

**OVERSTRAND MUNISIPALITEIT**

**ERF 1288, EDWARDWEG 33, PRINGLEBAAI EN ERF 1289, EDWARDWEG 31, PRINGLEBAAI: AANSOEK OM ONDERVERDELING, KONSOLIDASIE, AFWYKING, VERSLAPPING VAN TITLEAKTE EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: PLAN ACTIVE STADS- EN STREEKBEPLANNERS NAMENS HJ GERSBACH EN WD & EMA SLATER**

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoek van toepassing op Erf 1288 en 1289 Pringlebaai (die eiendom), naamlik:

**Onderverdeling**

Aansoek ingevolge Artikel 16(2)(d) van die Verordening om Erf 1288, Pringlebaai te onderverdeel om 'n onderverdeelde gedeelte van ±72m<sup>2</sup> in grootte te skep.

**Konsolidasie**

Aansoek ingevolge Artikel 16(2)(e) van die Verordening om die nuut onderverdeelde gedeelte (±72m<sup>2</sup>) met Erf 1289, Pringlebaai te konsolideer om die voorgestelde grensaanpassing te akkommodeer.

**Afwyking**

Aansoek ingevolge Artikel 16(2)(b) van die Verordening om die oostelike syboullyn van toepassing op Erf 1289, Pringlebaai vanaf 2m na 1m te verslap om die bestaande woning te akkommodeer, en om die westelike syboullyn vanaf 2m na 0m om 'n bestaande skadu-afdak te akkommodeer.

**Verslapping van Titleakte**

Verslapping van Klousule III.6.(b) van Titelakte Nr. T47968/10 van toepassing op Erf 1289, Pringlebaai om die oostelike syboullyn vanaf 1,5m na 1m te verslap om die bestaande woning te akkommodeer, en om die westelike syboullyn vanaf 1,5m na 0m te verslap om 'n bestaande skadu-afdak te akkommodeer.

**Bepaling van 'n Administratiewe Boete**

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir ongemagtigde boulyn oorskreidings soos hierbo genoem.

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.

Enige kommentaar moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) voor of op **25 Oktober 2024**, met u naam, adres, kontak besonderhede, 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 Stads- en Streekbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

**Dr. DGI O'Neill**  
**MUNISIPALE BESTUURDER**  
Overstrand Munisipaliteit  
Posbus 20  
**HERMANUS**  
7200

Kennisgewing nr. 151/2024

**OVERSTRAND MUNICIPALITY**

**ERF 1288, 33 EDWARD ROAD, PRINGLE BAY AND ERF 1289, 31 EDWARD ROAD, PRINGLE BAY: APPLICATION FOR SUBDIVISION, CONSOLIDATION, DEPARTURE, RELAXATION OF TITLE DEED AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF HJ GERSBACH AND WD & EMA SLATER**

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 Erven 1288 and 1289 Pringle Bay (the property), namely:

**Subdivision**

Application in terms of Section 16(2)(d) of the By-Law to subdivide Erf 1288, Pringle Bay to create a subdivided portion of ±72m<sup>2</sup> in extent.

**Consolidation**

Application in terms of Section 16(2)(e) of the By-Law to consolidate the newly subdivided portion (±72m<sup>2</sup>) with Erf 1289, Pringle Bay to accommodate the proposed boundary adjustment.

**Departure**

Application in terms of Section 16(2)(b) of the By-Law to relax the eastern lateral building line applicable to Erf 1289, Pringle Bay from 2m to 1m to accommodate the existing dwelling, and to relax the western lateral building line from 2m to 0m to accommodate an existing shadeport.

**Relaxation of Title Deed**

Relaxation of Clause III.6.(b) of Title Deed No. T47968/10 applicable to Erf 1289, Pringle Bay to relax the eastern lateral building line from 1,5m to 1m to accommodate the existing dwelling, and to relax the western lateral building line from 1,5m to 0m to accommodate an existing shadeport.

**Determination of an Administrative Penalty**

Application in terms of Section 16(2)(q) of the By-Law for the unauthorised building line encroachments as mentioned above.

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.

Any comments must be in writing and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before **25 October 2024**, with your name, address, contact details, interest in the application and the reasons for comment. Telephonic inquiries can be made to the **Senior Town Planner, Mrs. H. van der Stoep** 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.

