



OVERSTRAND MUNISIPALITEIT
ERF 4683, 29 DOLPHIN STRAAT, NORTHCLIFF,
HERMANUS: AANSOEK OM OPHEFFING VAN
BEPERKENDE TITELAKTEVOORWAARDES, AFWYKING
EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: WRAP
PROJECT OFFICE NAMENS DE BRUIN FAMILIE TRUST

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 4683, Northcliff, Hermanus naamlik:

Opheffing van 'n Beperkende Titelaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaarde C.4. soos vervat in Titelakte T57340/2007 van die eiendom om:

Afwyking

Aansoek om afwyking ingevolge Artikel 16(2)(b) van die Verordening om die volgende te akkommodeer:

- Verslapping van die agterste bou lyn van 2m tot 0.2m vir die nuwe ingeboude braai,
- Verslapping van die agterste bou lyn van 2m tot 1.06m vir die nuwe braai area,
- Verslapping van die agterste bou lyn van 2m tot 0.426m vir die nuwe motorafdek, en
- Verslapping van die noord-weslike bou lyn van 2m tot 0.467m vir die nuwe motorafdek.

Bepaling van Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete vir die onwettige aanbouings op die eiendom.

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

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op Vrydag, 09 Februarie 2024, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die Senior Stadsbeplanner, Me. H Van Der Stoep 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 kommentare te formuleer.

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

Munisipale Kennisgewing Nr. 189/2023



OVERSTRAND MUNICIPALITY
ERF 4683, 29 DOLPHIN STREET, NORTHCLIFF
HERMANUS: APPLICATION FOR REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE
AND DETERMINATION OF AN ADMINISTRATIVE
PENALTY: WRAP PROJECT OFFICE ON BEHALF OF DE
BRUIN FAMILY TRUST

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 4683, Northcliff, Hermanus namely:

Removal of a Restrictive Title Deed Condition

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition C.4. as contained in Title Deed T57340/2007 of the property to:

Departure

Application for consent use in terms of Section 16 (2)(b) of the By-Law to accommodate:

- Relaxation of the rear building line from 2m to 0.2m for the new built in braai,
- Relaxation of the rear building line from 2m to 1.06m for the new covered braai area,
- Relaxation of the rear building line from 2m to 0.426m for the new covered carport, and
- Relaxation of the north-western building line from 2m to 0.467m for the new covered carport.

Determination of Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for the illegal additions on the property.

Details regarding the proposal are 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) loretta@overstrand.gov.za) on or before Friday, 09 February 2024, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the Senior Town Planner, Mrs. H Van Der Stoep 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 in order to formalize their comments.

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

Municipal Notice No. 189/2023



UMASIPALA WASE-OVERSTRAND
ISIZA 4683, 29 DOLPHIN STREET, NORTHCLIFF
HERMANUS: ISICELO UKUSUSWA KWEZITHINTELO
KWISIVUMELWANO SOBUNINIMHLABA, UKUNDULUKA
KUNYE UKUMISELWA KWEZOHLWAYO ZOLAWULO: I-
WRAP PROJECT OFFICE (EGAMENI LIKA DE BRUIN
FAMILY TRUST)

Isaziso siyanikezelwa ngokweCandelo lama-47 nelama-48 loMthetho kaMasipala woLungiso loMthetho kaMasipala kuCwangciso lokuSetyenziswa koMhlaba kaMasipala, ka-2020 (uMthetho kaMasipala), kwezi zicelo zilandelayo zisebenza kwiSiza 4683, eNorthcliff, eHermanus ezizezi:

Ukususwa Kwezithintelo Kwisivumelwano Sobuninimhlaba

Isicelo ngokweCandelo le-16(2)(f) loMthetho kaMasipala sokusiswa komqathango osisithintelo wetayitile yobunini C.4. njengoko kuqulethwe kwiSivumelwano soBunini-mhlaba esingu-T57340/2007 somhlaba ukuze:

Ukunduluka

Isicelo sokusetyenziswa kwemvume ngokweCandelo le-16 (2)(b) loMthetho kaMasipala ukulungiselela:

- Ukucuthwa komda wesakhiwo ongasemva ukusuka kwi-2m ukuya kwi-0.2m kulungiselelwa ukwakhiwa esitsha kwibraai;
- Ukucuthwa komda wesakhiwo ongasemva ukusuka kwisi-2m ukuya kwisi-1.06m kulungiselelwa indawo entsha enophahla yokuqhotsa inyama;
- Ukucuthwa komda wesakhiwo ongasemva ukusuka kwisi-2m ukuya ku-0.426m kulungiselelwa ikhapoti entsha egqunyweyo, kunye
- Ukucuthwa komda wesakhiwo osemantla-ntshona ukusuka kwisi-2m ukuya kwi-0.467m kwikhapoti entsha egqunyweyo.

