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REMAINDER OF REMAINDER ERF 6883, 21 FIR CLOSE, EASTCLIFF, HERMANUS: APPLICATION FOR DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF SM & FM INGLES

6883 HEC (3312/2019)

P Roux

27 July 2020

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Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 15 August 2019 from Messrs PlanActive Town- and Regional Planning on behalf of SM & FM Ingles in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Remainder Erf 6883, Hermanus for the following:

- ❖ application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions, in order to legalize existing structures, which encroach the building lines of the property, and
- ❖ application for departure in terms of Section 16(2)(b) of the By-Law in order to accommodate the existing structures on the property.

The Locality Plan of the property concerned is attached as Annexure A, the Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan (SDP) is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Remainder of Erf 6883 is situated in Eastcliff, a suburb of Hermanus, and is 478m² in extent. The property is zoned General Residential Zone 1 and encumbered with various title deed conditions. The property is developed with an existing dwelling and outbuilding. The property was recently sold and it was discovered that there are various encroachments over scheme and title deed provisions. The applicant seeks to rectify the various encroachments.

4. SUMMARY OF APPLICANT'S MOTIVATION

The main points of motivation are conveyed as follows (the detailed motivation is attached as Annexure B):

- The property was developed in 1995 with a double storey dwelling and a double garage. A building plan indicating the double garage within the south-western lateral building line and the Main Road street building lines. The covered veranda additions on the northern lateral building line, was submitted to the Building Department in 1995, but not approved (most likely due to restrictive title deed conditions). In addition, the previous owners also constructed a pergola, new balcony and extended entrance hall on the subject property, not knowing

that approved building plans are required. All of which are indicated as new additions/structures on the Site Development Plan, but is in fact 'as built'.

- The application is therefore to address the following:
 - the covered veranda/balcony that encroaches the 1,57m northern lateral title deed building line, the 3m perimeter eastern lateral building line for the veranda only and the 6,3m street title deed building lines;
 - the double garage that encroaches the 5m Main Road street perimeter building line, the 1,57m south-western lateral title deed building line, and the 3,15m and 6,3m street title deed building lines;
 - the pergola that encroaches the 1,57m south-western title deed lateral building line, and
 - portions of the existing approved dwelling that encroach the 3,15m and 6,3m title deed street building lines.
- The Title Deed number of the property is T22996/2019 (the Title Deed), and it as depicted on the SG diagram that there is a right of way servitude registered in favour of Erf 7186, Hermanus.
- The character of the area and the zoning of the property limit the use of the property to low impact land uses only.
- Most of the existing structures (except for the pergola) have been situated on the property since 1995. Further, the structures are compliant with the character and scale of the built environment and the neighbour previously consented to the construction as indicated on the building plan in 1995.
- The property is zoned as General Residential Zone 1: Town Housing and the development therefore have a 3m perimeter eastern lateral building line and a 5m street building line. Internal building lines of 0m apply to the northern lateral building line.
- To accommodate the existing covered veranda (a 22,23m² in extent structure which is situated below the approved balcony and is enclosed on the Main Road street boundary side) application is made for:
 - relax the eastern perimeter lateral building line from 3m to 2,166m, and
 - relax the Main Road perimeter street building line from 5m to 3,646m.
- The balcony and veranda below the balcony stretch to be 0,23m from the northern lateral boundary. These structures were approved in terms of the building plans in 1995 however, the position was deviated from. A 0m building line is applicable in terms of the Overstrand Zoning Scheme Regulations (subject to a combined space of 2m between two adjacent buildings). However, a 1,5m lateral building line is applicable in terms the Title Deed, [pages 2-4, paragraph C.(g) and (f)]. In addition to this, the Title Deed, [pages 2-3, paragraph D.(d) and (e)] also stipulates a 3,15m and 6,3m street building line. The covered veranda and the balcony encroach the 6,3m street title deed building line, it is therefore requested that the restrictive conditions be removed.
- The double garage was constructed on the south-western boundary of the property as per plans submitted to the Building Department in 1995. The plans were never approved. To accommodate the double garage, it is proposed:
 - to relax the Main Road perimeter street building line from 5m to 1,55m;
 - to remove the 1,5m lateral building line is applicable in terms of the Title Deed, [pages 2-3, paragraph D.(d) and (e)], and
 - to remove the 3,15m and 6,3m street building line applicable in terms of the Title Deed [pages 2-3, paragraph D.(d) and (e)].
- The garage has no windows which will face the adjacent property owner. Further, the structure will be limited to 4,5m in height and will not be longer than one third of the length of the lateral- or street boundary.

- The previous owners constructed a pergola in front of the double garage in order to accommodate the pergola, it is proposed:
 - to remove the 1,5m lateral building line applicable in terms of the Title Deed [pages 2-3, paragraph D.(d) and (e)].
- The pergola is approximately 4,5m long on the boundary and 7,1m in width in front of the double garage, the height of the pergola is less than 2,8m.
- The main dwelling, which was approved in 1995, was constructed and approved encroaching the 3,15m and 6,3m street building line applicable in terms of the Title Deed. The title deed restrictions were not addressed with the building plan approval, therefore it is proposed:
 - to remove the 3,15m and 6,3m street building line applicable in terms of the Title Deed, [pages 2-3, paragraph D.(d) and (e)].
- None of the existing or “as built” structures infringe on traffic from Main Road or public activity. The double garage meets the provision in order to consider it for approval in lateral- and street building lines.
- The zoning and character of the subject property will remain unchanged.
- Most of the structures have been on the property for approximately 20 years.
- The “as built” structures are further compliant with the provisions of the Zoning Scheme.
- The removal of the title deed conditions is further motivated and accompanied by a conveyancer’s certificate.
- The proposal will have no impact on Municipal Engineering Services, forward planning and land use documents, and planning principles.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	5 February 2020	13 March 2020
Gazette	Yes	14 February 2020	13 March 2020
Notices	Yes	5 February 2020	13 March 2020
Ward councillor	Yes	3 February 2020	13 March 2020
Total comments	Two (2) objections were received		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Department	4/02/2020	No objection. Building plan applications have to comply with National Building Regulations and all other applicable law.
Fire Services	6/02/2020	Annexure E.
Engineering	21/02/2020	Annexure F.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Two (2) objections were received as summarised below (Please refer to the detailed objector's letter attached as Annexure E).

1. Point of comment

Mrs Kirkland (owner of Erven 7600 and 7186) requires that the existing boundary wall that encroaches upon the servitude right of way be removed, the rubble removed and the fence re-erected to the same specification.

Applicant's response

The applicant states that the property owner has consulted with the objector and is willing to remove the wall should the objector (property owner of Erven 7600 and 7186) submit building plans, in order to ensure a collaborative access point which might not require the removal of the entire boundary wall. The applicant also states that the boundary wall does not form part of the application and therefore should not hold up the application at hand. The owner of Remainder Erf 6883 is in continuous consultation with the objector.

Town Planner's response

The servitude right of way is in favour of Erf 7600 therefore the matter is a civil case between the two property owners, however the Municipality cannot approve building plans where structures encroach restrictions made in the Title Deed, therefore any building plan submitted in the future will have to indicate that the boundary wall will be removed.

2. Point of comment

The owner of Erven 7600 and 7186 (Mrs Kirkland) further does not agree with the removal of the title deed restrictions, because the encroachments are many and considerable. The property in question is very small and every metre count.

Applicant's response

The applicant states that the objector (Mrs Kirkland) is not clear with regard to what the objection entails, and therefore will seek to address the concerns of Mrs Kirkland with the proposed response to the objection received from Mr Nel.

Town Planner's response

It should be noted that according to municipal records the Kirkland family was one of the previous owners of Remainder Erf 6883 (2016 to 2019) and therefore the objector (Mrs Kirkland) should be well aware of the encroachments on the property as the encroachments (except for the pergola and the boundary wall) were constructed prior to their occupancy of the property in 2016. The applicant merely seeks to legalise the existing structures which objector (Mrs Kirkland) has enjoyed in the past.

3. Point of comment

Mr Nel (owner of Erf 6302) objects towards removal of the restrictive conditions (specifically 1,57m south-western lateral building line condition) due to the fear that the property owner of Remainder Erf 6883 will develop further vertical extensions unto the garage which will hamper his views and privacy. The objector also states that he does not oppose the retention of the structures which encroaches upon the title deed restrictions however, oppose the removal of the title deed conditions.

Applicant's response

The applicant states that it was proposed by the objector (Mr Nel) to register a notarial servitude in order to protect the objector's privacy and views. However, applicant does not consider the registration of the servitude as it is not the necessary midway. The applicant has the following opinion:

- The objection assumes that alterations could take place, following the previous "owner's" application to build upon the garage, which will impede the objector's view. Currently the objector's view is that of a dense row of wattle trees. The current view is not obstructed by existing structures on Remainder Erf 6883, however there is not much of a view to obstruct.
- It is not the intent of the applicant to extend the "as-built" structures, but rather to retain them, even with the removal of the title deed restrictions.
- The objector approves the existing structures on the boundary. In addition, the Zoning Scheme of the subject property allows for a 0m lateral building line for half the length of the erf boundary.
- The existing structures cannot be retained without the removal of the title deed conditions. To say that objector approves the structures, but does not want the removal of the title deed conditions is contradicting.
- Question which should prevail is whether there are immediate threats, towards the objector, with the approval of the current application, since the objection is based on future possible extension (which is neither proposed nor envisaged at this stage)?
- The objector states that the existing garage and pergola are not the threat with regards to privacy and views – the objector therefore neither stands to lose or

gain by opposing the removal of title deed condition to accommodate existing structures only.