**Dr. DGI O'Neill**  
**MUNICIPAL MANAGER**  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

Notice No. 151/2024

**UMASIPALA WASE-OVERSTRAND**

**ISIZA ESINGU-ERF 1288, 33 EDWARD ROAD, PRINGLE BAY NESIZA ESINGU-ERF 1289, 31 EDWARD ROAD, PRINGLE BAY: ISICELO SOKWAHLULAHLULA, UYONDELELANISO, UKWAHLUKA, UNYENYISO LWETAYITILE ZOBUNINI NENGIKHELELO YOMDLIWO WOBHALISO: NGABAKWAPLAN ACTIVE TOWN & REGIONAL PLANNERS EGAMINI LIKA- HJ GERSBACH AND WD & EMA SLATER**

Kukhutshwe isaziso esimayela nemiba yeSolotya lama-47 nelama-48 loMthethwana kaMasipala wase-Overstrand OsisiHlomelo soMthethwana kaMasipala OngeZicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana), esi sicelo sisebenziseka kwezi Ziza zilandelayo Isiza esingu-1288 nesingu-1289 Pringle Bay (umhlaba), ezibizwa:

**Ukwahlulahlula**

Isicelo esisebenza ngokwemiba yeSolotya le16(2)(d) loMthethwana ukwahlula-hlula Isiza esingu- Erf 1288, Pringle Bay ukudala ixanelnye eyahlulahlulwe yaziqikwemitha eziyi-±72m<sup>2</sup> ubungakanania.

**Uyondelelaniso**

Isicelo esimayela nemiba yeSolotya le-16(2)(e) loMthethwana ukuyondelelanisa inxalenye entsha eyahlulahlulweyo yaba zizikwemitha eziyi (±72m<sup>2</sup>) neSiza esingu-Erf 1289, Pringle Bay ukulungiselela ulungelelaniso lomda ophakanyiswayo.

**Ukwahluka**

Isicelo esingemiba yeSolotya le-16(2)(b) loMthethwana ongokunyenya umgca wesakhiwo omlene nesakhiwo kwicala elimelene neSiza u-Erf 1289, Pringle Bay ukusuka kwimitha ezi-2m ukuya ku-1m kwicala aeliseempuma ukulungiselela indawo yokuhlala esele ikhona, nokunyenya umgca wesakhiwo omlene nomgca wesakhiwo kwicala elisentshona ukusuka kwimitha ezi-2m ukuya ku-0m ukulungiselela indawo eyakha umthunzi esele ikhona.

**Unyeniso lweTayitile Yobunini**

Unyeniso loMhlathi III.6.(b) weTayitile Yobunini No. T47968/10 esebenziseka kwiSiza esingu-Erf 1289, Pringle Bay ukunyenya umgca wesakhiwo kwicala eliseempuma ukusuk kwimitha ezi-1,5m ukuya kwi-1m ukulungiselela indawo yokuhlala aesele ikhona, nokunyenya umgca wesakhiwo omlene ncala elisentshona ukusuka kwimitha eziyi-1,5m ukuya kwi-0m ukulungiselela indawo yokwenza umthunzi esele ikhona.

**Ingiqelelo yoMdlivo wobhaliso**

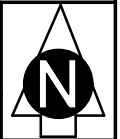
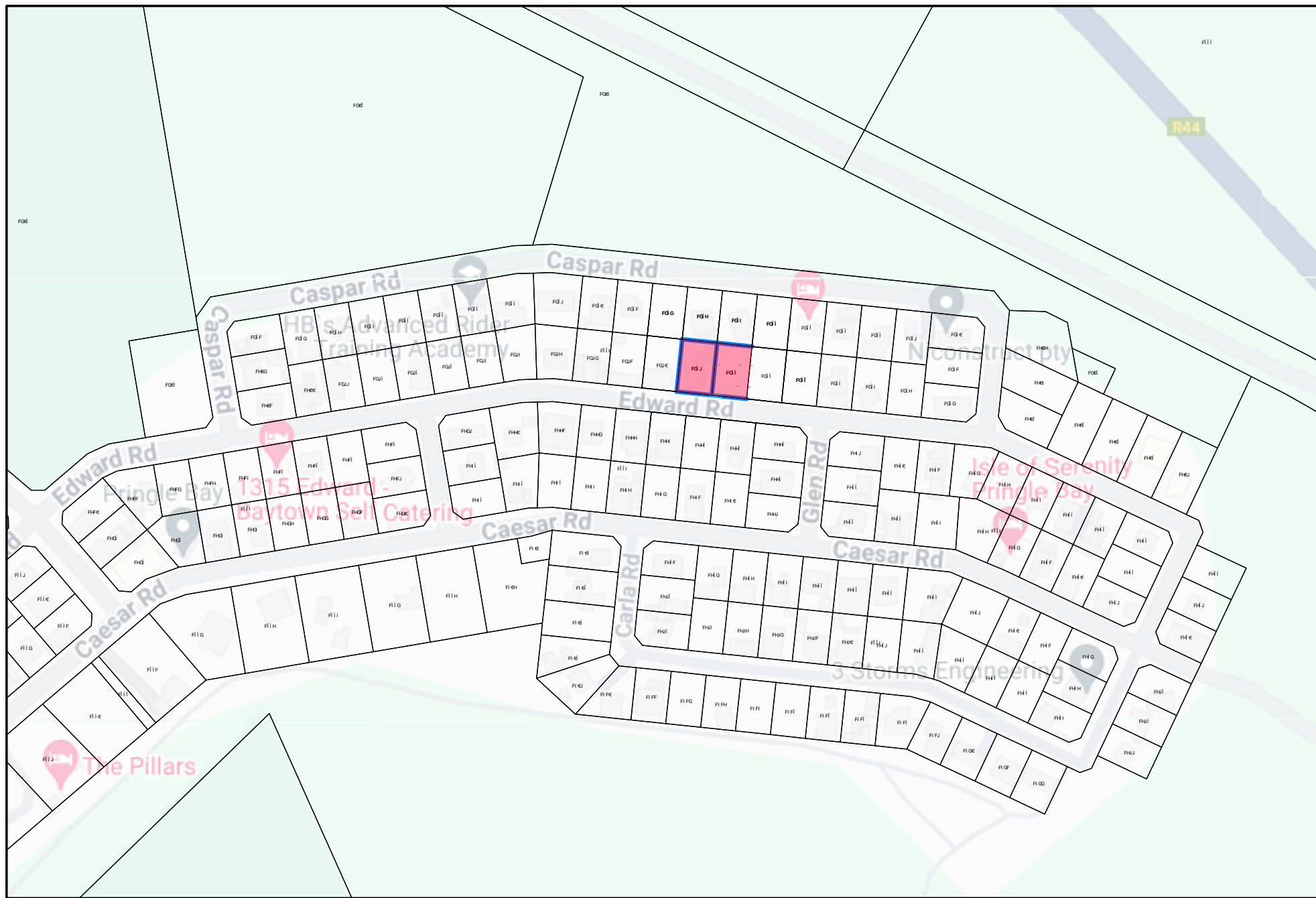
Isicelo esmayela nemiba yeSolotya le16(2)(q) loMthethwana osebenza kwimigca yesakhiwo engagunyaziswanga nengekho mthethweni ngokuphumela ngaphaya kwemida yomgca wesakhiwo njengoko kuchazwe ngentla.

Iinkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evelkini phakathi kwentsimbi ye-08:00 neye-16:30kwiSebe: Lezicwangciso Zedolophu neNdawo, 16 Paterson Street, Hermanus nase Betty's Bay Library, Clarence Drive, Betty's Bay.

Naziphi na izimvo ezibhalileyo mazifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama**25 Oktobha 2024**, zibe negama lakho idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla kwakho. Imibuzo ngefowuni ingathunyelwa ku**Mcwangcisi Omkhulu weDolophu, Nkskz. H. van der Stoep** ku-028-3138900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokwala. Nabani ongakwazi ukufunda nokubhala angahambela kwiSebe Lezicwangciso zeDolophu neNdawo apho baza kuncedwa ligosa likamasipala ukwakha uluvo nokubhala izimvo zakhe.

**Dr. DGI O'Neill**  
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Inothisi Nomb. 151/2024



**PROPOSED BOUNDARY  
ADJUSTMENT, BUILDING LINE  
DEPARTURES IN TERMS OF THE  
SCHEME REGULATIONS AND TITLE  
DEED AND ADMINISTRATIVE PENALTY**

**ERVEN 1288 & 1289 PRINGLE BAY**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

1. **BACKGROUND**

Mr. H.J. Gersbach, the owner of Erf 1288 Pringle Bay, and Mr. & Mrs. W.D. Slater and E.M.A. Slater, the owners of Erf 1289 Pringle Bay, have instructed Plan Active Town and Regional Planners to apply for a minor boundary adjustment. This adjustment will be achieved through a subdivision and consolidation, as well as a request for an administrative penalty and departure from the building lines prescribed in the Overstrand Municipality Zoning Scheme Regulations and the Title Deed. This is to address existing encroachments on Erf 1289 Pringle Bay.

Erf 1289 Pringle Bay is currently developed, featuring a double-storey dwelling, a double carport, and a swimming pool. The property was used as a guesthouse when Mr. & Mrs. Slater purchased it in 2010 in its present state. The dwelling, boundary line encroachment, and construction of the carport were completed by the former owner.

Upon deciding to design a house, Mr. Gersbach appointed a land surveyor to verify the beacons of Erf 1288 Pringle Bay. The survey revealed that the boundary wall and

dwelling on Erf 1289 Pringle Bay encroach onto Erf 1288 Pringle Bay. Currently, Erf 1288 Pringle Bay is vacant.

The owners of the two erven have agreed to rectify the encroachment by having Mr. & Mrs. Slater purchase a portion of Erf 1288 Pringle Bay, which will then be consolidated with Erf 1289 Pringle Bay. This will be elaborated in detail later in this motivation report. The application includes a subdivision, consolidation, and building line relaxations as per the Overstrand Municipality Zoning Scheme Regulations and the Title Deed, ensuring minimal impact on the subject erven and an administrative penalty.

Erf 1288 Pringle Bay is 600m<sup>2</sup> in extent and is held by Title Deed Number T22315/22. Erf 1289 Pringle Bay is also 600m<sup>2</sup> in extent and is held by Title Deed Number T47968/10.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of a portion of Erf 1288 Pringle Bay.
- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the consolidation of a portion of Erf 1288 Pringle Bay with Erf 1289 Pringle Bay.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for building line departures.
- Section III.6.(b) of the relevant Title Deeds, which states that no building or structure, or a portion thereof except boundary walls and fences, shall, except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 3m or 1.5m from the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority.



