



**OVERSTRAND MUNISIPALITEIT**  
**ERF 576, FLYING DUTCHMANWEG 42,**  
**FISHERHAVEN: AANSOEK OM OPHEFFING**  
**VAN BEPERKENDE**  
**TITELAKTEVOORWAARDE: PLAN ACTIVE**  
**NAMENS J SMIT**

Kennis word hiermee gegee ingevolge Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) van 'n aansoek ontvang vir 'n **opheffing van beperkende titelaktevoorwaardes** ingevolge Artikel 16(2)(f) van die Verordening om voorwaardes E.4.(b) te verwyder soos vervat in Titelakte T15942/2023 van die eiendom om die voorgestelde nuwe ontwikkeling bestaande uit 'n primêre woning met 'n tweede wooneenheid op die eiendom te akkommodeer.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentaar moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) voor of op **19 April 2024**, met u naam, adres, kontak besonderhede, belang in die aansoek en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H. Olivier** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

DGI O'Neill, Munisipale Bestuurder,  
Overstrand Munisipaliteit, Posbus 20,  
**HERMANUS, 7200**

Munisipale Kennisgewing Nr. **43/2024**

**OVERSTRAND MUNICIPALITY**  
**ERF 576, 42 FLYING DUTCHMAN WAY,**  
**FISHERHAVEN: APPLICATION FOR**  
**REMOVAL OF RESTRICTIVE TITLE DEED**  
**CONDITION: PLAN ACTIVE ON BEHALF OF J**  
**SMIT**

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) of an application received for a **removal of restrictive title deed condition** in terms of Section 16(2)(f) of the By-Law to remove condition E.4.(b) as contained in Title Deed T15942/2023 of the property to accommodate the proposed new development consisting of a primary dwelling with a second dwelling unit on the property.

Full details regarding the proposals above are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus.

Any comments must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before **19 April 2024**, with your name, address, contact details, interest in the application and the reasons for comment. Telephonic inquiries can be made to the **Town Planner, Mr. H. Olivier** at 028-3138900. The Municipality may refuse to accept comments after the closing date. Any person who cannot read or write can visit the Town Planning Department where they will be assisted by a municipal official in formulating their comments.

DGI O'Neill, Municipal Manager,  
Overstrand Municipality, P.O. Box 20,  
**HERMANUS, 7200**

Municipal Notice No. **43/2024**

**UMASIPALA WASE-OVERSTRAND**  
**ISIZA ESINGU-ERF 576, 42 FLYING**  
**DUTCHMAN WAY, FISHERHAVEN: ISICELO**  
**SOKUSHENXISWA KWEEMEKO**  
**EZIYIMIQOBO KWITAYITILE YOBUNINI:**  
**NGABAPLAN ACTIVE EGAMENI LIKA J SMIT**