- The proposal is in line with the densification strategies of the area since the proposal promotes development in a location that is sustainable. The proposal will not impact on urban sprawl or upon a sensitive environment.
- The cost to demolish the structures versus the protection of the objector's view must be weighed. The objector supports the current structures and the violation of the objector's privacy is not immediate and remains uncertain, while the applicant will suffer great consequences if these structures were to be demolished.
- The notarial servitude will burden our client's property and prevent the possible resale of the property in future.
- We are of the opinion that the existing unauthorized structures will not undermine or excessively disrupt the character or amenity of the area.
- There is no indication that the existing structures will lead to a reduction in the value of the surrounding area.

To further address the objector's concern it is proposed that a condition be imposed that no further construction or expansion works/additions can take place on the south-western common boundary (garage and pergola portion) of Remainder Erf 6883, or the portion that is of concern towards the objector, without an additional application or without the consent of the owner of the objector (Mr Nel property owner of Erf 6302).

Town Planner's response

The objector's concern is noted, which is the current title deed condition limits future extension on the south-western boundary, which may in future impact on the amenity of the objector's property and views (whatever it may be). It is clear that the objector has submitted a proposal by which he is comfortable with i.e registration of a notarial servitude. However, the applicant does not agree with this approach. To address this, the applicant has suggested that the following condition of approval be inserted: *"that no further construction or expansion works/additions can take place on the south-western common boundary (garage and pergola portion), or the portion that is of Mr Nel's concern, without further application or consent of the owner of the property (Mr Nel)"*. The insertion of the proposed condition into a decision is not supported.

Further, a condition of approval to this effect is not required as the property is General Residential Zone 1 and it is required when a building plan is submitted that the Home Owners Association (HOA) approve the building plan. However, when there is not a HOA established then the adjacent property owners must approve the building plan. In this case there were no HOA established for the General Residential Zone 1 erven in Fir Close and therefore the next door property owners will have to provide consent for the building plans. Hence when new building plans are submitted on Remainder Erf 6883 then the adjacent property owners will be informed and will have to provide their consent.

The impact of the proposed removal is illustrated further below. As illustrated by red rectangle in the picture below the current 1,5m title deed building line only protects a small percentage of the objector's view.

Insert 1

Should the property owner of Remainder Erf 6883 wish to develop up to the red rectangle on first floor he may do so without impacting on the 1,5m, as demonstrated by the blue square.

Further, as demonstrated by the red arrows in the image below, the objector's main view is over his own property, and should the owner of Remainder Erf 6883 develop a second storey on top of the garage then the objector's main view will still be maintained. The largest impact on the objector's views is the large trees on the southern side of the property.

Insert 2

Lastly, it should be noted that Remainder Erf 6883 is developed in Fir Close of which a majority of the erven have the same zoning which is General Residential Zone 1. These erven, as indicated in the green outline below, all have the same characteristic which is semi-detached houses with a 1,5m building line on the one lateral side and a 0m on the other lateral side, with a pergola in front of the garage. Due to the shape of Remainder Erf 6883 the dwelling could not be constructed in a similar fashion and in line with the other dwellings. Considering the development characteristic of the other dwellings it is regarded that the proposal to develop Remainder Erf 6883 with a 0m is in keeping with the character of the area.

Insert 3



8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See comment above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All relevant departments have provided positive comments.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The proposed application is considered consistent in the following manner from a town planning perspective:

Spatial Justice

The proposed application will not further promote the spatial development imbalances. The proposed application is in character with the existing area (Eastcliff) where similar applications have been approved in the past and therefore the approval of the proposed application will not be spatial bias.

Spatial sustainability

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

Efficiency

The proposed application only affects the current property and its immediate neighbouring properties, and therefore has limited impact. Further, the property has been in existence since 1970 and is already developed, and therefore the impact on the biophysical environment will be low.

Spatial resilience

The application will ensure that the existing land resources are utilised in line with the Overstrand Municipality's forward planning documents.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

10.2 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as 10.1 above.

10.3 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The primary uses are in line with the land use parameters in terms of the Zoning Scheme. The proposed application is further in line with the principles of the Overstrand Municipality Wide Spatial Development Framework, 2006 (OMSDF).

10.4 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.5 Impact on Municipal engineering services

No additional municipal services will be required.

10.6 Outcomes of investigations/applications i.t.o. other legislation

N/A

10.7 Existing and proposed zoning comparisons and considerations

The subject property is zoned General Residential Zone 1 and therefore General Residential Zone 1 parameters as prescribed in the Overstrand Municipal Zoning Scheme, 2013, or amended are applicable.

10.8 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

As stated in the motivation it is proposed to remove the following restrictive title deed conditions to accommodate the existing structures on the subject property:

Title Deed T22996/2019, pages 2 - 4, paragraph C.(g) and (f):

“C. To the special conditions contained in the Deed of Transfer No. T2795/1934 imposed by the Mossel River Estate Company Limited for its benefit and that of its successors in title as owners of the remainder of Mossel River West

Township A held by it by the Certificate of Registered Title No. T3907/1932, which read as follows:

- (g) No building shall be erected within one comma five seven (1,57) metres of the common boundary of any Lots in the above Township save where such Lots are owned by one and the same individual.*
- (f) All the buildings being dwelling houses shall be so placed that the front line of such building (including any stoep or porch) shall coincide with the building line laid down by the Transferor. Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The side of every building shall be parallel to the boundaries of the said Lot, unless the transferee or her successors in title be specially exempt by the Transferor in writing. In the case of irregulate Lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor in writing. In the case of irregulate Lots the relation between the sides of the building and the boundaries of the property shall be subject to approval of the Transferor.”*

Title Deed T722996/2019, pages 2-3, paragraph D.(d) and (e)

“D. To the special conditions contained in the said Deed of Transfer No T2795/1934 imposed by the Administrator in approving of the said Mossel River West Township, as amended by Section 6(1) Act 84/1967 which read as follows:

- (d) That all buildings to be erected on the above property shall stand back not less than three comma one five (3,15) metres from the line of the street on which the said Lot abuts. Such space may be used as gardens but shall not be built upon.*

- (e) *That all buildings to be erected on the above property shall stand back not less than six comma three nought (6,30) metres from the line of the street on which the said lot abuts.”*

As stated previously Remainder Erf 6883 is developed in Fir Close. The majority of the erven were subdivided, rezoned and developed (together) and therefore have the same zoning which is General Residential Zone 1. These erven, as indicated in the green outline on **Insert 3**, all have the same characteristic which is semi-detached houses with a 1,5m building line on the one lateral side and a 0m on the other lateral side, with a pergola in front of the garage. Although all the erven were developed with the same manner the title deed restrictions were never removed and stayed in force. However, due to the shape of Remainder Erf 6883 the dwelling and outbuilding could not be constructed in a similar fashion and in line with the other dwellings. As stated by the applicant Remainder Erf 6883 was developed in the early 2000. However, the title deed conditions were not address at that stage even though portions of the approved dwelling were approved and constructed over some of the title deed building lines. Further, previous property owners of Remainder Erf 6883 constructed additions to the dwelling which now also encroach upon title deed and scheme building lines. It is noted, even with the encroachments, the main characteristic of Fir Close is still maintained by the existing dwelling on Remainder Erf 6883.

In view of the above being stated, the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

Will 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?

The property owner will be able to retain the existing structures and to act in accordance with the Zoning Scheme, the removal will therefore benefit the property owner as he will not have to demolish the existing structures.

It is further clear that the restrictive conditions were registered to create a residential character in Eastcliff (Fernkloof/Firclose). However, the current Zoning Scheme has been implemented for the past seven (7) years and building plans and approvals have been supported in line with the current and past Zoning Scheme, and contradictory to the title deed conditions, therefore even if conditions are removed the application at hand will still be in line with the character of the area and the erven which are developed along Fir Close.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition:

The Municipality gains no benefits in keeping or removing the restrictive conditions. Further, the Zoning Scheme provisions maintain the character of the area.

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:

As stated earlier the property owner will be enabled to retain the existing structures, further due to the shape of the property and the location of the property it would not be feasibly possible to retain or construct the dwelling without encroaching upon one of the title deed conditions, for instance the 6,3m street building line.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:

The title deed restrictions are more restrictive than those of the Zoning Scheme, therefore by removing the title deed restrictions the property owner of Remainder Erf 6883 may be able to develop his property in such a manner that it will have marginally greater impact on the next door neighbours.

Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights?

Not all the title deed restrictions will be removed, further the rights enjoyed by the beneficiary (the Municipality) will remain in place since the subject property's zoning will remain zoned as General Residential Zone 1 and the right obtained will be subservient to the zonings and development parameters applicable to the zoning.

Given the abovementioned evaluation the opinion is held that if the restrictive conditions are removed as proposed, it will allow the property owner to develop his property in line with the Zoning Scheme parameters and to mitigate any further additional costs of redeveloping the whole property. The opinion is further held that the proposal is sufficiently evaluated in terms of Section 39(5) of LUPA, 2014 (Act 3 of 2014).

As stated earlier, under the objections, Mr Nel (owner of Erf 6302) is of the opinion that the removal of the title deed restrictive conditions will affect his privacy and views. It should however be noted that objector's main view is across his own property, Remainder Erf 6883 is situated next to objector's property, therefore the objector's main view is still protected. Regarding privacy, it must be noted that all the erven developed along the southern side of Fir Close are developed with a 0m on one side of the boundary which includes a double storey. Therefore, the character and development parameters which were established by the development of the other General Residential Zone 1 zoned properties will be maintained as the proposal is in keeping with the existing character.

Given the abovementioned evaluation the opinion is held that if the restrictive conditions are removed as proposed, it will allow the property owner to maintain the existing structures on his property and to further develop the property in line with the Zoning Scheme parameters. The opinion is further held that the proposal is sufficiently evaluated in terms of Section 39(5) of LUPA, 2014 (Act 3 of 2014).

