



OVERSTRAND MUNISIPALITEIT
ERF 124, SERVICEWEG 20, FISHERHAVEN:
AANSOEK OM OPHEFFING VAN
BEPERKENDE TITELAKTEVOORWAARDES:
INTERACTIVE STADS- EN
STREEKBEPLANNING NAMENS AD
WOOLNOUGH

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 D.4.(a), D.4.(b), D.4.(c), D.4.(d) en D.4.(e) te verwyder soos vervat in titelakte T34078/23 van die eiendom ten einde die voorgestelde ontwikkeling 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) voor of op **12 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. **40/2024**

OVERSTRAND MUNICIPALITY
ERF 124, 20 SERVICE ROAD, FISHERHAVEN:
APPLICATION FOR REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS:
INTERACTIVE TOWN & REGIONAL
PLANNING ON BEHALF OF AD
WOOLNOUGH

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 conditions** in terms of Section 16(2)(f) of the By-Law to remove conditions D.4.(a), D.4.(b), D.4.(c), D.4.(d) and D.4.(e) as contained in Title Deed T34078/23 of the property to accommodate the proposed development.

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) on or before **12 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. **40/2024**

UMASIPALA WASE-OVERSTRAND
ISIZA 124, 20 SERVICE ROAD,
FISHERHAVEN: ISICELO SOKUSUSWA
KWEMIQATHANGO ENESITHINTELO
KWITAYITILE: ABAKWA-INTERACTIVE
TOWN & REGIONAL PLANNING EGAMENI
LIKA-AD WOOLNOUGH

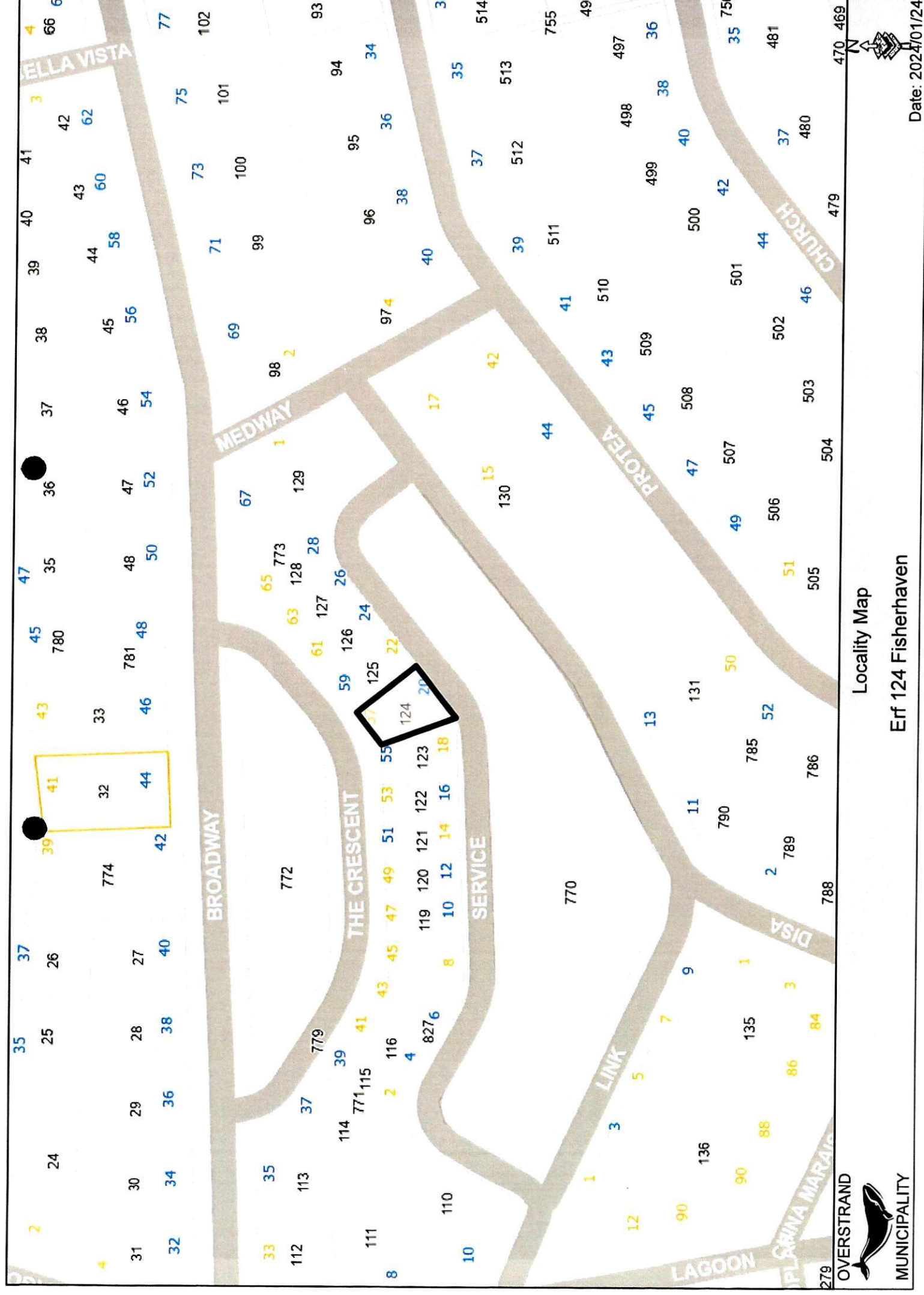
Kukhutshwa isaziso ngokumayela neCandelo 47 neCandelo 48 loMthetho Otshintshiweyo woMasipala waseOverstrand ongokuSetyenziswa Nokucetywa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala) ukuba kufunyenwe isicelo **sokususwa kwemiqathango enesithintelo kwitayitile** ngokumayela neCandelo 16(2)(f) loMthetho kaMasipala ukuze kususwe imiqathango D.4.(a), D.4.(b), D.4.(c), D.4.(d) nomqathango D.4.(e) njengoko iqulethwe kwiTayitile T34078/23 yepropathi ukuze kuvunyelwe uphuhliso olucetywayo.

linkcukacha ezipheleleyo mayela noku kucetywayo ziyafumaneka ukuze zihlolwe phakathi evekini phakathi ko 08:00 no 16:30 kwiSebe: LokuCeba Idolophu, 16 Paterson Street, Hermanus.

