



**OVERSTRAND MUNISIPALITEIT**  
**ERF 340, FYNBOSSINGEL 14, SANDBAAI,**  
**OVERSTRAND MUNISIPALE AREA: AANSOEK OM**  
**OPHEFFING VAN BEPERKENDE**  
**TITELAKTEVOORWAARDES, ONDERVERDELING,**  
**AFWYKING, EN DIE BEPALING VAN 'N**  
**ADMINISTRATIEWE BOETE : PLANACTIVE TOWN &**  
**REGIONAL PLANNERS NAMENS J SHAW**

Kragtens Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die volgende aansoeke van toepassing op Erf 340, Sandbaai, (die eiendom) naamlik:

**Opheffing van beperkende titleaktevoorwaardes**  
Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titleaktevoorwaardes B.(b)2. en B.(b)4. soos vervat in Titelakte T65377/2013 van die eiendom om die eiendom te onderverdeel, asook die onderstaande boulynoorskrydings te akkommodeer.

**Onderverdeling**  
Aansoek ingevolge Artikel 16(2)(d) van die Verordening vir die onderverdeling van die eiendom in twee (2) gedeeltes, naamlik:

- Gedeelte A ( $\pm 745\text{m}^2$  groot); en die
- Restant gedeelte ( $\pm 801\text{m}^2$  groot).

**Afwyking (boulynoorskrydings)**  
Aansoek om afwyking ingevolge Artikel 16(2)(b) van die Verordening vir die volgende:

- verslapping van die westelike laterale boulyn van die voorgestelde Restant gedeelte hierbo vanaf 2m na 1.27m en 1.6m om die bestaande woning te akkommodeer;
- verslapping van die westelike laterale boulyn van die voorgestelde Restant gedeelte hierbo vanaf 2m na 0.51m en 0.36m om die bestaande gekombineerde motorhuis en bediendekwartier te akkommodeer; en die
- verslapping van die oostelike laterale boulyn van Gedeelte A hierbo vanaf 2m na 1.78m om die bestaande onderdak stoep te akkommodeer.

**Bepaling van 'n administratiewe boete**  
Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete.

Besonderhede aangaande die voorstel lê ter insae gedurende weekdae 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) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) bereik voor of op Vrydag, **05 April 2024**, met u naam, adres en kontakbesonderhede, belang in die aansoek, asook die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mr. H Boshoff** 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 om hul kommentaar te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. 30/2024

**OVERSTRAND MUNICIPALITY**  
**ERF 340, 14 FYNBOS CRESCENT, SANDBAII,**  
**OVERSTRAND MUNICIPAL AREA: APPLICATION**  
**FOR THE REMOVAL OF RESTRICTIVE TITLE DEED**  
**CONDITIONS, SUBDIVISION, DEPARTURE, AND THE**  
**DETERMINATION OF AN ADMINISTRATIVE**  
**PENALTY: PLANACTIVE TOWN & REGIONAL**  
**PLANNERS ON BEHALF OF J SHAW**

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 applications applicable to Erf 340, Sandbaai, (the property) namely:

**Removal of restrictive title deed conditions**  
Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions B.(b)2. and B.(b)4. as contained in Title Deed T65377/2013 of the property to subdivide the property, as well as to accommodate the building line encroachments below.

**Subdivision**  
Application in terms of Section 16(2)(d) of the By-Law for the subdivision of the property in two (2) portions, namely:

- Portion A ( $\pm 745\text{m}^2$  in extent); and the
- Remainder portion ( $\pm 801\text{m}^2$  in extent).

**Departure (building line encroachments)**  
Application in terms of Section 16(2)(b) of the By-Law for the following:

- relaxation of the western lateral building line of the above proposed Remainder portion from 2m to 1.27m and 1.6m to accommodate the existing dwelling unit;
- relaxation of the western lateral building line of the above proposed Remainder portion from 2m to 0.51m and 0.36m to accommodate the existing combined garage and staff quarters; and the
- relaxation of the eastern lateral building line of the above proposed Portion A from 2m to 1.78m to accommodate the existing covered porch.

**Determination of an administrative penalty**  
Application in terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty.

Details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning at 16 Paterson Street, Hermanus.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) on or before Friday, **05 April 2024**, quoting your name, address and contact details, interest in the application, as well as the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Boshoff** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them to formalize their comment.