Ukumiselwa Kwezohlwayo Zolawulo

Isicelo ngokwemigaqo yeCandelo le-16(2)(q) loMthetho kaMasipala sokumiselwa kwesohlwayo solawulo lokongezwa ngokungekho mthethweni kwipropati.

Iinkcukacha ngesi sindululo ziyafumaneka ukuze zihlolwe ngulowo ngolowo ufuna ukuzifundela ngeentsuku zokusebenza ngamaxesha okusebenza phakathi kwentsimbi ye-08:00 naye-16:30 kwiSebe: Zicwangciso ngeDolophu kwa-16 Paterson Street, Hermanus.

Naziphi na izimvo mazibhalwe phantsi ukuze zifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) okanye ngaphambi koko, ngoLwesihlanu 09 eyoMdumba 2024, ucaphula igama lakho, idilesi kunye neenkukacha zoqhagamshelwano, umdla kwisicelo, kunye nezizathu zokuphawula. Imibuzo ngomnxeba ingenziwa kuMchwangciso weDolophu oPhuzulu, uNksk. H Van Der Stoep kule nombolo 028-313 8900. UMasipala unokwala ukwamkela izimvo ezifunyenwe emva komhla wokuvula. Nabani na ongakwaziyo ukufunda okanye ukubhala angandwendwela iSebe loCwangciso lweDolophu apho igosa likamasipala liya kuthi limcedise ukuze abhale ngokusesikweni izimvo zakhe.

Umlawuli kaMasipala, Masipala waseOverstrand, P.O. Box 20, HERMANUS, 7200

Municipal Notice No. 189/2023

1. Locality Plan Erf 4683 - Hermanus

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Town Planning & Project Management



Scale 1 : 500



MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
PSDF	Western Cape Provincial Spatial Development Framework, 2014
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 4683 Hermanus
Extent	763m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

The subject property, Erf 4683 Hermanus, is located in Dolphin Street, Northcliff, refer **Plan 1 - Locality Plan**. The property owners appointed WRAP Project Office to submit a land use application on their behalf, refer **Annexure A - Power of Attorney**.

The property owners acquired the property in 2007 and have been using it primarily as their holiday residence. In their pursuit to maximize their enjoyment of the property they have renovated the property which includes a backyard area with an undercover braai area. During the renovation process, it was decided to construct a new built-in braai along the rear boundary wall and enclose the space between the existing dwelling and the new braai.

Since these covered areas encroach on the side and rear building lines, approval of an application for departure from the building lines is required. Furthermore, it was only after the completion of the construction that it was discovered that the title deed contains a restrictive condition prohibiting structures from being situated across the side (lateral) building lines.

To ensure compliance with the OMLUS, approval of the following applications is required:

- Removal of restrictive title deed conditions;
- Permanent Departure from the side and rear building lines; and
- Determination of an administrative penalty.



4. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

WRAP compiled this report to ensure the property owner's requirements are met. The following is proposed:

4.1 Removal of a restrictive title deed condition in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

There are numerous title deed conditions that prohibit the property owners from utilising their property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions	
Condition C.4.	<p>"C. <i>SUBJECT to the following conditions contained in said Deed of Transfer No. T7714/1945, imposed by the Administrator of the Cape Province in approving of Hermanus Township (Extension No. 4): –</i></p> <p><i>"As being in favour of the registered owner of any erf in the Township and subject to amendment of alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33/1934:-</i></p> <p>"1. <i>That this erf be used for residential purposes only.</i></p> <p>2. <i>That only one dwelling together with such outbuilding as are ordinarily required to be used therewith, be erected on this erf.</i></p> <p>3. <i>That not more than half the area of this erf be built upon.</i></p> <p>4. <i>That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,20 metres of the lateral boundary common to any adjoining erf."</i></p>