- 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.

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### 3. DESIRABILITY

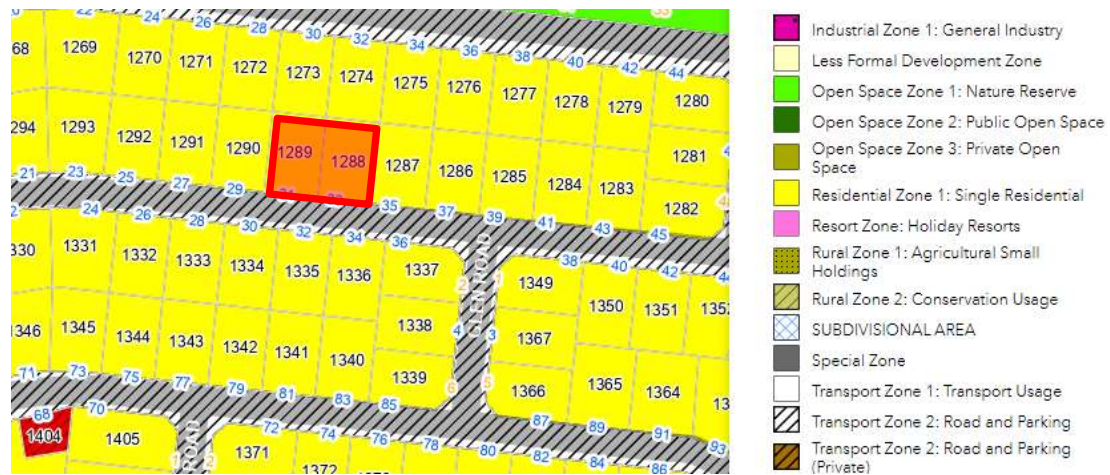
#### 3.1 PROPERTY DESCRIPTION

Erven 1288 and 1289 Pringle Bay are located at 31 and 33 Edward Road, Pringle Bay, respectively, with each property measuring 600m<sup>2</sup> in extent. Please refer to the enclosed locality plan and the aerial photograph below.



#### 3.2 ZONING

According to the zoning map abstract from the Overstrand Municipality GIS System, the subject properties, Erven 1288 and 1289 Pringle Bay, are zoned as Residential Zone 1: Single Residential. Please refer to the zoning map abstract below:



### 3.3 LAND USE

A double-storey dwelling is established on Erf 1289 Pringle Bay, comprising the following:

- Entrance foyer
- Four bedrooms, each with an en-suite bathroom
- Hobby room
- Open-plan kitchen, dining room, and living room
- Swimming pool
- Shadeport carport suitable for two vehicles
- Paved driveway

The portion of the dwelling that encroaches onto Erf 1288 Pringle Bay is approximately 72m<sup>2</sup>, as surveyed. This measurement was calculated using the existing eastern boundary wall that encroaches onto Erf 1288 Pringle Bay. The remaining extent of Erf 1288 Pringle Bay is currently vacant. Please refer to the photographs below.



The predominant land uses of the erven in the area surrounding Erven 1288 and 1289 Pringle Bay include single residential properties, public roads, and public open spaces.

### 3.4 **PROPOSAL**

The following is proposed in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of a portion of Erf 1288 Pringle Bay.

- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the consolidation of a portion of Erf 1288 Pringle Bay with Erf 1289 Pringle Bay.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for building line departures.
- Section III.6.(b) of the relevant Title Deeds, which states that no building or structure, or a portion thereof except boundary walls and fences, shall, except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 3m or 1.5m from the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority.
- 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.

#### **3.4.1. PROPOSED BOUNDARY ADJUSTMENT: SUBDIVISION & CONSOLIDATION**

Mr. H.J. Gersbach, the owner of Erf 1288 Pringle Bay, intends to construct a new dwelling on the property and subsequently had it surveyed. The survey revealed that a portion of the neighbour's dwelling and boundary wall, approximately 72m<sup>2</sup> in extent, situated on Erf 1289 Pringle Bay, encroaches onto his property. This encroachment was inadvertently inherited by the owners of Erf 1289, Mr. & Mrs. Slater, who purchased the property in its current state and location in 2010. Mr. & Mrs. Slater immediately agreed to address the matter.

The owners of Erven 1288 and 1289 Pringle Bay have come to an agreement to rectify the issue as outlined in this motivation report. Please refer to the enclosed Proposed Boundary Adjustment Plan that is attached and the abstract from the plan below:





In accordance with Chapter 4, Section 26(1)(c) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, minor boundary adjustments involving a change in area of any land unit not exceeding 10% are typically exempt. However, our current application does not qualify under this exemption. Therefore, we are proceeding with an application for subdivision and consolidation under Sections 16(2)(d) and (e) of the By-law on Municipal Land Use Planning to address the existing encroachment issues.