Naziphi na izimvo zimele zibhalwe zize zingeniswe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngaphambi okanye ingadlulanga **12 kaAprili 2024**, ubhale igama lakho, idilesi yakho kunye neenkukacha zoqhagamshelwano, umdla wkaho kwisicelo nezizathu zokubhala izimvo zakho. Imibuzo ngefowuni ingabhekiswa ku**Mcebisi Dolophu, Mr. H. Olivier** ku 028-3138900. UMasipala angangavumi ukwamkela amagqabaza okuhlomla afunyenwe emva komhla wokuvala. Nabani na ongakwazi kufunda okanye ukubhala angatyelela iSebe lokuCeba iDolophu apho igosa lakwamasipala liya kumnceda afake amagqabaza akhe okuhlomla.

DGI O'Neill, uMphathi kaMasipala,
uMasipala wase-Overstrand P.O. Box 20,
HERMANUS, 7200

Isaziso sikaMasipala No. **40/2024**



Locality Map

Erf 124 Fisherhaven



Date: 2024/01/24



ERF 124 FISHERHAVEN, OVERSTRAND

20 Service Road

Application for the removal of restrictive title deed conditions



Andre Wiehahn Pr Pln A/927/1996
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February 2024

Table of Contents

1. Introduction.....	1
a. Brief.....	1
b. Background.....	1
c. Development Objective & Application Proposal.....	1
2. The Application.....	2
a. Analysis: Title Deed.....	2
b. Analysis: Development Criteria:.....	3
c. Application:.....	4
3. Contextual Site Information.....	5
a. Property Description.....	5
b. Location:.....	6
c. Land Use:.....	7
d. Zoning:.....	7
e. Laws and policies relevant to the consideration of the application and forward planning and land use documents.....	8
i. Overstrand Municipal Spatial Development Framework, 2020.....	8
ii. Overstrand Municipality Growth Management Strategy, 2020.....	8
4. Motivation.....	9
a. Introduction and Background.....	9
b. Proposal.....	9
i. The removal of title deed condition D.4.(a).....	9
i. The removal of title deed condition D.4.(b).....	10
ii. The removal of title deed condition D.4.(c).....	10
iii. The removal of title deed condition D.4.(d).....	10
i. The removal of title deed condition D.4.(e).....	11
c. Desirability.....	11
d. Planning Principles.....	11
5. Conclusion.....	12

Figures

Figure 1: Concept plan.....	1
Figure 2: Extracts of the Surveyor General Plans of the application site.....	5
Figure 3: Locality Plan – Regional Context.....	6
Figure 4: Locality Plan – Local Context.....	6
Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties.....	7
Figure 6: Extract from the Overstrand Municipality: Online zoning viewer.....	7
Figure 7: Spatial Development Framework 2020 Spatial Proposals Plan.....	8
Figure 8: Extract from the Overstrand Municipality Growth Management Strategy, 2020 reflecting the envisaged land-uses for the area.....	8

Annexure

Annexure A: Application form
Annexure B: Power of Attorney
Annexure C: Title Deed
Annexure D: Conveyancer Certificate
Annexure E: SG Diagram.....
Annexure F: Locality Plan
Annexure G: Land Use Plan
Annexure H: Zoning Map.....
Annexure I: List of title deed conditions to be removed
Annexure J: Concept Plan.....

Notes

1. Introduction

a. Brief
Refer to **Annexure B** for the Power of Attorney.

Interactive Town and Regional Planning was appointed by the owner of the property Alan Woolnough to prepare and submit an application for the removal of restrictive title deed conditions of Erf 124, Fisherhaven in terms of the relevant legislation.

b. Background

The application area is zoned Business Zone 3: Local Business, but the title deed only allows for the land use of a single dwelling with associated outbuildings. The title deed also has other restrictive title deed condition such as 30% coverage which is very limiting for a business zoned erf.

The zoning development criteria are in conflict with the title deed development conditions resulting that the application area cannot be developed in its current state.

c. Development Objective & Application Proposal

The **development objective** is to allow for the property to be developed in terms of its zoning. Application is therefore to remove restrictive title deed conditions D.4.(a)-(e) from title deed T34078/2023 in terms of Section 16(2)(f).

No final development proposal exists for the application area, however the following concept proposal is provided to illustrate the typical land uses, scale and zoning criteria proposed on the application area. This plan is subject to change.