11. THE DESIRABILITY OF THE PROPOSAL

The applicant seeks to acquire approval for the following proposals:

- ❖ application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions, in order to legalize existing structures, which encroach the building lines of the property, and
- ❖ application for departure in terms of Section 16(2)(b) of the By-Law in order to accommodate the existing structures on the property.

The application is therefore to address the following:

- the covered veranda/balcony that encroaches the 1,57m northern lateral title deed building line, the 3m perimeter eastern lateral building line for the veranda only and the 6,3m street title deed building lines;
- the double garage that encroaches the 5m Main Road street perimeter building line, the 1,57m south-western lateral title deed building line, and the 3,15m and 6,3m street title deed building lines;
- the pergola that encroaches the 1,57m south-western title deed lateral building line, and
- portions of the existing approved dwelling that encroach the 3,15m and 6,3m title deed street building lines.

As stated earlier the subject property is zoned General Residential Zone 1. In normal practice the property would be developed in a private development and a HOA would have been established to enforce and ensure that the development on the property occurs in line with the estate's Architectural Guidelines. However, no HOA was established and no Architectural Guidelines lines can be found for the General Zoned properties (Erven 6302 – 6311, 6881 - 6883, 7185 and 7600). Therefore, the development parameters on the properties default to the base zoning as determined in the Zoning Scheme which is General Residential Zone 1.

It is noted that the placement and encroachments of the existing structure on Remainder Erf 6883 was and is a product of the shape of the property. The main encroachments which are not addressed by previous approved building plans are the balcony and veranda, the double garage and the pergola on the lateral boundary.

- The balcony and veranda below the balcony which is 0,23m from the northern lateral boundary, these structures were approved in terms of the building plans in 1995, however the position was deviated from. A 0m building line is applicable in terms of the Zoning Scheme Regulations (subject to a combined space of 2m between two (2) adjacent buildings).
- The enclosed veranda encroaches upon the 3m perimeter eastern lateral and the 6,3m street title deed building lines.
- A 1,5m lateral building line is applicable in terms of the Title Deed (T22996/2019), [pages 2-4, paragraph C.(g) and (f)]. In addition to this the Title Deed (T22996/2019), [pages 2-3, paragraph D.(d) and (e)] also stipulates a 3,15m and 6,3m street building line, the covered veranda and the balcony encroach the 6,3m street title deed building line, it is therefore requested that the restrictive conditions be removed.

The only person which is affected by the encroachment of the northern internal lateral building line is the property owner of Erf 7600, who according to the Municipality's records were one of the previous property owners of the property and who could also make use of the balcony/veranda and knowing full well of the existing encroachments (except the pergola). Google Street View shows the balcony, dwelling and garage on September 2013. The aforementioned being stated the balcony and veranda are compliant with the zoning parameters on the internal boundary. The boundary walls which were constructed over the right of way servitude will have to be addressed when building plans are submitted.

The impact of the veranda on the 3m perimeter eastern lateral and the 6,3m street title deed building lines is considered minimal due to the adjacent property being commonage (open space) and road usage, and the road surface being 25m from Remainder Erf 6883.

- The double garage was constructed on the south-western boundary of the property as per plans submitted to the Building Department in 1995. The plans were never approved. To accommodate the double garage, it is proposed:
 - to relax the Main Road perimeter street building line from 5m to 1,55m;
 - to remove the 1,5m lateral building line is applicable in terms of the Title Deed (T22996/2019), [pages 2-3, paragraph D.(d) and (e)], and
 - to remove the 3,15m and 6,3m street building line applicable in terms of the Title Deed (T22996/2019), [pages 2-3, paragraph D.(d) and (e)].
- The garage has no windows which will face the adjacent property owner and further the structure will be limited to 4,5m in height and will not be longer than one third of the length of the lateral or street boundary.
- The previous owners constructed a pergola in front of the double garage in order to accommodate the pergola, it is proposed:
 - to remove the 1,5m lateral building line is applicable in terms of the Title Deed (T22996/2019), [pages 2-3, paragraph D.(d) and (e)].
- The pergola is approximately 4,5m long on the boundary and 7,1m in width in front of the double garage, the height of the pergola is less than 2,8m.

The double garage and pergola only affects the adjacent property owner of Erf 6302 (Mr Nel). Although an objection was received from the property owner of Erf 6302, the objector stated that he does not object to the retention of the existing structures. Further, as stated earlier the double garage and pergola is considered to be in line with the character which was developed on the erven zoned General Residential Zone 1 in Fir Close. The objection from the property owner of Erf 6302 is noted and considered, and as stated in the previous sections should a building plan be received for further development then the adjacent property owners will have to provide their support, because there is no HOA established. It is therefore considered that the concern of the adjacent property owner is and can be mitigated.

Considering the aforementioned the retention of the dwelling and existing structures are considered to be in line with the character of the immediate area and will not infringe on or detract from the rights enjoyed by the adjacent property owners. The proposed departures and removal of title deed conditions can be considered desirable.

12. RECOMMENDATION

1. that the comments received are noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the removal of restrictive title conditions C.(g) and (f) and D. (d) and (e) as contained in Deed of Transfer T22996/2019 applicable to Remainder Erf 6883, Hermanus, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law applicable to Remainder Erf 6883, Hermanus in order to accommodate the existing structures on the property, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the approvals in 2. and 3. above be subject to the following conditions:
 - (a) that this approval only relates to the relaxation of the building lines as indicated on Site Plan, plan description: "H6883/2019", drawn by: CHAMCAD (attached as Annexure C);
 - (b) that the removal of the title deed restrictions only relates to Title Deed T22996/2019, [pages 2-4, paragraph C.(g) and (f) and pages 2-3, paragraph D.(d) and (e)];
 - (c) that building plans be submitted to the Building Department for approval, and that any conditions by the Fire- and Building Departments be complied with at that stage;
 - (d) prior to the submission of building plans consent is required from the adjacent property owners for additional work on the subject property;
 - (e) boundary walls encroaching right of way servitude cannot be shown on the building plan submission;
 - (f) that all the conditions of the Engineering Services, (attached as Annexures D), be complied with;
 - (g) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
5. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditions of approval

13. REASONS FOR RECOMMENDATION

- No HOA (Home Owner Association) was established for the General Residential Zone 1 erven along Fir Close, therefore when building plans are submitted the adjacent property owners must provide consent.

- The main characteristic of the General Residential Zone 1 erven along Fir Close are still maintained by the existing dwelling and structures on Remainder Erf 6883. The proposed encroachments are therefore considered non-invasive.
- The proposal will not have a detrimental impact on the character of the surrounding area.
- The objections and concerns have been addressed in this report and in the conditions of approval.
- The application has followed due process.
- The proposal is compliant with the spatial policies of the SDF.
- The proposal is consistent with the spatial principles as set out in SPLUMA and LUPA.

14. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed
Annexure E:	Objections received
Annexure F:	Applicant's comment on the objections
Annexure G:	Comment: Fire Services
Annexure H:	Services Report

SIGNATURE

AUTHOR:

Name: **P ROUX**

SACPLAN Reg No: **A2246/2015**

Signature: _____

Date: _____

REGISTERED PLANNER

Name: **S VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

**PROPOSED DEPARTURE & REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS**

REMAINDER ERF 6883 HERMANUS

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT



1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by S.M. & F.M. Ingles, the owners of Remainder erf 6883 Hermanus, to apply for the departure and removal of restrictive title deed conditions of the subject property.

Remainder erf 6883 Hermanus is 478m² in extent and is held by title deed no. T22996/2019. A copy of the new title deed is not available yet, since the subject property was only registered in the new owners' names on 7 June 2019. A copy of the previous title deed no. T38382/2016 and the concept title deed are attached.

There is an existing double storey dwelling with double garage situated on the subject property. The property was developed in 1995. A building plan, indicating the double garage within the south-western lateral and Main Road street building lines and the covered veranda additions on the northern lateral building line, was submitted to the building department in 1995 but not approved (most probably due to the restrictive title deed conditions). The latter unauthorised building work was undertaken by the developer at the time. In addition, the previous owners also constructed a pergola, new balcony and extended entrance hall on the subject property. The previous owners did not realize that the pergola required an approved building plan. As mentioned above the subject property was transferred to our client

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in June 2019. The new owners want to address all existing unauthorised structures on the subject property.

This application intends to address the following existing unauthorised structures that encroaches the zoning scheme regulations' and title deed building lines:

- The covered verandah / balcony that encroaches the 1,57m northern lateral title deed building line, the 3m perimeter eastern lateral building line (veranda only) and the 6,3m street title deed building line;
- The double garage that encroaches the 5m Main Road street perimeter building line, the 1,57m south-western lateral title deed building line, and the 3,15m and 6,3m street title deed building lines;
- The pergola that encroaches the 1,57m south-western title deed lateral building line;
- Portions of the existing approved dwelling that encroach the 3,15m and 6,3m title deed street building lines.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure (building lines) of Remainder erf 6883 Hermanus;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of the restrictive title deed conditions of Remainder erf 6883 Hermanus.



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3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Remainder erf 6883 Hermanus is situated at 21 Fir Close, Fernkloof, Hermanus. Refer to the locality plan attached.

The subject property is held by title deed No. T22996/2019 and is 478m² in extent. There is a servitude right-of-way registered over the subject property as depicted on SG diagram no 668/1995 that gives access to erf 7186 Hermanus.

The subject property is level sloped and is characterized by residential structures (double storey dwelling with double garage) and garden area. The existing structures have a footprint of ±154m² in extent and a total floor area of ±232m².

3.2 ZONING

Remainder erf 6883 Hermanus has the following land use rights:

ERF NUMBER	ZONING
Re/erf 6883 Hermanus	General Residential Zone 1: Town Housing

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



3.3 LAND USE

There is an existing double storey dwelling with double garage and garden situated on Remainder erf 6883 Hermanus.