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

Municipal Notice No. 30/2024

**UMASIPALA WASE-OVERSTRAND**  
**ISIZA ESINGU-ERF 340, 14 FYNBOS CRESCENT SANDBAII,**  
**KUMMANDLA KAMASIPALA WASE-OVERSTRAND. ISICELO**  
**SOKUSHENXISA IIMEKO EZIVIMIQOBO KWIITAYITILE**  
**ZOBUNINI, UKWAHLULA, INGQIKELELO YOMDLIWO**  
**NGABAPLAN ACTIVE & REGIONAL PLANNERS EGAMENI**  
**LIKA J SHAW**

Kukhutshwe isaziso ngumasipala waseOverstrand esingemiba yesolotya lama47 nelama48. Isaziso esi singeSihlomelo soMthethwana OngeZicwangciso Zokusetyenziswa koMthethwana kaMasipala ku2020 (uMthethwana), esimayela nezi zicelo zilandelayo nezisebenza kwisiza esingu-Erf 340, Sandbaai (Isiza/umhlaba) ezaziwa ngoku kulandelayo:

**Ukushenxiswa kweemeko ezivimiqobo kwiitayitile zobunini**  
Isicelo esi sisebenza ngokwemiba yeSolotya 16(2)(f) loMthethwana ongokushenxiswa kweemeko ezivimiqobo kwiitayitile B(b)2. noB(b)4. njengoko ziqulethwe kwiTayitile yoBunini T65377/2013 yomhlaba/yesiza ukwahlulahlula Isiza kunye nokulungiselela umda ophumela ngaphaya komga wesakhiwo ngezantsi.

**Ukwahlulahlula**  
Isicelo sisebenza ngokwemiba yeSolotya 16(2)(b) yalo Mthethwana ungokwahlulahlula

- Okusebenza kwimiba yeSolotya 16(2)(b) yalo Mthethwana ungokwahlulahlula Isiza sibe zuNxalenye ezimbini ezibizwa Inxalenye A (+745m2 ubungakanani).
- Intsalela eyinxalenye (+801m2 ubungakanani)

**Ukwahlulahlula (ngokuphumela ngaphaya komga wesakhiwo)**  
Isicelo esisebenza kuMthethwana weSolotya 16(2) loMthethwana osebenza koku kulandelayo:

- Ukunyenisisa umga wesakhiwo kwicala elisentshona elimelene neNtsalela ephakanyiswe ngentla ukusuka kwiimitha ezi 2m ukuya kweziyi 1.27m neziyi 1.6m ukulungiselela iyunithi yokuhlala esele ikhona.
- Ukunyenisisa umga wesakhiwo omelene necala lasentshona elikwiNtsalela yenxalenye ephakanyiswe ngentla ukusuka kwiimitha eziyingu 2m ukuya kwiimitha ezingu 0.51m neziyi 0.36 ukulungiselela igaraji ehlanganisiwe neendawo zokuhlala abasebenzi, noku
- Nyenisisa umga wesakhiwo omelene necala elisempuma yesakhiwo kwiNtsalela yenxalenye ephakanyiswe ngentla ukusuka kwiimitha ezi-2m ukuya kwi-1.78m ukulungiselela ipotshi egquniweyo esele ikhona.

**Ingqikelelo yomdluliwo wobhaliso**  
Isicelo esingemiba yesolotya 16(2)q loMthethwana wengqikelelo yobhaliso.

Iinkcukacha ezipheleleyo ngesi siphakamiso ziyafumaneka ukuze kwiintsuku zaphakathi evekini phakathi kwentsimb iye-8:00 ukuya ku8h16:30 kwiSebe: Lezicwangciso ZeDolophu kwa16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo mazifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngomhla okanye ngaphambi komhla **we 5 kuEpreli 2024** uchaze igama lakho, iinkcukacha ofumaneka kuzo, umdla wakho kwesi saziso nezizathu zokuhlomla. Imibuzo ngefowuni ingathunyelwa kuMchwangciso Omkhulu weDolophu, uMnu. H Boshof 02283138900. UMasipala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala makaye kwiSebe leZicwangciso zeDolophu apho igosa likaMasipala liza kumnceda afake izimvo zakhe ngokusemthethweni.

UMphathi Omkhulu kaMasipala, Overstrand Municipality, P.O. BOX 20, **HERMANUS**, 7200

Inothisi kaMasipala Nomb:30/2024

**PROPOSED REMOVAL OF  
RESTRICTIVE TITLE DEED  
CONDITIONS, SUBDIVISION,  
BUILDING LINE DEPARTURES AND  
ADMINISTRATIVE PENALTY**

**ERF 340  
SANDBAAI**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owner of Erf 340 Sandbaai, Ms. Jet Shaw, has instructed the company Plan Active to apply for the removal of restrictive Title Deed conditions, subdivision, building line departures and an administrative penalty of Erf 340 Sandbaai.