**Proposed Subdivision:**

The survey conducted identified that the existing boundary wall, which deviates from the actual boundary line, was used to determine the proposed building line. This approach ensures a setback of at least 1 meter between the double-storey dwelling and the new boundary line. The area to be subdivided from Erf 1288 Pringle Bay totals approximately 72m<sup>2</sup>, as detailed in the enclosed subdivision and consolidation plan.

**Proposed Consolidation:**

To rectify the boundary encroachment caused by the existing dwelling and boundary wall, it is proposed to subdivide and consolidate a 72m<sup>2</sup> portion of Erf 1288 Pringle Bay with Erf 1289 Pringle Bay. Following this process, Erf 1288 Pringle Bay will measure 528m<sup>2</sup>, while Erf 1289 Pringle Bay will increase to 672m<sup>2</sup>. These revised sizes align with the typical dimensions of nearby erven. Post-consolidation, Erf 1288 Pringle Bay will remain suitable for development as a single residential property.

The proposed boundary adjustment has been meticulously planned to ensure it will not adversely affect the surrounding properties. This approach aims to resolve the current encroachment issue in a manner that maintains harmony with the residential character of the area.

#### **3.4.2. PROPOSED BUILDING LINE DEPARTURES (Land Use Scheme)**

It has been determined that the most practical approach to establish the new common boundary between Erven 1288 & 1289 Pringle Bay is to use the existing boundary wall as surveyed. This decision aims to minimize any reduction in the size of Erf 1288 Pringle Bay. Consequently, the existing double-storey dwelling will be positioned approximately 1 meter from the proposed new boundary line, aligning with the survey findings.

According to the Overstrand Municipal Land Use Scheme Regulations, 2020, single residential zoned erven typically require a 2-meter lateral building line. Given this requirement, we are seeking a building line relaxation for the eastern lateral building line, reducing it from 2 meters to 1 meter to accommodate the existing dwelling. To mitigate any adverse impact on property size, the owners of Erven 1288 & 1289 Pringle Bay have mutually agreed to utilize the existing boundary wall to define the shared boundary between the properties, and to support the proposed building line departure as outlined.

Furthermore, it should be noted that Mr. and Mrs. Slater acquired the property with an existing shadeport carport already constructed, albeit without approved building plans. This shadeport carport measures 6 meters by 6 meters and is situated between the existing dwelling and the western boundary wall. The sides of the shadeport are approximately 2.5 meters above the natural ground level and are affixed to the dwelling itself, the northern garden wall, and the western boundary wall. Please refer to the photograph below:



To accommodate the existing shadeport carport, we are applying for a building line relaxation of the western lateral building line, reducing it from 2 meters to 0 meters. The shadeport carport is 6 meters in length along the western lateral boundary and has a height of approximately 2.5 meters measured from the natural ground level. Subsequently aligning with Section 16.1.1(c) of the Overstrand Municipal Land Use Scheme Regulations, which permits encroachments of side and rear building lines for structures used for housing vehicles.

It is important to note that the shadeport carport is well-maintained and does not adversely impact the adjacent erf, Erf 1290 Pringle Bay.

The standard building lines in terms of the Overstrand Municipal Land Use Scheme Regulations, 2020 will apply to Erf 1288 Pringle Bay.

### **3.4.3. PROPOSED BUILDING LINE DEPARTURES (Title Deed)**

The existing encroachment of the dwelling and boundary wall from Erf 1289 Pringle Bay onto Erf 1288 Pringle Bay has necessitated a common boundary adjustment through subdivision and consolidation to resolve the issue. The owners of the subject

erven have agreed to utilize the existing boundary wall, which was mistakenly built on Erf 1288 Pringle Bay, to establish the proposed boundary line.

Section B.6.(b) of the relevant Title Deed specifies that no building or structure, except boundary walls and fences, shall be erected closer than 5m to the street line forming the erf boundary, nor within 3m of the rear, or 1.5m from the lateral boundary common to any adjoining erf, without consent from the Administrator.

After subdivision and consolidation, the existing dwelling will be located approximately 1m from the proposed eastern lateral boundary line. This positioning results in a 0.5m encroachment on the prescribed 1.5m building line specified in the Title Deed. Therefore, we are applying for a building line departure under Section III.6.(b) of the relevant Title Deeds, seeking relaxation from 1.5m to 1m to accommodate the existing dwelling.

Similarly, the western lateral building line, where a 6m x 6m shadeport carport was constructed up to the boundary by the former owner, also requires a building line relaxation. We are applying to reduce this from 1.5m to 0m to align with the existing structure.

Since Mr. & Mrs. Slater occupied the property from 2010, no complaints have been received from neighbouring landowners regarding the encroachments. Given this lack of objections, we believe that rectifying these encroachments through the proposed adjustments will appropriately address the issue without negative impact on the surrounding properties.

