

<p><b>OVERSTRAND MUNISIPALITEIT</b>  <b>ERF 3199, PEARLRYLAAN 4, BETTYSBAAI:</b>  <b>AANSOEK OM OPHEFFING VAN BEPERKENDE</b>  <b>TITELAKTEVOORWAARDE, AFWYKING EN</b>  <b>BEPALING VAN 'N ADMINISTRATIEWE BOETE:</b>  <b>PLAN ACTIVE STADS- EN STREEKBEPLANNERS</b>  <b>NAMENS NA ERASMUS</b></p>	<p><b>OVERSTRAND MUNICIPALITY</b>  <b>ERF 3199, 4 PEARL DRIVE, BETTY'S BAY: APPLICATION</b>  <b>FOR REMOVAL OF RESTRICTIVE TITLE DEED</b>  <b>CONDITIONS, DEPARTURE AND DETERMINATION OF AN</b>  <b>ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN &amp;</b>  <b>REGIONAL PLANNERS ON BEHALF OF NA ERASMUS</b></p>	<p><b>UMASIPALA WASE-OVERSTRAND</b>  <b>ERF 3199, 4 PEARL DRIVE, BETTY'S BAY: ISICELO</b>  <b>SOKUSHENXISWA KWEMEKO EZIYIMIQOBO</b>  <b>KWIITAYITILE ZOBUNINI, UKWAHLULA</b>  <b>NENGIKILELO YOMDLIWO WOBHALISO: PLAN</b>  <b>ACTIVE TOWN &amp; REGIONAL PLANNERS EGAMENI</b>  <b>LIKA-NA ERASMUS</b></p>
<p>Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoeke van toepassing op Erf 3199, Bettysbaai (die eiendom), naamlik:</p> <p><b>Opheffing van Beperkende Titelaktevoorwaarde</b>  Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaarde C.(i)(5)(d) soos vervat in Titelakte T6358/2021 van die eiendom om die voorgestelde ontwikkeling wat die straatboulyn oorskrei te akkommodeer.</p> <p><b>Afwyking</b>  Aansoek ingevolge Artikel 16(2)(b) van die Verordening om die straatboulyn vanaf 4m tot onderskeidelik 2,09m en 2,12m te verslap om die bestaande fondasie van die voorgestelde ontwikkeling op die eiendom te akkommodeer.</p> <p><b>Bepaling van 'n Administratiewe Boete</b>  Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir ongemagtigde boulyn oorskreidings soos hierbo genoem.</p> <p>Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stads- en Streekbeplanning te Patersonstraat 16, Hermanus en by die Bettysbaai Biblioteek, Clarencerylaan, Bettysbaai.</p> <p>Enige kommentaar moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a>) voor of op <b>4 Oktober 2024</b>, met u naam, adres, kontak besonderhede, belang in die aansoek en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die <b>Senior Stadsbeplanner, Me. H. van der Stoep</b> 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 Stads- en Streekbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.</p> <p><b>Dr. DGI O'Neill</b>  <b>MUNISIPALE BESTUURDER</b>  Overstrand Munisipaliteit  Posbus 20  <b>HERMANUS</b>  7200</p> <p><b>Kennisgewing nr. 131/2024</b></p>	<p>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 the following application applicable to Erf 3199, Betty's Bay (the property), namely:</p> <p><b>Removal of Restrictive Title Deed Condition</b>  Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition C.(i)(5)(d) as contained in Title Deed T6358/2021 of the property to accommodate the proposed development that encroaches the street building line.</p> <p><b>Departure</b>  Application in terms of Section 16(2)(b) of the By-Law to relax the street building line from 4m to 2,09m and 2,12m respectively to accommodate the existing foundation of proposed development on the property.</p> <p><b>Determination of an Administrative Penalty</b>  Application in terms of Section 16(2)(q) of the By-Law for the unauthorised building line encroachments as mentioned above.</p> <p>Full details regarding the proposals above are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town and Spatial Planning, 16 Paterson Street, Hermanus and at the Betty's Bay Library, Clarence Drive, Betty's Bay.</p> <p>Any comments must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a>) on or before <b>4 October 2024</b>, with your name, address, contact details, interest in the application and the reasons for comment. Telephonic inquiries can be made to the <b>Senior Town Planner, Mrs. H. van der Stoep</b> 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 and Spatial Planning Department where they will be assisted by a municipal official in formulating their comments.</p> <p><b>Dr. DGI O'Neill</b>  <b>MUNICIPAL MANAGER</b>  Overstrand Municipality  P O Box 20  <b>HERMANUS</b>  7200</p> <p><b>Notice No. 131/2024</b></p>	<p>Kukhutshwe isaziso esimayela nemiba yeSolotya lama-47 nelama-48 loMthethwana kaMasipala waseOverstrand ngeZicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana), wesicelo esilandelayo esisebenziseka kwiSiza esing-Erf 3199, Betty's Bay (isiza), ezibizwa:</p> <p><b>Ukushenxiswa Kweemeko Eziyimiqobo kwiTayitile Zobunini</b>  Isicelo esisebenza bgokwemiba yeSolotya16(2)(f) loMthethwana ongokushenxiswa kweemeko eziyimiqobo kwiitayitile zobunini C.(i)(5)(d) njengoko ziqulethwe kwiTayitile YoBunini T6358/2021 besiza ukulungiselela uphuhliso oluphakanyiswayo noluphumela ngaphaya komgca womda wesakhiwo.</p> <p><b>Ukwahlula</b>  Isicelo semiba yeSolotya le16(2)(b) loMthethwana wokushenxiswa umga ongumda wesakhiwo ukuska kwiimitha ez4m ukuya kwi2,09m nemitha eziyi 2,12m ngokulandelelana ukulungiselela umgangatho osele ukhona kuphuhliso oluphakanyiswa kweisiza.</p> <p><b>Inggikilelo yoMdlivo woBhaliso</b>  Isicelo esisebenza ngokwemiba yeSolotya le16(2)(q) loMthethwana ongokuphumela ngaphaya komda womgca wesakhiwo ongagunyaziswanga njengoko kuchaziwe ngentla.</p> <p>linkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe:Lezicwangciso zeDolophu noKucandwa kweDolophu, 16 Paterson Street, Hermanus nase Betty's Bay Library, Clarence Drive, Betty's Bay.</p> <p>Naziphi na izimvo mazibhalwe zingeniswe kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) <a href="mailto:loretta@overstrand.gov.za">loretta@overstrand.gov.za</a>) ngomhla okanye ngaphambi komhla <b>wama4 uOktobha 2024</b>, uchaze igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla kwakho. Imibuzo ngefowini ingathunyelwa <b>kuMchwangcisi Omkhulu weDolophu, Nkszn. H. van der Stoep</b> at 028-3138900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvula. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe LeziCwangciso ZokuCanda iDolophu apho igosa likamasipala liza kumnceda ukubhala izimvo zakhe ahlomle ngokusemthethweni.</p> <p><b>Dr. DGI O'Neill</b>  <b>UMLAWULI KAMASIPALA</b>  Overstrand Municipality  P O Box 20  <b>HERMANUS</b>  7200  <b>Inothisi Nomb. 131/2024</b></p>