The intention of the owner is to subdivide Erf 340 Sandbaai into two portions, Portion A, and a Remainder, very similar to an approved subdivision that took place in the same residential block. The subject property was surveyed in order to indicate the exact position of the existing structures in relation to the actual erf boundaries. As a result thereof, it was discovered that some of the structures encroach into the building lines. These building line encroachments will be dealt with in detail later in this motivation report.

Erf 340 Sandbaai is 1547m<sup>2</sup> in extent and is held by Title Deed Number T65377/2013. The Title Deed applicable to Erf 340 Sandbaai contains restrictive conditions that will have to be addressed with this application.

## 2. APPLICATION DETAILS

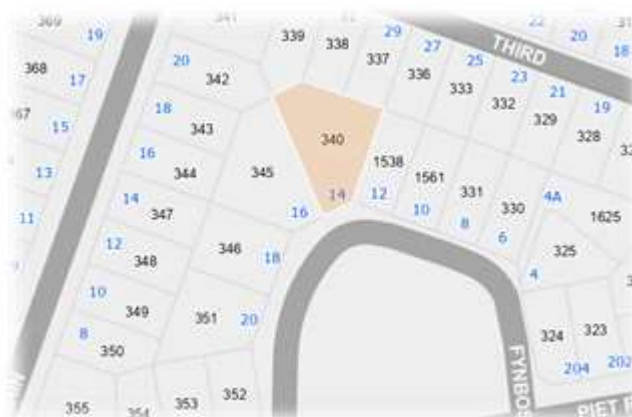
Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 340 Sandbaai.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the building lines.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;

## 3. DESIRABILITY

### 3.1 PROPERTY DESCRIPTION

Erf 340 is situated at 14 Fynbos Crescent, Sandbaai. Please refer to the attached locality plan and the map abstract below for easy reference:



Erf 340 Sandbaai is 1547m<sup>2</sup> in extent and is held by Title Deed No. 65377/2013. The subject property is situated in a predominantly single residential area.

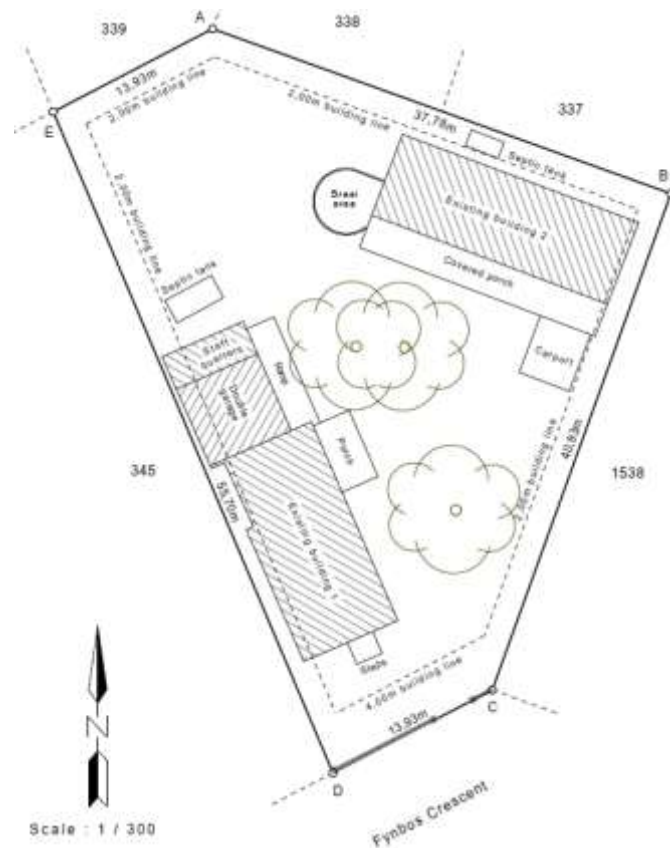
### 3.2 ZONING

Erf 340 Sandbaai is zoned Residential Zone 1 and is utilized as such. Surrounding properties are also zoned for single residential purposes. A Public Open Space is situated across Fynbos Crescent. Please refer to the zoning map abstract below:



### 3.3 LAND USE

Erf 340 Sandbaai is used for residential purposes. Two (2) buildings are established on the property as indicated on the surveyed plan and proposed subdivision plan. Below is an abstract from the surveyed plan for easy reference:



The use of each building can be described as follows:

### Existing Building 1

- An existing dwelling approved  $\pm 1.5\text{m}$  from the western lateral boundary;
- A double garage and staff quarters approved  $0.53\text{m}$  from the western lateral boundary;
- A garage ramp and porch.

