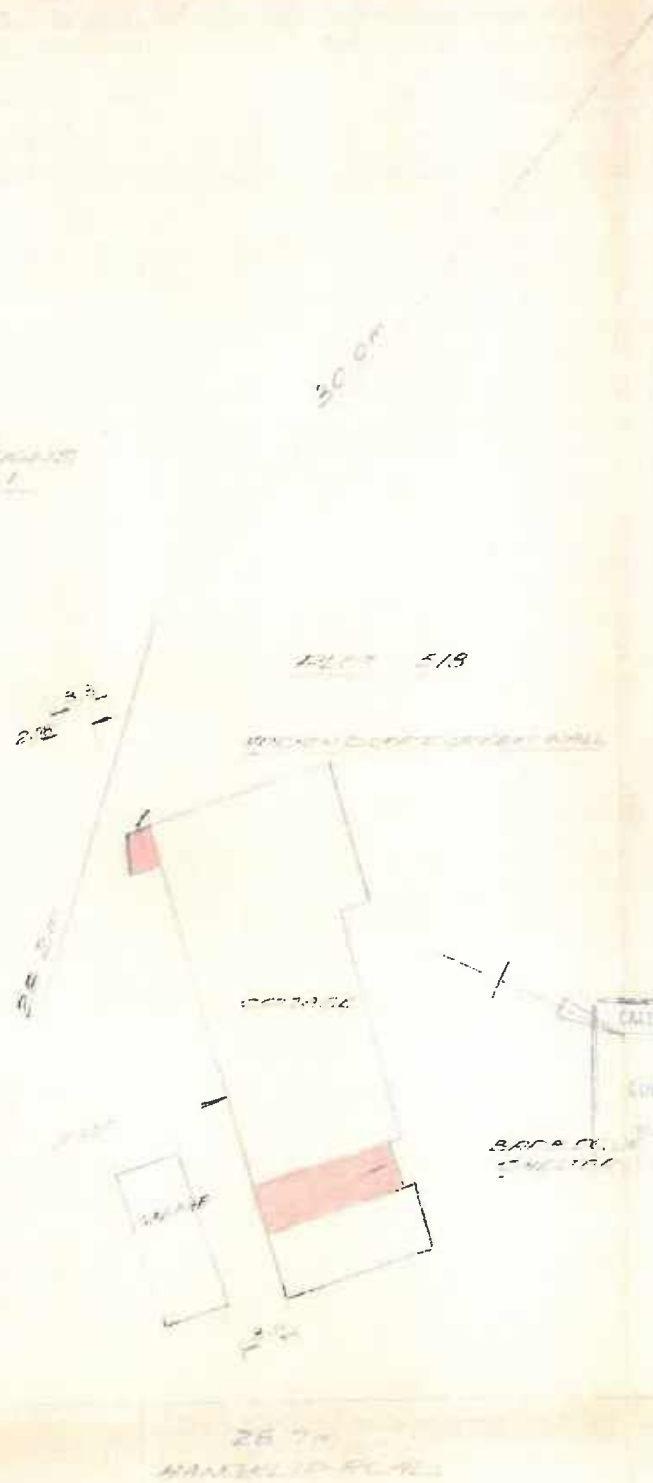
E.K. byman (Zeman)

| SECTION | NO. | DATE |
|------------|-------|------|
| SECTION AA | ADDED | |
| REVISION | | |

REF 518 - PRINGLE BAY - DIV. COUN. CALEDON.
PROPOSED GARAGE & OUTBUILDINGS FOR
MRS. E.K. SNYMAN

REF. DRGS. NOS. V. 155 V. 156 & V. 162
SCALE: DRAWN: J. B. TAYLOR
1:100 1:20 BOX 76
JAGERSPONTEN REVISION(D) 9-5-86

WATER'S SECTION ARE
DELETED, AND NOTATIONS
REFER DRS 11 V-261



CALLING SPRINGS ROAD
 BOJAN SILING
 CIVIL ENGINEER APPROVED
 25/8/87
 3000 ST. ...