Land uses that surround the subject property are town houses, single residential dwellings, public open spaces and public roads.

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3.4 THE POTENTIAL OF THE PROPERTY

The zoning and land use of the subject property will remain unchanged. The location of the subject property within a town house and single residential area allows the property to be developed (in future) for low impact land uses only. The proposed departure and removal of restrictive title deed conditions will not hinder any future land use applications on Remainder erf 6883 Hermanus.

The subject property has the potential and allows for the deviations being applied for since the zoning scheme regulations' general encroachment provisions allows for the positioning of outbuildings (garages) in lateral and street building lines subject to the conditions specified, and the following factors confirm the potential of the property: good quality materials were used, the additions blend in well with the scale of the surrounding built environment, the As Built additions have a low impact on the streetscape (large trees to the east form a buffer between Main Road and the subject property and the garage and pergola are set further back from Fir Close to the west), most structures that encroach the relevant building lines have been in existence since 1995 (except for the pergola that was constructed more recently without building line approval), the neighbour previously consented to the position of the garage on the 0m lateral building line (owner of erf 6302 Hermanus at the time of construction of the garage in 1995 – refer to consent letter from Forsyth & Partners dated 16 November 1995) and to keep the double garage will ensure compliance with the parking requirements for town houses.



3.5 PROPOSAL

The following are proposed:

- The departure (building lines) of Remainder erf 6883 Hermanus in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to:
 - relax the eastern perimeter lateral building line from 3m to 2,16m to accommodate the existing covered veranda on ground floor level;
 - relax the Main Road perimeter street building line from 5m to 3,646m to accommodate the existing covered veranda;
 - relax the Main Road perimeter street building line from 5m to 1,55m to accommodate the existing double garage.
- The removal of the restrictive title deed conditions in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to remove:
 - the 1,57m northern lateral building line to accommodate the existing As Built balcony on first floor and covered veranda on ground floor level on the 0,23m northern lateral building line;
 - the 3,15m and 6,3m street building lines to accommodate the existing double garage on the 1,55m Main Road street building line as well as the portions of the approved dwelling that encroach the title deed street building lines;
 - the 6,3m street building line to accommodate the existing covered veranda and a small portion of the existing balcony;
 - the 1,57m south-western lateral building line to accommodate the existing double garage and existing pergola on the south-western erf boundary (0m south-western lateral building line).

The potential of the subject property is discussed in detail in *Section 3.4 Potential of the property*.

There is an existing double storey dwelling with double garage situated on the subject property. The property was developed in 1995; however, the development was not executed as per the approved building plan. A building plan, indicating the double garage within the south-western lateral and street building lines and the covered veranda additions on the northern and eastern lateral building lines, was



submitted to the building department in 1995 but not approved (most probably due to the restrictive title deed conditions). As a result, the garage was constructed on the south-western lateral erf boundary line, the lean-to roof on the garage was changed to a gable roof and the covered veranda was built over the applicable perimeter building lines.

The latter unauthorised building work was undertaken by the developer at the time. The property changed ownership without amendments to the plans a couple of times since 1995. The previous owners owned the property from 2016 to 2019. In addition to the unauthorised structures already present on the subject property (double garage, covered veranda and new gable roof on the garage), the previous owners also constructed a pergola, new balcony and extended entrance hall on the subject property. These additions by the previous owners are indicated as "new" on the proposed site development plan, but it is in fact also As Built. The new balcony and extended entrance hall do not require any land use approvals (departure or removal of restrictive title deed conditions). The previous owners did not realize that the pergola required an approved building plan and approval for the encroachment of the title deed lateral building line. The subject property was transferred to our client in June 2019. The new owners now want to address all existing unauthorised structures on the subject property as well as approved structures where the title deed restrictions were not removed with previous building plan approval. All the additions addressed in this application already exist and no new additions / alterations by the current property owners are proposed.

Here follows the detail of the proposed departure application for consideration:

1. Covered veranda and balcony

The Overstrand Zoning Scheme Regulations (2013) stipulate that a 3m perimeter eastern lateral building line and a 5m perimeter street building line apply to this GR1 zoned property. An internal 0m lateral building line applies to the northern erf boundary. To accommodate the existing covered veranda an application is submitted for a permanent departure to:

- relax the eastern perimeter lateral building line from 3m to 2,166m.
- relax the Main Road perimeter street building line from 5m to 3,646m.



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The covered veranda is 22,23m² in extent and situated below the approved balcony. The covered veranda is enclosed on the Main Road street boundary side and where it is attached to the existing dwelling as indicated on the ground storey floor layout. Refer to the proposed site plan, floor plans, elevations and sections plan attached.

The existing balcony was approved with the initial building plan approvals in 1995. However, during construction the balcony's position deviated slightly from the approved building plan's position (constructed closer to the northern erf boundary). A 0m internal lateral building line applies to northern erf boundary; however, the removal of the restrictive title deed conditions was not addressed previously to accommodate the balcony at its As Built position within the title deed's lateral building line.

The As Built balcony and covered veranda positioned on the 0,23m northern lateral building line does not occupy more than 50% of the lateral boundary. In addition the adjacent erf (erf 7600 Hermanus) is a vacant portion of land and thus the combined space of 2m between buildings on adjacent land units are also met.

The title deed of the subject property stipulates that 3,15m and 6,3m street building lines as well as 1,57m lateral building lines apply to the subject property. The existing covered veranda and balcony encroach the northern lateral title deed building line of 1,57m. The covered veranda and a small portion of the existing balcony also encroach the 6,3m title deed street building line. Therefore, to accommodate the existing veranda and balcony within the building lines described above, the specific conditions that prohibit the construction of buildings within these building lines must be removed. The removal of the restrictive title deed conditions and the possible impacts are addressed in Section 3.14 of this report.

2. Garage

The existing double garage was constructed on the property by the developer in 1995. Although building plans and the consent from neighbouring erf 6302 Hermanus were submitted to the building department at the time, the building plans were not approved. To accommodate the existing double garage an application is submitted for a permanent departure to:

- relax the Main Road perimeter street building line from 5m to 1,55m

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to accommodate the existing double garage.

A 0m internal south-western lateral building line applies to the existing garage and thus a building line relaxation is not proposed for this erf boundary. The Overstrand Zoning Scheme Regulations (2013) stipulate certain conditions for the consideration of outbuildings and garages within side, rear and street building lines. The height of the garage from the natural ground level to the top of its roof does not exceed 4,5m (height is 4,487m), is not longer than one third of neither the side nor the Main Road street boundary and the garage is not closer than 5m to a road kerb / surface. In addition, there are no windows placed on the south-western lateral erf boundary and no windows or doors placed within 1m from the Main Road street boundary. It is therefore evident that the existing garage meets the requirements for the consideration of the structure within the lateral and street building lines and can be favourably considered.

Refer to the proposed site plan, floor plans, elevations and sections plan attached.

In addition, the title deed of the subject property stipulates that a 3,15m and a 6,3m street building line as well as 1,57m lateral building lines apply to the subject property. The existing double garage encroaches both the 3,15m and 6,3m Main Road street building lines as well as the 1,57m south-western lateral building line. Therefore, to accommodate the existing garage on the 1,554m Main Road street building line and the 0m south-western lateral building line, the specific conditions that prohibit the construction of buildings within these building lines must be removed. The removal of the restrictive title deed conditions and the possible impacts are addressed in Section 3.14 of this report.

3. Pergola

The previous owners constructed a pergola in front of the double garage not knowing that the structure requires an approved building plan and related restrictive title deed condition removal. Although a 0m internal lateral building line applies to the south-western erf boundary of the subject property, a 1,57m title deed lateral building line applies. Thus, to accommodate the existing pergola on the south-western erf boundary, the 1,57m lateral building line restriction in the title deed must be removed. The removal of the restrictive title deed conditions and the possible impacts are

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addressed in Section 3.14 of the report.

The pergola is $\pm 4,5\text{m} \times \pm 7,1\text{m}$ and measures at $\pm 32\text{m}^2$ in extent. The pergola is supported by 2 x 228 x 50mm timber pillar posts. Refer to the proposed site plan, floor plans, elevations and sections plan attached.

4. Existing approved dwelling

The existing dwelling was approved in 1995. Portions of the existing dwelling however encroach the title deed street building lines of 3,15m and 6,3m. The removal of these restrictive title deed conditions was not addressed with the previous building plan approval. The removal of these conditions will not only address the existing unauthorized structures but will also accommodate the portions of the existing dwelling positioned within these title deed street building lines.

5. General

The existing structures on the subject property do not create an infringement to any passing traffic or public activity. There are no windows in the existing garage's southern wall (positioned on the 0m lateral building line) and no windows are placed within 1m from the Main Road street building line. As previously mentioned, the double garages meet the conditions for the consideration of a garage within lateral and street building lines.

The subject property is limited in size. Most of the structures have been on the property for the past ± 20 years and no additions to the existing structures are proposed.

The zoning of Remainder erf 6883 Hermanus will remain unchanged (General Residential Zone I: Town Housing). All buildings as indicated on the site development plan already exist and the application addresses existing structures only. Consequently, the proposed departure and removal of restrictive title deed conditions will not have a greater impact on the surrounding properties.

It is noteworthy that the existing double storey dwelling is visible from the street (Fir Close) and the neighbouring properties. It is however submitted that the massing and



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height of the existing building will remain unchanged. The impact on the adjacent property owners and the passers by will therefore be marginally higher than if these structures did not exist.