### Existing Building 2

- 2 x Staff quarters, bathroom, entrance hall and a garage approved  $1.5\text{m}$  from the eastern lateral boundary line.
- A covered porch;
- A carport.

Land uses that surround Erf 340 are predominantly single dwellings, public roads and a public open space. It is therefore evident that the subject property is situated within a predominantly single residential area.

### **3.4 PROPOSAL**

The following are proposed in terms of :

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 340 Sandbaai into 2 portions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the building lines.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty;

Erf 340 is 1547m<sup>2</sup> in extent. The intention of the owner of the subject property is to subdivide Erf 340 into two portions, Portion A and the remainder and simultaneously apply for a departure from the prescribing building lines to address the existing building line encroachments. In order to subdivide the property it will be required that we apply for the removal of restrictive Title Deed conditions and address the existing building line encroachments. The determination of an administrative penalty will form part of the application process.

The detail of the application can be described as follows:

#### **3.4.1. Proposed Removal of Restrictive Title Deed Conditions**

Van Zyl Kruger Attorneys were requested to confirm by means of a conveyancing certificate if the Title Deed contains restrictive conditions that will have to be addressed. The enclosed Title Deed, T65377/2013 contains the following restrictions:

- **Page 3, paragraph (7)(b)2.: “That the above erf or erven not be subdivided”**
- **Page 3, paragraph (7)(b)4.: “That no building shall be erected on the above erf or erven within 4.72 metres of any boundary line between the said erf or erven abuts; such space may be used as gardens but shall not be built upon”**

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

- The intention of this application is to subdivide Erf 340 Sandbaai in order to create 1 additional erf, proposed Portion A, leaving a remainder. The Title Deed restricts the subdivision of the said erf. We are therefore applying to have the following Title Deed restriction removed. **“Page 3, paragraph (7)(b)2.: “That the above erf or erven not be subdivided”**
- Existing buildings established on Erf 340 Sandbaai are located closer to the lateral boundaries as what the Title Deed restriction prescribes. The Title Deed prescribes a building line of 4.72m. The restriction read as follows: **“Page 3, paragraph ((7)(b)4.: “That no building shall be erected on the above erf or erven within 4.72 metres of any boundary line between the said erf or erven abuts; such space may be used as gardens but shall not be built upon”** We are therefore applying for the removal of this restrictive Title Deed condition to make provision for the existing 2 buildings within the prescribed building lines.

It is our opinion that the last mentioned restriction was carried over in error and should read as follows: *“that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon”*

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

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

The removal of these Title Deed restrictions will allow the property to be subdivided and the actual position of the buildings rectified on plan for approval purposes. It should be noted that both buildings referred to earlier in this report have been approved closer to the lateral boundaries as what the Title Deed and Overstrand Municipality Zoning Scheme Regulations prescribe. After the recent survey of Erf 340 Sandbaai it was discovered that the buildings were accidentally constructed closer to the lateral boundary as per the approved building plans. Subdividing the subject erf and legalising the building line encroachments will increase the market value of the property and give the owner the opportunity to sell the additional erf. Increasing the market value of erven and houses in the area will also attract investment opportunities.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed conditions to be removed is concerned. None of the existing owners within the township will gain anything personally by having the restrictions removed.

The proposal will have an extremely low impact on the existing built form and land use in the area, however, similar applications have been supported in the area. Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of restrictive Title Deed conditions will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

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

The property owner will benefit from the removal of the mentioned Title Deed restrictions as she will be able to subdivide Erf 340 Sandbaai and sell the newly created property at market value, it will also legalise the existing building line encroachments.

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

The particular township has already changed with previous approved applications consisting of departures, consent uses and removal of restrictive Title Deed conditions or a combination of the last mentioned, within the township. If the conditions remain in place, the status quo will remain. If the type of conditions to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of these restrictions will add another layer to be enforced by the Overstrand Municipality, in addition to the current Zoning Scheme Regulations requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed conditions and consequently allowing for the subdivision of Erf 340 Sandbaai to create 1 additional property will be positive. Appropriate densification should be encouraged in all areas. Removing the conditions will enable the better utilization of the property in terms of modern city development, contribute to the prevention of urban sprawl and align with various policies which require a more efficient use of land and appropriate densification of land and will allow additional residents and potential future amenities / facilities within the area.