The rationale for the removal of the restrictive title deed conditions is to enable the property owners to achieve their development intent highlighted in Section 3 and not be restricted in the future. Certain title deed conditions are more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Permanent Departure from the 2m rear building line to 0,2m to allow the built in braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.3 Permanent Departure from the 2m rear building line to 1,06m to allow the covered braai area in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As discussed in section 3 above, the property owners added a built-in braai and a covered braai area to the rear of the property. This was not done without proper consultation with professionals and the work was completed. Only then the property owners realised that the building work was unlawful.

The property owners took immediate action and appointed architects to prepare plans for the existing braai area and obtained consent from the affected neighbours, both documents are annexed to the application as **Annexure C – Architectural Drawings** and **Annexure D – Neighbours' Consent**.

This was done to ensure the neighbours would be notified of this application before it was submitted and to obtain their consent which indicates they do not have an objection to the braai area and carport as motivated in Section 4.4 and 4.5. The figure 1 illustrates the encroachment of the building lines:

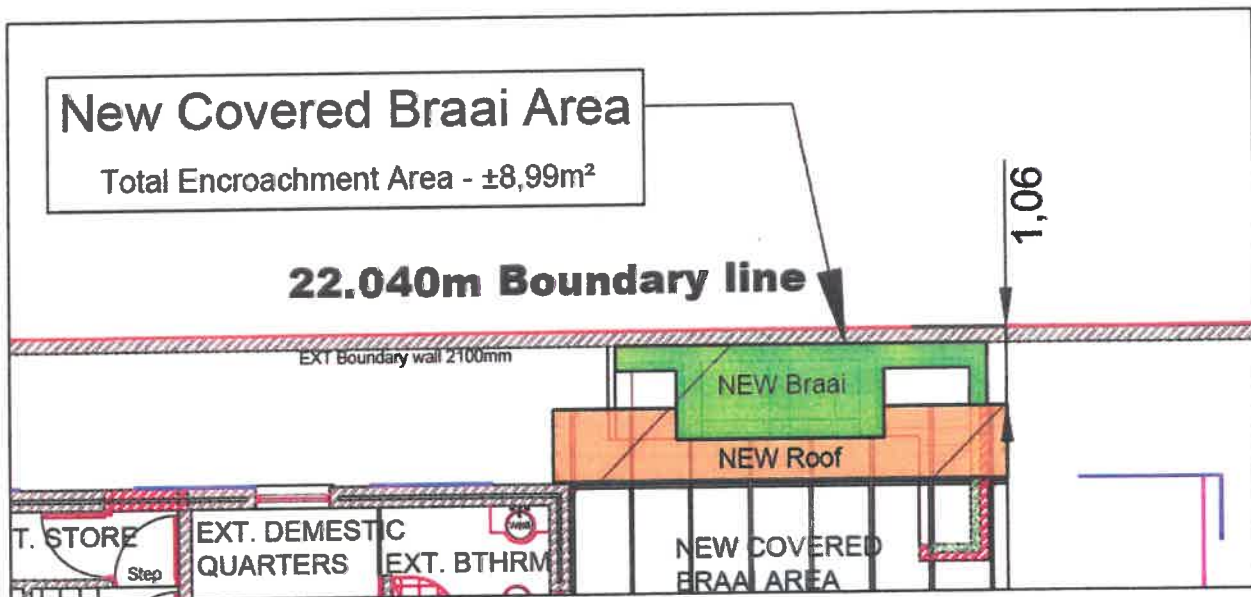


Figure 1: Braai Area encroachments

The total area that was constructed over the building line equates to ±8,99m² of which is shared between the built-in braai and the roof which covers the braai area. As the counters adjacent the braai is lower than 1m it was not included into the area calculation.