The area schedule and coverage for the subject property are as follows:

TOWN PLANNING REQUIREMENTS			
ZONING: GENERAL RESIDENTIAL GR1 : TOWN HOUSING ZONE 1			
	NEW	EXISTING	COVERAGE
GROUND STOREY		95.51m ²	95.51m ²
GARAGE		33.75m ²	33.75m ²
COVERED VERANDA		22.23m ²	22.23m ²
EXTENDED ENTRANCE HALL	2.5m ²		2.5m ²
FIRST STOREY		66.97m ²	
NEW BALCONY	10.30m ²		
EXISTING BALCONY		13.7m ²	
TOTAL	12.8m ²	232.16m ²	153.99m ²
LOT SIZE : 478M²			32%

Additions undertaken by the previous owners are indicated as "new" on the proposed site development plan and in the table above, but it is in fact also As Built new structures.

The total footprint, of all the As Built structures, does not exceed the maximum allowable coverage of 50% for GR1 zoned properties.

It is submitted that the existing structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed departure and removal of restrictive title deed conditions application, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.



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The proposed departure and removal of restrictive title deed conditions of Remainder erf 6883 Hermanus are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.6 ECONOMIC IMPACT

The proposed building line deviations and removal of restrictive title deed building lines are to accommodate the existing structures on the subject property only. No additions or new structures are proposed for Remainder erf 6883 Hermanus. The proposed departure and removal of restrictive title deed conditions will allow the owners to legalise all existing structures and this will favour the resale of the property in the future and have a positive impact on the adjacent properties (with no more structures being illegally present on the subject property once approved).

The approval of these structures will save our clients the cost of demolishing these structures and constructing it new elsewhere on the subject property. The proposed building line deviations and removal of restrictive title deed conditions will therefore have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departure and removal of restrictive title deed conditions will have a positive impact on the social status quo of the area.

The impact that the proposed development will have on the social wellbeing of the surrounding community will only be beneficial and no negative impacts are anticipated.

It is submitted that the As Built additions are compatible with the character of the area and do not impact negatively on the rights of anyone else.



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3.8 COMPATIBILITY WITH SURROUNDING LAND USES

The subject property is situated in an existing low to medium density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposed departure and removal of restrictive title deed conditions application is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties are for permanent residences and holiday houses. The scale of the existing dwelling with additions and outbuilding (garage) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, the As Built additions to the subject property will contribute towards the value of the subject property and consequently have a positive impact on the area as a whole. It is therefore submitted that the proposed encroachments are compatible with the character of the area and do not impact negatively on the rights of anyone else.

There is no impact on the streetscape from Main Road. Since the existing garage and pergola are set back quite a distance from internal Fir Close, the impact on the Fir Close streetscape is also kept to a minimum.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

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

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



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3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed departure and removal of restrictive title deed conditions will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that one family will continue to occupy the subject property. The existing As Built structures to be accommodated with a departure will not be used as habitable areas and thus the impact on the adjacent properties will be kept to a minimum.

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

3.11 IMPACT ON HERITAGE

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for the departure and removal of restrictive title deed conditions do not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Remainder erf 6883 Hermanus is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

The existing structures on the subject property are not older than 60 years. Furthermore, the existing structures will remain unchanged, except for the As Built additions to the existing structures as described in this report. 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.



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In the light of the above mentioned it is evident that the proposed departure and removal of restrictive title deed conditions will not have a negative impact on the heritage value of the Fernkloof or Greater Hermanus area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to Remainder erf 6883 Hermanus will remain unchanged and will be from Fir Close. No new access points are proposed. Refer to the site development plan indicating the position of the access gate.

The Overstrand Zoning Scheme Regulations (2013) stipulate that a minimum of two parking bays are required for a town housing dwelling unit. Provision is made for a double garage on Remainder erf 6883 Hermanus as indicated on the site development plan. The town house on Remainder erf 6883 Hermanus therefore complies with the minimum parking requirements.

The subject property will still be used for town housing purposes only and therefore the impact on the traffic flow in the area will remain unchanged.

3.14 TITLE DEED

Title deed no. T22996/2019 has title deed conditions that prohibit the existing As Built balcony and covered veranda, the existing double garage, a portion of the existing



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dwelling and the existing pergola. Refer to a copy of the conveyancer's certificate compiled by H.L. van Zyl dated 6 August 2019. Application is therefore made for the removal of restrictive title deed conditions.

It is proposed to remove the following restrictive title deed conditions to accommodate the existing structures on the subject property:

Title deed no. T722996/2019, pages 2-4, paragraph C.(g) & (f):

C. *To the special conditions contained in the Deed of Transfer No. T2795/1934 imposed by the Mossel River Estate Company Limited for its benefit and that of its successors in title as owners of the remainder of Mossel River West Township A held by it by the Certificate of Registered Title No. T3907/1932, which read as follows:*

- (g) *No building shall be erected within one comma five seven (1,57) metres of the common boundary of any Lots in the above Township save where such Lots are owned by one and the same individual.*
- (f) *All the buildings being dwelling houses shall be so placed that the front line of such building (including any stoop or porch) shall coincide with the building line laid down by the Transferor.*

Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The side of every building shall be parallel to the boundaries of the said Lot, unless the transferee or her successors in title be specially exempt by the Transferor in writing. In the case of irregulate Lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor in writing. In the case of irregulate Lots the relation between the sides of the building and the boundaries of the property shall be subject to approval of the Transferor.

Title deed no. T722996/2019, pages 2-3, paragraph D.(d) and (e):

D. *To the special conditions contained in the said Deed of Transfer No T2795/1934 imposed by the Administrator in approving of the said Mossel River West Township, as amended by Section 6(1) Act 84/1967 which read as follows:*

- (d) *That all buildings to be erected on the above property shall stand back not less than three comma one five (3,15) metres from the line of the street on which the said Lot abuts. Such space may be used as gardens but shall not be built upon.*
- (e) *That all buildings to be erected on the above property shall stand back not less than six comma three nought (6,30) metres from the line of the street on which the said lot abuts.*



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Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition":

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

The removal of the restrictive conditions intends to increase the use rights of the property to permit an existing double garage, pergola, covered veranda, approved balcony and approved dwelling on the subject property. The value of the rights is vested in the owners of the property. The properties in whose favour the conditions are registered do not enjoy any financial or other value. The removal of these conditions will consequently have no impact on the favoured properties. Property owners not seeking that the title deed building line restrictions should be in line with the zoning scheme regulations' restrictions will favour the restrictive title deed conditions since the conditions impede the development of a residential property in line with the zoning scheme. The existing As Built development is not an unusually large-scale form of development and no habitable structures within the building lines are proposed.

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

The conditions were imposed by the Administrator for the benefit of the surrounding township. The only personal benefit to the holder is that the property is more restricted in terms of developing outbuildings and associated structures on the subject property.

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

The removal of the restrictive title deed conditions will bring about personal benefits to the land owners since it will allow them to legalise the existing structures that will in turn benefit the value and resale of their property in future. The 6,3m street building line as stipulated in the title deed has a negative impact on the developable area of the land since the property abuts two streets and to demolish the existing structures to adhere to this street building line is not feasible. It will also allow them to develop within the



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scheme regulations' building lines for any future developments on the subject property. They will be able to enjoy the personal benefits of the existing double garage (safety for vehicles), the covered veranda (for recreational purposes) and pergola (additional parking space and aesthetical value).

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

The social benefit if the title deed conditions were to remain unchanged would be that the character of Fir Close will remain unchanged. If the conditions remain unchanged, the owners must adhere to the title deed building lines. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed building lines are more restrictive than the scheme regulations' building lines.

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

The removal of these conditions will allow the scheme regulations' building lines to set the rules for future development on the subject property (if any). The social benefit will therefore only be to the property owners of erf 6883 Hermanus since it will allow them to keep the existing unauthorised structures on the subject property.

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

The removal of the restrictive conditions will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the existing structures and future additions (if any) within the scheme regulations' building lines with departures where applicable. The latter is considered to be more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area.

There is a bond registered against Remainder erf 6883 Hermanus. The bondholder's consent dated 12 August 2019 is attached.



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3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2006)* earmarks the area where Remainder erf 6883 Hermanus is situated, for residential purposes. Refer to the Spatial Development Framework Plan (2006) attached. The zoning and use of the subject property will remain unchanged (General Residential Zone I; Town House for town housing use). As a result, the impact of the proposed departure and removal of restrictive title deed conditions on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2006).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that Remainder erf 6883 Hermanus forms part of Planning Unit no. 8. The aforementioned planning unit is not earmarked for densification purposes. The status quo of the area will remain unchanged with regards to the density since no additional portions or second dwelling units are proposed. The land use application for the subject property therefore falls within the existing planning for the Hermanus area.

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

The impact on the overall density of this part of Hermanus will therefore be kept to a minimum since the proposed application still promotes a low to medium density residential area.

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



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3.16 PLANNING PRINCIPLES

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

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1995.

This principle addresses the need to address the past imbalances regarding opportunity. This application is for an erf as per the establishment of the existing Hermanus Township and this principle does therefore not apply to this application.

Spatial sustainability: Since it is not proposed to alter or demolish the existing structures on the subject property the proposed departure and removal of restrictive title deed condition will have no impact on the visual elements of the subject property and surroundings. It is submitted that the existing As Built structures are compatible with the character of the area and do not impact negatively on the rights of anyone else. The impact on the biophysical environment will also be kept to a minimum. The subject property has the potential and allows for the deviations being applied for since the zoning scheme regulations' general encroachment provisions allows for the positioning of outbuildings (garages) in lateral and street building lines subject to the conditions specified, good quality materials were used, the additions blend in well with the scale of the surrounding built environment, the As Built additions have a low impact on the streetscape (large trees to the east form a buffer between Main Road and the subject property and the garage and pergola are set further back from Fir Close to the west), most structures that encroach the relevant building lines have been in existence since 1995 (except for the pergola that was constructed more recently without building line approval), the neighbour previously consented to the position of the garage on the 0m lateral building line (owner of erf 6302 Hermanus at the time of construction of the garage in 1995) and to keep the double garage will ensure compliance with the parking requirements for town houses. All the aforementioned allows for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area.