Furthermore, the removal of these Title Deed conditions is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

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

The removal of the restrictions will not remove the rights completely, as the

**Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of restrictive Title Deed conditions will not deprive any person in the subject area of Sandbaai as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restrictions, additional people will be deprived from housing opportunities. It will also deprive the current owner from utilizing the subject property to its full potential to subdivide the property and to address existing building line encroachments.

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

The reasons to have the abovementioned Title Deed restrictions removed are mainly to give the owner the opportunity to subdivide the subject property and to address the existing building line encroachments.

### 3.4.1. Proposed Subdivision

The detail of the subdivision can be described as follows:

Subdivision of Erf 340 Sandbaai				
Proposed Portions	Size	Land use	Zoning	Coverage
Remainder Erf 340	±801m <sup>2</sup>	Dwelling, porch, double garage and staff quarters	Residential Zone 1	26.5%
Portion A	±745m <sup>2</sup>	2x Staff quarters, single entrance hall, bathroom, garage, carport and outside braai area	Residential Zone 1	27.3%

The proposed subdivided portions of Erf 340 Sandbaai are of a similar size than that of erven that were created with the previously approved subdivision of Erf 325 Sandbaai, located at 14 Fynbos Crescent. The adjacent erf to the east of Erf 340 Sandbaai is 774m<sup>2</sup> in extent. Portion A and the remainder portion of Erf 340 are ±745m<sup>2</sup> and ±801m<sup>2</sup> in extent, respectively. The proposed subdivision line was determined by the position of the existing structures and established trees. Please refer to the attached proposed subdivision plan.

**Portion A** is ±745m<sup>2</sup> in extent. The existing building that consists of 2 staff quarters, single entrance hall, shared bathroom, single garage and carport will now be utilised as a 2 bedroom dwelling. Building plans confirming the use will be submitted after an approval has been obtained. Pedestrian and vehicular access will be gained from Fynbos Crescent. After subdivision the coverage of proposed Portion A will be 27.3%

**The remaining extent of Erf 340 Sandbaai** is 801m<sup>2</sup> in extent and accommodates an existing dwelling, porch, double garage and staff quarters. Access to the existing double garage will also still be from Fynbos Crescent. The subdivision line is located 3.5m to 4.14m from the existing porch to make provision for a motor vehicle to easily access the existing double garage. 8.18m Manoeuvre space is also provided between the garage doors and the proposed subdivision line in order to comfortably manoeuvre

a vehicle in and out of the double garage. After subdivision the coverage of the remaining extent of Erf 340 Sandbaai will be 26.5%.

### 3.4.2. Building Line Departures

As mentioned earlier in this motivation report, the 2 buildings were approved closer to the lateral boundaries as defined in the Zoning Scheme Regulations. The detail of the building encroachments can be tabled as follows:

Building Description	Approved distance from the lateral boundary	Actual distance from the lateral boundary
Existing building 1	±1.5m	1.16m & 1.27m
Existing building 1 Double Garage and Staff Quarters	0.53m	0.53m & 0.36m
Existing building 2 Covered Porch	1.5m 2.0m	1.6m & 1.78m 1.78m

The building line encroachments that need addressing are not as a result of the proposed subdivision line.

**Existing building 1**, the main dwelling, was approved ±1.5m from the western lateral boundary. The existing double garage and staff quarters were approved 0.53m from the western lateral boundary. After a survey was conducted it was discovered that the dwelling, double garage and staff quarters were accidentally constructed closer to the lateral boundary than how it was approved on the building plans.

The dwelling was constructed between 1.27m and 1.16m from the western lateral boundary. Subsequently the dwelling was constructed 0.23m and 0.34m closer to the lateral boundary. We are therefore applying for a building line relaxation of the lateral boundary from 2m to 1.27m and 1.16m respectively to accommodate the existing dwelling. The double garage and staff quarters were approved 0.53m from the western lateral boundary but also accidentally constructed 0.51 and 0.36m from the boundary. The double garage and staff quarters were therefore constructed 0.02m and 0.17m closer to the boundary than approved. We are therefore applying for a building line relaxation from 2m to 0.51m and 0.36m of the western lateral building line to accommodate the existing double garage and staff quarters.