**DETERMINATION OF AN ADMINISTRATIVE PENALTY,  
PROPOSED DEPARTURE & REMOVAL OF A  
RESTRICTIVE TITLE DEED CONDITION**

**REMAINDER ERF 3199 BETTY'S BAY**

**OVERSTRAND MUNICIPALITY**

## MOTIVATION REPORT

### 1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by Mrs N.A. Erasmus, the owner of erf 3199 Betty's Bay, to apply for the administrative penalty, departure and the removal of a restrictive title deed condition of the subject property.

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. Our client bought the subject property in 2021 and submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications. Our client, the landowner, was unaware of the deviation until the building inspector intervened. There was clearly an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

The foundation and ground floor of the new dwelling were constructed over the title deed and land use scheme regulations' street building lines. In addition, the design of the dwelling does not allow the first floor and roof (yet to be constructed) to be stepped

back to comply with the applicable street building lines. This application proposes to address the unlawful As Built encroachment and future construction / completion of the new dwelling over the street building line.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an **administrative penalty**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for **the departure** of erf 3199 Bettys Bay;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **removal of a restrictive title deed condition** of erf 3199 Bettys Bay.

## **3. NEED AND DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

Erf 3199 Bettys Bay is situated at 4 Pearl Avenue, Sunny Seas, Betty's Bay. Refer to the locality plan attached. Erf 3199 Betty's Bay is 2006m<sup>2</sup> in extent and is held by title deed no. T6358/2021.

The subject property gently slopes in a southerly direction and is characterized by an unfinished dwelling structure.



### 3.2 ZONING

Erf 3199 Betty's Bay has the following land use rights:

ERF NUMBER	ZONING
Erf 3199 Bettys Bay	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

### 3.3 LAND USE

There is an unfinished dwelling structure on the subject property. There is an approved building plan for the subject property to construct a double storey dwelling with double garage on the subject property (copy attached).

Land uses that surround the subject property are single residential dwellings, vacant erven and public roads.

### 3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 3199 Betty's Bay to accommodate the existing As Built sections of the dwelling (foundation and ground floor level) in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
2. The **departure** of erf 3199 Bettys Bay in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
  - relax the street building line from 4m to 2,09m (north-western corner)

- and 2,12m (north-eastern corner) respectively to accommodate the As Built dwelling's foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line;
3. The **removal of a restrictive title deed condition** of erf 3199 Betty's Bay in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove condition C.(i) (5)(d) on pages 3-4 of title deed no. T6358/2021 to:
- Accommodate the As Built foundation and ground floor of the new dwelling as well as future construction (first floor and roof) that will encroach the 4,72m title deed street building line.

The potential of the subject property is discussed in detail in *Section 3.5 Potential of the property*.

There was an existing dwelling on the subject property that was destroyed in the devastating veld fires in 2019. Our client bought the subject property in 2021 and submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the land use scheme and title deed street building lines.

This application proposes to address the unlawful As Built dwelling and the proposed first floor and roof (future completion of the dwelling) that encroaches the title deed and land use scheme regulations' street building lines.