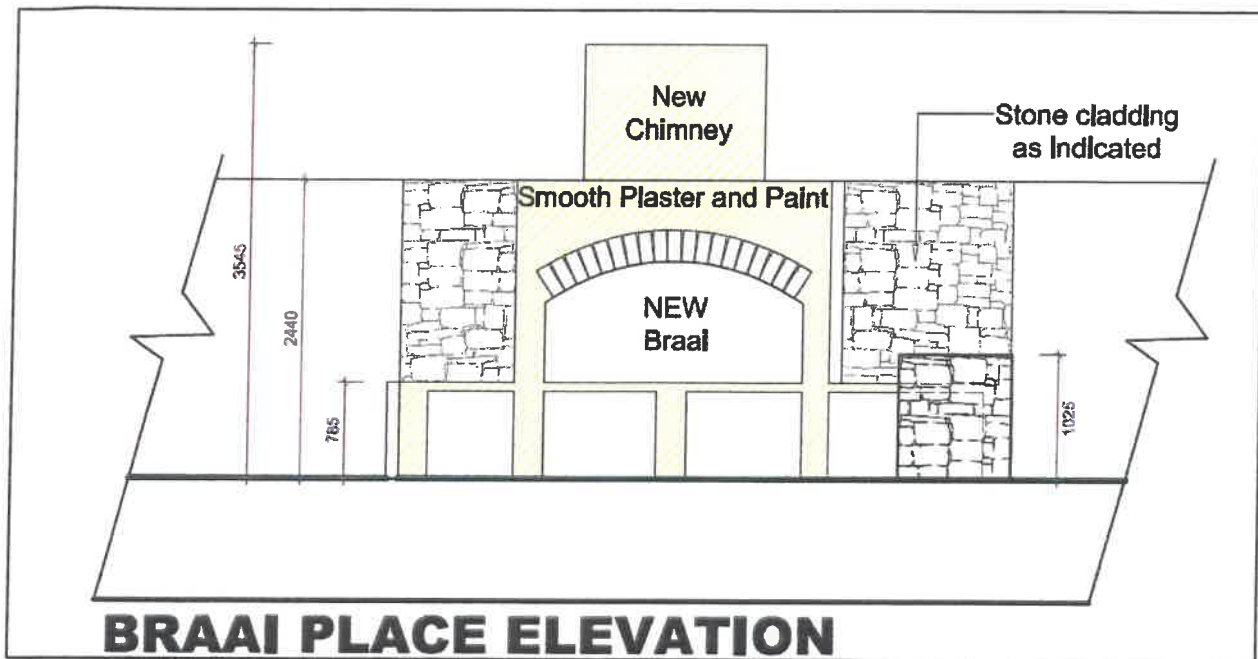


Figure 2: Built in braai elevation.

The only section of the built in braai that is higher than 2,1m is the chimney which, as illustrated above, has a height of 3,545m. The figure above is an extract from **Annexure C – Architectural Drawings**.

The application is submitted to obtain approval for the braai in its current position, which is 0,2m from the rear boundary (the width of the boundary wall) and to allow the covered braai area to be located 1,06m from the rear boundary. As the neighbours have signed the consent letter it is accepted that they have no objection to these structures and their positions. The braai area is not predicted to be a nuisance and is not out of the ordinary within a residential area.

There are several advantages to introducing a covered braai area, firstly the primary advantage of a covered braai area is the protection it provides from the elements. Whether it's rain, intense sun, or strong wind, the covered area ensures that the property owners can continue to enjoy the outdoor area more without being affected by adverse weather conditions.

Additionally, the covered space extends the usability of the braai area. Unlike open outdoor spaces that are subject to seasonal limitations, a covered braai area can be enjoyed throughout the year. It allows the property owners to utilise the space even during colder months or when it's raining. This extended usability ensures that the property owners can make the most of their outdoor space regardless of the season.

Lastly, a covered braai area can provide an added level of privacy and reduce any potential noise impact. The roof acts as a barrier, shielding the space from neighbouring properties. This privacy allows the property owners to enjoy their outdoor area while creating a more intimate setting.