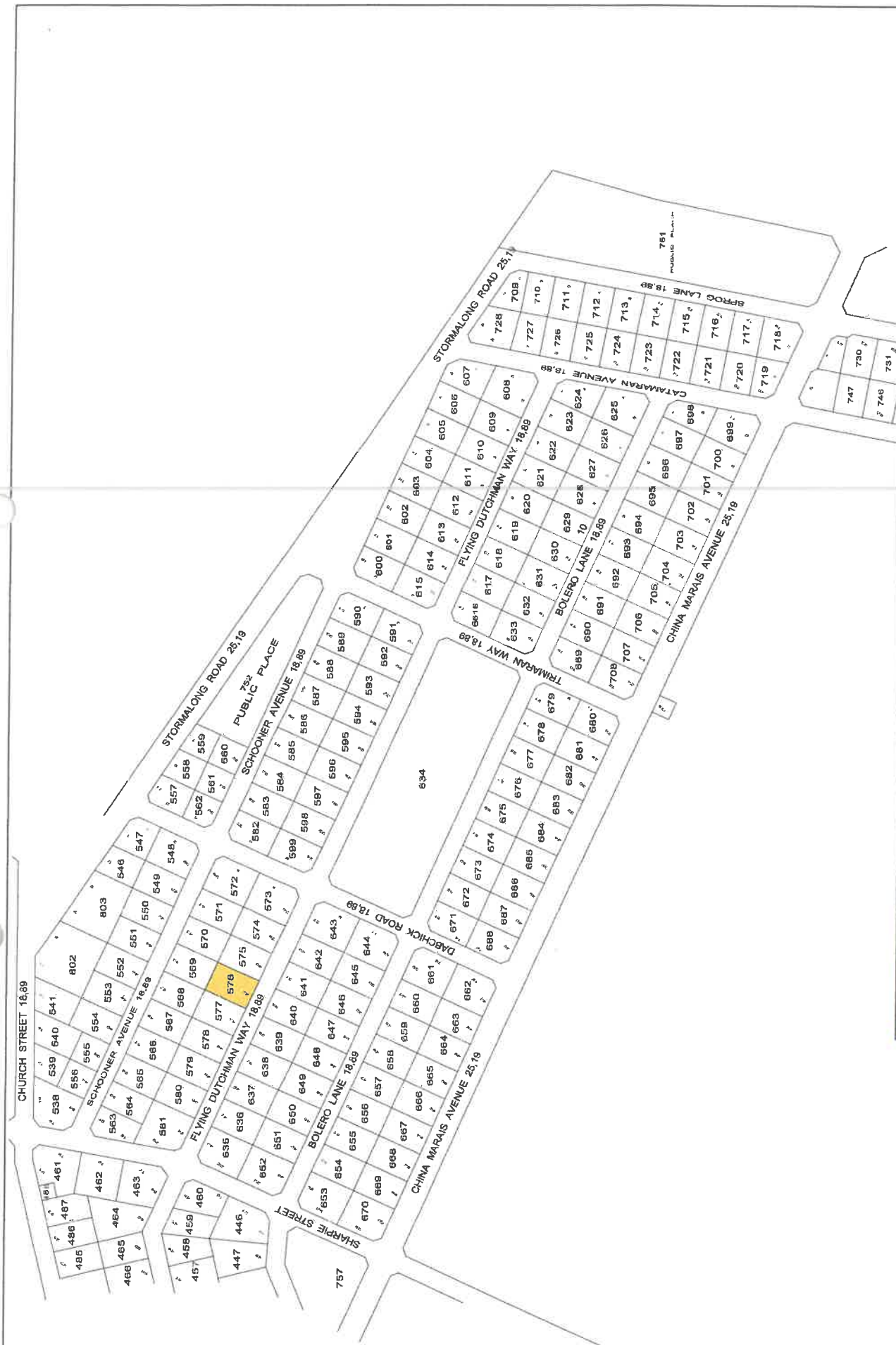
Kukhutshwe isaziso esimayela nemiba yeSoloty lama-47 nelama-48 loMthethwana Osisihlomelo soMthethwana kaMasipala waseOverstrand OngeziCwangciso ZokuSetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana) ngesicelo esifunyenweyo **ngokushenxiswa kweemeko eziyimiqobo** ngokwemiba yeSoloty16(2)(f) loMthethwana ongokushenxiswa imeko engumqobo ebizwa E.4.(b) ngokweziquatho zeTayitile yoBunini T15942/2023 yesiza ukulungiselela iziphakamiso zophuhliso olutsha oluquka indawo eyeyokuqala yokuhlala kunye nendawo yokuhlala eyiyunithi yesibini kwesi siza.

Iinkcukacha ezipheleleyo mayela nezi ziphakamiso zingentla ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukusukela phakathi kwentsimbi ye- 08:00 neye-16:30 kwiSebe: Izicwangciso zeDolophu, 16 Paterson Street, Hermanus.

Naziphina na iinkcukacha ezipheleleyo mazifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama-**19 Epreli 2024**, uchaze igama lakho, i-adresi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Mcwangcisi Omkhulu weDolophu, uMnu. H. Olivier** kwa-028-3138900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe Lezicwangciso zeDolophu apho baza kuncedwa ligosa likamasipala ukuhlomla ngokusemthethweni.