Detail of the proposed application for consideration:

#### **3.4.1 Rectification of contravention**

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), 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.

As the application is for the rectification of a contravention of the By-Law (As Built dwelling foundation and ground floor) an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The nature, duration, gravity and extent of the contravention**

There was an existing dwelling on the subject property that was destroyed in the Betty's Bay fires a few years ago. Only the foundation remained following the devastating veld fires in 2019. Our client bought the subject property in 2021.

The site was initially surveyed in September 2021 by Van Dyk Land Surveyors. A topographical survey was compiled indicating the contours and foundation that remained on the site following the Betty's Bay fires (copy attached). The building plans were compiled accordingly, and our client submitted building plans to construct a new dwelling on the subject property. A copy of the approved building plans dated 6 June 2022 is attached.

The building contractor did not adhere to the approved building plans (our client was uninformed and unaware of the encroachment), specifically regarding the position of the dwelling in relation to the relevant street building lines. The result was that the foundation and ground floor were constructed in a manner that does not comply with the approved plan's specifications. Our client, the landowner, was unaware of the deviation until the building inspector intervened. It was clear that there was an oversight and miscommunication between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

Van Dyk Land Surveyors were instructed to undertake an As Built survey to determine to extent of the encroachment. The As Built survey dated March 2024 confirmed that



the foundation and ground floor of the new dwelling was constructed over both the title deed and scheme regulations' street building lines.

It is unclear why the positioning of the new building during construction was incorrect. Our client (the landowner) does not reside in Betty's Bay and in good faith appointed the relevant consultants and the construction team to undertake the project in line with all land use scheme and title deed requirements. The approved building plan clearly shows that no building lines were to be encroached.

The architect confirmed that the dwelling's main wall in the front should have been set back 2,043m from the street land use scheme building line of 4m, i.e. 6,043m away from the street boundary line - all according to and indicated on the final approved set of drawings. The dwelling was however constructed on the 2,09m and 2,12m street building line. The total extent of the As Built foundation / ground floor level is  $\pm 245,85\text{m}^2$  with a  $\pm 104,1\text{m}^2$  porch (total footprint As Built is  $\pm 349,95\text{m}^2$ ). The section of the dwelling that encroaches the land use scheme regulations' building line is  $\pm 33,43\text{m}^2$  in extent ( $\pm 9,55\%$  of total building footprint) and  $\pm 48,08\text{m}^2$  ( $\pm 13,74\%$  of total building footprint) encroach the 4,72m title deed street building line. The new foundations are within the allowed land use scheme's lateral building lines of 2m and the title deed lateral building lines of 1,57m - built at 2,03m from the western boundary line. Refer to the encroachment plan attached. A departure and removal of restrictive title deed conditions application is submitted simultaneously to address the encroachments.

The unlawful construction is considered a future habitable area that encroaches the relevant street building lines. It is of utmost importance to our client that the structures be retained.

- **The conduct of the person involved in the contravention**

The building contractor did not adhere to the approved building plans, specifically regarding the position of the dwelling in relation to the street building line. Our client, the landowner, was unaware of the deviation until the building inspector intervened. From our client's side it was clear that there was an oversight and miscommunication



between the contractor, and possibly the project manager to ensure that construction aligns with approved plans.

- **Whether the unlawful conduct was stopped**

The owner was unaware of the encroachment until she received the notice from the building inspector (refer to the email dated 15 February 2024). All construction was ceased immediately. The unlawful structures cannot be demolished since it is such a large extent of the new dwelling that was already constructed and since it will imply a whole new configuration of the layout. To demolish this section of the dwelling will place a great financial burden on our client who was unaware of the erroneous construction work. The owner now attempts to rectify the contravention by submitting the administration penalty application and subsequent departure application in order to legalise the As Built structures on the subject property.

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

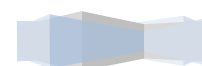
The landowner confirmed that the construction cost for the section of the dwelling over the street building line was ±R150 000.00.

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

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

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the fraudulent activity undertaken by the building contractor and not our client per se.



It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures.

The owner never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictive title deed conditions application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

### **3.4.2 Departure**

It is proposed to retain the As Built dwelling (foundation and ground floor level) that encroach the 4m street building line. In addition, due to the configuration of the levels and floor layouts, the future first-floor storey and roof construction cannot be stepped back to comply with the 4m street building line and will therefore also encroach the building line. The walls and the staircase cannot align between the ground and first floor levels if the first floor is not constructed over the 4m street building line in future.

To accommodate the As Built structure and proposed additions (first floor and roof) an application is submitted for a departure to:

- Relax the street building line from 4m to 2,09m (north-western corner) and 2,12m (north-eastern corner) respectively to accommodate the As Built dwelling foundation and ground floor level and the proposed construction of the first-floor level and roof on the same building line.