Plan Active Town & Regional Planners

As discussed in this report the visual impact of the As Built additions is minimal and it is therefore submitted that the existing structures are compatible with the character of the area and will not impact negatively on the existing rights of anyone else.

Efficiency: The subject property is easily accessible and conveniently located close to the Hermanus CBD area and major routes. The massing and height of the renovated dwelling will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built additions to the subject property since it ensures sufficient parking on site, it is compatible with the existing built environment and the manner in which the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing As Built structures by approving the proposed departure and removal of restrictive title deed conditions of Remainder erf 6883 Hermanus instead of demolishing the existing structures.

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

Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016.



Plan Active Town & Regional Planners

4. RECOMMENDATION

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

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and land use of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations' building lines and the removal of restrictive title deed conditions are to accommodate the As Built structures only. No new structures are proposed;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- To keep the existing double garage in its current position will ensure that sufficient parking bays are provided on site for the existing town house;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013).

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



ANNEXURE C 1/2

GENERAL NOTES

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE SANS STANDARDS REFERRED TO IN THIS DRAWING.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AUTHORITIES.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.
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9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.
10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.

CONTRACT NOTES

1. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.
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10. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY INFORMATION FROM THE APPLICABLE AUTHORITIES.

TIME TABLE

NO.	DESCRIPTION	START DATE	END DATE	STATUS
1	FOUNDATION	15/01/2024	31/01/2024	COMPLETE
2	STRUCTURE	01/02/2024	15/02/2024	COMPLETE
3	MECHANICAL	16/02/2024	31/02/2024	COMPLETE
4	ELECTRICAL	01/03/2024	15/03/2024	COMPLETE
5	PLUMBING	16/03/2024	31/03/2024	COMPLETE
6	PAINTING	01/04/2024	15/04/2024	COMPLETE
7	LANDSCAPING	16/04/2024	31/04/2024	COMPLETE
8	FINAL INSPECTION	01/05/2024	15/05/2024	COMPLETE
9	HANDOVER	16/05/2024	31/05/2024	COMPLETE

CLIENT: CAROLINA & MEGAN LEU PREZ

PROJECT: ANNEXURE C 1/2

PROPOSED PLAN FOR CIVIL WORK:

PROPOSED MECHANICAL WORK:

PROPOSED ELECTRICAL WORK:

PROPOSED PLUMBING WORK:

PROPOSED PAINTING WORK:

PROPOSED LANDSCAPING WORK:

PROPOSED FINISHES:

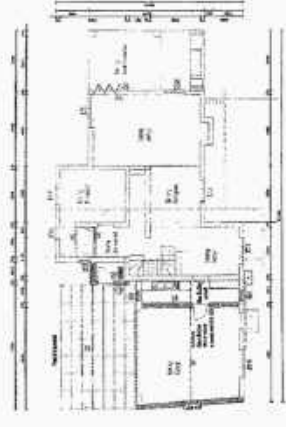
PROPOSED MATERIALS:

PROPOSED FINISHES:

PROPOSED MATERIALS:

PROPOSED FINISHES:

PROPOSED MATERIALS:



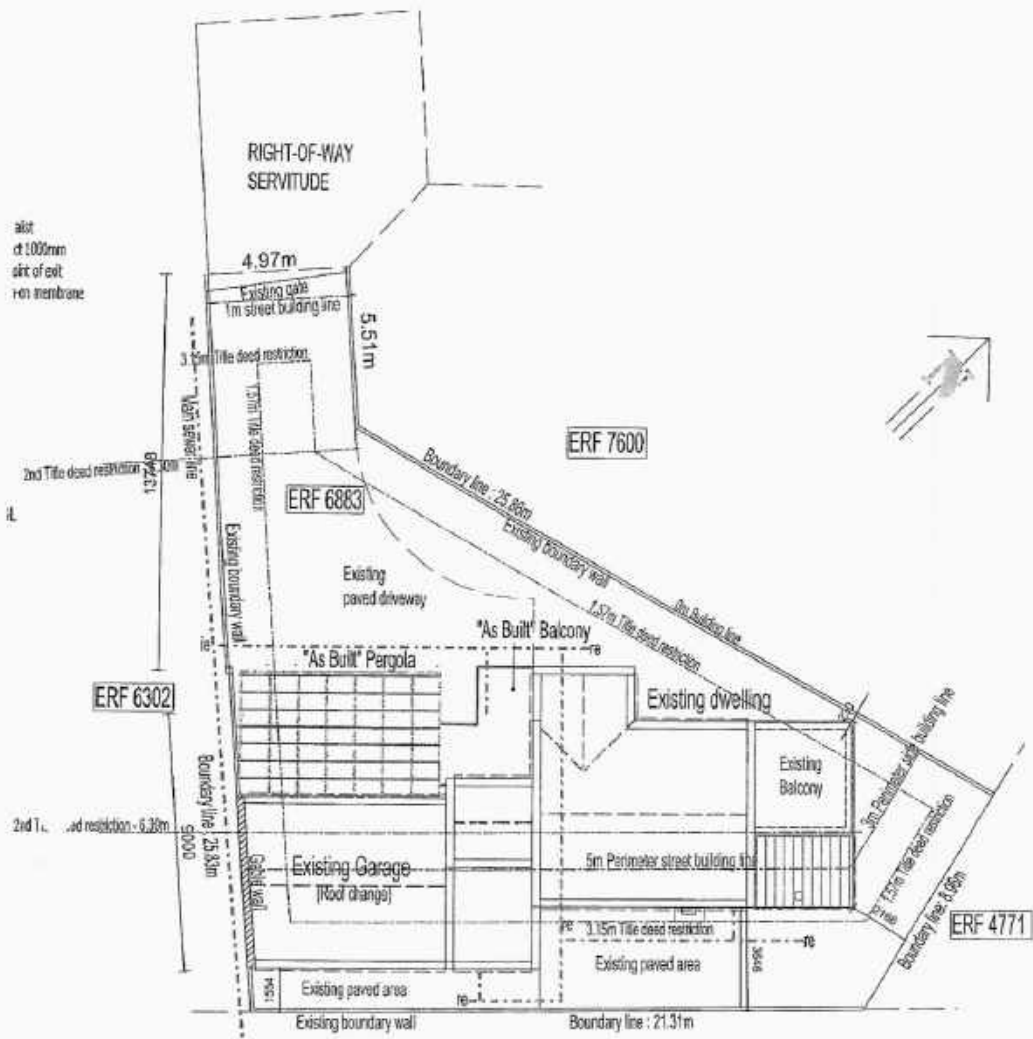
- KEY TO SYMBOLS:**
1. FINISHES TO BE USED
 2. MATERIALS TO BE USED
 3. FINISHES TO BE USED
 4. MATERIALS TO BE USED
 5. FINISHES TO BE USED
 6. MATERIALS TO BE USED
 7. FINISHES TO BE USED
 8. MATERIALS TO BE USED
 9. FINISHES TO BE USED
 10. MATERIALS TO BE USED

PROPOSED MECHANICAL WORK

NO.	DESCRIPTION	START DATE	END DATE	STATUS
1	FOUNDATION	15/01/2024	31/01/2024	COMPLETE
2	STRUCTURE	01/02/2024	15/02/2024	COMPLETE
3	MECHANICAL	16/02/2024	31/02/2024	COMPLETE
4	ELECTRICAL	01/03/2024	15/03/2024	COMPLETE
5	PLUMBING	16/03/2024	31/03/2024	COMPLETE
6	PAINTING	01/04/2024	15/04/2024	COMPLETE
7	LANDSCAPING	16/04/2024	31/04/2024	COMPLETE
8	FINAL INSPECTION	01/05/2024	15/05/2024	COMPLETE
9	HANDOVER	16/05/2024	31/05/2024	COMPLETE

PROPOSED MECHANICAL WORK
SCALE 1:50

PROPOSED MECHANICAL WORK INCLUDED - GRAND ENTRY



MAIN ROAD

SITE PLAN
SCALE 1:200

Richards Attorneys
35 Barnard Road
Gansbaai
7220

Prepared by me

J. Alida Booyens
CONVEYANCER
JACORINE ALIDA BOOYENS

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R 3 650 000,00	R 1 588,00
Reason for exemption	Category Exemption	Exemption (i.e. Sec/Reg Act/Proc)

~~VIR ENDOORSEMENTE KYK BLADSY
FOR ENDORSEMENTS FEE PRICE~~ **6**

T 000022996/2019

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

JACORINE ALIDA BOOYENS *Johannes Hendrik Blaauw* 11

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney signed at Cape Town on 15 April 2019, by

SHEREE DU PREEZ she being duly authorized thereto in terms of a Special Power of Attorney signed at HERMANUS dated 28 December 2018 and granted to her by

1. CARLOUX DU PREEZ
Identity Number 881121 5008 089
Married out of community of property
2. MEAGAN DU PREEZ
Identity Number 860728 0004 080
Married out of community of property

DATA / VERIFY
10-05-2019
TAMARA MASIU

DATA / CAPTURE
10-05-2019
FATGEYAH LARNEY

B

Page 2

And the appearer declared that his said principal had, on 5 April 2019, truly and legally sold by Private Treaty, and that he, the said appearer, in this capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **SEAN MICHAEL INGLES**
Identity Number 761230 5057 080
Married out of community of Property
2. **FIONA MORAG INGLES**
Identity Number 750506 0116 085
Married out of community of Property

their Heirs, Executors, Administrators or Assigns, in full and free property

REMAINDER OF ERF 6883 HERMANUS
IN THE OVERSTRAND MUNICIPALITY DIVISION CALEDON,
PROVINCE OF THE WESTERN CAPE.