#### **3.4.4. DETERMINATION OF AN ADMINISTRATIVE PENALTY**

As outlined earlier in this report, Mr. Gersbach, the owner of Erf 1288 Pringle Bay, intends to develop a new dwelling on his property and initiated a survey of the site. The survey identified an encroachment where a small portion of the existing dwelling

and boundary wall, measuring approximately 72m<sup>2</sup>, extends from Erf 1289 Pringle Bay onto Erf 1288 Pringle Bay. This encroachment existed prior to the ownership of the current owners, Mr. & Mrs. Slater, who acquired the property in its current developed state in 2010. Upon notification of the encroachment by Mr. Gersbach, Mr. & Mrs. Slater promptly agreed to resolve the issue.

Both property owners subsequently reached an agreement wherein Mr. and Mrs. Slater purchased approximately 72m<sup>2</sup> of land from Erf 1288 Pringle Bay to rectify the encroachment. Furthermore, they have committed to covering the costs associated with the application and its fees.

In accordance with **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**, an application is being submitted for the determination of an administrative penalty due to unauthorized land uses. **As stipulated in Chapter 10, Section 90(1)**, any person found to be in contravention of this By-law, who subsequently applies to rectify the contravention, must request the Municipality to determine an administrative penalty. This applies unless the Municipality has issued a demolition directive under Section 85 for the concerned land, building, or part thereof.

As per Chapter 10, Section 90(3) of the By-law, the applicant must satisfactorily provide the following to the municipality:

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

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

In assessing the need for an administrative penalty under Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, the following factors are considered:

Nature of the Contravention: The encroachment of approximately 72m<sup>2</sup> from Erf 1289 Pringle Bay onto Erf 1288 Pringle Bay, which was inherited by the current owners and constructed by the former owner prior to their acquisition of the property in 2010.



Duration of the Contravention: The encroachment has persisted until its recent identification and the subsequent initiation of a boundary adjustment and building line relaxations.

Gravity of the Contravention: The encroachment, while existing, does not pose significant harm or disruption to neighbouring properties or the community.

Extent of the Contravention: The encroachment covers approximately 72m<sup>2</sup> in extent on Erf 1288 Pringle Bay.

Given that the encroachment was inherited by the current owners and predates their ownership, acquired in good faith in its existing state, they have cooperated fully with the owners of Erf 1288 Pringle Bay to address the issue and will cooperate with the Overstrand Municipality to rectify the boundary and building line encroachments. Considering these circumstances, it is argued that an administrative penalty should not be imposed, as the encroachment was not knowingly created or maintained by the current owners.

These considerations highlight the equitable resolution sought in addressing the encroachment, aiming to ensure fair and reasonable outcomes under municipal land use regulations.

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

Regarding the conduct of the persons involved in the contravention, it is noteworthy that the current owners of Erf 1289 Pringle Bay, Mr. & Mrs. Slater, acquired the property in its existing developed state in 2010. The encroachment onto Erf 1288 Pringle Bay, amounting to approximately 72m<sup>2</sup>, was inherited from the previous owner and was not created knowingly or intentionally by Mr. & Mrs. Slater.

Upon being informed of the encroachment by Mr. Gersbach, the owner of Erf 1288 Pringle Bay, they cooperated fully to rectify the boundary adjustment through a subdivision and consolidation process. Their proactive approach and cooperation with the Overstrand Municipality reflect their commitment to resolving the issue in accordance with municipal regulations and fostering good neighbourly relations. This

demonstrates responsible conduct in addressing inadvertent property boundary discrepancies inherited from previous ownership.

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

In considering the circumstances surrounding the encroachment between Erf 1288 and Erf 1289 in Pringle Bay, and taking into account the report by a quantity surveyor regarding unauthorized building and construction, it is important to note that the current owners of Erf 1289, Mr. & Mrs. Slater, inherited the encroachment from the previous owner upon their acquisition of the property in 2010.

They have since taken proactive steps to rectify the situation by compensating the owner of Erf 1288, Mr. Gersbach, for the encroachment and bearing all associated application and fees for the boundary adjustment and building line relaxations. Given their cooperation with the Overstrand Municipality and their commitment to rectifying the issue in compliance with municipal regulations, it is respectfully requested that no penalty be imposed.

This request is based on the responsible conduct demonstrated by Mr. & Mrs. Slater in addressing inadvertent property boundary discrepancies inherited from prior ownership, aligning with the principles of fairness and equitable resolution under municipal land use guidelines.

**Whether the unlawful conduct was stopped**

Regarding whether the unlawful conduct was stopped, it is evident that upon learning of the encroachment issue between Erf 1289 and Erf 1288 in Pringle Bay, the current owners, Mr. & Mrs. Slater, took immediate steps to address the situation. They ceased any further continuation of the encroachment by cooperating fully with the owner of Erf 1288, Mr. Gersbach, and initiating measures to rectify the boundary discrepancy through a subdivision and consolidation process. The owners continued to utilize the dwelling since they bought it in 2010 and did not stop utilizing it as such. They were unaware of the encroachments and the carport that was constructed without building plans within a building line until they further investigated approved building plans. They only became aware of these issues when their neighbor had their property surveyed. This proactive approach underscores their commitment to compliance with municipal

regulations and demonstrates their willingness to rectify the situation responsibly. The cessation of any further encroachment upon discovery further supports their intent to ensure lawful adherence to land use regulations in the area. All building works are completed.