The total extent of the As Built foundation / ground floor level is  $\pm 245,85\text{m}^2$  with a  $\pm 104,1\text{m}^2$  porch (total footprint As Built is  $\pm 349,95\text{m}^2$ ). The section of the dwelling that encroaches the land use scheme regulations' building line is  $\pm 33,43\text{m}^2$  in extent ( $\pm 9,55\%$  of total building footprint) and  $\pm 48,08\text{m}^2$  ( $\pm 13,74\%$  of total building footprint) encroach the 4,72m title deed street building line. The new foundations are within the allowed land use scheme's lateral building lines of 2m and the title deed lateral building lines of 1,57m - built at 2,03m from the western boundary line. Refer to the encroachment plan attached and included below:

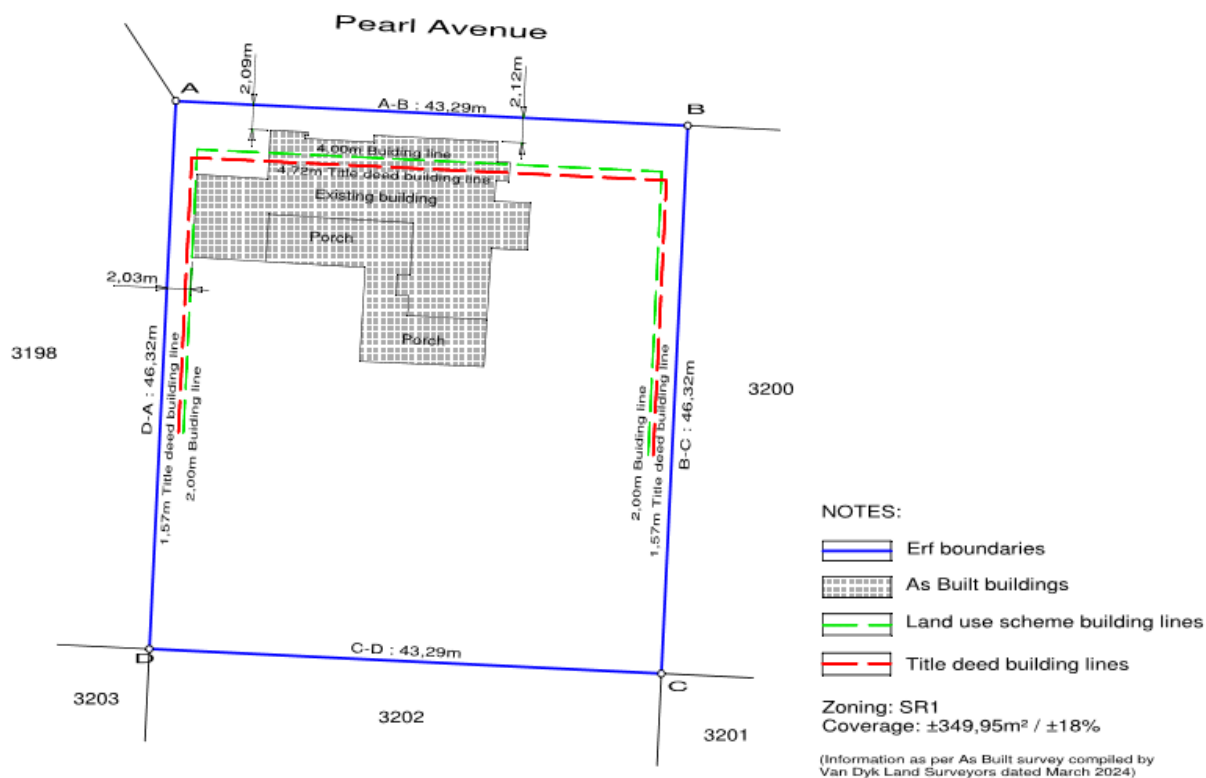


Image 1: Encroachment plan

The structures are visible from neighbouring erven. The position of the dwelling on erf 3199 Bettys Bay does however not have a negative impact on neighbours' views towards the ocean and mountain.

The following should be noted when considering the As Built structures:

- It was never the intention of the landowner to construct the As Built dwelling in its current position. The approved building plan clearly shows the intent that the building was to be positioned at least 6m from the street erf boundary.
- Unfortunately, the first floor (to be constructed) cannot be stepped back to the respective street building lines as explained in previous sections of this report. The blueprint of the dwelling will remain as per the approved building plans – only the position on the property changes as per the As Built mistake.
- The materials used and the design of the dwelling are aesthetically pleasing.
- The As Built foundation and ground floor structure forms the basis of the dwelling on the subject property, thus to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client.

The proposed application has a low to no impact on the character and property values of the surrounding properties. The existing structure on the subject property does not create an infringement to any passing traffic or public activity due the low impact use of the structures. It is submitted that the massing and height of the existing structure are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 3199 Bettys Bay will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all the structures on the subject property will comply with the permissible height requirements for SR1 zoned properties (as per the approved building plans). The building and use thereof that encroach the applicable street building lines, as indicated on the encroachment plan, already exist and the application addresses existing structures that encroach the building line and the future first floor addition that must be constructed on the same street building line. The impact on the adjacent property owners and the passers-by will be marginally higher than if these structures were set back and constructed outside of the relevant building lines.