- 1-0 WALL
- 2-0 WALL
- 3-0 WALL
- 4-0 WALL

BRICK CONCRETE WALL
AS NOTED ON DRAWING

NOTE: SEE DRS 11 V-261 FOR WATER'S SECTION

IF ANY OF THE EXISTING WALLS ARE FOUND TO BE IN POOR CONDITION, THE FOLLOWING RECOMMENDATIONS ARE MADE: SEE PL AND KITCHEN WOOD WORK (SEE PL)

CONSTRUCTION NOTES:
1. ALL WALLS TO BE FINISHED WITH PLASTER AND PAINT.
2. ALL FLOORS TO BE FINISHED WITH POLISHED CONCRETE.
3. ALL ROOFS TO BE FINISHED WITH GALVANIZED IRON SHEETING AND ASPHALT FELT.

DATE: 25/8/87
DRAWN BY: [Signature]
CHECKED BY: [Signature]
SCALE: 1/4" = 1'-0"

EXISTING WALL
WIRE BRACKET



1:100 ELEVATION
DETAIL A



SECTION A-A
1:50

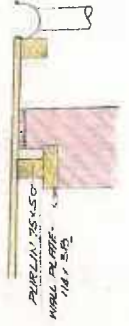
PROPOSED ENCLOSURE FOR
WINDOWS & DOOR BARBECUE SHELTER
SHEETS WITH BRILLIANT FRONT ELEVATION.
1:100



PROPOSED
SCREEN WALL



DETAIL B
1:10



DETAIL C
1:10

CALEDON DISTRICT COUNCIL
GEORGE HENDERSON
MAYOR
HEALTH & SAFETY
8/8/06
CALEDON DISTRICT COUNCIL

CALEDON DISTRICT COUNCIL
GEORGE HENDERSON
MAYOR
HEALTH & SAFETY
8/8/06
CALEDON DISTRICT COUNCIL

50mm CORRUGATED
50mm LAMINATED
50mm

SECTION B-B
1:50

FOR ORIGINAL APPROVED DRAWINGS REFER
D.R.G. REV. 217 - APPROVED 2-9-06

NOTES - AMBLEBY - DY COUNCIL CALEDON C.P.
PROPOSED ENCLOSURE OF AREA INDICATED IN
SOLID LINE FOR BARBECUE SHELTER &
SCREEN WALL FOR KITCHEN DOOR
SCALE 1:100
DRAWN: J. HENDERSON
CHECKED: G. HENDERSON
DATE: 25.5.07
DRAWING REV 2

STRAAT 25
DIEPSTRAAT 25
DIEPSTRAAT 25

30 CM

2775 510

1 1/2

WALL SCREEN WALL

77366

BOUWREGULERING

CALEDON AFDELINGSRAAD
 BOUWAFDELING
Goedgekeur
 GOEDGEKEUR / APPROVED
 27/5/88
 BUILDING DEPARTMENT
 CALEDON DIVISIONAL COUNCIL

Caledon Afdelingsraad
 STADSBEPLANNING
 AFDELING
 GOEDGEKEUR / APPROVED
 TOWN PLANNING
 DEPARTMENT
 Caledon Divisional Council

(Can 25/5/88)

nie huis op
1 meter
Jan 27/5/88

26 CM

HANDELLER

BY LOCAL SURVEYOR

WILL CONSIDER ALL NECESSARY REVISIONS

ET BOUTILLON 1001 515 - PRINCE ALBERT BAY - CALEDON
 THE PLAN SHOWS PROPOSED POSITION OF
 SCREEN AND KITCHEN DOOR SCREEN WALL

| | | | | | |
|-------|-------|------|---------------|----|----------------|
| SCALE | 1:250 | DATE | 27/5/88 | BY | BOUWREGULERING |
| | | | DEPARTMENT OF | | |
| | | | PAGE 5 OF 7 | | |