DGI O'Neill, Umlawuli Omkhulu kaMasipala, Overstrand Municipality, P.O. Box 20, **HERMANUS, 7200**

Inothisi kaMasipala Nomb. **43/2024**



**PLAN** Stads- en Sireksbeplanners  
Town & Regional Planners

**Active**

All distances approximate  
and subject to survey.

COPY RIGHT RESERVED

Property Description:  
**ERF 576  
FISHERHAVEN**

Plan Description:  
**LOCALITY MAP**

Scale: **NTS**  
Drawing Nr:  
576 fisherhaven.dwg  
Date:  
JANUARY 2024

**PROPOSED REMOVAL OF A RESTRICTIVE  
TITLE DEED CONDITION**

**ERF 576 FISHERHAVEN**

**OVERSTRAND MUNICIPALITY**

**1. BACKGROUND**

Mr. J. Smit, the owner of Erf 576 Fisherhaven, has instructed the company Plan Active Town Planners to apply for the removal of a restrictive Title Deed condition of Erf 576 Fisherhaven.

The owner intends to erect a main dwelling and a second dwelling on the subject property which is currently vacant. The building plans for a dwelling have already been submitted at the building control office for their approval. This dwelling complies with the Scheme Regulations restrictions applicable to second dwelling units and will become the second dwelling once the building plans for the main dwelling is approved. The intention is to erect the main dwelling after the second dwelling is developed as the main dwelling will be larger in extent. The application will address the applicable restriction in the Title Deed by applying for the removal thereof.

Erf 576 Fisherhaven is 1 487m<sup>2</sup> in extent and is held by Title Deed Number T15942/2023.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.

## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

Erf 576 Fisherhaven is situated at 42 Flying Dutchman Way, Fisherhaven. Erf 576 Fisherhaven is 1 487m<sup>2</sup> in extent and is currently vacant. Please refer to the enclosed locality plan.

### **3.2 ZONING**

Erf 576 Fisherhaven is zoned Residential Zone 1 and is currently vacant. The surrounding properties are also zoned for single residential purposes and public roads.



### **3.3 LAND USE**

Erf 576 Fisherhaven is currently vacant.

Land uses that surround Erf 576 Fisherhaven are single dwellings and public roads. It is therefore evident that the subject property is situated within a predominantly single residential area.

### **3.4 PROPOSAL**

The following is proposed:

- The removal of a restrictive Title Deed condition in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

Erf 576 Fisherhaven is 1 487m<sup>2</sup> in extent and is currently vacant. The intention of the owner of the subject property is to build a main dwelling and a second dwelling on the subject property. The aforementioned Title Deed applicable to the subject property contains a condition that restricts the subject property to **one (1)** dwelling only. This application is to remove the mentioned restriction from the Title Deed in order to accommodate a proposed main dwelling and second dwelling. As mentioned earlier, building plans for the second dwelling only, has already been submitted to the building control office as a main dwelling. The larger main dwelling will be built at a later stage.

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

The enclosed **Title Deed, T15942/2023** contains the following Title Deed restriction that has to be addressed in order to accommodate the proposal as indicated on the site plan with drawing number **CO1** dated **18 January 2024**:

- **Page 6, paragraph (4)(b):**



- (b) it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;

The reason to have the above-mentioned Title Deed Restriction removed is mainly because the restriction is more stringent than the restrictions as prescribed in the development rules of the Zoning Scheme Regulations for properties with a **Residential Zone 1: Single Residential Zoning**. The applicable Zoning Scheme Regulations prescribe the following land use restrictions in relation to the primary land use rights.

#### 6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)

##### Use of the property

6.1.1 The following use restrictions apply to property in this zone:

- a) **Primary uses** are: crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.