**Existing building 2**, that consists of 2 staff quarters, centrally located bathroom and entrance hall and single garage, was approved 1.5m from the eastern lateral boundary and is actually situated 1.6m and 1.78m from the lateral boundary as confirmed by the survey that was carried out. Subsequently no building line relaxation is required due to the fact that Existing Building 2 was constructed further from the eastern lateral boundary than what it was approved, as per the building plans. Subsequently an application for a departure from the prescribed lateral building line is not applicable to this building. The covered porch however was approved at 2m from the eastern lateral building line but constructed in line with the eastern wall of the Existing Building 2. Subsequently we apply for a building line relaxation from 2m to 1.78m to make provision for the covered porch that encroaches the eastern lateral building line by 0.22m.

The proposed building line departure will not have a negative impact on the neighbouring property or the character of the greater Sandbaai area as these are existing buildings.

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

As mentioned earlier in this motivation, a survey of the property was conducted to assist us to determine a subdivision line in relation to the existing buildings and actual property boundaries. As a result of the survey it was noted that the buildings have shifted westwards from its original approved position by between 2cm to 34cm. These encroachments were caused unintentionally and are minor encroachments in relation to the approved building plans.

The existing unauthorised accidental encroachments are tabled below:

Detail	Unauthorised building line encroachments	Proposed rectification
Existing Building 1: Dwelling	The dwelling was approved 1.5m from the western lateral boundary but in reality, the dwelling was constructed 1.16m to 1.27m from the western lateral boundary.	Proposed building line departure and the removal of a restrictive Title Deed condition.

Existing Building 1: Double garage and Staff Quarters	The double garage and staff quarters were approved 0.53m from the western lateral boundary but in reality, the double garage and staff quarters were constructed 0.36m to 0.51m from the western lateral boundary.	Proposed building line departure and the removal of a restrictive Title Deed condition.
Existing building 2: Covered Porch	The covered porch was approved at 2m from the eastern lateral boundary but in reality it was constructed 1.78m from the eastern lateral boundary.	Proposed building line departure and the removal of a restrictive Title Deed condition.

The owner intends to rectify the encroachments that were inherited from the previous owner.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised building line encroachments. In terms of Chapter 10, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 10, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:



### **3.4.1.1. CRITERIA FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY**

#### **a) The Nature, duration, gravity, and extent of the contravention**

The current owner purchased the property in 2013 with the buildings already established on the property. Please refer to the abstract below from a 2012 aerial photograph:



Building plans were submitted and approved by the former owner of which the last former owner was Mr. C.W. Dercksen. At the time of taking transfer of Erf 340 Sandbaai by the client, Ms. Jet Shaw, a clearance inspection was carried out by the Overstrand Municipality, and it was confirmed that the buildings were constructed in line with the approved building plans with the exception of minor interior changes made to Existing Building 2. The position of these building was never questioned. Please refer to the abstract below from the clearance inspection report below:

OVERSTRAND CLEARANCE INSPECTION REQUEST	
HEREWITH A CLEARANCE INSPECTION HAS BEEN REQUESTED FOR:	
ERF NUMBER:	340
AREA:	SANDBAAI
SUBURB:	
PHYSICAL ADDRESS:	
DATE SENT:	25/10/13
BUILDING DEPARTMENT	
DATE RECEIVED:	
COMMENTS:	
<p>- Dwelling build as per approved plans, only minor changes made to the side of the outbuilding.</p> <p>- No Compliance Certificate on record.</p>	

Only now, after a survey was conducted, did it come to light that there are building line encroachments that need to be addressed. These minor encroachments in relation to the approved building plans occurred unintentionally, not by the current owner, and nothing was gained by these encroachments.

The extent of the building line encroachments are tabled as follows:

Structure	Extent of encroachment
Existing Building 1: Dwelling	3.19m <sup>2</sup>
Existing Building 1: Double garage and Staff Quarters	0.89m <sup>2</sup>
Existing building 2: Covered Porch	0.66m <sup>2</sup>
<b>Total Extent of building line encroachments</b>	<b>4.74m<sup>2</sup></b>

The owner of Erf 340 Sandbaai intends to provide her full co-operation to the Overstrand Municipality to rectify the matter.

The construction of the existing buildings at the incorrect positions occurred prior to 2013 when the current owner purchased the property. Surrounding neighbours have not questioned the positioning of the buildings to date and no complaints were raised. It is therefore our opinion that the proposed rectification of the building line encroachments have no impact on the surrounding erven.