4.4 Permanent Departure from the 2m rear building line to 0,426m to allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

4.5 Permanent Departure from the 2m northwestern side building line to 0,467m to allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

In addition to the built-in braai, the property owner also added a carport to the side/rear of their property that will be used for the storage of a trailer. The carport is located approximately half a metre away from the boundary all runoff water will be contained on site, refer to the figure 3:

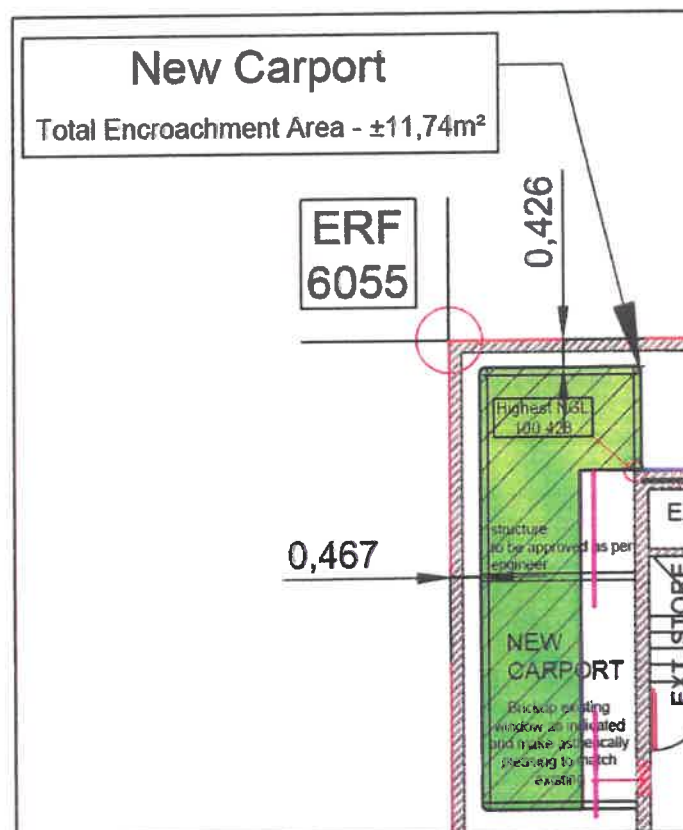


Figure 3: Encroachment area of the carport.

The total area that was constructed over the building line equates to $\pm 11,74\text{m}^2$. As the carport was constructed closer than 2,2m from the side boundary lines, it requires the removal of the restrictive title deed condition. The height of the carport is illustrated within **Annexure C – Architectural Drawings**, the carport is 2,139m at its lowest point and as the property slopes down toward the street its highest point is 2,423m.