The detail of the proposed removal of the Title Deed restriction can be described as follows:

- **Page 4, paragraph (4)(b):** *“it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.”*

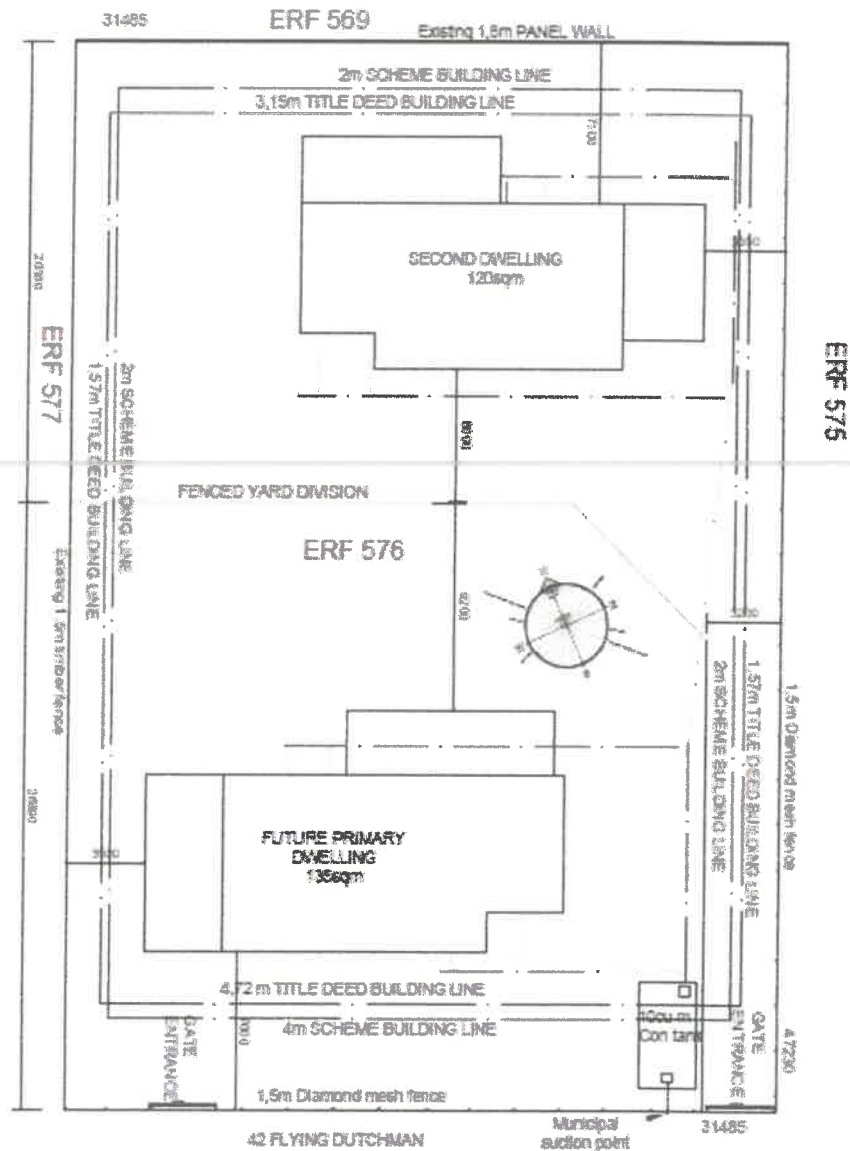
In terms of the Zoning Scheme Regulations for the Overstrand Municipal Area, a second dwelling is a primary land use right for erven with a Residential Zone 1 zoning and should comply with **Chapter 16, Section 16.10.20** of the **Overstrand Municipal Land Use Scheme Regulations, 2020** and reads as follow:

**Second dwelling unit**

16.10.20 The following additional development parameters apply to a second dwelling unit:

- a) The total floor area (footprint) of the second dwelling unit shall not exceed 120 m<sup>2</sup>;
- b) A second dwelling unit may be contained within the same building as a primary dwelling unit and may be either on the ground or first floor;
- c) A second dwelling unit may not be separately alienated in terms of the Sectional Title Act;
- d) Parking must be provided on the property as per Chapter 17, Section 17.1.3, to the satisfaction of the Municipality, and
- e) A second dwelling must be located within the applicable building lines.