The area schedule and coverage for the subject property as per the approved building plans are as follows (take note, the As Built footprints and extent were used to determine the encroachment):

AREAS:	
GROUND FLOOR	169,38 m <sup>2</sup>
FIRST FLOOR	119,24 m <sup>2</sup>
GARAGE	36,58 m <sup>2</sup>
COVERED FRT VERANDA	7,22 m <sup>2</sup>
COVERED BCK VERANDA	101,34 m <sup>2</sup>
OPEN BALCONY	99,14 m <sup>2</sup>
<b>TOTAL AREA:</b>	<b>325,20 m<sup>2</sup></b>
FOOTPRINT	314,52 m <sup>2</sup>
SITE AREA	2006 m <sup>2</sup>
COVERAGE	15,68%

The total coverage of 15,68% (or As Built foundation footprint of 349,95m<sup>2</sup> / ±18%) does not exceed the maximum permissible coverage of 50% for SR1 zoned 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. When considering the proposed building line deviation, the

point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure of erf 3199 Betty's Bay is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

### **3.5 THE POTENTIAL OF THE PROPERTY**

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, second dwelling, guest house and home occupation uses). The proposed departure and removal of restrictive title deed conditions will not hinder any possible future land use applications on erf 3199 Bettys Bay.

The subject property has the potential and allows for the deviations being applied for. The existing structure meet the lateral building lines, coverage and maximum of 8m height requirement for SR1 zoned properties as depicted on the encroachment plan and approved building plans.

The following should be noted when considering the potential of the site:

- The position of the dwelling on erf 3199 Bettys Bay does not have a negative impact on neighbours' views towards the ocean and mountain.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the street building line deviation, all other land use parameters are met.
- The As Built foundation and ground floor structure forms the basis of the dwelling on the subject property thus to demolish / partially demolish the structure to make it compliant to the street building lines, will have great cost and time implications to our client.



The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and removal of restrictive title deed conditions. The following factors confirm the potential of the property to accommodate the proposed building line deviations:

- Good quality materials were / will be used for the construction of the dwelling;
- The development will keep to the approved blueprint of the dwelling, only at a position closer to the street boundary;
- The dwelling will add value to the property and the area.

### **3.6 ECONOMIC IMPACT**

The proposed departure and removal of restrictive title deed conditions are to accommodate the As Built dwelling and future completion thereof. The approval of the encroachment will allow the owner to legalise the existing structures on the subject property and continue the construction work to the dwelling. This will also favour the resale of the property in the future.

The approval of the existing structure in its current position will save our client the cost of demolishing the structure. The proposed building line deviation and removal of the restrictive title deed condition will have a low but positive impact on the local economy.

### **3.7 SOCIAL IMPACT**

The proposed application will have no impact on the social status quo of the area. The building line deviation and removal of restrictive title deed condition will however allow the owner to keep the As Built structure on the subject property.

No negative impact on the social wellbeing of the surrounding community is anticipated. It is submitted that the proposed development and completion of the dwelling in its current position on site is compatible with the character of the area and does not impact negatively on the rights of anyone else.

### **3.8 COMPATIBILITY WITH SURROUNDING LAND USES**

The subject property is situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. There are also a few vacant erven in the immediate vicinity. The scale of the structures on erf 3199 Bettys Bay (and the proposed uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures that encroach the street building lines will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will remain for residential purposes.

### **3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES**

All services on the subject property already exist. The As Built structures will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

### **3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY**

The proposed departure and removal of restrictive title deed condition will have no





impact on the general safety and wellbeing of the surrounding community. It is anticipated that one family will occupy the subject property once the development is complete.

Since the proposed departure and removal of a restrictive title deed condition are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

### **3.11 IMPACT ON HERITAGE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. Consequently, the proposed application for the departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 3199 Bettys Bay is not situated within the Heritage Protection Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

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 departure will not have a negative impact on the heritage value of the Betty's Bay area.

### **3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed departure and removal of a restrictive title deed condition do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Management Overlay Zone (2020).

### **3.13 TRAFFIC IMPACT, PARKING AND ACCESS**

Access to erf 3199 Bettys Bay will remain unchanged and will be from Peal Avenue. Refer to the encroachment plan. No new access points are proposed.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house (main dwelling). The new dwelling will be developed with a double garage that will provide parking for the main dwelling.

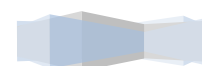
Considering the above the proposed main dwelling on erf 3199 Bettys Bay therefore complies with the minimum parking requirements for SR1 zoned properties.

The subject property will continue to be used primarily for single residential purposes and therefore the impact on the traffic flow in the area will remain unchanged.

### **3.14 TITLE DEED**

Title Deed No. T6358/2021 has restrictive title deed conditions that need to be removed to accommodate the encroachment of the dwelling over the street building lines on the subject property. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl of Van Zyl Kruger Attorneys attached.

There is a bond registered against erf 3199 Bettys Bay. The bondholder's consent dated 23 July 2024 is attached.