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

Regarding whether a person involved in the contravention has previously contravened this By-Law or a previous planning law, it is important to note that Mr. & Mrs. Slater have no history of such violations. Since purchasing Erf 1289 in Pringle Bay in 2010, they have not contravened the Overstrand Municipality's By-Law on Municipal Land Use Planning, 2020, or any prior planning laws. We appeal to the Overstrand Municipality to consider the minimal impact the encroachment has on the surrounding area, especially noting that it involves only a small portion of the double-storey dwelling encroaching onto Erf 1288 in Pringle Bay.

Furthermore, it's important to consider the negligible impact of the encroachment on neighbouring properties in relation to existing land use rights. Additionally, future development on the subject property will still adhere to the Zoning Scheme Regulations and the Overstrand Municipality's Amended By-Law on Municipal Land Use Planning, 2020. Given these factors, and the fact that the owner of Erf 1289 Pringle Bay has compensated the owners of Erf 1288 Pringle Bay as previously mentioned, we respectfully request that no penalty fee be imposed on the property owners.

**3.5 ACCESS AND PARKING**

As mentioned earlier in this report, Erf 1289 Pringle Bay is developed with a double-storey dwelling and a carport that can accommodate two vehicles. The property features two existing vehicular access points from Edward Road, providing convenient access to both the carport and the additional parking area on the eastern side of the property. These areas are fully paved, ensuring smooth ingress and egress for vehicles. The current access points will remain unchanged, maintaining the established traffic flow and parking arrangements.

Erf 1288 Pringle Bay, currently vacant, will have its access determined in conjunction with the building plan submission once the new dwelling has been designed. The proposed access to Erf 1288 will also be from Edward Road, ensuring consistency with the existing access patterns in the area. The design and placement of the new access point will be carefully considered to optimize accessibility while minimizing any potential impact on traffic flow and neighbouring properties. This approach aligns with the overall goal of maintaining a cohesive and well-planned residential environment in Pringle Bay.

### **3.6 SERVICES.**

All necessary services on the subject properties are already in place. This application involves a boundary realignment and building line departures, without proposing any additional erven. Consequently, there is no requirement for additional services. The proposed changes will not negatively impact the existing services provided by the Overstrand Municipality, ensuring a seamless continuation of utility provision without any strain on current infrastructure. This careful planning ensures that the community's needs are met without compromising service quality or availability.

### **3.7 TITLE DEED**

Erf 1288 Pringle Bay, under Title Deed Number T22315/22, and Erf 1289 Pringle Bay, under Title Deed Number T47968/10, are subject to restrictive Title Deed conditions. According to Section III.6.(b) of these Title Deeds, no building or structure, or a portion thereof, except for boundary walls and fences, shall be erected nearer than 5m to the street line forming a boundary of the erf, nor within 3m of the rear or 1.5m from the lateral boundary common to any adjoining erf, without the consent of the Administrator and the Local Authority.

This section provides that an application can be lodged for the relaxation of the prescribed building lines, which has been addressed in Section 3.4.3 of this report. A prerequisite for such an application is obtaining consent letters from the neighbouring

landowners. This requirement has been fulfilled, and the consent letters are included in Annexure A.

Therefore, the restrictive Title Deed conditions do not need to be removed or amended but can be relaxed as justified in Section 3.4.3.

Additionally, there is no bond registered against Erf 1289 Pringle Bay. A bond is registered with FNB against Erf 1288 Pringle Bay, and the bondholder's letter of consent has been enclosed.

### **3.8 FORWARD PLANNING**

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

According to the Overstrand Municipal Wide Spatial Development Framework (2020), the subject properties, Erf 1288 and Erf 1289 Pringle Bay, are earmarked for urban development purposes. The residential zoning and land use of these erven will be retained after the rectification of the common boundary between Erf 1288 and Erf 1289 Pringle Bay and the conclusion of the proposed building line departures.

This alignment with the Spatial Development Framework ensures that the modifications to the properties remain consistent with the municipality's long-term planning and development objectives, supporting sustainable urban growth in the area.

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

According to the Overstrand Growth Management Strategy (2010), the subject properties fall within Planning Unit 2, which primarily consists of the northern existing built-up area of Pringle Bay. No densification proposals are made for this planning unit.



We are of the opinion that the proposed boundary adjustment between Erf 1288 and Erf 1289 Pringle Bay, as well as the building line departures, will have no impact on the density as set out in the Overstrand Growth Management Strategy (2010). Therefore, the proposed applications can be supported.