The proposed second dwelling does not exceed the maximum allowable footprint of 120m<sup>2</sup> as described in the Zoning Scheme Regulations. The second dwelling has a proposed footprint of 120m<sup>2</sup> and it is situated in the north-eastern corner of the subject property as seen below and does not encroach any building lines. The proposed second dwelling complies with the requirements for a second dwelling as set out in **Chapter 16, Section 16.10.20** of the **Overstrand Municipal Land Use Scheme Regulations, 2020** and does not have a negative impact on surrounding property owners.



The proposal will not have any negative impact on the surrounding property values or the existing residential character of the area. The proposal allows an opportunity for the space on the subject property to be used optimally and the proposed development still complies with the Zoning Scheme Regulations as no departures from the land use restrictions are proposed.

It is clear that the restriction in the Title Deed is more restrictive than the development rules in the Zoning Scheme Regulations. By removing the Title Deed restriction, the owner will be able to develop the property as per the primary land use rights as



stipulated in the Zoning Scheme Regulations for properties with a Residential Zone 1 zoning.

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

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

The removal of the Title Deed restriction will allow the property to be developed according to the existing policies. The removal will also provide an opportunity for the owner to develop a second dwelling and utilise the space on the subject property optimally. This will increase the market value of the area and attract investment opportunities. Future owners will also be able to develop the subject property according to the primary uses and land use restrictions as set out in the **Zoning Scheme Regulations of the Overstrand Municipal Area.**

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township will gain anything personally by having the restriction removed, which prevents the subject property to be utilised according to the development rules with reference to the primary land use rights as stipulated in the Zoning Scheme Regulations. The proposal will have a positive impact on the existing built form in the area. Such change is supported in the future planning documents of the area (**Overstrand Growth Management Strategy**). Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended Bylaw on**

**Municipal Land Use Planning, 2020.** The proposed removal of the restrictive Title Deed condition will increase the market value of the property as well as the area as the Title Deed restriction is more restrictive than the land use restrictions prescribed in the Scheme Regulations. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

- **The personal benefit which will accrue to the persons seeking the removal of the restrictive conditions if it is removed.**

The property owner will benefit from the removal of the mentioned Title Deed restriction as it will create an opportunity to construct a main dwelling with a second dwelling on the subject property. An opportunity is also created to construct a second dwelling which can be used by a second single family.

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

Should the condition remain in place, the status quo will remain. If the type of condition to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit. The retention of the restriction will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations' requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for a main and second dwelling on the subject property will be positive. Removing the condition will enable the better utilization of the property in terms of modern city development.

Furthermore, the removal of the Title Deed condition is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development promotes intensification of land

uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

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

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

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of a restrictive Title Deed condition will not deprive any person in the subject area of Fisherhaven as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restriction, the property owner will be deprived from utilising the subject property to its full potential and possible accommodation to a single family within the Fisherhaven township.

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

### **3.5 ACCESS**

The subject property is currently vacant. Vehicular and pedestrian access to Erf 576 Fisherhaven and the proposed dwellings will be from Flying Dutchman Way, Fisherhaven.

### **3.6 SERVICES**

Erf 576 Fisherhaven is situated in an already developed area where all services exist. The proposed removal of the restrictive Title Deed condition will have minimal impact on the existing services. Any additional services required to the subject property will be done according to the specifications of the Overstrand Municipality.

### **3.7 TITLE DEED**

Title Deed T15942/2023 has a restriction that must be removed in order for the owner to develop the proposed two dwellings on the subject property.