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

As mentioned earlier in this motivation report, the current owner inherited the building line encroachments that were not disclosed to her and only came to light with a recent survey conducted by Van Dyk Land Surveyors. The owner, even though she was not involved causing the encroachments, is in the process of addressing the contravention on the subject property in order to rectify the matter. She intends to provide her full co-operation to the Overstrand Municipality to rectify the building line encroachments.

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

The current owner purchased the property in 2013 under the impression that all is in order with the existing structures, with the exception of the minor changes that took place in the Existing Building 2. Only recently when we were investigating the possibility to subdivide Erf 340 Sandbaai was the property surveyed that determined that the existing buildings encroach the lateral building lines. Since the buildings were constructed, they were utilised until now. The owner will continue to utilise the property and the existing buildings thereon whilst the building line encroachments are being dealt with in terms of this application.

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

If the Overstrand Municipality finds it necessary that an administrative penalty fee be enforced for the unauthorised building work, a report from a quantity surveyor will be submitted with reference to the unauthorised building work. It



is our opinion that no administrative penalty be charged due to the fact that the current owner inherited the building line encroachments .

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

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

We appeal to the Overstrand Municipality to take into consideration the low impact the building line encroachments have on the surrounding erven. The building line encroachments do not have any negative impact on the existing character of Sandbaai that is predominantly residential.

The owner intends to provide her full co-operation with the Overstrand Municipality to formalise the building line encroachments. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

### **3.5 ACCESS**

Vehicular and pedestrian access to Erf 340 Sandbaai is from Fynbos Crescent, Sandbaai.

With the proposed application for the subdivision of Erf 340 Sandbaai into Portion A and the Remainder, access to Portion A will also be gained from Fynbos Crescent. The street frontages of the Remainder Erf 340 Sandbaai and proposed Portion A will be 10.43m and 3.5m respectively that would be sufficient for vehicular access after subdivision has taken place. Please refer to the enclosed subdivision plan. The minimum requirement for the provision of at least 2 parking bays per residential property is also easily met.



### 3.6 **SERVICES**

Erf 340 Sandbaai is situated in an already developed residential area, municipal services already exist to which the newly created erf could connect to. It is our opinion that there are enough services available to service the proposed additional single residential erf. All required services will be installed according to the specifications of the Overstrand Municipality.

### 3.7 **TITLE DEED**

There are restrictive Title Deed conditions that will have to be addressed in order for the subdivision and building line departures to be accommodated as described in detail in Section 3.4.1 above.

There is no bond registered against Erf 340 Sandbaai.

### 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 two portions, Portion A and the Remainder will be retained after the proposed subdivision and departure applications are concluded.

#### **Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 that consists mainly of the Sandbaai single residential erven. No densification of this planning unit is proposed.

With reference to the above mentioned it our opinion that the Growth Management Strategy does propose densification for the specific area, but it must be taken into consideration that the property is much larger than the average residential erf in the area. Each subdivision application should be dealt with on its own merit.

In this instance Erf 340 Sandbaai is much larger in extent than the surrounding erven and even after subdivision it will still be compatible with the areas of the residential erven in the vicinity.

It is therefore our opinion that the proposed subdivision can be supported, and it is in line with forward planning strategies and also the current land use trends for the area. An application for subdivision was approved in the same residential block, being Erf 325 Sandbaai, to create an additional erf, Erf 1625 Sandbaai as previously mentioned.

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

#### **3.9.1 HERITAGE VALUE**

Erf 340 Sandbaai is not situated within the Heritage Protection Overlay Zone. The property is also 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 light of the above mentioned it is evident that the proposed subdivision and building line departures will not have a negative impact on the heritage value of the subject property or the greater area of Sandbaai.

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

The proposed subdivision and departure do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998) and is does not fall within the Environmental Management Overlay Zone.

### **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: After the proposed subdivision of Erf 340 Sandbaai the area of the proposed portions will be in line with the current erf sizes in the vicinity and the single residential land use of the property will also be retained. The proposed building line departures will also not have a negative impact on the surrounding erven due to the fact that the buildings already exist since prior to the current owner taking transfer in 2013. The land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 will still apply and the departure application is to accommodate the existing structures as stated above.

Spatial sustainability: The proposed subdivision and building line departures are in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Sandbaai. Spatially the land use and erf size of the Remainder of Erf 340 Sandbaai and Portion A, a portion of Erf 340 Sandbaai will be in line with the residential character of the area.