IN EXTENT 478 (FOUR HUNDRED AND SEVENTY EIGHT) Square metres

FIRST TRANSFERRED by Deed of Transfer Number T28598/1990 with Diagram SG No. 668/95 relating thereto and held by Deed of Transfer Number T38382/2016

SUBJECT

- A. To conditions referred to in Certificate of Consolidated Title No. T9445/85;
- B. To the special condition contained in the Amended Title granted under the provisions of Act No 9 of 1879 on 22 November 1904 (Caledon Quits. Vol 10 No 19) reading:
"That the land granted thereby shall be subject to all such duties and regulations as either are already or shall in future be established with regard to such lands"
- C. To the special conditions contained in the Deed of Transfer No. T2795/1934 imposed by the Mossel River Estate Company Limited for its benefit and that of its successors in title as owners of the remainder of Mossel River West Township A held by it by the Certificate of Registered Title No. T3907/1932, which read as follows:
 - (a) The Transferor reserves to itself the sole right at any time to all Hotels and all Liquor Licences within the township and neither the Transferee and her successors in title nor the Lessee or occupier of the above Lot shall erect thereon any Hotel or hold any Liquor Licence in respect thereof without the written consent of the Transferor first had obtained.
 - (b) The Transferor reserves to itself the right at anytime hereafter to the free and undisturbed passage of electric, telegraph or telephone wires over or upon any portion of the Lot herein described with the further right of causing them to be affixed to any or erection thereon, not less than 3,05 metres from the ground, with right of access at any time to such wires for the purpose of removal replacement or maintenance.
 - (c) The Transferor reserves to itself the right at any time hereafter to lay and maintain piping for the conveyance of electric, telephone, or telegraph wires,

Page 3

water or drainage under any portion of the said Lot, at all times to have access thereto for removal, maintenance, extension, or any other purpose and to do all such acts and things as shall be required for the convenience of the inhabitants of the Township.

- (d) There shall not be erected on the said Lot any building designed for the purpose of a Boarding House or Lodging House of flats nor shall the Transferee or her successors in title be permitted to carry on the business of a Boarding or Lodging House keeper without the consent, in writing, of the Transferor first had and obtained. No building of more than two storeys in height may be erected on the above Lot without the consent of the Transferor in writing.
- (e) There shall not be erected on said Lot any buildings the plans and specifications of which have not been submitted to and approved by the Transferor in writing prior to the commencement of building operations.
- (f) All the buildings being dwelling houses shall be so placed that the front line of such building (including any stoep or porch) shall coincide with the building line laid down by the Transferor.

Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The side of every building shall be parallel to the boundaries of the said Lot, unless the transferee or her successors in title be specially exempt by the Transferor in writing. In the case of irregular Lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor in writing. In the case of irregular Lots the relation between the sides of the building and the boundaries of the property shall be subject to approval of the Transferor.

- (g) No building shall be erected within one comma five seven (1,57) metres of the common boundary of any Lots in the above Township save where such Lots are owned by one and the same individual.
 - (h) The Transferor reserves to itself the sole right to all water arising on or flowing over the properties Highfield or Fernkloof, as also to all water flowing down the stream known as Mossel River, or any tributary thereof, also to all riparian rights or other rights to water of every description to which the properties Highfield, Fernkloof or Annex Highfield may be entitled. There shall, however, be excluded from this reservation any water obtained by the Transferee or her successors in title within the Township by means of wells or boreholes sunk on the said Lot.
 - (i) No obligation shall rest upon the Transferor under any circumstances to construct, repair or maintain any streets laid down in the plan of the Township, save, that it shall provide practical roadway access to the said Lot.
- D. To the special conditions contained in the said Deed of Transfer No T2795/1934 imposed by the Administrator in approving of the said Mossel River West Township, as amended by Section 6(1) Act 84/1967 which read as follows:
- (a) That the above Lot be used for residential purposes only.
 - (b)
 - (c)
 - (d) That all buildings to be erected on the above property shall stand back not less than three comma one five (3,15) metres from the line of the

Page 4

street on which the said Lot abuts. Such space may be used as gardens but shall not be built upon.

- (e) That all buildings to be erected on the above property shall stand back not less than six comma three nought (6,30) metres from the line of the street on which the said lot abuts.

E. To the following conditions contained in certificate of Registered Title No T53703/88 imposed by the Administrator in terms of Section 9 of Ordinance No 33/1934 when approving the subdivision:

- (a) the owner of this erf shall without compensation, be obliged to allow gas mains, electricity, telephone and television cables and/or wires and main and/or other water pipes and the sewage and drainage including stormwater of any other erf or erven to be conveyed across this erf, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon if considered necessary by the local authority in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering removing or inspecting any works connected with the above.
- (b) The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
- (c) The owner of this erf must -
Maintain so much of the support for any wall, roof, pipe, gutter, wiring or other structure or thing as in common to such erf and any other erf. Maintain every part of such wall, roof, pipe, gutter, wiring or other structure or thing which is on or traverses his erf, and permit access to his erf for the purpose of maintaining, cleaning, renovating, repairing, renewing, altering and adding to any wall, roof, gutter, wiring or other structure or thing and shall not do anything which will prevent or hinder any such access or work from being done.

The owner of his erf shall not make any alterations, additions or demolitions to any part of the building erected on the property including boundary walls and fences, and he shall also not change the external colour scheme or materials if such building without the written consent of the Local Authority, nor shall he permit the external appearance of the buildings to deteriorate in an untidy or dirty condition.

F. SUBJECT FURTHER to the following condition of Deed of Transfer No. T28598/90 reading as follows:

Remainder

By T8879/96 the remainder within mentioned property measuring 478 square metre is subject to a servitude Right of Way area represented by figure DFGHE on Diagram SG No. 671/95 in favour of Erf 760-Hermanus: in extent 455 square metres thereby transferred. ^{T600}
AS will more fully appear from the aforesaid deed." V.
S

Page 5

WHEREFORE the said Appearer, renouncing all rights and title which the said

1. CARLOUX DU PREEZ, Married as aforesaid
2. MEAGAN DU PREEZ, Married as aforesaid

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

1. SEAN MICHAEL INGLES
2. FIONA MORAG INGLES

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R3 650 000,00 (THREE MILLION SIX HUNDRED AND FIFTY THOUSAND RAND) .

IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 7 June 2019.




 q.q.

In my presence



 REGISTRAR OF DEEDS

6

VERBIND MORTGAGED	
VER FOR R 2392000,00	
B 000014349/2019	
04 JUL 2019	REGISTRATEUR/REGISTRAR



TP. n. / heart
(H. Olivier)

PO Box 5307
Brandwacht
Worcester
6862
24 Februarie 2020

Overstrand Munisipaliteit
Hermanus Administrasie
Posbus 20
Hermanus
7200

FILE NO:	EF 6883
	Estadiff ✓
SCAN NO:	HEC 6883
COLLABORATOR NO:	1387125

Vir Aandag: Die Munisipale Bestuurder

Besware teen die aansoek om opheffing van die 1.57m Suid Westelike laterale bou lyn, beperkende titelakte voorwaardes en afwyking van restant Erf 6883 om die bestaande dubbel garage en pergola te akkomodeer.

Ek, Jacobus Petrus Nel, ID 6504045089088, as eienaar van Erf 6302, staan die aansoek teen om die regulasie te verslap rondom die dubbele motorhuis wat die 1.57 Meter Suid Westelike laterale titelakte boulyn oorskry.

Ek kan ongelukkig nie die voorgestelde verslapping of verwydering van die beperkende titelakte voorwaardes en afwyking oor restant erf 6883 goedkeur nie. Met die verslapping of afskaffing sal dit 'n geleentheid bied vir latere bou en veranderinge op die motorhuis wat op die 0 Meter laterale boulyn is.

Die vorige eienaar van Erf 6883 het reeds planne opgetrek om bo-op die garage op te gaan, maar is gelukkig gestuit deurdat die planne nie goedgekeur is nie. Ek glo dat destyds toe die vorige eienaar van Erf 6302 goedkeuring verleen het vir die 0 Meter boulyn, daar ook geen bouwerk bo op die garage geantipiseer of beplan is nie, maar daarna is dit wel beplan.

Erf 6883 kan die nie goedgekeurde struktuur, garage en pergola behou, maar ons kan ongelukkig nie goedkeuring gee vir die verslapping van die beperkende titelakte nie.

Wat gaan eienaar van Erf 6883 verhoed om bo-op sy garage te bou, asook om uit te bou op sy pergola, indien die verslapping goedgekeur word?

Dit dring in op my privaatheid, en gaan my uitsig erg beperk. Ek maak ten sterkste beswaar teen die aansoek om opheffing van beperkende titelakte voorwaardes.

By voorbaat dankie.

Die Uwe

JP Nel

26 FEB 2020

Alida Conradie - Objections to Application

6883 PNC

From: Ruth Kirkland <ruthk@afrikatikkun.org>
 To: "aconradie@overstrand.gov.za" <aconradie@overstrand.gov.za>
 Date: 2020/03/06 05:50 PM
 Subject: Objections to Application
 Cc: Liezl Potgieter <liezlpotgieter@overstrand.gov.za>



Sir

TP. n/thead
(17.01.20)

I have received your documents of 5 February 2020 regarding Erf 6883 Hermanus.

Before I deal with your request you need to know about further unauthorised infringement on the part of the previous owners which impacts my plot quite considerably.