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

#### **3.9.1 HERITAGE VALUE**

Erven 1288 and 1289 Pringle Bay are not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). According to the Overstrand Municipal GIS system, the properties are located within an area earmarked as LCZ Zone C1.

The subject properties have no association with important persons, groups, significant events, or activities. They also do not have any historical association with slavery or living heritage. The dwelling on Erf 1289 Pringle Bay is not older than 60 years, and Erf 1288 Pringle Bay is currently vacant.

In light of these factors, it is evident that the proposed minor boundary adjustment and building line departures will not have a negative impact on the heritage value of the subject properties or the greater area of Pringle Bay.

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

The proposed minor boundary adjustment and building line departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998). Therefore, the application does not require an Environmental Impact Assessment (EIA) in accordance with NEMA regulations. This conclusion is based on the assessment that the proposed changes will not significantly

impact the environment beyond the scope considered acceptable under the NEMA guidelines.

### **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:** Spatial justice concerns ensuring fairness and equity in the distribution of spatial resources and opportunities within a community. In the case of Erven 1288 & 1289 in Pringle Bay, the proposed minor boundary adjustment and building line departures aim to rectify a historical encroachment issue between the properties. This initiative, guided by municipal regulations and urban planning frameworks, seeks to resolve discrepancies while maintaining residential zoning integrity and adhering to local heritage considerations. Importantly, the owners have diligently navigated regulatory processes and addressed land use planning implications. By doing so, they demonstrate a commitment to spatial justice by aligning their actions with municipal guidelines and ensuring that the proposed developments do not adversely impact the surrounding area or its heritage value.

**Spatial sustainability:** Spatial sustainability involves designing and managing spatial arrangements in a way that supports long-term environmental, social, and economic well-being. In the context of Erven 1288 & 1289 in Pringle Bay, the proposed boundary adjustment and building line departures are undertaken with spatial sustainability in mind. By rectifying the encroachment and aligning with the Overstrand Municipality's urban planning frameworks, the owners aim to ensure that future developments on these properties are harmonious with the existing built environment. This approach not only preserves the residential character of the area but also minimizes the ecological footprint and enhances resource efficiency. Moreover, the planned adjustments adhere to local zoning regulations and heritage considerations, contributing to a sustainable spatial development that balances the needs of residents with the preservation of natural and cultural assets in Pringle Bay.

**Efficiency:** Efficiency in the context of the proposed developments on Erven 1288 & 1289 in Pringle Bay refers to the streamlined and effective use of resources and processes. The boundary adjustment and building line departures are designed to optimize land utilization while adhering to municipal regulations and planning frameworks. By consolidating and subdividing portions of the properties, the owners aim to resolve the encroachment issue efficiently without unnecessary delay or resource wastage. This approach ensures that the development process remains cost-effective and minimizes administrative burden, thereby facilitating timely compliance with regulatory requirements and promoting effective land management practices in Pringle Bay.

**Spatial Resilience:** Spatial resilience, in the context of Erven 1288 & 1289 in Pringle Bay, refers to the properties' ability to adapt and withstand challenges while maintaining functionality and integrity within the urban landscape. The proposed boundary adjustment and building line departures are part of a resilient approach to address the existing encroachment issue. By realigning boundaries and adjusting building lines, the owners are enhancing the properties' resilience to future urban development pressures and regulatory changes. This proactive measure ensures that the properties can sustain their intended use as single residential units while mitigating potential conflicts with adjacent properties and maintaining harmony within the neighbourhood. By adhering to municipal planning frameworks and considering long-term urban development strategies, the owners are contributing to the spatial resilience of Pringle Bay's urban fabric.

**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 minor boundary adjustment, building line departures, and administrative penalty of Erven 1288 and 1289 in Pringle Bay aim to rectify an accidental building encroachment, identified through a comprehensive survey.
- The boundary adjustment and building line departures align with the Overstrand Municipality's regulations and planning frameworks, ensuring compliance with municipal requirements.
- Consent letters from neighbouring landowners have been secured, underscoring community support and adherence to spatial justice principles.
- All necessary administrative processes and fees have been fulfilled as per municipal guidelines.
- The collaborative efforts between the owners of Erven 1288 and 1289 and the Overstrand Municipality support spatial resilience and sustainable urban development.
- The proposed actions are consistent with the objectives outlined in the Overstrand Growth Management Strategy (2010) and do not trigger activities listed under the National Environmental Management Act (NEMA), 1998.
- The proposal respects the exclusion from the Heritage Overlay Zone and has no impact on heritage values or living heritage in the area.
- The application ensures there will be no adverse impact on existing services or infrastructure provided by the Overstrand Municipality.
- Acknowledging the property owners' proactive approach to promptly address the encroachment issue upon discovery, demonstrating their commitment to responsible development practices.

With these points considered, we kindly request the Overstrand Municipality to favourably consider the application for the minor boundary adjustment, building line departures, and administrative penalty applicable to Erven 1288 and 1289 in Pringle Bay.



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