It is proposed to remove the following restrictive title deed condition registered by the Administrator (now the Overstrand Municipality) to accommodate the new dwelling that will encroach the 4,72m title deed street building line on erf 3199 Bettys Bay:

**Title deed no. T6358/2021, pages 3-4, paragraph C.(i) (5)(d):**

*“C. To the following conditions contained in the said Deed of Transfer Number 17598/68:-*

*(i) Imposed by the Administrator of the Province of the Cape of Good Hope when approving of the establishment of Sunny Seas Township in terms of the provisions of Ordinance No. 33 of 1934, as amended:*

*(5) 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 Boards 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:*

*(d) 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 nor within 3,15 metres of the rear or 1,57 metres in height measured from the floor to the wall plate and no portion 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;”*

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 removal of the restrictive conditions intends to increase the use rights of the property to allow the dwelling to encroach the 4,72 street building line and to allow any future development on the property in line with the land use restrictions stipulated in the Overstrand Land Use Scheme Regulations (2020) for SR1 zoned properties. The value of the rights is vested in the owner of the property. The condition was registered by the Administrator when the township was developed and neither the administrator nor the registered owners of the township enjoy any financial or other

value. The removal of the condition will consequently have no impact on the favoured parties. Property owners not seeking the encroachment of the As Built dwelling and the completion thereof over the street building line will favour the restrictive title deed condition since the condition impede the development of the dwelling at its current position. The street and rear building line conditions are more restrictive than the land use scheme regulations' building lines. In addition, the stricter title deed building lines shrinks the development area of the subject property.

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

The conditions were imposed by the Administrator for the benefit of the Sunny Seas Township, Bettys Bay. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property. The holder (Overstrand Municipality) has efficient scheme regulations to guide development for SR1 zoned erven in Bettys Bay.

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

The removal of a restrictive title deed condition will bring about personal benefits to the landowner since it will allow her to retain the As Built dwelling foundation and ground floor and continue building work to complete the dwelling (both ground and first floor) on the 2,09m and 2,12m street building line once the application is finalized.

The 4,72m street building line and 3,15m rear boundary building lines as stipulated in the title deed are more restrictive than the land use scheme building lines. To remove the title deed's street and common boundary building lines will allow the property owner to retain the As Built dwelling footprint and construct the dwelling on the position as per the attached encroachment plan. Any future development / additions can also be done according to the land use scheme development parameters, instead of being bound by the more restrictive title deed building lines.

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

The social benefit if the title deed conditions were to remain unchanged and enforced on erf 3199 Bettys Bay would be that the character of Pearl Avenue will remain

unchanged. Other than the aforementioned, the social benefit is considered minimal if the condition was to remain in place. If the condition remains unchanged, the owner must adhere to the stricter title deed street and rear boundary building lines. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's rear boundary and street building lines are more restrictive than the scheme regulations' building lines. To keep the 4,72m title deed street building line and the 3,15m rear boundary building line will have no benefit to the property owner since it takes away developable land and restricts the development of the dwelling at the As Built foundation / ground floor position.

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

The removal of the restrictive title deed condition will allow the scheme regulations' building lines to set the rules for future development of erf 3199 Bettys Bay. It will also allow our client to retain the As Built structure and complete the dwelling in its current position on site. The social benefit will therefore only be to the landowner of erf 3199 Bettys Bay.

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

The removal of the restrictive condition will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the future structures within the scheme regulations' building lines. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area.

### **3.15 FORWARD PLANNING AND LAND USE DOCUMENTS**

The ***Overstrand Spatial Development Framework (2020)*** earmarks the area where erf 3199 Betty's Bay is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of a restrictive title deed

condition on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The ***Overstrand Municipal Growth Management Strategy (OMGMS, 2010)*** specifies that erf 3199 Betty's Bay forms part of Planning Unit no. 7. This planning unit stipulates that the density status quo should remain. A main dwelling will be developed on the subject property and therefore no densification is proposed with this application. The land use application for the subject property therefore falls within the existing planning for the Betty's Bay (East) area.

The proposal will promote land development in a location that is sustainable. The proposed departure and removal of a restrictive title deed condition are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

There is no impact on the overall density of Sunny Seas / Bettys Bay east and therefore the proposed application still promotes a low-density residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

### **3.16 PLANNING PRINCIPLES**

The planning principle of spatial resilience does not apply to this application.

**Spatial justice:** The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1949. The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Sunny Seas (Bettys Bay) Township. The proposed application is in character with the

existing area where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

Spatial sustainability: The proposed departure and removal of a restrictive title deed condition will have a low impact on the visual elements of the subject property and surroundings. It is submitted that the proposed application is compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the street building line has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The dwelling (once complete) will merge well with the surrounding built environment. The impact on the biophysical environment will also be kept to a minimum since the development does neither trigger any listed activities in terms of NEMA nor is it positioned with Overstrand Municipality's EMOZ.

Factors such as the good quality materials to be used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the larger extent of the erven in this extension, the existence of the As Built structure on the subject property, compliance with all other land use development parameters, etc. allow for the consideration and approval of the proposed deviations and removal of a restrictive title deed condition without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures is to an improved erf within an established residential area will not impact on urban sprawl, or upon a sensitive environment.

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The property is compatible with the character of the area and does not impact negatively on the rights of any adjacent property owners.

Efficiency: The subject property is easily accessible and conveniently located close to Bettys Bay CBD, Kleinmond and major routes. The massing and height of the property will be in line with the relevant land use scheme regulations. It proves to be resourceful to approve the As Built structure with the proposed use thereof since it is compatible with



the existing built environment and the way the dwelling was designed (and will ultimately be constructed) proofs to be aesthetically pleasing.