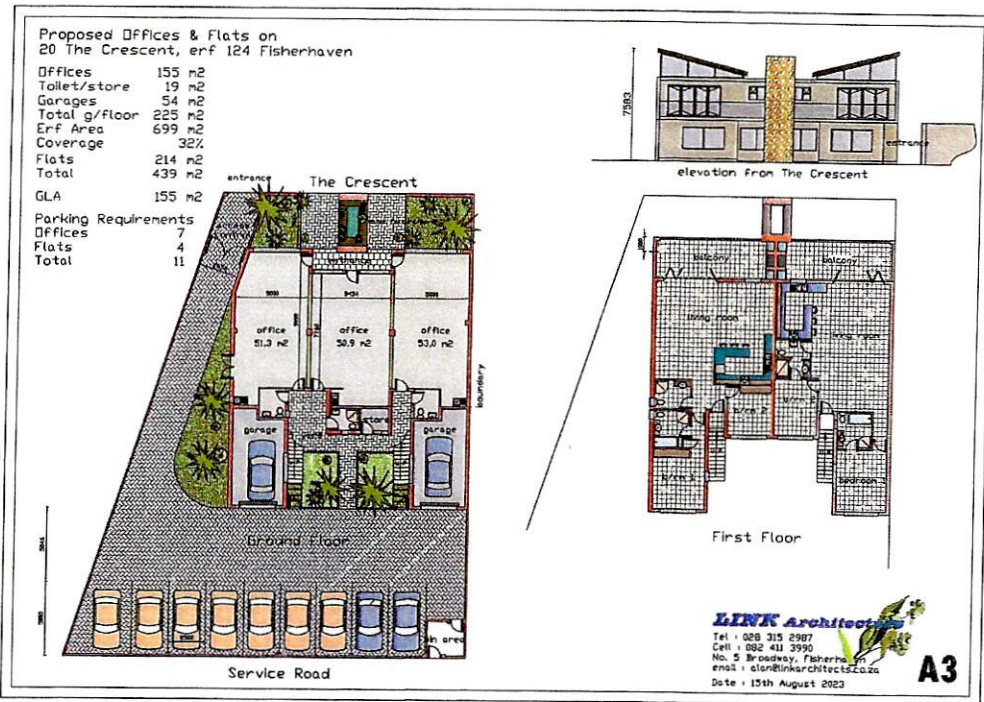


Figure 1: Concept plan

2. The Application

a. **Analysis: Title Deed**
Refer to **Annexure D** for the Conveyancer Certificate.

The conveyancer, Amelia Galvin from Virtual Lawyers provided a conveyancer certificate confirming that several title deed conditions exists which restricts the property from being developed effectively.

Title Deed 34078/2023

"D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer No. T35689/1970 imposed by the Administrator of the Province of the Cape Good Hope in terms of Ordinance 33 of 1934 when approving the establishment of Fisherhaven Township, namely:-

4. This erf shall be subject to the following further conditions provided especially that where in the opinion of the Administrator, after consultation with the Township Board and the Local Authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation, subject to compliance with such conditions as he may impose:-

(a) it shall not be subdivided;

(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;

(c) not more than 30% of the area thereof shall be built upon;

(d) no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the said street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 1,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;

(e) in the event of the provisions of a Town Planning Scheme being made applicable to this erf, which provisions are more restrictive than the provisions contained in the above, then the provision of such scheme shall apply."

Parameters		Existing Zoning:	Proposal:	Comments
b. Analysis: Development Criteria: The development parameters for Erf 124 Overstrand as per the Overstrand Municipality Land use Scheme, 2020 are summarised as follows:	Zoning	Business Zone 3: Local Business	Business Zone 3: Local Business	Consistent
	Primary Use	Shops, dwelling unit (above ground floor), flats (above ground floor), offices, restaurant, caretaker's accommodation and self-catering.	Shops, offices & dwelling units above ground floor	Consistent
	Consent Uses	Bottle store, business premises, clinic, conference facility, dwelling unit (on ground floor), flats (on ground floor), town housing, tourist accommodation, hotel, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, sale of alcoholic beverages, service station, service trade and transmission apparatus.	N/A	Consistent
	Coverage	75% (30% in term of the title deed)	To be determined and aligned with the existing Business Zone 3: Local Business criteria	Application is for the removal of restrictive title deed conditions
	Floor factor	1.5		Consistent
	Height	8.5m 2 storeys		Consistent
	Building lines	Street		0m (4.72m in terms of the title deed)
		Side	0m 3m when abutting a different zone (1.57m in terms of the title deed)	Application is for the removal of restrictive title deed conditions
		Rear	3m (3.15m in terms of the title deed)	Application is for the removal of restrictive title deed conditions
	Parking	Shops, offices or restaurants: 4 bays per 100m ² GLA Flats: 2 bays		Consistent

<p>c. Application: The application form is attached as Annexure A.</p>	<p>Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020:</p> <ul style="list-style-type: none">• The removal of restrictive title deed condition D.4.(a) from title deed T34078/2023 in terms of Section 16(2)(f).• The removal of restrictive title deed condition D.4.(b) from title deed T34078/2023 in terms of Section 16(2)(f).• The removal of restrictive title deed condition D.4.(c) from title deed T34078/2023 in terms of Section 16(2)(f).• The removal of restrictive title deed condition D.4.(d) from title deed T34078/2023 in terms of Section 16(2)(f).• The removal of restrictive title deed condition D.4.(e) from title deed T34078/2023 in terms of Section 16(2)(f).
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3. Contextual Site Information

a. Property Description

Property	Extent	Title Deed	Registered Owner
Erf 124 Fisherhaven	699m ²	T34078/2023	Alan Woolnough

Refer to Annexure E for the SG Diagrams, Annexure C for the Title Deed of Erf 124 Fisherhaven.

The following Surveyor General Plans reflect the application site:

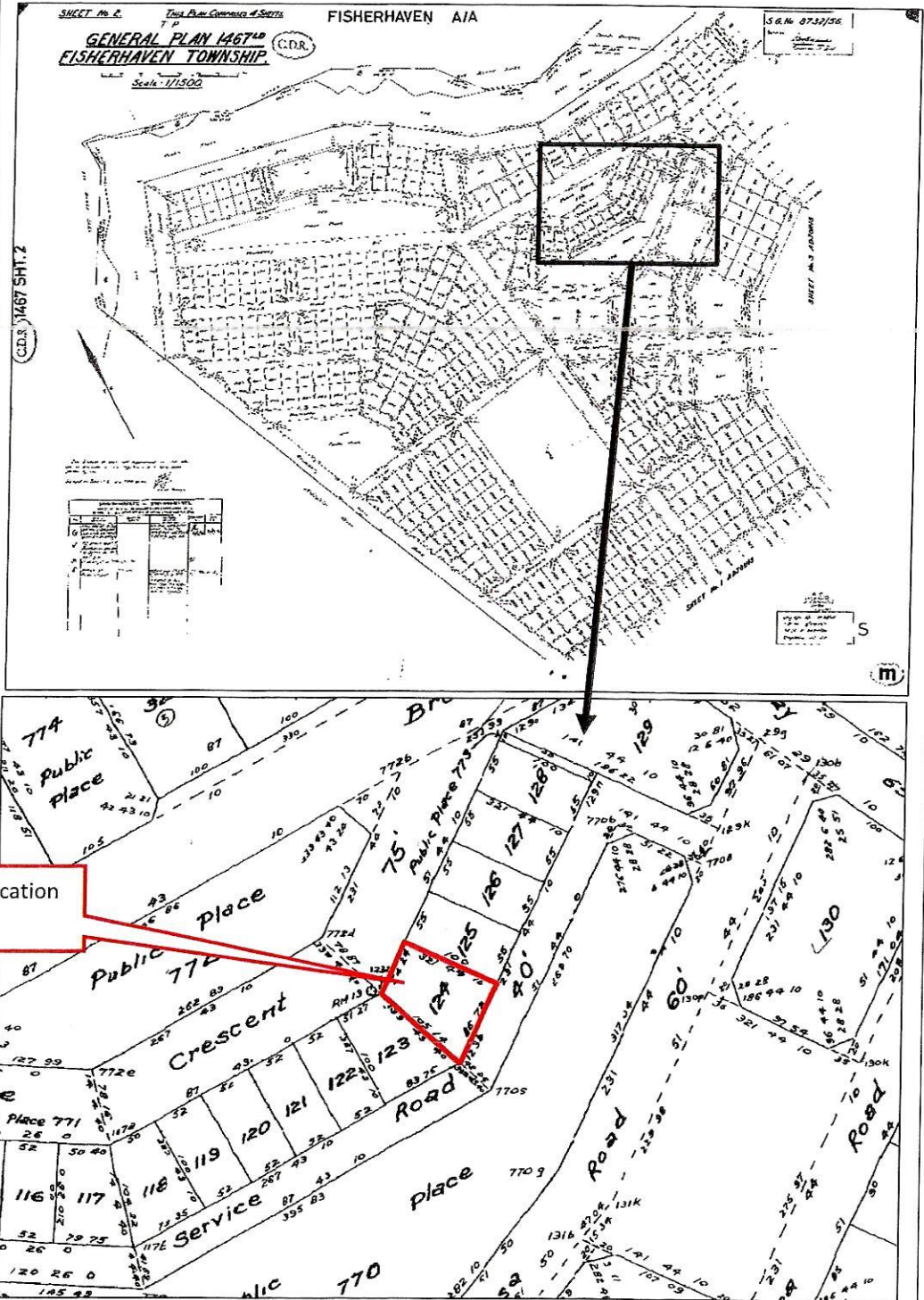


Figure 2: Extracts of the Surveyor General Plans of the application site

b. Location:

For the Locality Plans refer to Annexure F

Regional Context:

Within the regional context, the application area is located within Fisherhaven. Fisherhaven is located on the eastern bank of the Bot River estuary, 9km west of the Hermanus CBD and 8km east of Kleinmond and predominantly functions as a retirement/ residential and holiday destination with approximately 30% of the dwellings permanently occupied.

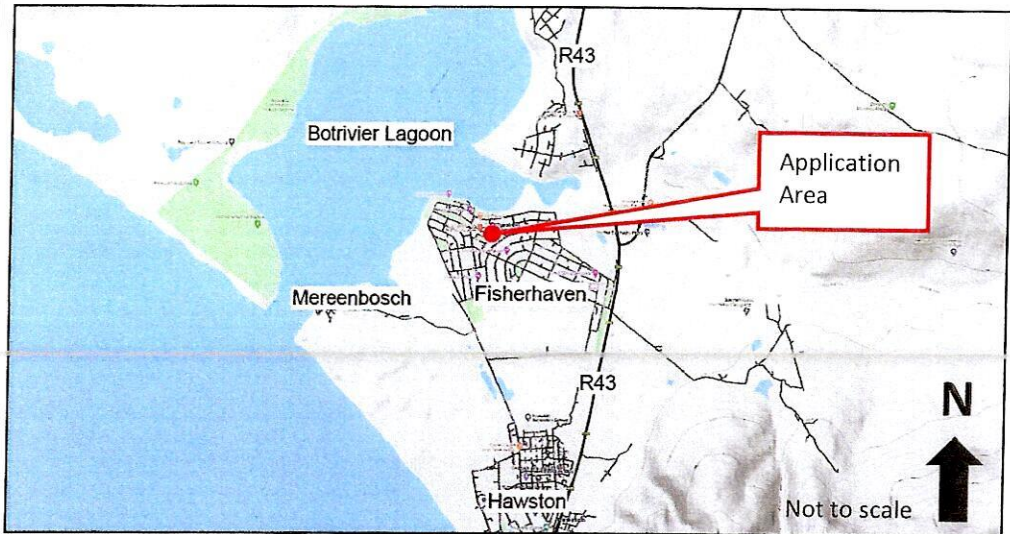


Figure 3: Locality Plan – Regional Context

Local Context:

The application area is located at number 20 Service Road and forms part of the existing Fisherhaven business node.



Figure 4: Locality Plan – Local Context

c. Land Use:

Refer to the Extract of Overstrand Zoning plan attached as Annexure G.

The application area consists of a vacant erf. The surrounding land-uses consist of single residential dwellings, business premises, open space and vacant erven. The area is thus a mixed use area. Business premises is proposed on the application area. The application proposal is **consistent** with the land use of the area.