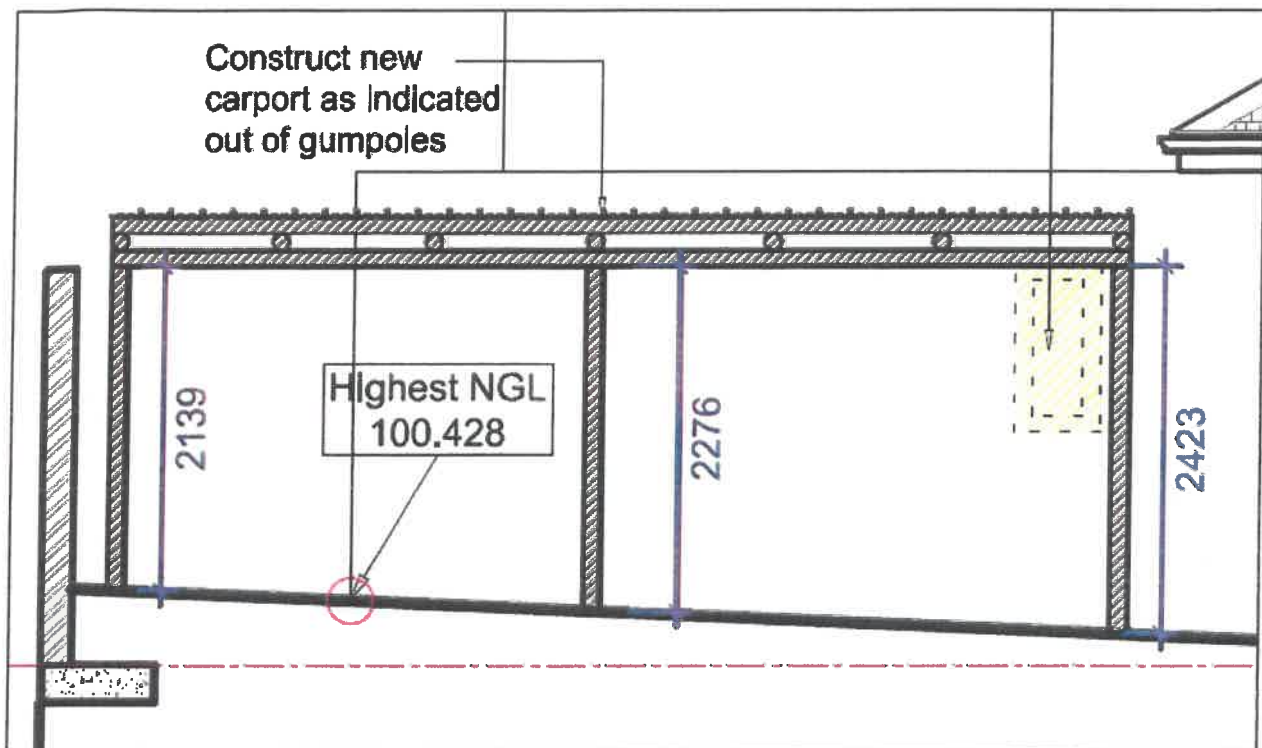


Figure 4: Southwest carport elevation.

4.6 Determination of an administrative penalty in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The addition of these two structures have been completed. To ensure compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 it is of importance to include the determination of an administrative penalty application. We however would like to request that the administrative penalty be waived as this application serves as method to rectify the contraventions that occurred.

Section 90(3) of the By-law requires the following information:

The nature, duration, gravity and extent of the contravention

Section 4.2 – 4.4 indicate the nature and gravity the additions that were constructed without prior approval.

The total extent of the building lines encroachments is:

Covered Braai Area and Braai	±8,99m ²
Carport	±11,74m ²

The conduct of the person (allegedly) involved in the contravention

The intention was never to knowingly contravene the provisions of the OMLUS. The property owners added the structures to the property, but there was never any malintent.



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

Due to the small-scale nature of the encroachment no quantity surveyor was involved.

Whether the unlawful conduct was stopped

The two structures were already built.

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

To the knowledge of this office, the property owners have not previously contravened the By-Law.

5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.2 Permanent Departure** from the 2m rear building line to 0,2m to allow the built in braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.3 Permanent Departure** from the 2m rear building line to 1,06m to allow the covered braai area in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.4 Permanent Departure** from the 2m rear building line to 0,426m to allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.5 Permanent Departure** from the 2m northwestern side building line to 0,467m allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.6 Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

6. LAND USE ENVIRONMENT

The subject property is located in the Northcliff area, an established residential area in Hermanus. The property is surrounded by Residential Zone 1: Single Residential and Public Open Spaces properties. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan).

7. TITLE DEED

Title deed T57340/2007 (refer **Annexure B**) was perused and there is a restrictive condition that was inserted into the original title deed and transferred into the current title deed.



This title deed condition prohibits that the applicant's intent with the subject property can be realised.

Title deed restriction

Condition C.4. "C. SUBJECT to the following conditions contained in said Deed of Transfer No. T7714/1945, imposed by the Administrator of the Cape Province in approving of Hermanus Township (Extension No. 4): –

"As being in favour of the registered owner of any erf in the Township and subject to amendment of alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33/1934:-

1. That this erf used for residential purposes only.
2. That only one dwelling together with such outbuilding as are ordinarily required to be used therewith, be erected on this erf.
3. That not more than half the area of this erf be built upon.
4. **That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,20 metres of the lateral boundary common to any adjoining erf."**

Motivation**The rationale for the proposed removal**

The subject property is improved with the dwelling house and the additions discussed. The property owners had the vision to renovate the property and increase the enjoyment thereof. Refer to **Plan 4 – Site Plan** and **Annexure C – Architectural Drawings**) The property owners were unaware of the restriction contained within the title deed. The current title deed conditions are more restrictive than what is allowed in the OMLUS and the residential properties in the Overstrand area.

Title deed condition background

The restrictive title deed conditions were originally intended to protect the residential character of the Hermanus area, but with the introduction of more overarching and stringent town planning regulations, the title deed building lines are proposed to be removed.