It proofs to be efficient to accommodate the existing structure and its proposed uses by approving the proposed departure and removal of a restrictive title deed condition of erf 3199 Bettys Bay instead of demolishing the structures, that will have great time and cost implications to our client.

The proposed departure and removal of a restrictive title deed condition proof to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm 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 Amendment By-law on Municipal Land Use Planning, 2020.

#### **4. RECOMMENDATION**

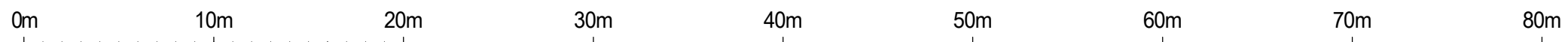
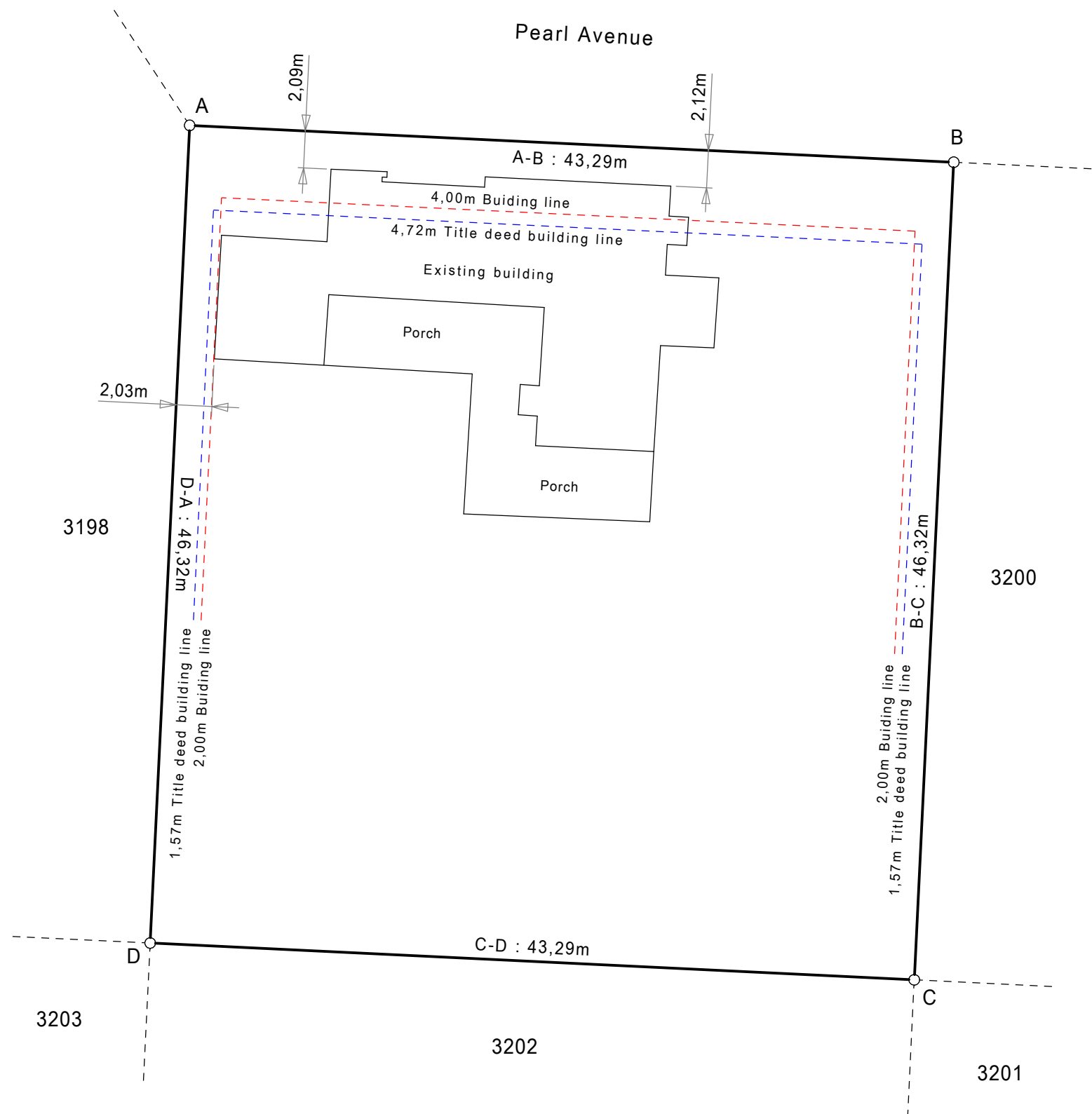
When this application is evaluated, it is important to take note of the following:

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The zoning and primary land use of the subject property will remain unchanged;
- The deviation from the applicable scheme regulations' street building line and the removal of the title deed building lines condition are to accommodate the As Built structure (inclusive of the first storey) only;

- The proposal is compatible with the existing built character of the area;
- Impact on the traffic will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.