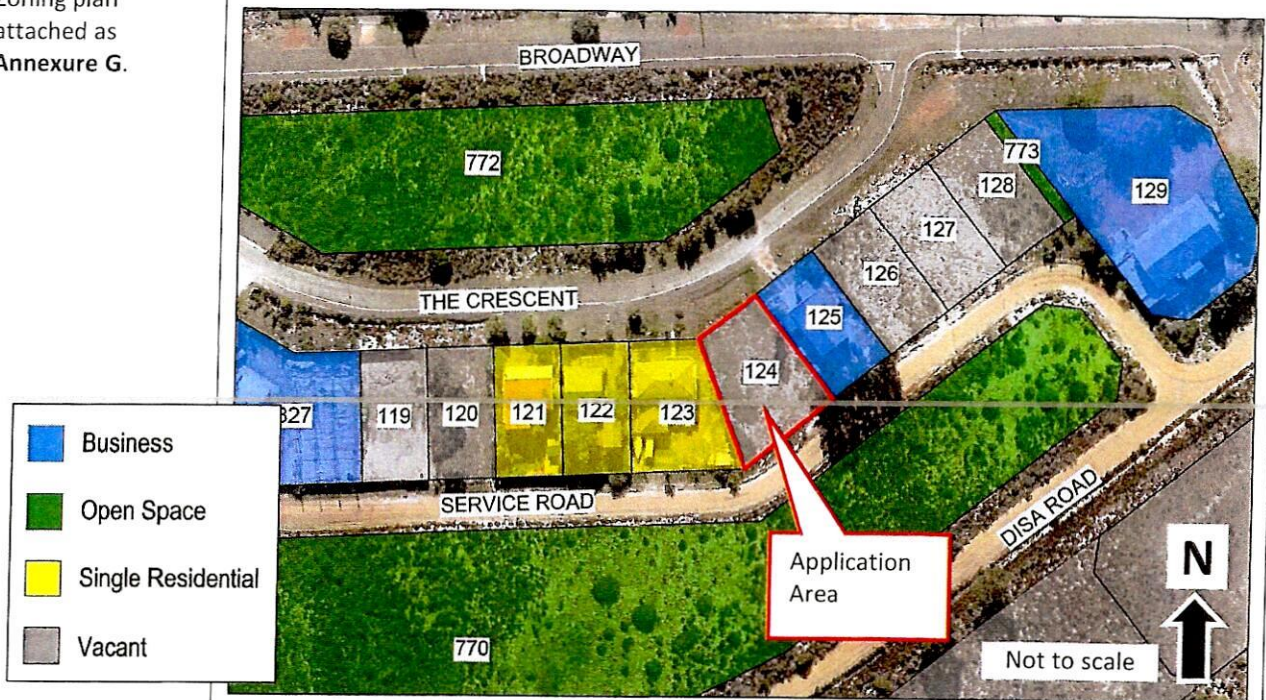


Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties

d. Zoning:

Refer to the Extract of Overstrand Zoning plan attached as Annexure H.

The application area, Erf 124, Fisherhaven is zoned Business Zone 3: Local Business. The surrounding erven are zoned Business Zone 3: Local Business as well as Open Space Zone 2: Public Open Space. No change in zoning is proposed. The application proposal is **consistent** with the zoning of the area.

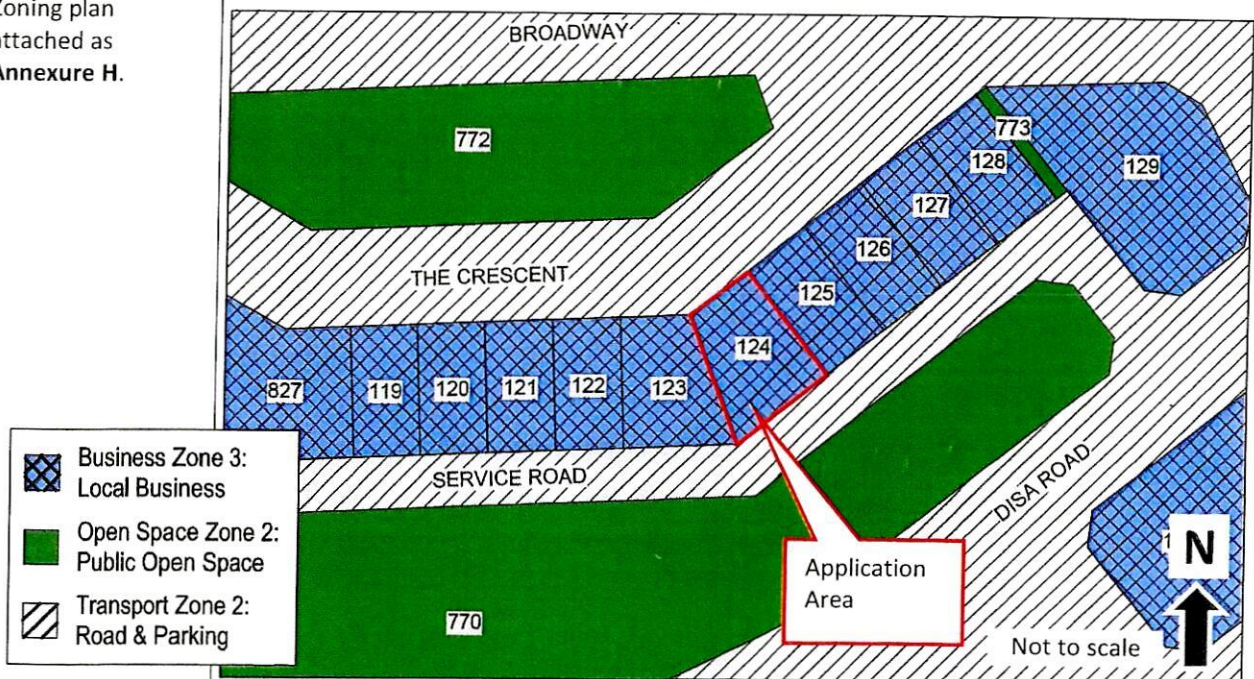


Figure 6: Extract from the Overstrand Municipality: Online zoning viewer

e. Laws and policies relevant to the consideration of the application and forward planning and land use documents

The following policy is applicable to the application area.

i. **Overstrand Municipal Spatial Development Framework, 2020**

The application area falls within a Vacant Business Zone. The proposal is for Business Zone 3: Local Business related land uses.

The application is consistent with the Overstrand Municipal Spatial Development Framework, 2020.