The enclosed Title Deed, T15942/2023 contains the following Title Deed restriction that has to be addressed:

- **Page 4, paragraph (4)(b):** *“it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.”*

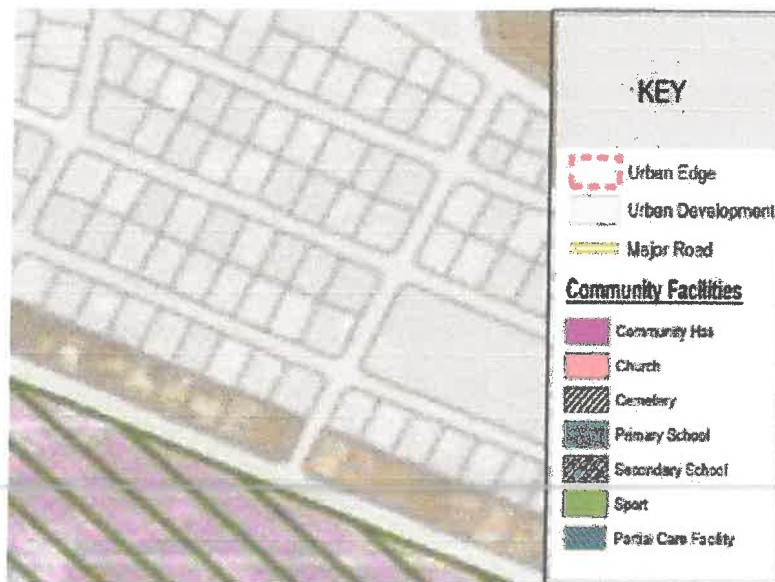
The reasons for the removal of the restrictive Title Deed condition has already been covered as per paragraph 3.4.1 above.

There is no bond registered against Erf 576 Fisherhaven.

### **3.8 FORWARD PLANNING**

#### **Overstrand Municipal Spatial Development Framework (2020).**

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for urban development purposes. The residential zoning of the subject property will be retained after the removal of the restrictive Title Deed condition application has been concluded.



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

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 1 which represents the Fisherhaven Village. Incremental densification of 20% of erven through further subdivision is proposed in terms of this proposal.

With reference to the *Overstrand Growth Management Strategy (2010)*, the proposal will not have any impact on the proposed density for the area. Therefore, the proposed removal of the restrictive Title Deed condition can be supported.

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

### **3.9.1 HERITAGE VALUE**

Erf 576 Fisherhaven is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).



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

In the light of the above mentioned it is evident that the proposed removal of a restrictive Title Deed condition will not have a negative impact on the heritage value of the subject property or the greater area of Fisherhaven.

### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

### **3.10 PLANNING PRINCIPLES**

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

**Spatial Justice:** The proposed removal of the Title Deed restriction is in line with the current land use tendencies in the vicinity, within the Fisherhaven area. The proposed removal of a restrictive Title Deed condition will create an opportunity for the owner to develop the subject property according to the land use restrictions imposed by the zoning scheme regulations.

**Spatial Sustainability:** The proposed removal of the Title Deed restriction is in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Fisherhaven. The proposal does not have any impact on the residential character for this specific area of Fisherhaven.

**Efficiency:** The proposed application for the removal of the restrictive Title Deed condition will promote the optimisation of the use of space within a developed residential area.