**Beacon Certificate:**  
 Beacon Description:  
 A,B ... 12mm Iron peg  
 C,D ... Not beaced

L A van Dyk PLS 1069  
 Professional Land Surveyor

**VAN DYK & ASS. inc.**



P.O.Box 2025  
 HERMANUS  
 7200  
 SOUTH AFRICA  
 TEL. (028) 313 0077  
 E-MAIL : info@vandyksurvey.co.za

Stelsel: WGS84 / Lo 19  
 System:

Hoogte Stelsel:  
 Height System:

Skaal: 1 : 300  
 Scale:

Datum: March 2024  
 Date:

Klient: The Owner  
 Client:

Projek Titel: ERF 3199  
 Project Title: BETTY'S BAY

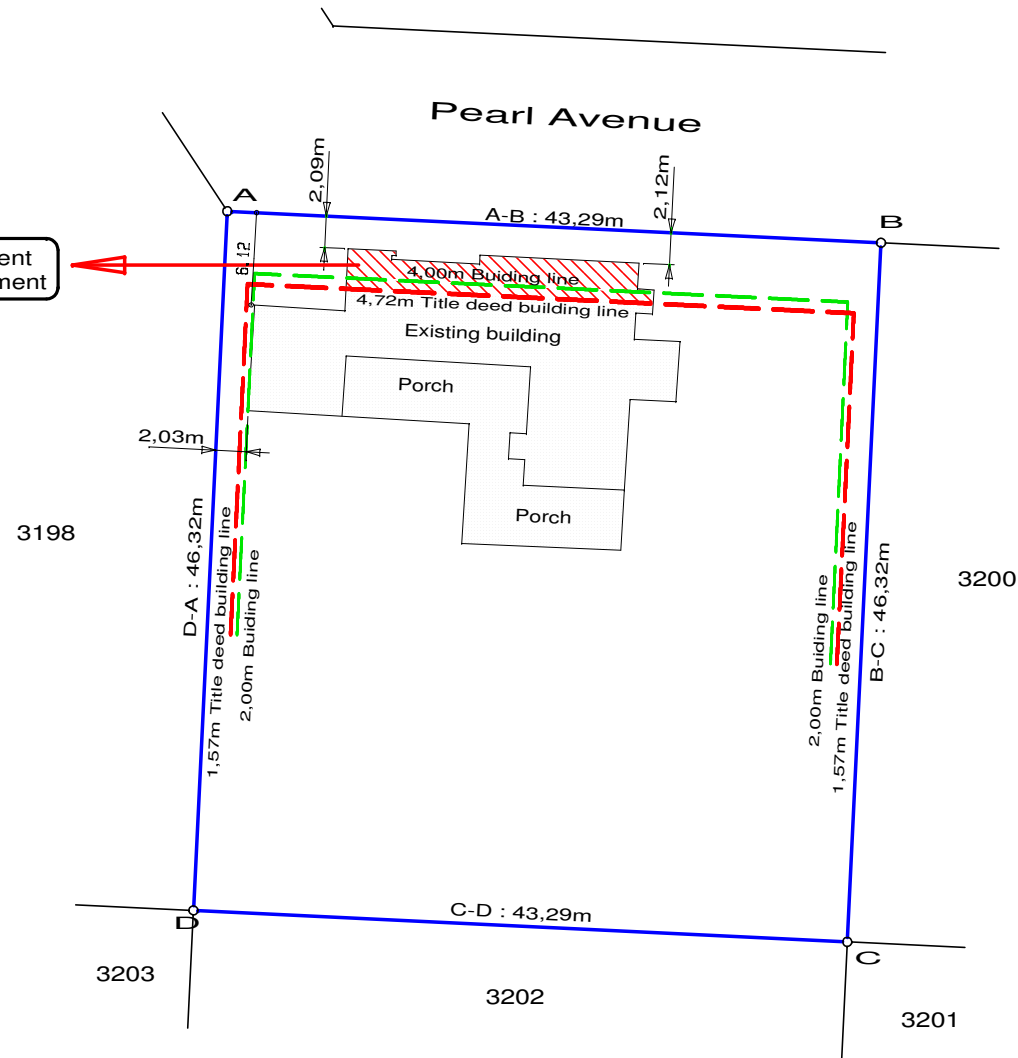
Titel: POSITIONING OF  
 Title: EXISTING BUILDING

Tekening Nommer: V24140  
 Drawing Nummer:

Geteken deur: DJP	Hers:
Drawn by:	Rev:

Vel Sheet	1	van of	1
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±33,43m<sup>2</sup> scheme BL encroachment  
 ±48,08m<sup>2</sup> title deed BL encroachment



NOTES:

- Erf boundaries
- As Built buildings
- Dwelling encroaching building lines
- Land use scheme building lines
- Title deed building lines

Zoning: SR1  
 Coverage: ±349,95m<sup>2</sup> / ±18%

(Information as per As Built survey compiled by Van Dyk Land Surveyors dated March 2024)

All distances approximate and subject to survey.

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Property Description:

**ERF 3199  
 BETTYS BAY**

Plan Description:

**ENCROACHMENT  
 PLAN**

Scale: 1:500

Drawing Nr:  
 bettys3199encr.drw

Date:  
 JULY 2024