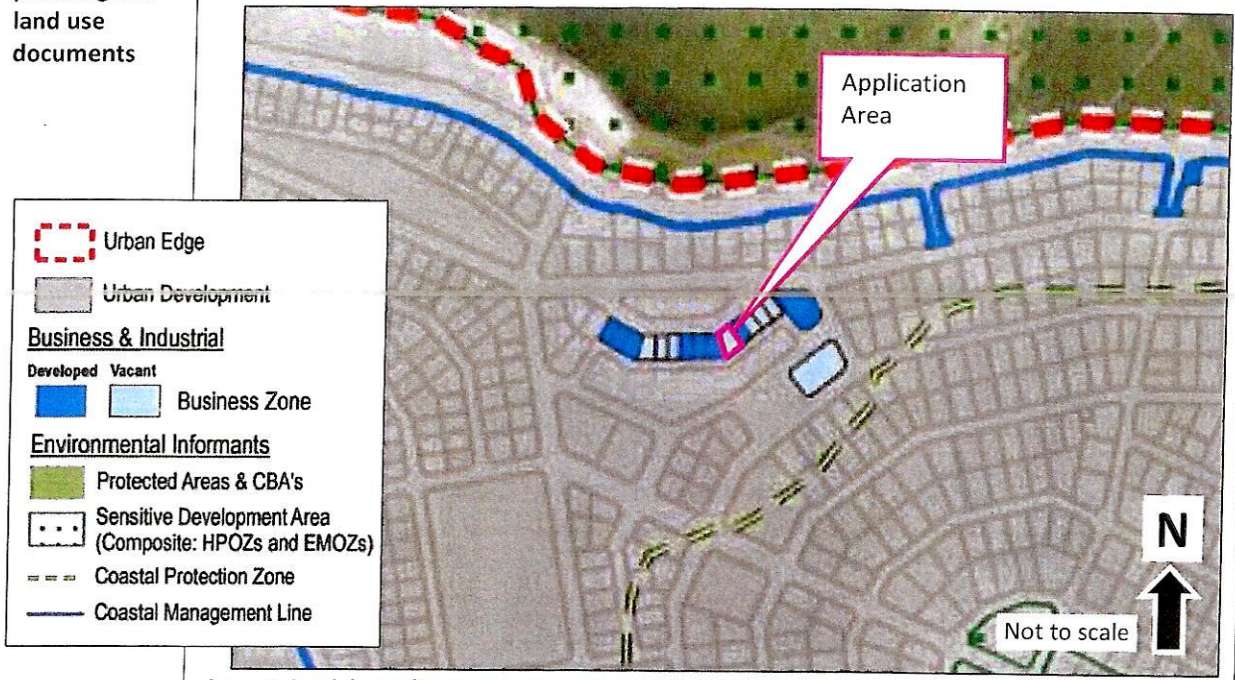


Figure 7: Spatial Development Framework 2020 Spatial Proposals Plan

ii. **Overstrand Municipality Growth Management Strategy, 2020**

The application area is within an area earmarked for a 20 to 30 Dwelling Units Per Hectare Densification Zone as well as a Proposed Economic Opportunity area. Two flats are proposed in addition to the business resulting in 28.6 dwelling units per hectare.

The application is thus consistent with the Overstrand Municipality Growth Management Strategy, 2020.

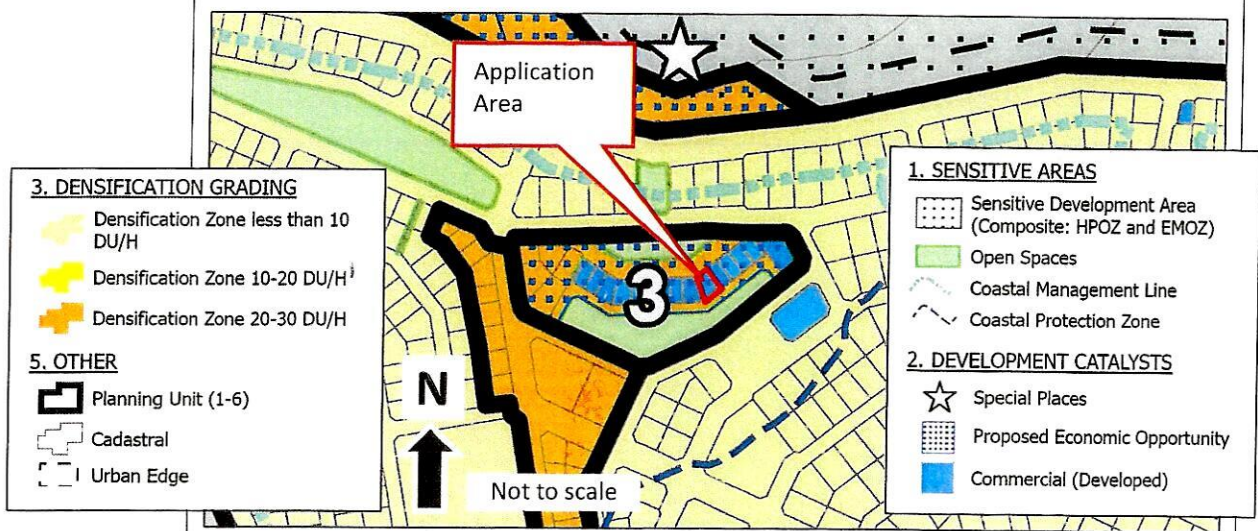


Figure 8: Extract from the Overstrand Municipality Growth Management Strategy, 2020 reflecting the envisaged land-uses for the area.

4. Motivation

Motivation for the application:

Refer to **Annexure I** for the Building Plan

a. Introduction and Background

The application area consists of a vacant 699m² single residential erf situated at number 20 Service Road. The application area is within the Fisherhaven local business node and both business and residential land uses and currently represented within this node.

The zoning of the application area is Business Zone 3 while the title deed does not allow for business uses and contains zoning criteria more suited for low density residential land uses as reflected in the following extract from the subject Erf 124 Fisherhaven's title deed:

Title Deed 34078/2023

"D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer No. T35689/1970 imposed by the Administrator of the Province of the Cape Good Hope in terms of Ordinance 33 of 1934 when approving the establishment of Fisherhaven Township, namely:-

4. This erf shall be subject to the following further conditions provided especially that where in the opinion of the Administrator, after consultation with the Township Board and the Local Authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation, subject to compliance with such conditions as he may impose:-

- (a) it shall not be subdivided;*
- (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;*
- (c) not more than 30% of the area thereof shall be built upon;*
- (d) no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the said street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 1,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;*
- (e) in the event of the provisions of a Town Planning Scheme being made applicable to this erf, which provisions are more restrictive than the provisions contained in the above, then the provision of such scheme shall apply."*

b. Proposal

The **development objective** is to remove the restrictive title deed conditions to allow for the property to be developed in terms of its zoning and the municipal strategic statutory planning documents.