Status quo

The current OMLUS has clear development guidelines to ensure that the whole of the Overstrand Area's residential properties is managed in a similar manner. The title deed

conditions are more restrictive than the OMLUS. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

The current and future development of the property are being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the land use scheme and policies of the Overstrand Municipality, the property owners are not able to utilise their property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of the restrictive title deed condition.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is directly benefitting from this condition as the condition is only restricting the property owners.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise their property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	This restrictive condition does not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of the condition, and no person or entity will be affected if these are removed.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL			
Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House , Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House	Comply
Consent use	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
Development parameters			
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: <ul style="list-style-type: none">• 400m² and greater = 50%	Existing Extent = 768m ² Main Dwelling – 126.97m ² Proposed Coverage – 16,532% <i>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</i>	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: <ul style="list-style-type: none">• 400 m² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: <ul style="list-style-type: none">• Greater than 400 m² = 2m	The street building lines are being adhered to. <ul style="list-style-type: none">• Permanent departure from the 2m rear building line to 0,2m to allow the built in braai;• Permanent departure from the 2m rear building line to 1,06m;• Permanent departure from the 2m rear building line to 0,426m to allow the covered carport; and• Permanent departure from the 2m northwestern side building line to 0,467m. <i>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</i>	Deviate



MOTIVATION

Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m..	The existing dwelling adheres to the 8,0m building line.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Carports on site. <i>Please take note formal building plans will be submitted to the Overstrand Municipality Building Control Department.</i>	Comply



9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity, Water, Sewage and Solid Waste

The subject property will be connected to the existing networks in the area, which include electricity, water and sewage. The proposal of this application is not anticipated to impact on existing services .

Solid waste will be collected every week by the OM.

Access and Egress

Access and egress to the property are gained from Dolphin Street.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability.

The need for the land use application was a result of addressing all the land use requirements and ensuring the property meets the requirements of the property owners. To achieve this, the property owners are required to apply for the removal of the restrictive title deed condition.

Socio-economic impact	The removal of the restrictive title deed condition and permanent departures are not predicted to have a socio-economic impact.
Compatibility with surrounding uses	The proposal is to improve the property in-line with the development parameters as set out within the OMLUS.
Impact on the external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	It is not predicted that the proposal will have an impact on safety, health and wellbeing of the surrounding community.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	It is not predicted that the proposal will have an impact on the biophysical environment.
Traffic impacts, parking, access and other transport related considerations	The proposal will not have an impact on traffic, parking or access.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the structures being proposed are not out of the ordinary. As the neighbours have provided their consent, it is accepted that the small impact that the structures may have, is not opposed by the neighbours.

Economic impact

There has been capital expenditure through the construction phases. However, the proposal does not have a long-term economic impact.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The proposal is not predicted to have a negative impact on surrounding properties.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The property is not located within the HPOZ.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The property is not located within the HPOZ.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal to increase the enjoyment of the property is not predicted to have an effect on past elevation of past spatial injustices.

Spatial sustainability

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

Efficiency

This proposal is intended to maximise the usage of the subject property.



Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process.

The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.

13. EVALUATION

The purpose of submitting the application is to address and rectify the encroachment of the building lines caused by the construction of additional structures in violation of the restrictive title deed conditions and the OMLUS. By seeking the removal of these restrictive conditions, the property owners aim to regularize the situation and obtain approval for the structures that have been added.

Furthermore, the submission of this application shows the property owners' intent to resolving the issue at hand. Rather than allowing the encroachment to persist or attempting to circumvent the regulations, they have chosen to address the situation through the proper channels. This demonstrates their willingness to comply with the established rules and procedures, emphasizing their respect for the integrity of the planning process.

The submission of this application is a conscientious effort by the property owners to rectify the encroachment of the building lines and comply with the relevant spatial planning policies. By seeking the removal of the restrictive title deed conditions, they aim to regularize the situation and ensure that their actions align with the established guidelines and regulations. This responsible approach reflects their commitment to responsible development and their willingness to adhere to the planning framework of the area.

14. RECOMMENDATION

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

- 14.1 Removal of a restrictive title deed condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.2 Permanent departure** from the 2m rear building line to 0,2m to allow the built in braai in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.3 Permanent departure** from the 2m rear building line to 1,06m to allow the covered braai area in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.4 Permanent Departure** from the 2m rear building line to 0,426m to allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;



RECOMMENDATION

- 14.5 Permanent Departure** from the 2m northwestern side building line to 0,467m to allow the covered carport in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 14.6 Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.