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

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

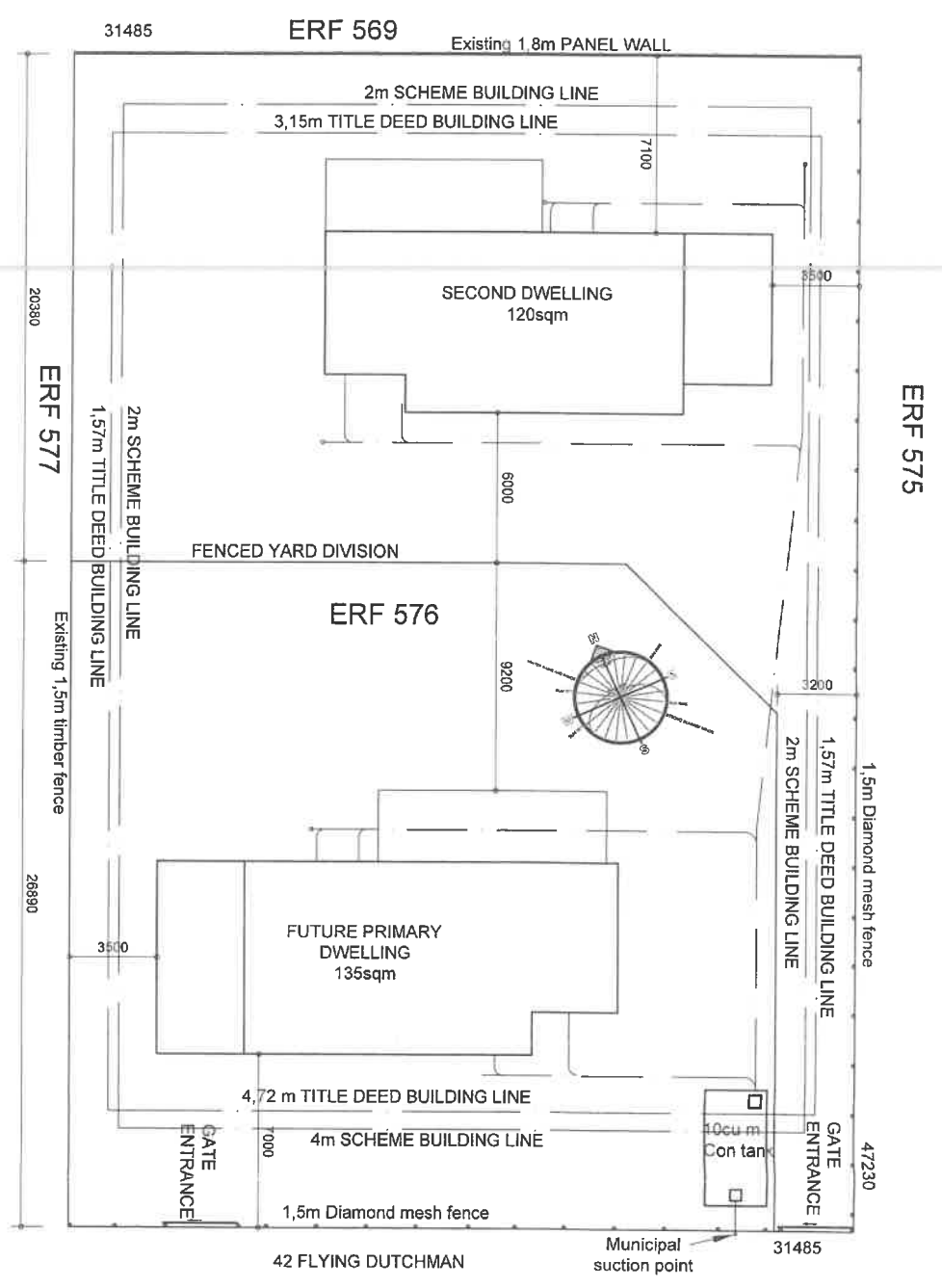
#### 4. **RECOMMENDATION**

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

- The proposed removal of the restrictive Title Deed condition in order to permit a main dwelling and second dwelling falls within the existing land use tendencies in the area;

- The proposal will not have a negative impact on the residential character of the area;
- The proposal will not have a negative impact on the existing services;
- The proposal is in accordance with the land use restrictions as stipulated in the Scheme Regulations for the Overstrand Municipality;
- The proposed removal of the restrictive Title Deed condition will not have a negative impact on the land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of a restrictive Title Deed condition of Erf 576 Fisherhaven.



Project

# SITE DEVELOPMENT PLAN

*LA Design Studio*

ARCHITECTURAL PRACTICE  
Les Abbott  
SACP REGISTRATION Pr Arch 7733  
Cell 083 232 6138  
www.ladesignstudio.co.za  
m.allaboutbuilding.co.za  
info@ladesignstudio.co.za

Client

## HOUSE SMIT

ERF 576  
42 Flying Dutchman  
Fisherhaven

Drawing title

### SITE PLAN

Date  
18/01/2024

Scale  
1:-

Project No.  
669-24

Drawing No.  
C01

Revision

Signed