Thus the following changes are proposed:

i. The removal of title deed condition D.4.(a)

Title deed condition D.4.(a): *"it shall not be subdivided;"*

The application proposal is for business premises with flats. The need may in future exist to subdivide the property, thus improving ownership and financial flexibility and viability. It will also potentially remove barriers to ownership for people with lower budgets and needs.

i. The removal of title deed condition D.4.(b)

Title deed condition D.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 application area is presently zoned Business Zone 3: Local Business.

The primary uses of Business Zone 3: Local Business are shops, dwelling unit (above ground floor), flats (above ground floor), offices, restaurant, caretaker's accommodation and self-catering. The primary uses of Business Zone 3: Local Business does not allow for a dwelling unit on the ground floor. The title deed also does not allow for business uses such as shops, offices and a restaurant.

As evident in terms of the Overstrand Online Zoning Map, the Spatial Development Framework & Growth Management Strategy, the application area is within a local business node. The application area is marked as a vacant business erf in terms of the Overstrand Municipal Spatial Development Framework, 2020 and within a local economic opportunity area in terms of the Overstrand Municipality Growth Management Strategy, 2010.

The title deed is in conflict with the zoning scheme and municipal strategic planning documents.

The provisional development proposal is for business premises on the ground floor with shops and offices and flats on the first floor. The proposal is therefore consistent with the zoning and municipal strategic planning documents, but in conflict with the title deed.

ii. The removal of title deed condition D.4.(c)

Title deed condition D.4.(c): *"not more than 30% of the area thereof shall be built upon;"*

The zoning scheme allows for 75% coverage. 30% coverage is generally considered suitable for low density residential properties. The property is proposed to be developed as a business property and likely to exceed 30%. The 30% coverage is in conflict with the proposed development, significantly more restrictive than the zoning scheme and will have a significant impact on the viability of the proposed development.

iii. The removal of title deed condition D.4.(d)

Title deed condition D.4.(d): *"no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the said street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 1,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;"*.

Currently for Business Zone 3: Local Business, the zoning scheme allows for 0m street, 0m side and 3m rear building lines. The title deed building lines are 4.72m for the street, 1.57 for the side and 3.15m for the rear. The title deed building lines are therefore more restrictive than the zoning scheme.

The zoning scheme reflects building lines appropriate for a local business erf, while the title deed reflects building lines which are more appropriate for a single residential erf. The proposal is for business premises which is consistent with the zoning scheme and municipal future planning documents.

The title deed building lines are therefore inconsistent with what is suitable and optimal for the intended use in terms of the application proposal, zoning scheme and municipal future planning documents.

The title deed building lines will also have a negative impact on the development potential and viability of the application area.

i. The removal of title deed condition D.4.(e)

Title deed condition D.4.(e): *"in the event of the provisions of a Town Planning Scheme being made applicable to this erf, which provisions are more restrictive than the provisions contained in the above, then the provision of such scheme shall apply."*

Title Deed condition D.4.(e) is only applicable to and therefore dependent on the existence of conditions D.4.(a)-(d) and therefore cannot exist independently. Since title deed conditions D.4.(a)-(d) are proposed to be removed, condition D.4.(e) which is dependent on conditions D.4.(a)-(d) should also be removed.

Conditions D.4 (a)-(d) reads as follows:

- (a) *it shall not be subdivided;*
- (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;*
- (c) *not more than 30% of the area thereof shall be built upon;*
- (d) *no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the said street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority an outbuilding not exceeding 1,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf;*

c. Desirability

The application proposal is considered desirable for the following reasons:

- The application proposal will allow for the optimal use of the property.
- The application proposal will contribute to the provision of business, housing and employment.
- The application proposal will resolve the conflict between the title deed, zoning scheme and municipal future planning documents.
- The application proposal is consistent with the municipal zoning scheme.
- The application proposal is consistent with the municipal future planning documents.
- The application area is within a business node and is therefore consistent with the character of the area.

d. Planning Principles

In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:

- 1) **Spatial Justice** which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.

Possible results of the development

The application proposal will contribute to the provision of housing and employment which will be equitably available.

The application proposal is **consistent** with **spatial justice**.

- 2) **Spatial Sustainability** which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

Possible results of the development

The application area is within the statutory approved urban edge and will not impact on agricultural land, environmentally sensitive or biodiversity rich areas.

The application proposal is **consistent** with **spatial sustainability**.

- 3) **Spatial Efficiency** which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

Possible results of the development

The application proposal will allow for additional business within Fisherhaven, reducing potential travel distances for residents of Fisherhaven and will provide more housing opportunity close to business, reducing travel distances.

The application proposal is **consistent** with the **efficiency principle**.

- 4) **Spatial Resilience** which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

Possible results of the development

The application proposal will not impact on environmental shocks, however it will allow for the optimal use of land and increase the ability to absorb potential economic shocks.

The application proposal is **consistent** with the principle of **spatial resilience**.

- 5) **Good Administration** which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

Possible results of the development

Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Overstrand Municipality who will also advertise the application in such a manner as to enable the different spheres of government and the general public to participate in the eventual decision-making process.

The application proposal is **consistent** with the principle of **good administration**.

5. Conclusion

The application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities.

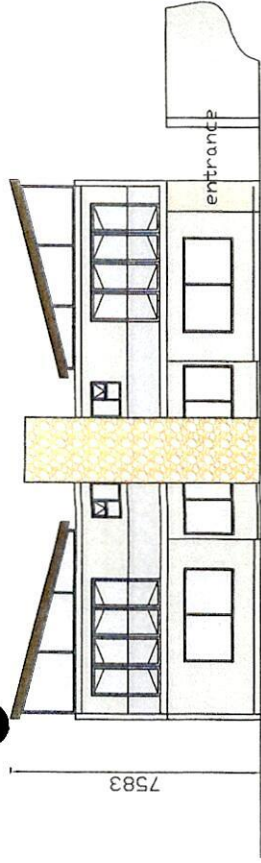
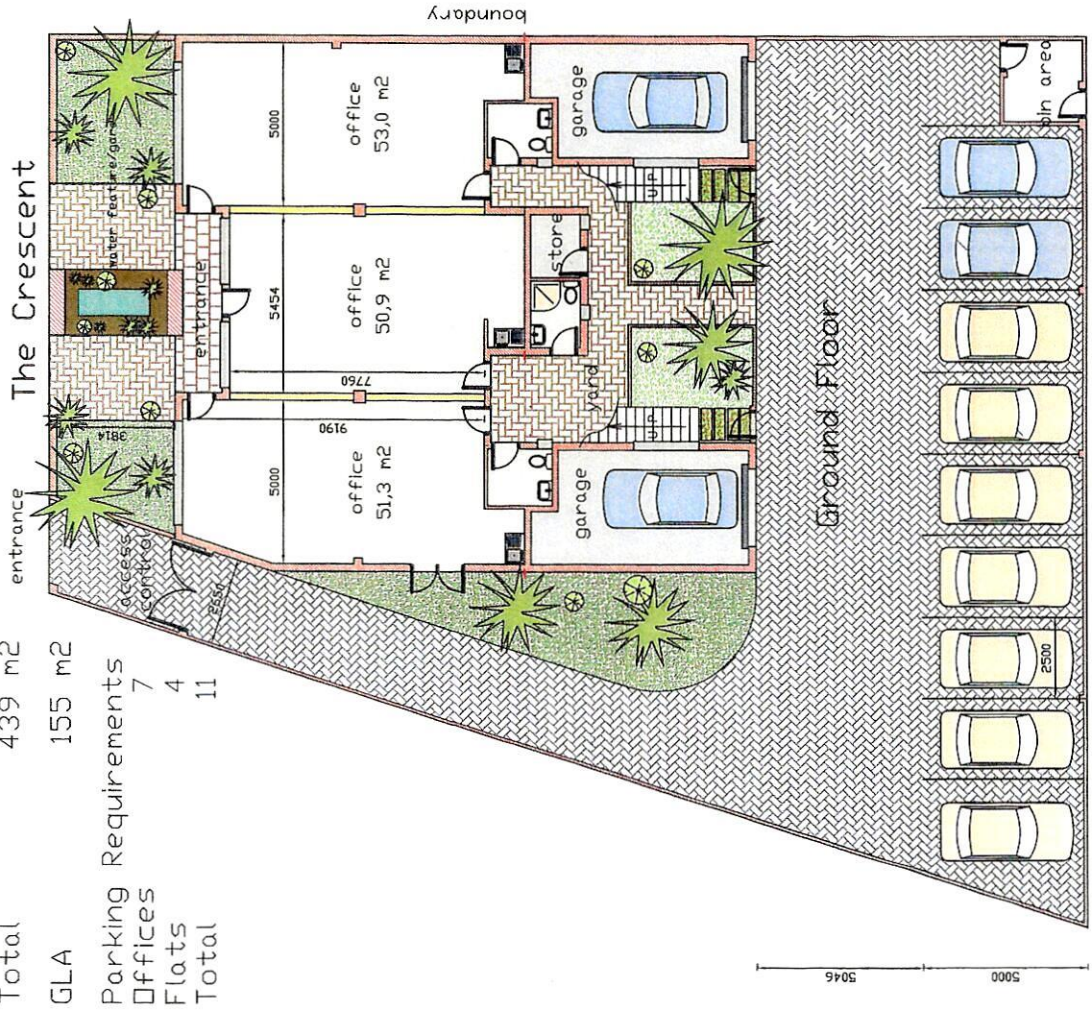
It is therefore recommended that the application **be approved** in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020:

- The removal of restrictive title deed condition D.4.(a) from title deed T34078/2023 in terms of Section 16(2)(f).
- The removal of restrictive title deed condition D.4.(b) from title deed T34078/2023 in terms of Section 16(2)(f).
- The removal of restrictive title deed condition D.4.(c) from title deed T34078/2023 in terms of Section 16(2)(f).
- The removal of restrictive title deed condition D.4.(d) from title deed T34078/2023 in terms of Section 16(2)(f).
- The removal of restrictive title deed condition D.4.(e) from title deed T34078/2023 in terms of Section 16(2)(f).

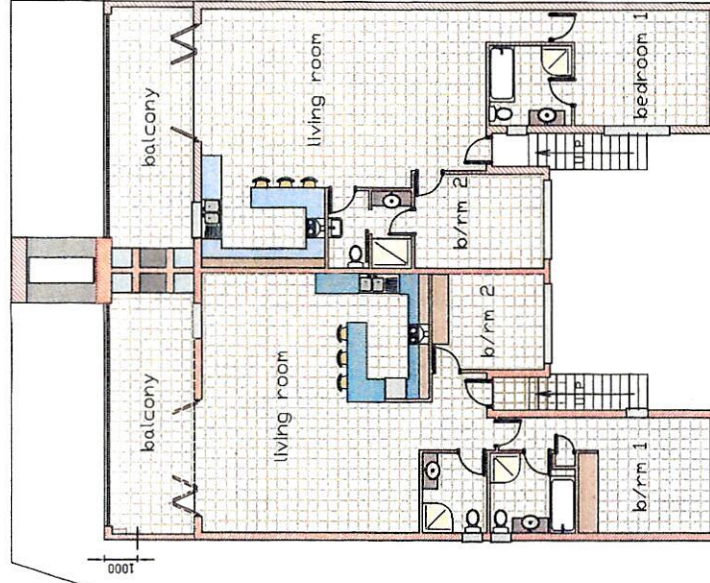
Proposed Offices & Flats on
20 The Crescent, erf 124 Fisherhaven

Offices	155 m2
Toilet/store	19 m2
Garages	54 m2
Total g/floor	225 m2
Erf Area	699 m2
Coverage	32%
Flats	214 m2
Total	439 m2

GLA	155 m2
Parking Requirements	7
Offices	4
Flats	11
Total	



elevation from The Crescent



First Floor