Efficiency: The proposed application for the subdivision and building line departure will promote the optimisation of the use of space within a developed residential area. The subject property is also situated close to public and private schools, the Sandbaai CBD area and the Whale Coast Mall.

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). 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.

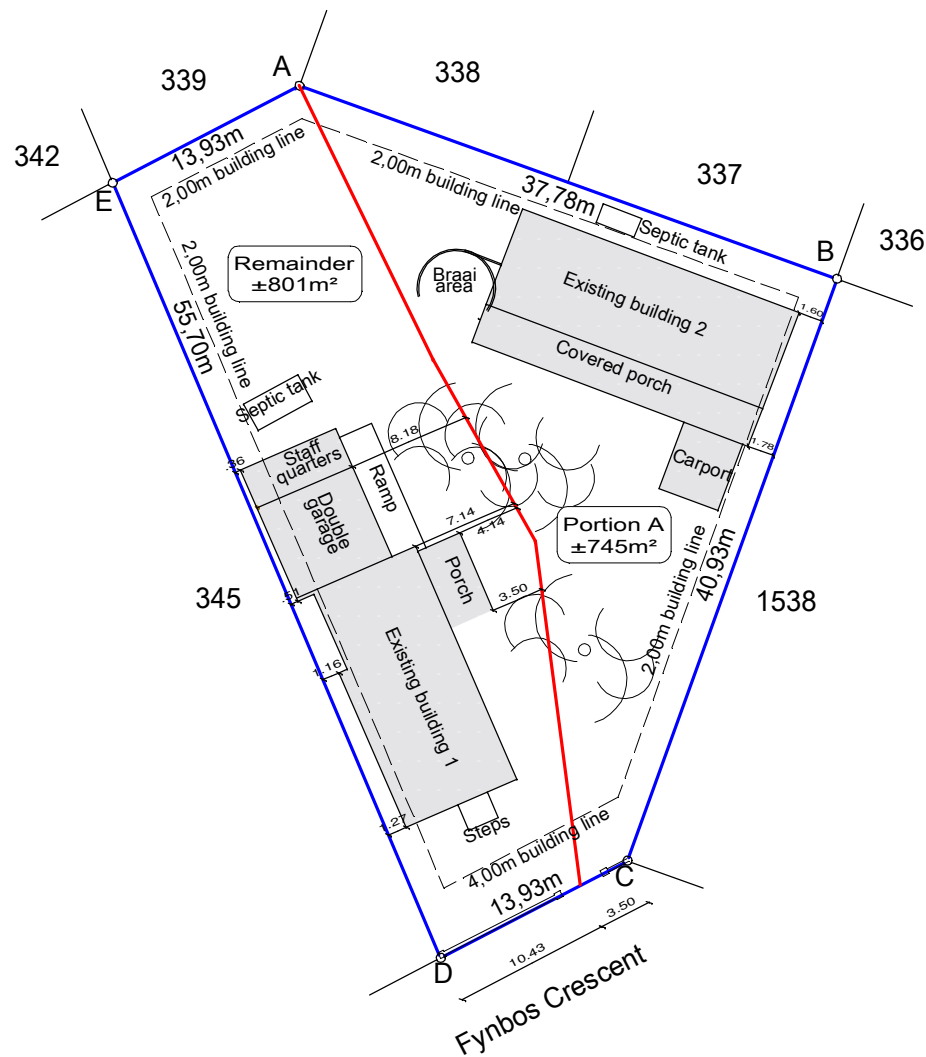
#### **4. RECOMMENDATION**

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

- The proposed removal of restrictive Title Deed conditions, subdivision of Erf 340 Sandbaai and building line departures from the prescribed building lines of the proposed Remainder of Erf 340 Sandbaai and proposed Portion A fall within the existing land use tendencies in the area;
- Erf 340 Sandbaai is more than twice the size of the surrounding residential erven.
- The proposal is compatible with the existing erf sizes in the area;
- The subject property is situated in an already developed residential area and Portion A can easily be connected to existing services in the area;
- The municipality can attain bulk services levies as well as monthly rates and taxes from the additional portion proposed;
- The proposed removal of restrictive Title Deed conditions, subdivision and building line departures will not have a negative impact on the current character and 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 restrictive Title Deed conditions, subdivision of Erf 340 Sandbaai and the building line departures applicable to the proposed Remainder of Erf 340 Sandbaai and proposed Portion A.





**NOTES:**

- Existing Boundaries
- Proposed Subdivision Line