On Friday 18 October 2019 I met Ms Liezl Potgieter, building inspector for the Overstrand Municipality, at my plot adjacent to 21 Fir Close and have been in touch with her since. The fence that we had erected years ago along the boundary line of our property had been torn down and left lying behind a solid brick wall which was then constructed on the border of my property. This was totally unauthorised – no discussion whatever had ever taken place. This wall blocks off all access to my plot 7600 and also encroaches the access of Erf 7185 which also belongs to me. I have never met the previous owners. Their behaviour is arrogant and disrespectful. Ms Potgieter consulted the records and confirmed that the wall goes 8.6 metres over the servitude. The previous owners claim not to have realised about authorisation regulations regarding the pergola – they cannot claim likewise for ignoring my boundary fence. They clearly had an attitude of riding rough shod over neighbours and regulations. I once had to telephone them from Johannesburg about abuse of my empty plot.

Regarding your letter, I do not at this stage agree to the removal of the title deed restrictions because the encroachments are many and considerable. The erfs concerned are very small and every metre counts – in this case there are many metres involved. (Indeed some of the erfs in the area are only about 10 metres wide and you speak of encroachments of up to 6.3 metres).

Secondly I reserve my right of objection as indicated two paragraphs up from this paragraph, until the full picture is given of how this affects the other properties in the area. I would certainly like to come to an amicable solution with the present owners as they didn't cause the infringements but I wish to avoid compromising the developmental aspect of the other little plots.

I look forward to hearing from you.

Faithfully
Ruth Kirkland

FILE NO:	6883
	Costiff ✓
SCAN NO:	
COLLABORATOR NO:	1394006

- 9 MAR 2020

PLAN Town & Regional Planners
Stads- en Streeksbeplanners
Active

TP. A. Ancoot
(H. Oliva)



Our reference: PA19039/ML
Your reference: 6883 HEC
Application ID: 3312/2019

20 MAY 2020

**THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200**

FILE NO:	6883
	East Cliff Hermanus
SCAN NO:	0.3
COLLABORATOR NO:	1413760

FOR ATTENTION: MR SCHALK VAN DER MERWE

Sir

**PROPOSED DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS:
REMAINDER ERF 6883 HERMANUS**

- **S.M. & F.M. INGLES**

Reference is made to our application dated 15 August 2019 and your letter with objections attached thereto dated 24 March 2020.

Two objections were received from the public. Our client approached both the objectors to determine if they couldn't perhaps meet each other halfway.

Mrs Kirkland (owner of erven 7600 and 7186 Hermanus) would like the boundary wall that encroaches the servitude right-of-way to be removed. The wall does however not form part of the application procedure and as a result it should not hold up the land use application at hand. Her request is that the illegal wall needs to be broken down, the rubble removed, and the fence re-erected (to the same specification as the existing fence) down to where her and our client's properties' meet. Our client (Mr Sean Ingles) understands that this is a matter that needs to be resolved in future. Mr Ingles has been in contact with Mrs Kirkland in this regard. Our client is prepared to demolish the wall or change it when there are building plans being drafted for Mrs Kirkland's property. Demolishing the wall now will not necessarily achieve anything. Future development of the site might have a collaborative access that could require only a section of the wall being demolished. It would be irrational to do so now.

Mrs Kirkland has requested some clarification of the points in the application document that she received per registered mail before she considers the land use application matter further. Our client is in continuous consultation with Mrs Kirkland to resolve her concerns and / or request the

Divine Inspiration Trading 329 (Pty) Ltd, trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

John Mc Lachlan: Ndiq (Town Planning) Tech Witwatersrand, MSAPI
Pauline Spronk: B (Soc Sc) U.S., BA Hon (UNISA)
Meriké Lenn: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

withdrawal of her objection. Her objection with regards to the departure and removal of restrictive title deed conditions reads as follows:

"Regarding your letter, I do not at this stage agree to the removal of the title deed restrictions because the encroachments are many and considerable. The erf's concerned are very small and every metre count – in this case there are many metres involved. (Indeed, some of the erf's in the area are only about 10 metres wide and you speak of encroachments of up to 6.3 metres)."

Since Mrs Kirkland is not specific in her objection raised, it proves to be difficult to fully address her exact concerns. We will therefore attempt to address her concerns with our response to the other objector / neighbour (Mr J.P. Nel) as well.

Our client approached Mr J.P. Nel (owner of the adjacent erf 6302 Hermanus) to get his objection withdrawn. Mr. Nel's objection is based on the removal of the 1,57m south-western lateral building line condition from the title deed to accommodate the existing double garage and existing pergola on the south-western erf boundary (0m south-western lateral building line). From Mr Nel's objection letter it is however evident that he does not oppose the existing unauthorized structures (garage and pergola) on the common boundary with his property, but rather any **future development** that may occur on the 0m, if this specific title deed condition is removed. We quote from his objection letter:

"Erf 6883 kan die nie-goedgekeurde struktuur, garage en pergola behou, maar ons kan ongelukkig nie goedkeuring gee vir die verslapping van die beperkende titelakte nie. Wat gaan eienaar van Erf 6883 verhoed om bo-op sy garage te bou, asook om uit te bou op sy pergola, indien die verslapping goedgekeur word? Dit dring in op my privaatheid, en gaan my uitsig beperk. Ek maak ten sterkste beswaar teen die aansoek om opheffing van beperkende titelakte voorwaardes."

During our client's correspondence with Mr Nel, Mr Nel's attorney suggested a notarial deed of servitude to be registered to protect Mr Nel's privacy and views from any future development on the south-western erf boundary (common boundary between erven 6883 and 6302 Hermanus). Our client discussed this proposal with his own attorney, and it was concluded that a notarial deed of servitude is not necessarily the midway and will at this stage not be considered in this case. We are of the opinion that the existing structures (garage and pergola) on the common (south-western) boundary with Mr Nel can be considered for the following reasons:

- The core of Mr Nel's objection assumes that alterations could take place, following the previous owners' application to build above the garage, that would have impeded his view. Our client wants to ensure that there is a clear description of what Mr Nel's current view is. He currently looks into a dense row of wattle trees. Therefore, our client wants to ensure that the municipality is aware that there is currently no obstruction and there is not much of a view to obstruct.
- The application is only rectifying the errors of two previous owners, the current as-built situation is not intended to be extended even if the restrictions are lifted.
- Mr Nel approves of the existing structures on the 0m south-western lateral building line. In addition, the zoning of the subject property allows for a 0m lateral building line for half the length of the erf boundary.
- The existing structures cannot be accommodated without removing the title deed condition. To say that he approves of the structures but simultaneously does not approve of the removal of the title deed condition is therefore contradicting.
- The question should be asked whether there are any immediate threats to Mr Nel by just approving the existing structures since his objection is based on possible future additions (which is neither proposed nor envisaged at this stage)?
- By his own admission the existing garage and pergola is not the threat with regards to privacy and views – Mr Nel therefore neither stands to lose or gain by opposing the removal of the title deed condition to accommodate existing structures only.

- The proposal to remove the title deed condition to accommodate the existing garage and pergola is in line with the densification strategies of the area since the proposal promotes development in a location that is sustainable. The proposed departure and removal of restrictive title deed conditions are to an improved erf within an established residential area and therefore will not impact on urban sprawl or upon a sensitive environment.
- The relative value of protecting the view of Mr Nel versus the cost that our client must incur to demolish the unauthorized structures (pergola and garage) must be weighed. As indicated by Mr Nel he supports the encroachment of the existing structures on the common erf boundary. The violation of Mr Nel's privacy is not immediate and remains uncertain, while our client will suffer great consequences if these structures were to be demolished.
- A notarial servitude will burden our client's property and prevent the possible resale of the property in future.
- We are of the opinion that the existing unauthorized structures will not undermine or excessively disrupt the character or amenity of the surrounding area.
- There is no indication that the existing structures will lead to a reduction in the value of the surrounding properties. Land value is determined by supply and demand.

To address the objection and concerns from Mr Nel, we would recommend (in agreement with our client) that the municipality rather consider to make it a condition of approval that no further construction or expansion works / additions can take place on the south-western common boundary (garage and pergola portion), or the portion that is of Mr Nel's concern, without further application or consent of the owner of the property (Mr Nel).

This way the existing structures can be accommodated on the south-western erf boundary, while simultaneously accommodating the neighbour's request for no new / future development on the 0m south-western lateral building line.

We trust that you find the above in order and that you will now be able to proceed with the processing of the application.

Yours faithfully



M. LERM Pr. Pln (A/158/2009)
PLAN ACTIVE

File reference:	6883 HEC (3312/2019)
Date:	3 February 2020 MS



INTERNAL MEMORANDUM

From	: Town Planning Department
Town Planner	: P Roux

TO:

<u>Area Manager</u>	<u>Building Department</u>	District Health	<u>Electrical Department</u>
<u>Environmental Officer</u>	<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local Heritage Committee</u>
<u>Operational Services</u>	Traffic Department	<u>Ward Councillor (K Brice)</u>	Waste Management

Applicant	PLANACTIVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF SM & FM INGLES
Property Details	ERF 6883, 21 FIR CLOSE, EASTCLIFF
Application Description	APPLICATION FOR DEPARTURE AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

ATTACHMENTS :

1	Notice	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2	Locality Plan	
3	Motivation	
4	Site Development Plan	

YOUR DEPARTMENT'S COMMENTS:

The Fire department have no objection provides that the structure complied to the National Fire Protection Regulations SANS-T:2011 and the By-Law relating Community Fire Safety	
Signature:	<i>E. Selous</i>
Date:	05 FEB 2020



Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo by not later than the date stipulated below. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

- Building Control Department to confirm that all structures on the property/ies are in accordance with the approved Building plans.

FIRE BRIGADE/BRANDVEER
APPROVED: JGOS DORRUS

COMMENTS REQUIRED BY: 13 MARCH 2020

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS: ERF 6883, EASTCLIFF (3312/2019)**

Stormwater (SW) : In Order
Electricity : In Order
Water : In Order
Sewer : In Order
Roads and traffic : In Order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through Erf 6883, Eastcliff, unobstructed;
7. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE