



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

DATE:	31 AUGUST 2023
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

24 August 2023

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that the **Municipal Planning Tribunal (MPT)** will go into session on **Thursday, 31 August 2023 at 10:00** in the **Town Planning Committee Room**, to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Mr P Roux (Town Planner)
11. Secretariat

**MUNICIPAL PLANNING TRIBUNAL
(MPT)**

31 August 2023

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- 1. OPENING**
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- 3. CONFIRMATION OF MINUTES**
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- 4. ITEM FOR CONSIDERATION**
 - 4.1 ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF PH VAN NIEKERK**

Report attached
 - 4.2 PORTION 104 (A PORTION OF PORTION 102) OF THE FARM HEMEL EN AARDE NO 587, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE: PLAN ACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF HASPESLAGH VINEYARDS (PTY) LTD**

Report attached
 - 4.3 REFERRAL: ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD**

Report attached

4.1

ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF PH VAN NIEKERK

3221 HON (4299/2022)

H Olivier

11 July 2023

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 29 November 2022 from Interactive Town & Regional Planners on behalf of PH Van Niekerk on Erf 3221, Onrustrivier in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed conditions E.7 as contained in Title Deed T3925/2014 of the property to accommodate the existing dwelling and structures.

The restrictive title conditions read as follows:

“E. ONDERHEWIG VERDER aan die volgende voorwaardes opgele deur die Administrateur in terme van Ordonnansie Nr 33/1934 met die goedkeuring van die stigting van Onrust Rivier Dorp Uitbreiding Nr 3 en vervat in gesegde Transportakte Nr T29867/80, naamlik:

7. *NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –*
 - (i) *an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate height thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;*
 - (ii) *an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.”*

- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the northern lateral building line from 2m to 1,3m to accommodate the existing dwelling on the property.

- ❖ **Determination of an Administrative penalty** application in terms of Section 16.(2)(q) of the By-Law for the unauthorized building line encroachments as stipulated above.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C. The Title Deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 700m² in extent and is developed with a double storey dwelling with garage. The erf is in a residential area and is zoned Residential Zone I.

The property owner illegally constructed some low decking and made minor alterations to the dwelling, and some of the decking and alterations is over Title Deed and Land Use Scheme building lines. He is also rectifying some historic encroachments over building lines which was only now determined after the building position on the erf was surveyed.

Application is then also made not to pay an administrative penalty.

4. SUMMARY OF APPLICANT'S MOTIVATION

THE MOTIVATION CAN BE SUMMARIZED AS FOLLOWS:

- ❖ The application is to legalize existing structures and does not impact land use or spatial planning and therefore the proposal is fully consistent with the requirements of the spatial development policies of the Overstrand Municipality.
- ❖ The original dwelling was approved in 1987. The current property owner purchased the property in 2014.
- ❖ Some building plan approvals were obtained by the existing property owner, but no plans were submitted for the enclosing of a roofed stoep above the garage and some decking at the rear of the property.
- ❖ The property was surveyed in September 2022 and the property owner now wants to legalize the buildings/structures that encroaches the Title Deed and land use scheme building lines.
- ❖ The property owner is also leasing part of the municipal land for garden purposes, but this **does not** form part of this application.
- ❖ The total extend of the encroachments are as follows:
- ❖ Encroachment of the existing historical dwelling previously approved 1,5m from the property boundary, over the 2m northern lateral and 1,5m Title Deed building line up to 1,31m from the boundary line. The encroachment is only 0,19m over the approved building plan position and only 0,06m² in extend. This was already constructed in 2014, and the existing owner only made some changes to windows but did submit a building plan for such alterations. The property to the north is a park and this part of the application will have no impact on private property owners. It has no negative impact on privacy, light, safety, services, or the character of the area.

- ❖ Encroachment over the 5m Title Deed Street building line up to 4,18m from the street boundary line to accommodate the existing dwelling and the enclosure of a covered stoep above the garage. The building still complies with the 4m land use scheme street building line and will not have a negative impact on the character of the area, privacy, views, safety, or services.
- ❖ Encroachment over the 3m rear Title Deed building line to accommodate a low deck constructed onto the rear boundary line, and a portion of the existing historic dwelling, which was constructed 2,62m from the rear boundary line.
- ❖ The application is desirable as it has no negative impact on privacy, light or views of neighbouring properties, no negative impact on services or safety, the deck is consistent with the zoning scheme with no additional impact, the proposal is consistent with the character of the area and only entails the existing dwelling and deck.

DETERMINATION OF ADMINISTRATIVE PENALTY

a) Nature, duration, gravity, and extent of the contravention

The portion of the enclosed stoep above the garage is 0,82m over the 5m Title Deed Street building line and covers an area of **2,75m²** in extent. The portion of the low deck traversing the 3m rear Title Deed building line measures **22,29m²** in extent. The portion of the existing dwelling is 0.19m over the 1,5m Title Deed building line on which the dwelling was approved, and measures **0,06m²** in extent. The dwelling encroaches 0,38m over the 3m rear Title Deed building line, and the area encroaching is 2,76m² in extent.

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

The existing owner is co-operative and willing to rectify the existing contravention.

c) Report by a quantity surveyor in matters of unauthorised building/construction

Due to the scale of the contraventions a report is not considered necessary.

d) Whether the unlawful conduct was stopped

Due to the low impact of the contraventions, the most practical and cost-effective way to stop the unlawful conduct is by legalising the contraventions.

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

Not according to our knowledge.

PLANNING PRINCIPLES

❖ **Spatial Justice**

N/A

❖ **Spatial Sustainability**

No impact on agricultural land or biodiversity rich areas and is spatially sustainable.

- ❖ **Efficiency**
Is the most efficient solution to deal with the dwelling and deck exceeding building lines.
- ❖ **Spatial Resilience**
Will not lead to economical or environmental shocks and is consistent with the principle.
- ❖ **Good Administration**
The correct consultation process is followed in consultation with the Municipality, and relevant government tiers and the general public are enabled to participate.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	Yes	10/02/2023	17/03/2023
Local newspaper	Yes	10/02/2023	17/03/2023
Registered Notices	Yes	10/02/2023	17/03/2023
Ward councillor	Yes	10/02/2023	17/03/2023
Total comments	One (1)		
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 (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Fire Department	23/02/2023	No objection.
Building Control	14/02/2023	No objection.
Municipal Environmental Branch	20/04/2023	No objection.
Municipal Property Administration	07/03/2023	No objection if there is no further extension of the building and no encroachment of any building or structure onto Municipal Land.
Engineering Services	21/02/2023	See Annexure G.

Telkom	16/02/2023	See Annexure H.
Eskom	19/05/2023	See Annexure I.
Cape Nature	05/04/2023	See Annexure J.
BGCMA	24/03/2023	See Annexure K.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

The application was duly advertised in the local newspaper and Government Gazette. Registered letters were also sent out to 36 surrounding property owners and the Onrustrivier Ratepayers Association. A notice board were also placed on-site by the applicant's consultant.

One (1) letter of objection was received, and the applicant was provided with an opportunity to respond to the objections. See Annexures E and F respectively.

The objections, the applicant's reply and the Municipal Town Planners response thereon can be summarized as follows:

OBJECTION 1 - THE APPLICATION IS INCOMPLETE

(a) The south-eastern boundary wall, being part of the rear boundary wall, is built on the adjacent public open space. The land must be purchased from the Municipality and rezoned, or the wall must be demolished.

APPLICANT'S RESPONSE

This point of objection has no relevance to the application and should thus be ignored.

The south-eastern boundary wall does not form part of the application to legalise the existing dwelling or deck. A section of the wall was built incorrectly and not exactly on the boundary as per cadastral survey, but the wall is estimated to be only 35cm out of position. This is considered insignificant in having any impact in terms of privacy, view, sunlight, aesthetics, or anything else. This point of objection emphasises that the objector seeks with several irrelevant and insignificant details/libel to defame the applicant or application. Should this point be of real concern, it can be corrected. It should also be noted that the applicant currently rents that portion of land from the local authority.

TOWN PLANNER'S RESPONSE

The encroachment of an existing boundary wall onto Municipal land is a matter to be dealt with between the Municipal Property Administration and the owner of Erf 3221. It has no relevance on the application being considered.

OBJECTION 1 - THE APPLICATION IS INCOMPLETE *(continues)*

- (b) The north-western corner of the subject property shows a motor gate used for access. The road reserve adjacent to the gate is formal parking for the public open space and accordingly clearly shown on the Municipality's zoning plans as well as on the application's zoning plans. There is no servitude right-of-way in favour of the owner of Erf 3221 to use the Municipal land as an access point. This area must be kept open for parking for the public.**

APPLICANT'S RESPONSE

The objector is factually incorrect in the sense that the gate is not used as an access gate; the access gate to the property is directly in front of garage. The gate accesses directly onto the widened road reserve. This gate is also not adjacent to the formal parking for the public open space. The gate is used principally for access for the maintenance of the area outside the fenced area and on odd occasions for garden refuse removal. This gate is on the opposite side of the objector's property and has no impact at all on his privacy.

TOWN PLANNER'S RESPONSE

This objection has no relevance to the application submitted.

However, for some clarity, the zoning scheme only shows the area next to the indicated area is zoned for Road and Parking, and there is no formal approved site development plan indicating the specific area to be earmarked for parking purposes. A vehicle can travel over the portion as it is zoned for road purposes, and the comment that a servitude right-of-way must be registered is not concurred with.

The old building plans were scrutinized and on the building plan dated 2014 an "existing garden gate" was indicated. The new building plans submitted now show a double gate. This matter will be dealt as part of the building plan evaluation process.

OBJECTION 1 - THE APPLICATION IS INCOMPLETE (continues)

- (c) A copy of the Height Certificate must be provided, and where is the approval of the encroachment? It should have been included in the survey plans.**

APPLICANT'S RESPONSE

The height of the dwelling was officially approved at 8,3m. Therefore, the application did not include a departure for the height. Consequently, the point of objection is factually incorrect and thus not applicable. It should be ignored by the deciding authority.

TOWN PLANNER'S RESPONSE

The original dwelling was approved in 1987, and the applicable height restriction at that time was more than the existing 8m height restriction. The elevation plans were considered, and it is clear the portions of the existing building that encroach building lines are lower than the existing 8m height restriction.

A height certificate is only requested if there is concern that a new dwelling or extensions to the dwelling will be higher than the new 8m height restriction. In this case it is thus not applicable.

OBJECTION 1 - THE APPLICATION IS INCOMPLETE (continues)

- (d) The coverage as reflected on the approved building plans is questioned and these plans are considered blatantly misleading and irregular. The rear roof overhang is more than 1m wide. The 2013 “as-built” building plans were wilfully and sneakily held back due to illegal encroachments.**

APPLICANT’S RESPONSE

The objector makes serious accusation without any facts. The dwelling’s coverage of 42% is clearly within the town planning scheme limits. These accusations constitute a personal matter between the objector and the owner which the objector is using, without any facts or investigations, making unfounded accusations. The objector provides no proof of his statements. Given the above, the point of objection should be omitted.

TOWN PLANNER’S RESPONSE

The comments of the objector and applicant are noted.

It is indicated on the plan submitted that the coverage is 41,7%. Coverage on the erf can be 50%, which means it can have a total area of 346,85m². At this stage it is indicated the ground floor area is 289m². This means it can accommodate an additional area of approximately 58m².

It is therefore highly unlikely that extended roof overhangs would increase the coverage to close to 50%.

The objector’s concern regarding the fact that the plan that was circulated was dated 2013 and was shown “as-built” is noted. This appears more to be a case that the architect made a typing error with the year date. The structures that need to be evaluated is however on the plan, and with the motivation provided give a clear indication what the application is about to consider any possible impact. It is also an existing situation.

OBJECTION 1 - THE APPLICATION IS INCOMPLETE (continues)

- (e) The boundary wall exceeds the 2.1 m height restriction. Measured from the subject erf it is already approximately 2,5m high. On the objector’s side of the boundary wall, with fill of 200mm, the wall height from natural ground level is 2,32m, thus also exceeding the 2,1m height restriction.**

APPLICANT’S RESPONSE

The height of the boundary wall does not form part of the application and objections relating to the height of the wall are thus not applicable.

The evaluation of the boundary wall will be dealt with via a separate building plan application, post the current subject application.

TOWN PLANNER'S RESPONSE

The applicant's comments that this is not part of the application are noted.

The comments and concern by the objector are not unwarranted, as it formed part of possible illegal building work on the property the Municipality identified. For clarity comments will be provided on this matter.

The property owner of Erf 3221 was requested to confirm that the boundary wall height (including wood extensions) comply with the Land Use Scheme requirements. A building plan was submitted, and specific comments were also made on such building plan that the correct natural ground levels needed to be confirmed to ensure the wall height complies.

The applicant did not apply for the raising of the wall above 2,1m, and considering that the consultant indicated the wall will be addressed by way of building plan submission, it is interpreted that it is the applicant's intention to comply with the maximum height for a boundary wall.

From the building plan submitted with this application the architect indicated the wall will comply, but the Town Planning section will require that the final wall height will have to be confirmed by a Professional Surveyor.

OBJECTION 2

With regards to other matters, the objector has no objection to the repair or replacement of the old title deed to accommodate the existing dwelling, but the following needs to be addressed to ensure the privacy of both the owners of Erven 3221 and 3220. It is the illegal buildings of the wall, wooden deck, the positioning of the water tank as well as the illegal use and enclosing of the public open space that requires an application.

APPLICANT'S RESPONSE

The matter regarding the objector's comment of the removal of the restrictive title conditions is noted.

From the objector's grievance it is becoming clear that privacy is his main concern. According to the owner of the application site, the enmity from the neighbours originated many years ago and is continuing.

As mentioned in the original application, the objective of the application is to legalise the existing dwelling as well as the deck, i.e., all land use matters not aligned with the town planning scheme.

The matters relating to the water tank, the boundary wall as well as the matters regarding the public open space has no relevance to this application and subsequently the decision-makers should ignore the mentioned points of objection accordingly.

TOWN PLANNER'S RESPONSE

The comment of the applicant is concurred with. However, additional comments will be made on the boundary wall and water tank in the points below.

OBJECTION 3

The wooden deck is elevated more than 1m from the natural ground level resulting in everybody's privacy being impacted.

APPLICANT'S RESPONSE

The objector exaggerates with this point of objection. The reality is that the deck is on the same level as the back door and provides easy level access from the back door to the back yard as is reflected in a survey.

It is also evident, and factually proven through the survey by the registered land surveyor, that the deck is not elevated more than 1m from the natural ground level (only approximately 25 cm for most of the deck area). It is factually clear that the objector's statement that the deck is elevated more than 1m from natural ground level is incorrect.

The objector's statement that the elevated deck will impact on everybody's privacy is taken completely out of context.

The impression is created that the objector is attempting to malign the application and the applicant. It is consequently requested that the deciding authority take note of the objector's tactics and nullify this point of objection.

TOWN PLANNER'S RESPONSE

As indicated by the applicant a survey diagram was obtained indicating the highest portion of the deck over building lines is 97cm above natural ground level. The deck thus complies with the requirements of the Land Use Scheme which allows decks over building lines if it is lower than 1m from natural ground level.

If the owner of Erf 3221 raised the ground level of this portion of his erf to the same height and used it for outside seating or even outside entertainment, he could do it as it is his right to utilize his property for such purposes. The objector's expectation for privacy is noted but is perhaps a bit unrealistic considering the small size of the properties and proximity of the two dwellings close to each other.

OBJECTION 4

The owners of Erf 3220 (the objector) were forced to relocate sections of the main building as well as the entrance to ensure that the foundations do not damage the roots of the existing 300–400-year-old milkwood trees. It is also important to note that Erf 3220 is located higher than Erf 3221 sloping from Erf 3220 toward Erf 3221

APPLICANT'S RESPONSE

This comment is noted but is not relevant to the application.

TOWN PLANNER'S RESPONSE

The comments are noted. The application was circulated to Cape Nature and the Municipal Environmental Management Services Department, and no additional environmental studies were requested.

OBJECTION 6

The objector recommends that the wooden deck be replaced with stairs from the existing braai room to the outside on natural ground level. Increasing the boundary wall will ensure that there will be no sight lines onto people sitting or standing inside the dwelling into Erf 3220 from Erf 3221.

APPLICANT'S RESPONSE

This point conflicts with the previous point of objection where the objector claims that the boundary wall is too high.

It is ironic that the objector alleges that the wall is too high and on the other hand wants the wall higher to ensure more privacy.

The changes proposed by the objector will make no difference to the views as the level when walking out of the braai room remains the same.

It should be noted that most of the deck area is only approximately 0.5m above ground level and that the removal of the deck will have no impact on privacy at all.

With respect to the height, the fact that the deck does not exceed 1m means it will be legal in terms of the Amended Overstrand Municipality Planning By-Law, 2020 once the restrictive condition has been removed. The objector clearly indicated he has "no objection to the repair and replacement of the old title deed to accommodate the existing dwelling". By implication, should the current restrictive condition be removed, the height of the deck will be statutorily compliant.

In light of the above, the point of objection should be omitted.

TOWN PLANNER'S RESPONSE

See Municipal Town Planner's response under OBJECTION 3.

It is also highly unlikely that, since Erf 3220 is situated higher than Erf 3221 and the steep area on the eastern side of the objector's dwelling has been raised, that the actions recommended by the objector would have the result she is expecting.

Also, considering the surveyor's diagram the existing deck is only approximately 25cm high at its closest point from the common boundary with Erf 3220, approximately 41cm high 9m from the common boundary and 97cm high 11m from the common boundary. The applicant's sentiment is thus supported that the lowering/removal of the deck would have no real significant impact.

OBJECTION 7

Raising the boundary wall with 200mm on Erf 3220 will not prevent the sight lines from the illegal deck on Erf 3221 to ensure privacy. The natural ground level should be used.

APPLICANT'S RESPONSE

The previous comments are applicable to this point of objection as well.

TOWN PLANNER'S RESPONSE

The comments are noted.

It is however impossible to stop a higher placed dwelling to not have some form of sight line over adjacent lower lying properties. The stoep on Erf 3220 was also designed to partially view Erf 3221's back yard, although the direct view over the lagoon is in a more eastern direction.

OBJECTION 8

The best solution will be to relocate the deck towards a northern orientation as it was with the previous owners where everybody respected each other's privacy in terms of sight and sound, being within 5m from the first-floor designed decks from the illegal built up deck on Erf 3221. The main structure was planned, designed, and positioned on Erf 3220 to retain privacy and the applicant ruined this planning with the construction of this illegal structure within the rear building line.

APPLICANT'S RESPONSE

It appears that the objector does not take cognisance that the properties are located within a residential area where 100% privacy is not possible from all positions. Contradictory to the objector's opinion of privacy, social interactions, good neighborhood and good relationships between residents are encouraged in a healthy urban environment. The issues of the objector are not considered as the norm of standard residential living.

The objector's statement is incorrect since the deck is approximately 9m from the objector's first floor deck, not within 5m. The sight lines from the deck to the first-floor balcony are also mostly blocked by trees. Furthermore, as shown in the introduction of the application, the objector has located and built his dwelling in such a manner that his views cannot be affected by neighbouring residential properties.

The statement made by the objector that the applicant ruined his house planning and design is considered ridiculous given that, if it was not a deck built, but merely a level paved area, the effect would have been exactly the same. The restrictive title deed condition, reading: "7. No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf", does not restrict a paved area as example.

This objection is considered irrelevant and should also be ignored by the Municipal Planning Tribunal.

TOWN PLANNER'S RESPONSE

The applicant's opinion is supported.

OBJECTION 9

The municipality also owes a lot to the irregularities and illegal buildings and will not acknowledge the written objections and enquiries. The objector accuses the municipality of several matters such as political hooliganism and that the owner uses political relationships to prevent actions against him.

APPLICANT'S RESPONSE

The objector makes serious accusations and allegations against the municipality without any evidence. The accusations and allegations have no relevance to the application. The point of objection must be strongly rejected.

TOWN PLANNER'S RESPONSE

The objector makes serious allegations against officials of the Municipality and the Municipality as a whole, but it is drafted extremely vague and ambiguous as it is unclear what the objector means with what he is saying. He does not proffer a single fact and/or piece of evidence and/or instance where, when and how this would have accrued and who at the municipality (allegedly) would have been involved.

The objector bears no relevance to the desirability criterion of the application at all, and should be rejected.

OBJECTION 10

The objector stated that the applicant's statement that the deck will not have an impact on privacy is rejected. This is the core matter of this objection.

The objector has erected two permanent screens to improve their privacy. The objector states that there are regular complaints from the applicant about noise from the objectors.

The objector accuses the owner of Erf 3221 of purposely with knowledge contravening the law.

The objector questions the legal status of the water tank and deck which has been taken up with the building department and town planning since 2016 to which no response was received until it was formally disputed in February 2022.

APPLICANT'S RESPONSE

This point of objection is a repeat from previous points of objection. However, this objection covers several matters. In summary it is about privacy in terms of vision and sound, purposely breaking the law as well as the legality of the applicant's water tank and the deck.

The objector should be reminded that he resides within an urban residential area of medium density. Secondly, he should be reminded that neighbours do not have any say in the design or layout of dwellings, subject thereto that it complies with the Municipal Planning By-Law and the title deed conditions. Hence, the reason for the application, where he has the opportunity to comment as part of a public participation process on the matters falling outside the Municipal Planning By-Law's zoning parameters and title deed conditions. These matters will then be considered on merit by the relevant local authority, in this matter being the Overstrand Municipality.

THE LEGAL STATUS OF THE DECK AND WATER TANK:

The water tank as well as the deck is compliant within the zoning scheme parameters in terms of height. This is confirmed by the registered land surveyor's diagram.

THE TITLE CONDITION:

The deck is considered as a structure by the Overstrand Municipality in terms of the following condition of the title deed; hence the reason for the application:

- "7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –*
- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate height thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;*
 - (ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."*

LAW BREAKING:

The application is clear that the unapproved structures are motivated in detail and the application included the determination of an administrative penalty.

PRIVACY BETWEEN NEIGHBOURS:

Based on general South African Property Law, the principle is applicable that you have no automatic entitlement to retain amenities like privacy, access to light, views and the like. To stop your neighbour from building to your prejudice you will generally have to prove either:

- o That the building is in contravention of a legal restriction – think title deed conditions, town planning/zoning/building restrictions and the like; or
- o That the building, although complying with all legal restrictions, is “so unattractive or intrusive that it exceeds the legitimate expectations of the parties”.

In the light of the above, these points of objection should clearly be omitted.

TOWN PLANNER’S RESPONSE

The Municipal Planner’s response under OBJECTION 3 already addressed concerns about the deck.

It is noted that the objector already fitted privacy screens on his stoep, and that should then also help to address privacy issues between the two neighbours.

The comments about neighbours submitting complaints on each other for sound disturbances are a matter for the South African Police and not the Municipality.

The Municipality has no comment on the objector’s opinion that the applicant knowingly contravened law.

A low deck and water tanks are allowed over land use building lines if a deck is lower than 1m in height and a water tank lower in 2,1m in height from natural ground level, and screened by a wall/screen of at least the same height.

In this case the Title Deed also has a building line restriction.

The Municipality could also only have provided a final opinion on the structures after we received a draft building plan and survey diagram confirming heights above natural ground level. We also obtained a Legal Opinion from the Municipal Legal Services Department to advise on if the water tank and deck were in compliance with the Title Deed restrictions.

Ultimately the opinion was received that application will have to be made for the removal of restrictions in the Title Deed for the deck, but not for the water tank. The deck is now being applied for and has been discussed in detail in this application.

The water tank, boundary wall and low deck were surveyed by a professional surveyor. The applicant then submitted a building plan for the water tank, deck and boundary wall, and such building plan can only be finalized until this application has been dealt with. The existing water tank will have to be screened from the neighbour, but this will be dealt with as part of the building plan process.

As can be seen above, the Municipality also need detailed information to ensure that structures/buildings contravene land use restrictions and if action must be taken against a property owner. The illegal structures are however now being addressed.

OBJECTION 11 - BOUNDARY WALL

The current boundary wall is illegally raised with old material.

With the increase at the time, the current wall and timber slats were already approximately 2,5m measured from the applicant's side of the boundary. These timber slats were not evenly spaced and an eyesore as well as the water tank.

This timber balustrade provided no privacy as a result of the elevation of the wall and in the humble opinion of the owners; the applicant has no sense of aesthetics and shows no respect for the neighbouring owners' property value.

The currently broken balustrades ensure no privacy and there is absolutely no way that the owners are spared from interference and intrusion on our right to privacy.

West Trust are in favour of raising the boundary wall with timber, but not in the current form and are even prepared to provide permission that it be raised up to 2,5m subject thereto that the section of the deck within the building line be removed.

Alternatively, the water tank must be removed.

APPLICANT'S RESPONSE

As mentioned in the previous point, privacy is not an automatic right, providing that all structures are legally compliant and do not negatively impact on the character of the area.

The objection raised by Messrs. West Trust regarding the wall height and the aesthetics about the timber slats and water tank is considered irrelevant as it does not form part of this application.

It is considered that the objector is niggling and obviously looking for reasons to invalidate the application.

It is clear that this is more about petty fault finding than about privacy. Therefore, this point of objection should be removed.

TOWN PLANNER'S RESPONSE

As previously indicated a draft building plan was submitted for the boundary wall and planking extending the height, and for the water tank. Should the boundary wall on-site not comply with the Land Use Scheme requirements, the building plan submitted implies it will be lowered by the applicant to comply.

Note that a professional surveyor was involved with the survey of ground levels and the height of the wall, and the Municipality will stipulate a condition to the building plan if and when approved that the professional surveyor confirm the boundary wall (with wood extensions) complies with the 2,1m height restrictions for boundary walls.

The objector's comments regarding the fact that the wood extensions do not ensure privacy and must be a solid wood fencing, and that the existing wood extension does not look aesthetically pleasing is noted. It is however not necessarily the applicant's responsibility to ensure the objector's privacy, other than where the deck was constructed. The objector's taste in architecture is also not necessarily the applicant's taste but does not mean it can be considered to be an eyesore.

OBJECTION 12

The Town Planning consultant's statement that "the proposal is only to accommodate the existing dwelling and deck" is incorrect in the sense that the application does not address:

- ***the height of the boundary walls,***
- ***the wall built outside the property boundary,***
- ***the right of access over the parking area***
- ***etcetera.***

APPLICANT'S RESPONSE

We hereby emphasise that the objective of the application is to legalise the existing dwelling.

Thus, the comments from the objector are irrelevant.

TOWN PLANNER'S RESPONSE

The above matters were already discussed in this report and why it did not form part of this application.

OBJECTION 13

The town planning applicant's statement of "Good Administration" is also incorrect. This is not about a few mistakes historically made; the fact is that the applicant has no choice as to correct the mess on his Erf 3221 and cannot be glossed over as "historic and unknowingly".

The following facts should be cleared by the Council or officials before the SPLUMA requirements can be complied with:

- i. How is it possible that the specific owner can get away with all the illegalities at the Overstrand Municipality after all the written and telephone discussions and complaints from West Trust?**
- ii. How is it possible that the applicant obtains a clearance and occupational certificate from the Overstrand Municipality (political interference is West Trust's guess with the available information at our disposal)**
- iii. How is it possible that Overstrand Municipality officials can pressure owners to give their legal building plans to other organizations like OREF or ORHA without PAIA (again the guess is political racketeering at the OM).**

APPLICANT'S RESPONSE

The objector's comment in terms of "Good Administration" is taken out of context.

In terms of SPLUMA, "Good Administration" means in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

The emphasis lies in the consultative planning practices in terms of this specific application. All due consultation has taken place in terms of this application by the relevant local authority. Therefore, this point of objection should also be omitted.

TOWN PLANNER'S RESPONSE

- I. This unsubstantiated "objection" framed as a question is in fact potentially defamatory as far as the applicant is concerned, because the objector accuses the applicant of having contravened laws and legal prescript.
- II. This is an unsubstantiated statement (disguised as a question) but this time against the municipality as a whole.
- III. This is again an unsubstantiated statement against the municipality as a whole. No proof is provided that the Municipality pressured "owners" to give their plans to organizations (OREF and ORHA).

The objector's statements have no merit and should be rejected. These points of objection again bear no relevance to the desirability criteria of the application.

OBJECTION 14 – CONCLUSION

It is clear that the applicant's dishonest and wilful conduct still continues. The owner bought the house and had it renovated and knew about the violations.

West Trust, owners of Erf 3220, therefore strongly objects to the incomplete application and reserves the right to withdraw the objection if a settlement can be reached between the respective owners in relation to the shielding/removal of the unsightly water tank, the raising of the boundary wall which provides privacy for all parties and the removal and relocation of the wooden deck in the rear building line to provide privacy to Erf 3220 to restore planned and designed unity.

APPLICANT'S RESPONSE

As mentioned on several occasions in this response, the objective and purpose of this application is to legalise the existing dwelling of which the deck (being interpreted as a structure) forms part.

Once the restrictive title deed condition 7 of Title Deed T3925/2014 in terms of Chapter IV, Section 16(2)(f) is removed, the deck as well as the existing dwelling house will be compliant in terms of the Overstrand Municipality Planning By-Law, 2020, zoning scheme.

The height of the wall and the accommodation of the water tank in its existing location is legally acceptable and has no legal bearing on the privacy of the objector.

TOWN PLANNER'S RESPONSE

No comments.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All Municipal Branches and other institutions support the application.

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

10.1 Background

N/A

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

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application will not impact valuable agricultural and sensitive environmental land.

Efficiency

It will be more efficient for the applicant to try to legalize the buildings/structures that traverse the building lines, than to remove it at cost.

Spatial Resilience

The application is in line with spatial planning policies which promotes densification.

Good Administration

Procedure as determined by the relevant B-Law of the Municipality has been followed and a good public participation process was followed.

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

The application is consistent with the planning principles.

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

Consistent since it remains Residential.

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

N/A

10.6 Impact on Municipal engineering services

No impact.

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

The Title Deed does contain restrictive conditions, and application is made to remove such restrictions.

10.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS***The financial or other value of the rights***

There is no financial value of the rights.

The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

It will only have a personal benefit for the applicant to be able to legalize portions of the dwelling and deck and not demolish the structures/buildings at great financial cost.

The social benefit of the restrictive condition remaining in place, and/or being removed / amended

The restrictive conditions for building lines were inserted in Title Deeds to control development prior to the approval of Zoning/Land Use Schemes.

The restrictive conditions applicable to building lines are now controlled in terms of the Amended Overstrand Land Use Scheme, 2020. It is therefore the opinion that the parameters of the Land Use Scheme are the new acceptable conditions applicable to the society.

Most portions of the dwelling and deck will still comply with the Land Use Scheme, and only the encroachment over the northern lateral building line will encroach the 2m land use scheme building line with 0,69m, only 0,19m more than the 1,5m building line on which it was approved.

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

Application is made to only remove the restriction stipulate building lines.

12. THE DESIRABILITY OF THE PROPOSAL

The property is developed with a dwelling with double garage. The property measures 693,7m² in extent and is zoned Residential Zone 1. It is situated in an area with a strong Single Residential character.

The Municipality investigated a complaint regarding illegal structures on the property, and only after receiving building plans and survey diagrams it could be confirmed what structures traverse building lines and what applications were required.

The application includes the removal of a restrictive condition in the Title Deed and a departure to accommodate portions of the existing dwelling traversing building lines, and a new low deck that was illegally constructed over the rear Title Deed building line.

The application was duly advertised, and one (1) objection was received from an adjacent property owner. The applicant was provided with the opportunity to respond to the objection.

As can be seen in this report there is bad blood between the neighbours. The objector also makes various accusations against the Municipality and neighbour. This report is however to consider the desirability of the application and the writer will not respond to such accusations in this report.

The applicant's comments regarding the completeness of the application and the issues such as a portion of a wall constructed onto a public open space, a motor gate that was fitted next to a road reserve, request for a height certificate, questions regarding the coverage and the boundary wall height, were already discussed in detail in this report. It does not prove the application to be incomplete.

There were also some references to consideration of impact on Milkwood trees when the objector developed her property, which has no relevance to this application.

The other complaint was directed at a water tank that was placed on the applicant's property next to the common boundary with the objector's property. This issue was resolved by obtaining a legal opinion and the water tank being surveyed. A building plan has been submitted for the water tank, and if it is placed behind a 2,1m wall/screen, it will comply with legislation. It will be dealt with as part of a building plan process.

The major complaint is with regards to the deck that was constructed over the 3m Title Deed building line up to the rear boundary line. The objector is of the opinion the deck is more than 1m above the natural ground level and impacts her privacy and sight lines.

The constructed deck is approximately 5m from the common boundary, and only approximately 25cm above the ground level at that point. It is approximately 97cm high at the furthest point from the objector's property. It is a deck of approximately 22,29m² in size, with approximate 5m² being a walkway to the existing stoep to the north.

The two major concerns the objector have with the deck is it impacts her privacy and secondly sight lines.

The existing stoep on the objector's property was built in such a manner that it has its main sight line in a northeastern direction towards the Onrust River lagoon. There are no real view lines over the applicant's property, and existing vegetation also blocks any major view of the mountains to the north. The objector refers more to the fact that they can look onto the objector's back yard, which is actually a common situation in residential areas with properties of medium density sizes. The objector also raised her stoep with approximately 90cm above natural ground level, and taking into consideration that Erf 3221 is situated lower than Erf 3220, the objector will always look onto the applicant's back yard. The fact is the low deck on Erf 3221 is only 25cm above ground level at its closest point from the common boundary, which is insignificant when it comes to sight lines.

The second point is privacy. As previously indicated in this report, the property owner of Erf 3221 can level out and raise his backyard and use it for seating area or entertainment purposes. This would have had the same impact with regards to noise and privacy on the objector. The objector's concerns are therefore not necessarily created by the low deck, as it is the right of the owner of Erf 3221 to utilize his backyard. The applicant also constructed the deck at such position as it is adjacent to the entertainment room and has the best view over the lagoon.

The objector's various proposals are noted, but her opinion that the low deck must be removed is not considered reasonable. The owner of Erf 3221 constructed the low deck illegally, and therefore the Municipality can lay down conditions that may improve the situation, and to hopefully help to mediate the existing neighbour's bad relationship. It is therefore proposed that the owner of Erf 3221 construct a 2,1m wall or non-see-through screen to the south of the existing low deck, to address the privacy issue between neighbours. A non-see-through door/gate of 2,1m in height can also be fitted to the wall/screen to provide access to the remainder of the yard to the south.

Most of the existing encroachment of the existing dwelling over the Title Deed building lines and Land Use Scheme building lines are historical encroachments and were only identified when the property was recently surveyed. The objector questioned how these encroachments were allowed but did not object to the rectification of the situation. The fact is this is an existing situation with no further impact on any neighbours. These parts of the application can therefore be supported.

The property owner enclosed the existing covered balcony above his garage with some screens. The garage is already over the 5m Title Deed building line. This alteration is also minor with no impact on neighbours or the character of the area.

ADMINISTRATIVE PENALTY

a) Nature, duration, gravity, and extent of the contravention

The portion of the enclosed stoep above the garage is 0,82m over the 5m Title Deed Street building line and covers an area of **2,75m²** in extent. The portion of the low deck traversing the 3m rear Title Deed building line measures **22,29m²** in extent. The portion of the existing dwelling is 0,19m over the 1,5m Title Deed building line on which the dwelling was approved, and measures 0,06m² in extent. The dwelling encroaches 0,38m over the 3m rear Title Deed building line, and the area encroaching is 2,76m² in extent.

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

Most of the encroachments are historic as submitted by previous owners. The existing landowner also obtained approval for some minor additions, which was indicated to not encroach the building lines which the property owner only now became aware of is over building lines. The owner illegally enclosed a balcony and constructed a low deck.

c) Report by a quantity surveyor in matters of unauthorised building/construction

The applicant indicated that due to the scale of the contraventions a report is not considered necessary.

d) Whether the unlawful conduct was stopped

The structures/buildings have already been constructed.

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

The applicant indicated not to their knowledge.

The encroachments of the existing dwelling and small extensions are considered historic, and it was also impossible for the existing new landowner to identify until a land surveyor was appointed to survey the whole dwelling. No penalty fee is therefore proposed for the dwelling encroachments, other than the enclosure of the balcony measuring 2,75m². The existing landowner also constructed the low deck of 22,29m² without any building plan approval. The applicant's main defence is that he was not aware that he had to submit building plans for these alterations and additions. Each property owner has the responsibility to comply with legislation, and the property owner should have consulted with the Municipality before the construction was started.

The total area that encroaches is 25,04m². The penalty fee for non-habitable structures must be calculated by the average of two quotes. No quotes were submitted.

The penalty fee for habitable structures/buildings will be used which is R19107-00/m² which will be lowered to a more reasonable penalty fee. This property owner illegally constructed the structures, and for such a 5% to 10% penalty fee is usually charged. It is thus recommended that only a 5% penalty fee be charged due to the small scale of the structures/buildings.

The calculation is 25,03 x R19107-00 x 0.05 (5%) giving a total of R23 912-00. The structures are non-habitable and therefore it is recommended that only 20% of the penalty fee be charged as follows:

R23912-00 x 0,2 provides for a R4782,40 penalty fee.

Considering the above, it is the opinion that the application will not have a negative impact on the character of the area, and with some minor mitigation the objectors' concerns can also be addressed.

The application is desirable and is supported.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3221, Onrustrivier for the removal of restrictive title deed condition E.7 as contained in Title Deed T3925/2014 of the property to accommodate the existing dwelling and structures (low wooden deck), **be approved**, in terms of the provisions of Section 61 of the By-Law.
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 3221, Onrustrivier for a departure to relax the northern lateral building line from 2m to 1,3m to accommodate the existing dwelling on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law
3. that the approvals in Points 1 and 2 above be subject to the following conditions:
 - (a) that this approval is only for the removal of restriction and a building line departure is not an approval in terms of any other legislation;
 - (b) that the approval be limited to the building/structures as per Plan number PvN Onrus-001 dated April 2013 and the encroachments as indicated on the site plan in the motivation reports under point 1(c);
 - (c) that the applicant construct a 2,1m high (from natural ground level) wall/non-see-through screen (south of the existing wooden deck and any gates in such wall/screen must also be 2,1m in height and non-see through, to the satisfaction of the Senior Manager: Town & Spatial Planning;
 - (d) that building plans in line with condition 1(b) be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;

- (e) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (f) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
 - (g) that all the conditions in the Services Report (attached as Annexure F), be complied with;
 - (h) that the conditions imposed by Telkom (attached as Annexure G), be complied with,
 - (i) that the conditions of Eskom (attached as Annexure H) be complied with.
 - (j) that the conditions of BGCMA (attached as Annexure J) be complied with.
4. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 3221, Onrustrivier, for the unauthorized structures / buildings over building lines as stipulated above, **be imposed**, and that an administrative penalty fee of R4782-40 be payable within thirty (30) days of the decision.
 5. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above decision.

14. REASONS FOR RECOMMENDATION

POINTS 1 & 2

- ❖ The portions of the existing dwelling over building lines are historic encroachments and some are encroachments the applicant was not aware of and only became aware of when the property was formally surveyed. The impact of these encroachments is minimal and an existing situation.
- ❖ The enclosure of the covered balcony over the Title Deed street building line is a minor encroachment and within an existing building footprint. It will have no impact on the street ambience or privacy of neighbours.
- ❖ The low deck is over the 3m rear Title Deed building line. The objections regarding impact on sight lines and privacy by the adjacent property owner is not reasonable as the low deck would have the same impact as a grassed or paved area which the owner of Erf 3220 could have established without any Municipal approval.
- ❖ The application is supported by all relevant Municipal Departments and State or other institutions.
- ❖ The applicant illegally constructed the low deck, and although the impact on the neighbour is debated, the additional condition that the applicant must construct a 2,1m wall/non-see-through screen next to the southern side of the low deck will improve the privacy for both property owners.
- ❖ No Municipal services are affected.

POINT 3

- ❖ This existing landowner constructed the low wooden deck and also enclosed the balcony above the garage, without submitting any building plans.
- ❖ The penalty fee imposed is reasonable considering the scale of the encroachment.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Encroachment plan, Building plan and Survey diagram
Annexure D:	Title Deed T3925/2014
Annexure E:	Objection letter
Annexure F:	Applicant's response to objection
Annexure G:	Services Report
Annexure H:	Comment: Telkom
Annexure I:	Comment: Eskom
Annexure J:	Comment: Cape Nature
Annexure K:	Comment: BGCMA

SIGNATURES**AUTHOR:**

Name: **HENK OLIVIER**

SACPLAN Reg No: **B/8128/2004**

Signature: _____

Date: _____

REGISTERED PLANNER

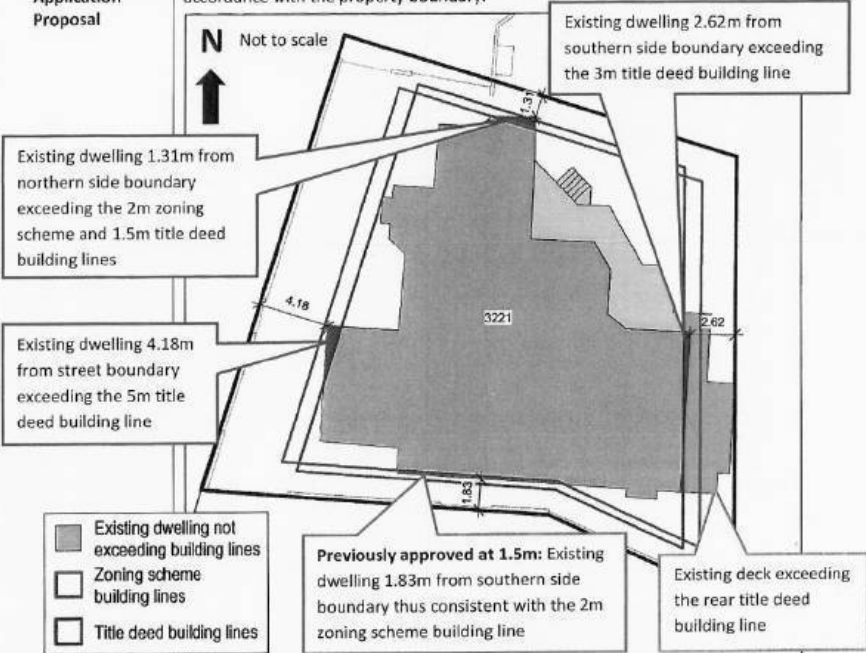
Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

Signature: _____

Date: _____

Annexure B 1/16

1. Introduction	
<p>a. Brief</p> <p>Refer to Annexure B for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by the owner of the property Petrus Hendrik Van Niekerk to prepare and submit an application for building line departures, the removal of a restrictive title deed condition on Erf 3221, Onrusrivier and the determination of an administrative penalty in terms of the relevant legislation.</p>
<p>b. Background</p>	<p>The property was purchased by the current property owners in 2014. In 2014 building plan approval for building amendments was obtained and accordingly constructed.</p> <p>The building plan approval however did not include the enclosed stoep above the garage and also not the deck on the eastern side.</p> <p>A survey of the property has been done in September 2022 revealing that the existing dwelling exceeds title deed and zoning scheme building lines and that the deck at the rear of the property exceeds the property boundary.</p>
<p>c. Development Objective & Application Proposal</p>	<p>The <u>application objective is to legalise the existing dwelling and a deck</u>. In order to legalise the existing deck at the rear of the property, it is proposed to reduce the size of the deck in accordance with the property boundary.</p>  <p>Figure 1: Application illustration</p> <p>Subsequently the application proposal is for:</p> <ul style="list-style-type: none"> • A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling. (Previous approval was for 1.5m) • Removal of a restrictive title deed condition pertaining to building lines. • The determination of an administrative penalty.

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2. The Application					
a. Analysis: Title Deed	Title Deed T3925/2014 contains a restrictive title deed condition which reads as follows:				
	<p>"7. <u>NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –</u></p> <p>(i) <u>an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;</u></p> <p>(ii) <u>an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."</u></p> <p>Application is therefore made for a removal of the above mentioned restrictive title deed conditions.</p>				
b. Analysis: Development Criteria:	Parameters	Existing Zoning Scheme Requirements:	As Built:	Comments	
	Zoning	Residential Zone 1: Single Residential (SR1)	Residential Zone 1: Single Residential (SR1)	Consistent	
	Primary Use	Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;	Dwelling house	Consistent	
	Consent Uses	Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.	None	Consistent	
	Coverage	50%	42%	Consistent	
	Height	8m	±8.3m (Previously approved)	Consistent	
	Building lines	Street	4m (5m in terms of title deed)	4m	Consistent with the Zoning Scheme, exceeds 5m title deed thus application includes a removal of restrictive title deed conditions
		Side	2m (1.5m in terms of title deed)	<u>1.3m north for dwelling</u> 1.8m south for dwelling (Previously approved)	Exceeds both the zoning scheme and title deed building lines, application is made for a zoning scheme departure and removal of restrictive title deed conditions application
		Rear	2m (3m in terms of title deed)	<u>0m for deck</u> 2m for dwelling	The deck exceeds the title deed building line, thus an application is made for a
The development parameters for Erf 3221 Onrusrivier, Hermanus as per the Overstrand Zoning Scheme Regulations, 2015, read with the subject title deed are summarised as follows:					

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				removal of restrictive title deed conditions
	Parking	Dwelling house: 2 bays	Dwelling house: 2 bays	Consistent
<p>c. Application:</p> <p>The application form is attached as Annexure A.</p>	<p>Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, for:</p> <ul style="list-style-type: none"> • A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling in terms of Chapter IV, Section 16(2)(b). • Removal of a restrictive Title Deed Condition 7 from Title Deed T3925/2014 in terms of Chapter IV, Section 16(2)(f). • The determination of an administrative penalty in terms of Chapter IV, Section 16(q). 			

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3. Contextual Site Information

a. Property Description	Property	Extent	Title Deed	Registered Owner
	3221 Onrusrivier	700m ²	T3925/2014	Petrus Hendrik van Niekerk

Refer to Annexure E for the SG Diagrams, Annexure C for the Title Deed of Erf 3221 Onrusrivier.

The following Surveyor General Plans reflect the application site:

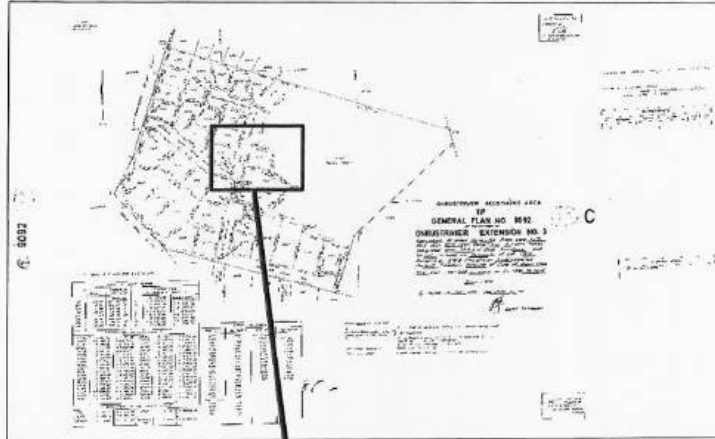
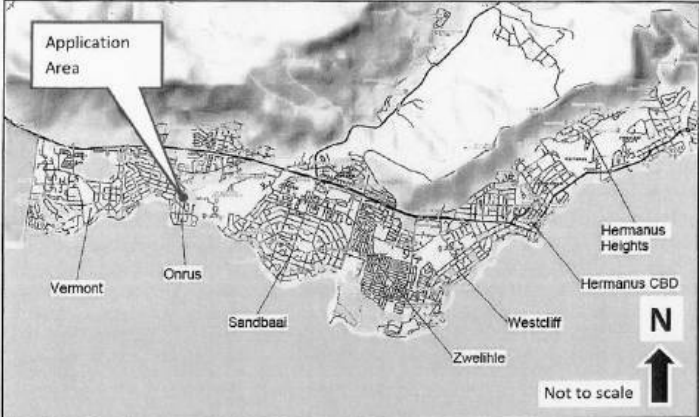
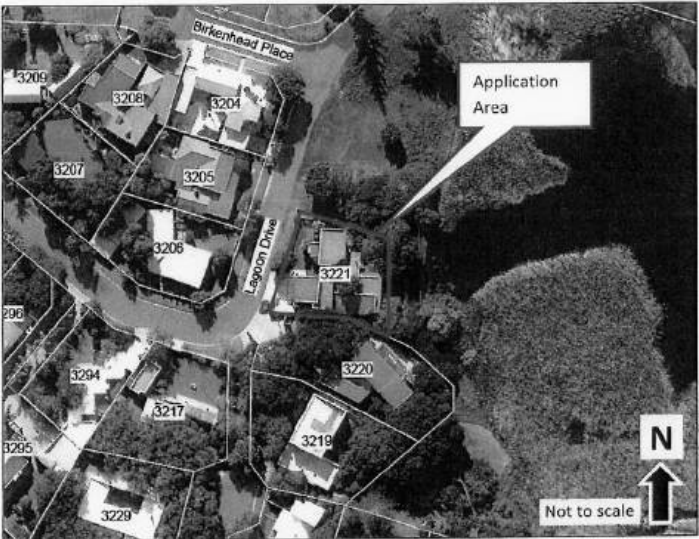


Figure 2: Extracts of the Surveyor General Plans of the application site

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<p>b. Location:</p> <p>For the Locality Plans refer to Annexure F.</p>	<p>Regional Context:</p> <p>Within the regional context, the application area is located within Onrusrivier residential suburb. Onrusrivier is located approximately 5km west of the Hermanus CBD.</p>  <p>Figure 3: Locality Plan – Regional Context</p>
	<p>Local Context:</p> <p>Within the local context the application area consists of a residential erf within Onrusrivier that forms part of the larger Hermanus West area. The application area is located at number 16 Lagoon Drive.</p>  <p>Figure 4: Locality Plan – Local Context</p>

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e. **Spatial Planning Policy**

The following policy guidelines from the following relevant policy documents are applicable to the application area.

i. **Overstrand Municipal Spatial Development Framework, 2020**

In terms of the Overstrand Municipal Spatial Development Framework, the application area is within a Heritage Overlay Zone.

Figure 7: Overstrand Municipal Spatial Development Framework, 2020 extract

ii. **Overstrand Municipality Spatial Growth Management Strategy – 2010 (OMSGMS)**

In terms of the Overstrand Growth Management Strategy, the application area falls within a “No Densification” area as well as a Heritage Overlay Zone. No densification or building dwelling amendments are proposed.

Figure 8: Extract from the Overstrand Municipality: Growth Management Strategy

Conclusion:
The application is for the legalisation of existing structures and does not impact land use or spatial planning and therefore proposal is fully **consistent** with the requirements of the spatial development policies of the Overstrand Municipality.

iii. **Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020**

The property owner purchased the property in 2014 and since then enclosed a stoep on the first floor which exceeds the title deed street building line and added a deck which exceeds the rear title deed building line. The northern and eastern parts of the dwelling that exceeds building lines were approved but exceeded building lines unknowingly and was only realised once a survey of the property has been done. Thus the determination of an administrative penalty is applicable.

"90. Application for administrative penalty

- (1) *A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.*
- (2) *A person making an application contemplated in Subsection (1) must –*
 - (a) *submit an application;*
 - (b) *pay the prescribed fee;*
 - (c) *provide the information contemplated in Subsections (3); and*
 - (d) *comply with the duties of an applicant in Section 84.*
- (3) *The applicant must, to the satisfaction of the Municipality, provide the following information such as-*
 - (a) *the nature, duration, gravity and extent of the contravention;*
 - (b) *the conduct of the person (allegedly) involved in the contravention;*
 - (c) *a report by a quantity surveyor in matters of unauthorised building/construction;*
 - (d) *whether the unlawful conduct was stopped; and*
 - (e) *whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law."*

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4. Motivation

Motivation for the application:

Refer to Annexure K for the As-built building plan

a. Introduction and Background

The dwelling was originally approved in and built in 1987. The property was purchased by the current property owners in 2014. Thereafter, in 2014 building plan approval for building amendments was obtained and the existing dwelling was constructed.

The building plan approval however did not include enclosing the roofed stoep above the garage in the front of the property and did not include the deck at the rear of the property.

A survey of the property has been done in September 2022 revealing that the existing dwelling exceeds title deed and zoning scheme building lines and that the deck at the rear of the property exceeds the property boundary.

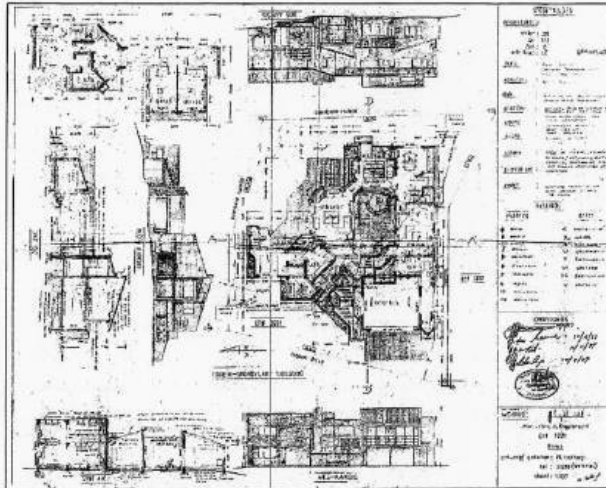


Figure 9: 1987 Approved building plans

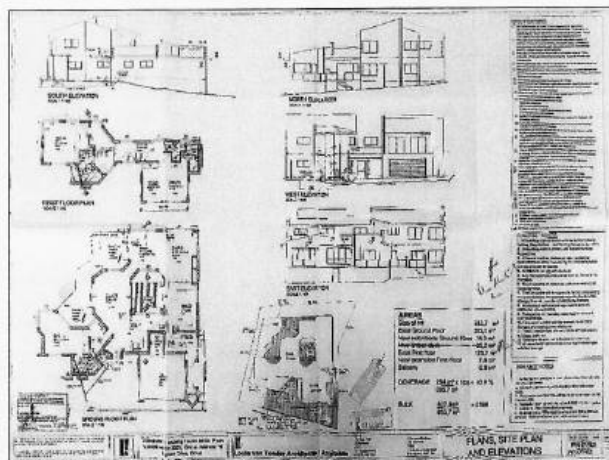


Figure 10: 2014 Approved building plans

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A survey of the property has been done in September 2022 showing that the existing dwelling exceeds title deed and zoning scheme building lines and that the deck at the rear of the property exceeds the property boundary.



Figure 11: Site Survey

The property owners are also leasing a part of municipal land for garden purposes. This does not form part of the application.

b. Proposal

The application objective is to legalise the existing dwelling and the deck. In order to legalise the existing deck at the rear of the property, it is proposed to reduce the deck to conform with the property boundary.

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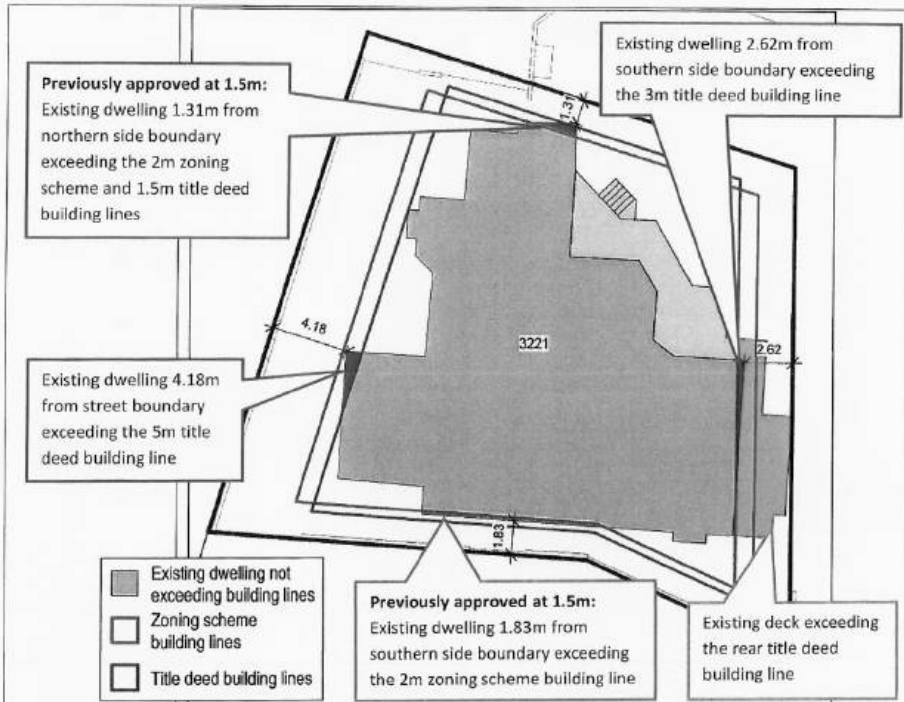
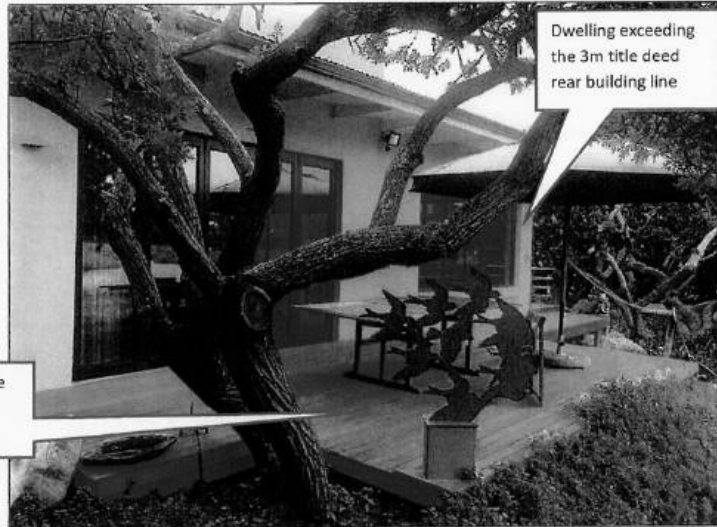
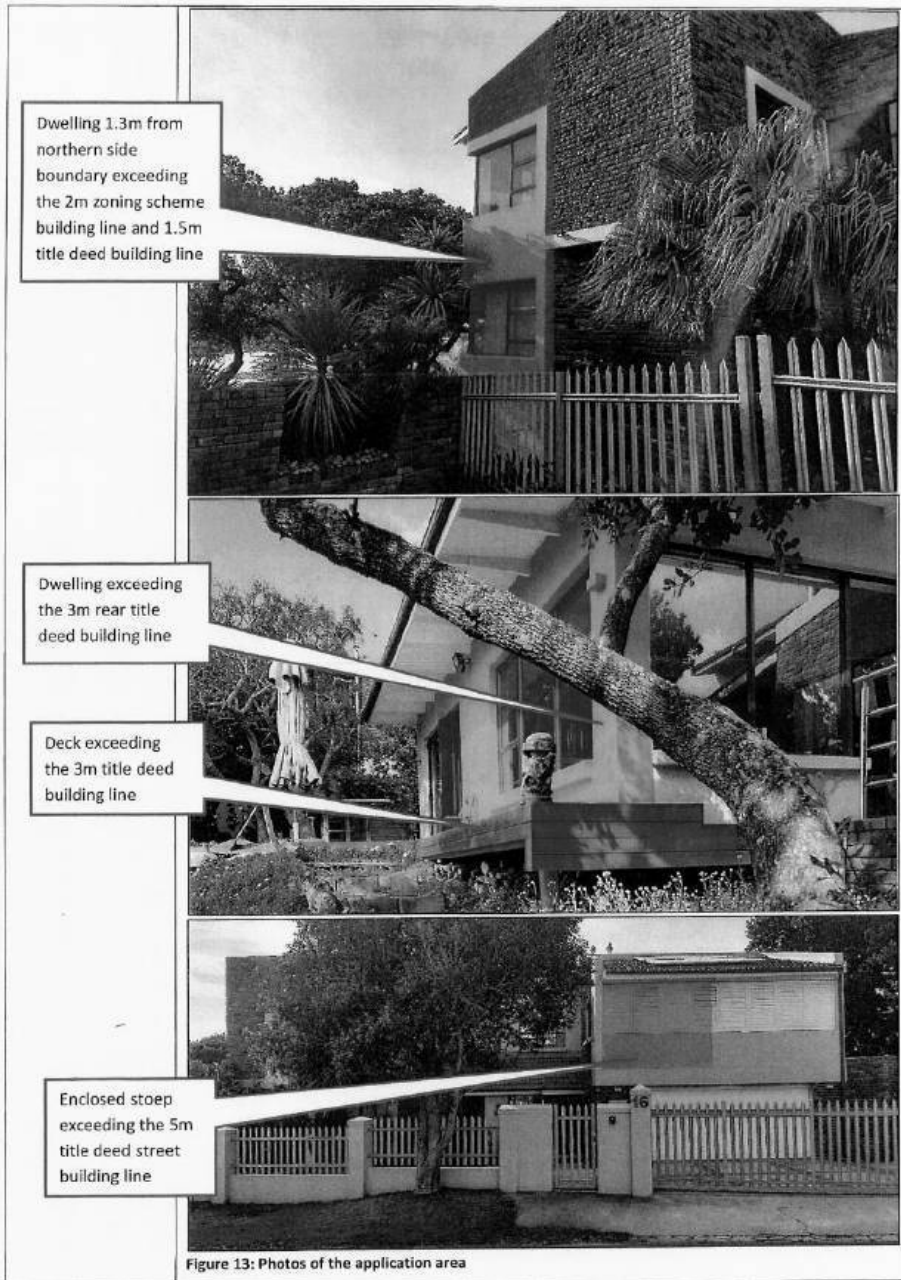


Figure 12: Application illustration



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Departure to relax the northern side zoning scheme building line from 2m to 1.3m

The dwelling was originally approved 1.5m from the northern side boundary and was erroneously built 1.3m from the property boundary. When the property was purchased in 2014, it already exceeded the northern side zoning scheme building line. The only change that exceeded the northern side building line since it was purchased in 2014 was the replacement of existing windows with new windows which was included in the building plan approval of 2014. Such change requires an application for a building line departure.

The dwelling was approved at 1.5m from the northern side boundary and built at 1.31m. Only a small portion of the northern side building line is exceeded by a corner of the dwelling which is an additional 0.19m or 0.06m².

Enough space is also still available for services and access on the northern part of the application area.

The property north of the application area is a public park. As a result, the existing dwelling exceeding the northern side building line does not have an impact on private property owners.

Subsequently, the portion of the existing dwelling that exceeds the northern side building line does not have a negative effect on privacy, light, safety, services or character of the area. It is therefore recommended that the departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling be approved.

Removal of a restrictive title deed condition

Title Deed T3925/2014 contains a restrictive title deed condition which reads as follows:

"7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –

- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;*
- (ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."*

The subsections of the dwelling exceed the street, side and rear title deed building lines and the deck exceeds the rear title deed building line.

- The existing dwelling is 4.18m from the street boundary and the street title deed building line is 5m. The existing dwelling therefore exceeds the title deed street building line by 0.82m.
- The existing dwelling is 1.31m from the northern side boundary and the title deed side building line is 1.5m. The existing dwelling therefore exceeds the title deed side building line by 0.19m.
- The existing dwelling is 2.62m from the rear boundary and the rear title deed building line is 3m. The existing dwelling therefore exceeds the rear title deed building line by 0.38m.
- The existing deck is proposed to be reduced in size up to the property boundary and will therefore exceed the title deed rear building line by 3m.

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	<p>A removal of Clause 7 from Title Deed T3925/2014 is therefore required to accommodate the existing dwelling and deck.</p> <p>The title deed building lines on the rear and street boundaries are more restrictive than the zoning scheme building lines and the existing dwelling does not exceed the zoning scheme rear or street building lines. The existing dwelling is therefore in line with the street and rear municipal building line standards and will not have a negative impact on the character of the area, privacy, views, safety or services.</p> <p>The existing dwelling exceeds the title deed northern side building line by 0.19m and is a corner of a building with a coverage of 0.06m². The part of the building exceeding the northern title deed building line is relatively small and will not have a notable impact on the character of the area, privacy, views, safety or services.</p> <p>The deck exceeding the rear title deed building line is on the ground floor, is less than 1m from the natural ground level and does not have a roof, pillars or a balustrade. The deck will be decreased in size in order to not exceed the property boundary. The deck will therefore not have an additional impact on privacy, views, character of the area, access, or safety services compared to the existing ground level.</p> <p>The removal of the restrictive title deed condition is required in order to accommodate the existing dwelling and deck and the removal of Clause 7 from Title Deed T3925/2014, will not have a negative impact on the character of the area, privacy, views, safety or services. It is therefore recommended that the removal of the restrictive title deed condition be approved.</p> <p><u>Determination of Administrative Penalty</u></p> <p>The following information with regards to the administrative penalty is provided as required according to Chapter X, Section 90(3):</p> <p>(a) <u>The nature, duration, gravity and extent of the contravention</u> The nature, duration, gravity and extent of the contravention has been described in detail in this motivation report and includes the following contraventions; The property owner purchased the property in 2014 and since then enclosed a stoep on the first floor which exceeds the title deed street building line and added a deck which exceeds the rear title deed building line. The northern and eastern parts of the dwelling that exceeds building lines were approved but exceeded building lines unknowingly and was only realised once a survey of the property has been done.</p> <p>The portion of the enclosed stoep above the garage exceeding the title deed street building line exceeds the title deed building line by 0.82m is 2.75m². The existing covered stoep was enclosed by replacing the wooden balustrade by a masonry half wall and adding shutters. The stoep shutters can open completely and the stoep is still used as a stoep. The stoep was enclosed in 2014. The stoep does not exceed zoning scheme building lines.</p> <p>The deck exceeding the title deed building line is proposed to be reduced to not exceed the property boundary. The portion of the deck exceeding the 3m title deed building line is 22.29m². The deck was built in 2014. The deck is allowed in terms of the zoning scheme. By the removal of the restrictive title deed Condition 7, the reduced deck size will be compliant in terms of the Zoning Scheme.</p> <p>The dwelling was approved at 1.5m from the northern side boundary, but erroneously by the previous owners at 1.31m from the property boundary, thus exceeding the approval by 0.19m. The area exceeding the northern side zoning scheme building line is only a corner of the dwelling and is 0.06m². This was only realised once a survey was done in September 2022.</p> <p>The dwelling was approved at 3m from the rear boundary and erroneously built at 2.62m from the rear boundary in 2014, thus exceeding the approval by 0.38m. The area exceeding approval is 2.76m². This was only realised once a survey was done in September 2022.</p>
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	<p>(b) <u>The conduct of the person (allegedly) involved in the contravention</u> It is evident from this application that the applicant/owner is co-operative and willing to rectify the existing contravention and to follow the correct statutory procedure to apply to legally accommodate the existing structures.</p> <p>(c) <u>Report by a quantity surveyor in matters of unauthorised building/construction</u> Due to the nature and scale of the contravention, a report by a quantity surveyor is not considered applicable.</p> <p>(d) <u>Whether the unlawful conduct was stopped</u> Due to the nature of the contravention being building line transgressions not causing a material impact on the environment, the most practical, non-destructive and cost-efficient way to stop the unlawful conduct is by <u>legalising</u> the contraventions, for which the applicant/owner is in the process of applying through this application.</p> <p>(e) <u>Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law</u> No, according to our knowledge, with the exception of the contraventions mentioned in this motivation, the applicant/owner has not previously contravened this By-Law or a previous planning law.</p> <p>c. Desirability</p> <ul style="list-style-type: none"> • The existing dwelling does not have any negative impact on privacy, light or views of neighbouring properties. • The existing dwelling does not have any negative impact on services or safety. • The proposal for the deck is consistent with the zoning scheme and will not have any additional impact. • The proposal is consistent with the character of the area. • The proposal is only to accommodate the existing dwelling and deck. <p>d. Planning Principles</p> <p>In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:</p> <p>1) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.</p> <p>Possible results of the development The application is to accommodate an existing dwelling and deck which will not have an impact on redressing the past apartheid spatial development imbalances. The application proposal is consistent with spatial justice.</p> <p>2) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.</p> <p>Possible results of the development The application is to accommodate an existing dwelling and deck on a single residential property and will therefore not have an impact on agricultural land or biodiversity rich areas. The application proposal can thus be deemed to be spatially sustainable.</p>
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	<p>3) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.</p> <p>Possible results of the development</p> <p>The application is to accommodate an existing dwelling and deck and therefore does not influence how efficient a settlement is designed. Approval of this application is however the most efficient solution to the dwelling and deck exceeding the building lines.</p> <p>The application proposal is consistent with the efficiency principle.</p> <p>Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.</p> <p>Possible results of the development</p> <p>The proposed development will not lead to any economical and/or environmental shocks as the application allows for the existing dwelling and deck.</p> <p>The application proposal is consistent with the principle of spatial resilience.</p> <p>4) Good Administration which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.</p> <p>Possible results of the development</p> <p>Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the relevant government tiers and the general public to participate in the eventual decision-making process.</p> <p>The application proposal is consistent with the principle of good administration.</p>
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5. Conclusion

The application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities. It is therefore recommended that the application **be approved** in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, as follows:

- A departure to relax the northern side building line from 2m to 1.3m to allow for the existing dwelling in terms of Chapter IV, Section 16(2)(b).
- Removal of a restrictive title deed condition 7 of Title Deed T3925/2014 in terms of Chapter IV, Section 16(2)(f).
- The determination of an administrative penalty in terms of Chapter IV, Section 16(q).



NAME	N.	J.	RESIDENTIAL
NO.	115254	20201231	30-71
DATE	11/15/20	20201231	30-71
PROJECT	115254	20201231	30-71

13 JAN 2023

M.A.
 M.A. CLARK, B.S. 1978
 PROFESSIONAL LAND SURVEYOR

Project	TOPOGRAPHIC SURVEY BP 3331 ONSLUSTEINER		
Client	P VAN HOFFEN		
Address			
Notes			
Contract	Y	K	
Height	G.D.	G.D.	
Project No.	M2024a		
Sheet No.	ON2021		
Scale	1:150		
Date	14 September 2022		



Annexure D 1/6

CTN1265
 BM PROKUREURS
 Kamer 203, 80 Strand Street,
 Kaapstad
 8001
 Tel: 021 421-2761
 Epos: info@bm-law.co.za

Opgestel deur my

TRANSPORTBESORGER
 FLORIS ALBERTUS HANEKOM

Rug oordragings		Opname
Partikulêre prys/Value	Rug oordragings	Opname
	R 4 175 000,00	R 1500,00
Stortingskapitaal Amount		
Stortingskapitaal Amount		
Stortingskapitaal Amount		

DATA / CAPTURE

07 FEB 2014

L4TYATYAMRANQLUVLIYO

TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT

FLORIS ALBERTUS HANEKOM

T000003925/2014

voor my verskyn het, REGISTRATEUR VAN AKTES te Kaapstad, hy die genoemde
 komparant synde behoorlik daartoe gemagtig deur 'n Volmag aan hom verleen deur

BERNARD BROM
 Identiteitsnommer 4103105067084
 Getroud buite gemeenskap van goed

geteken te Stellenbosch op 2 Desember 2013

DATA / VERIFY

10 FEB 2014

VAN WYK JENNY

En genoemde Komparant het verklaar dat sy prinsipaal, op 13 Oktober 2013, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

PETRUS HENDRIK VAN NIEKERK
Identiteitsnommer 4807045083080
Getroud buite gemeenskap van goed

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volkome en vrye eiendom

ERF 3221 ONRUSTRIVIER
 IN DIE OVERSTRAND MUNISIPALITEIT
 AFDELING CALEDON
 PROVINSIE WESKAAP

GROOT 700 (SEWE HONDERD) Vierkante Meter

OORSPRONKLIK oorgedra kragtens Akte van Transport Nr T29867/80 met Algemene Plan TP 9092 wat daarop betrekking het en gehou kragtens Akte van Transport Nr T65769/2001

- A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr T2395/1942.
- B. ONDERHEWIG VERDER aan die volgende voorwaardes vervat in Transportakte Nr T4826/1939:

"Subject further to and entitled to the sole benefit (that is to say to the exclusion of such rights which John Robertson may have had in so far as his ownership of the remaining extent of the land held by him under Deed of Transfer No 53 dated 5th January 1918, is concerned) of the terms of the three Deeds of Servitude referred to in the three endorsements, all dated 29th April 1930, on the said Deed of Transfer No 53/1918 whereby the sole rights to the sale of liquor were reserved in favour of the land held by the said John Robertson under the said Deed of Transfer No 53/1918 and which endorsement reads as follows:

"BY Notarial Deed dated the 14th of March 1930, the sole rights to the sale of liquor has been granted in favour of the land held hereunder and this condition has been registered against the remainder of the land held under Grant dd 19 February 1904 (Caledon Quitrents Vol 10 No 18 as per Certificate of Remaining Extent dd 25 March 1930) as will more fully appear on reference to the copy annexed."

α

"BY Notarial Deed dated 11th April 1930 the sole right to the sale of liquor has been reserved in favour of the land held hereunder and this condition has been registered against the land held under Transfer 10235 dated 14th October 1927, as will more fully appear on reference to the copy annexed hereto."

"BY Notarial Deed dated 11.4.1930 the sole right to the sale of liquor has been reserved in favour of the land held hereunder and this condition has been registered against the remainder of the land held under Trfr. 9286 dd. 25 Sept. 1925 (as per Cert.of remg. Ext. dd. 25 March 1930) as will more fully appear on reference to the copy annexed hereto."

- C. ONDERHEWIG EN GEREGTIG AAN die voordele van die voorwaardes vervat in Notariële Akte waarna verwys word in die endossement gedateer 2 Oktober 1940 in gesegde Transportakte Nr T4826/1939, welke endossement soos volg lees;

"BY Notarial Deed 301/1940 dated 30th August 1940, the owner for the time being of the properties conveyed by the Transfers Nos. 4597/23, 2692/25 and 53/1918 shall not sell any liquor on the properties conveyed by the said Deeds of Transfer without the consent of the owner for the time of the within ppty as will more fully appear on reference to the said Notarial Deed registered this day in the Servitude Register under No 301/1940."

- D. GEREGTIG aan die voordele van die serwituit waarna verwys word in gedeelte (b) van die endossement gedateer 26 November 1954, op die gesegde Transportakte Nr 2395/1942, wat soos volg lees:

"BY Notarial Deed No 767/54 dated 11th August 1954:

- (b) Erf 2703 Onrust River held hereunder is entitled to certain water rights from a certain pipeline running from Portion 81 (a portion of Portion 67) of the farm Onrust rivier and Rheeziigt, held under Deed of Transfer No 19601/54 dated this day, to the said property held hereunder, together with certain ancillary rights and subject to certain conditions as will more fully appear on reference to the said Notarial Deed."

E. ONDERHEWIG VERDER aan die volgende voorwaardes opgelê deur die Administrateur in terme van Ordonnasie Nr 33/1934 met die goedkeuring van die stigting van Onrust Rivier Dorp Uitbreiding Nr 3 en vervat in gesegde Transportakte Nr T29867/80, naamlik:

1. ANY words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Notice No 623 dated 14th August 1970.
2. IN the event of a Town Planning Scheme or any portion thereof applying or being made applicable to the erf, any provisions thereof which are more restrictive than any condition of the title applicable to this erf shall take precedence. Furthermore anything in these conditions shall be construed as overriding the provisions of Section 146 of Ordinance No 15 of 1952, as amended.
3. NO building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
4. THE owner of this erf shall, without compensation, be obliged to allow electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or even inside or outside this township to be conveyed across this erf, if deemed necessary by the local or any other statutory authority and 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.
5. 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 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.
6. THIS erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purpose as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.

7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –
- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;
 - (ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
8. ON consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.
9. IN the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf."

WESHALWE die komparant afstand doen van al die regte en titel wat

BERNARD BROM , Getroud soos vermeld

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat hy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

PETRUS HENDRIK VAN NIEKERK , Getroud soos vermeld

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hy dat die verkoopprijs die bedrag van **R4 175 000,00 (Vier Miljoen Een Honderd Vyf en Sewentig Duisend Rand)** beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te Kaapstad op 04 FEB 2014 2014

In my teenwoordigheid

REGISTRATEUR VAN AKTES

24 February 2023
AFGELEWER PER HAND
TO:

Overstreek
HERMANUS
Mnr Henk Olivier



Annexure E 1/9
WEST TRUST [IT 2092/2002]

MOBILE:
Email:

14 LAGOON DRIVE
ONRUSRIVIER
7201

TP. N. Heat
(H. Olivier)

U VERWYSING:

MUNISIPALE KENNISGEWING NR. 29/2023

IS:

ERF 3221, LAGOONRYLAAN 16, ONRUSRIVIER;
AANSOEK OM OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDE, AFWYKING EN BEPALING VAN
'N ADMINISTRATIEWE BOETE; INTERACTIVE STADS- EN
STREEKSBEPLANNING NAMENS PH VAN NIEKERK

FILE NO. Erf 3221
Onrusrivier
SCAN NO.
HON 3221
COLLABORATOR NO.
1829787

Geagte Meneer

ERF 3221, LAGOONRYLAAN 16, ONRUSRIVIER: BESWAAR

u Kennisgewing (Nr 29/2023) vir publieke deelname ten opsigte van Erf 3221 Onrusrivier geadverteer in The Village News van 10 Februarie 2023, met die sluitingsdatum van 17 Maart 2023 het betrekking-

intvang hiermee West Trust se skriftelike beswaar as eienaars van aangrensende Erf 3220 Onrusrivier, teen die aansoek soos hieronder uiteengesit.

A) AANSOEK IS ONVOLLEDIG

Dit is duidelik dat nie al die onreëlmatighede en onwettighede op Erf Erf 3221 Onrusrivier aangespreek word in die aansoek nie, nl:-

1. Die suid-oosteelike grensmuur (gedeelte agterste grensmuur) is op publieke oop ruimte gebou en word verskans agter notules op die plan op bladsy 11 van die aansoek (Figuur 12), maar word duidelik getoon op die opmetingsplan op bls 10.

Die grond moet of by die Raad aangekoop word en gehersoneer word of die muur moet gesloop word en op sy regte posisie ontwikkel word.

2. Die Noordwestelike hoek van Erf 3221, word daar duidelik aangetoon dat 'n voertuighek aangebring is (en daar is gemerk deur West Trust dat hierdie hek wel in gebruik is deur die aansoeker). Soos u bewus behoort te wees, strek hierdie toegang op die Noordwestelike hoek tot Erf 3221 Onrusrivier oor 'n padreserwe waar die formele parkering vir die publieke oop ruimte voorsien moet word en aangedui is op die munisipaliteit se soneringsplanne, asook duidelik aangetoon deur die aansoeker se stadsbeplanners in hulle aansoek onder paragraaf "d. zoning" op bladsy 6.

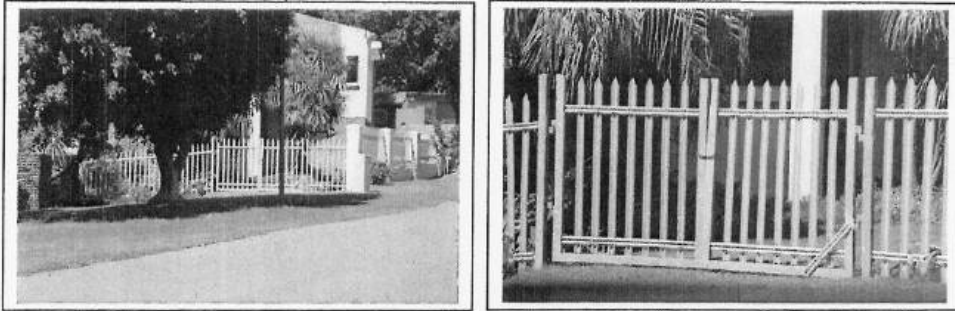
Dus moet die aansoeker hier 'n reg van weg laat registreer en of die hek verwyder en moet vervang met 'n heining.

Hierdie aspek is uiters belangrik aangesien hierdie formele parkering (waarvoor daar op planne voorsiening gemaak is), asook die broodnodige ablusiegeriewe nou aangespreek moet en gaan word.

As hierdie publieke oop ruimte as 'n primêre ontspanningsgebied geoormerk is (soos deur die omgewingskonsultant in samewerking met OREF [Onrus River Estuary Forum] bepaal en uiteengesit is in hul omgewingsaansoek vir hul goedgekeurde "Maintenance Management Plan [MMP], sal West Trust as grondeienaar aangrensend tot die Estuarium nie verder opgeskeep sit met die onsosiale gedrag van die algemene publiek wat voor ons huis plaasvind nie. Hierdie "morsige nes" van urineer en ontlaas deur lede van die algemene publiek wat op die grasperk (einde van Lagoonylaan) kom ontspan en om hul wateraktiwiteite voort te sit, wat onder die struik en tussen die bosse op die rivierwal, direk voor West Trust se eiendom plaasvind, moet deur die munisipaliteit aangespreek word tesame met die parkering.

Die informele in/uitgang oor publieke oop ruimte en padreserwe deur die eienaar van Erf 3221 vanaf sy private eiendom, welke oop ruimte en padreserwe wat uitgehou is vir publieke parkering word nie aangespreek in die aansoek nie.

TP 17 MAR 2023



FIGUUR 1: INGANGSHEK OP NOORD WESTELIKE HOEK VAN ERF 3221 SOOS AANGETOON OP DIE OPMETING IN DIE AANSOEK. DIE HEK IS $\pm 2200\text{mm}$ TOT 2500mm BREEDT IS EN MAKLIK TOEGANG VERLEEN VIR VOERTUIGBEWING RONDOM DIE VOORKANT VAN DIE EIENDOM BEKEND AS 16 LAGOONRYLAAN (ERF 3221 ONRUSRIVIER).

3. Ons versoek 'n afskrif van 'n hoogtesertifikaat vir evaluering – waar is die goedkeuring vir die oorskreiding (?) en dit behoort ingesluit te wees op die opmeter se plan.
4. Die aansoeker is bewus dat die bestaande struktuur nie die 50% dekking mag oorskrei nie. Die agterste dakoorhange blyk langer as 1000mm te wees en ons betwyfel of die 40% wat aangedui is op bladsy 9 – Figure 10: 2014 Approved building plans, reg is. Dit is die skrywe se mening dat dit onmoontlik is om 'n ingeligte evaluering te doen van die juiste situasie op Erf 3221 met hierdie aansoek as gevolg van die blatante, misleiding en onreëlmatighede met goedgekeurde planne en soos gebou bouplanne wat voorgelou word aan die publiek deur die aansoeker en sy konsultant met hierdie aansoek.

Soos die Overstrand Munisipaliteit bewus sal wees (en volgens die titelakte) is die eiendom gekoop in 2013 en oorgedra na PH Van Niekerk op 7 Februarie 2014 waarna bouplanne ingedien is vir goedkeuring. Al die oorskreidings wat dekke insluit ens word netjies uiteengesit op "AS BUILT PLANS" soos opgetrek deur die argitek en gedateer 2013! Dus kan en sal die eienaar van Erf 3220 die afleiding maak dat die 2013 planne teruggehou is as gevolg van al die onwettige oorskreidings en die bouplanne was ingedien bloot om die projek van die grond af te kry en word beskou as moedswillig en onderduims.

Met bogenoemde as agtergrond, dring ons daarop aan dat die aansoeker se argitek (Louis Van Tonder Argitek) sy "AS BUILT PLANS" opdateer na 2023 en hersirkuleer as deel van hierdie publieke deelname proses tesame met die ander tekortkominge soos uiteengesit in 1,2 en 3 hierbo.

5. Die grensmure oorskrei reeds die 2.1m hoogtebeperking en is gemeet vanaf die aansoeker se erfgrans kant reeds $\pm 2.5\text{m}$ hoog. Ten tweede op West Trust se kant van die grensmuur is daar invul van grusklippies 200mm diep en gemeet vanaf die natuurlike grondvlak na die bokant van die grensmuur is die hoogte 2320mm wat ook die maksimum hoogtebeperking van 2.1m oorskrei.

Dus sal daar aansoek gedoen moet word vir 'n permanente afwyking vir die hoogte van die grensmuur.

B) ANDER SAKE

West Trust het geen beswaar teen herstel of vervanging van die ou titelaktebeperkings om die bestaande huis te akkommodeer nie, maar die volgende moet aangespreek word om beide Erwe 3220 & 3221 van privaatheid te verseker. Dit is juis hierdie onwettige bousels van mure, houtplatforms en plasing van watertenk asook die onwettige gebruik en afkemp van publieke oop ruimte wat die eienaar van Erf 3221 noodsaak om die ongeruimthede aan te spreek.

1) Houtdek

- 1.) Die onwettige houtdek is met meer as 1 meter gelig vanaf natuurlike grondvlak wat veroorsaak dat almal se privaatheid geïmpakteer word.

- 1.2 West Trust is gedwing om gedeeltes van die hoofgebou en toegang op stille te plaas om te verseker dat die fondasies van strukture op Erf 3220 nie die wortelstelsels van die 300 – 400 jaar oue beskernde Melkhoudbome beskadig nie (dit is gedoen met 'n "environmental scoping assessment" en die insette van vier omgewingspesialiste). Dit is ook belangrik om te let en ook duidelik met die blote oog dat Erf 3220 hoër geleë is as Erf 3221 en die helling val afwaarts van die suidelike grens van Erf 3220 tot die noordelike grens van Erf 3221. Dit kan ook gesien word in Lagoonrylaan waar die helling van die straat ook val van Suid na Noord tot op die publieke oop ruimte.
- 1.3 Ons stel voor dat die aansoeker sy houtplattvorm in sy agterste boulyn verwyder en die plattvorm met 4 trappe vervang (250mm is 'n standaard trap) om vanuit die huis se braaikamer na buite te benader en op natuurlike grondvlak uitstap. Hierdie aksie tesame met die verhoging van die grensmuur behoort te verseker dat daar geen siglyne direk in Erf 3220 se woning is as persone op Erf 3221 in hierdie boulyn sit of staan nie. Die eienaar kan dus nog altyd vrylik om sy eiendom beweeg en dit sal nie nodig wees om 'n houtskerm op te sit soos voorgestel deur die eienaar van Erf 3221 nie – die grensmuur se hoogte sal dien as die houtskerm en tesame met die verlagings/ weglaat van die plattvorm in die agterste boulyn van Erf 3221 sal daar geen visuele siglyne wees van persone wat in hierdie gebied (agterste boulyn) rondbeweeg en wat visueel kontak maak met persone binne die woning op Erf 3220 of op hulle grondvloer dekke nie.
- 1.4 Die verhoging van die grensmuur om die denk te verskans met 200mm op Erf 3220 se kant, gaan geensins verhoed dat daar nie meer visuele siglyne is vanaf die onwettige dek soos aangebring op Erf 3221. Twintig (20) sentimeter gaan geen verskil maak nie – dus moet die natuurlike grondvlak gebruik word in hierdie boulyn deur die eienaar van Erf 3221 Onrusrivier om die kwessie van privaatheid reg te stel.
- 1.5 Die beste oplossing is om die dek te verskuif na die noordelike orientasie soos dit al die jare was met die vorige eienaar en waar almal mekaar se privaatheid gewaarborg het ten opsigte van visueel en klank (niemand word dan gedwing om te fluister of gepra te word deur ander se gesels, gekuier en musiek nie, soos tans die geval). Terloops, West Trust se musiek word harder gespeel sodat gesprekke nie gehoor kan word nie deur dié persone op Erf 3221 wat rondsit en staan by tafel en stoele op 'n onwettige, opgeboude plattvorm 'n skrale 5 meter van West Trust se grond en ontwerpte eerstevloer dekke.
- As jy iets weet van argitektuur en plasing van vensters, deure en leefareas, dan sal die voorsiening van 'n stoep of dek binne jou boulyne in 'n noordelike orientasie tog sin maak.
- Dus is die laaste voorstel dat "everyone gets out of everyone's face" die maklikste en eenvoudigste. Die totale hoofstruktuur op Erf 3220 is sò beplan, ontwerp en posisioneer op Erf 3220 sodat ons privaatheid behoue bly en die aansoeker op Erf 3221 het hierdie jare lange beplanning geruïneer met die aanbring van 'n onwettige, uitgeboude struktuur binne hul agterste boulyn.
- 1.6 Die Overstrand Munisipaliteit het ook groot skuld aan hierdie onreëlmatighede en onwettige bousels en wil tot vandag toe nie ons skriftelike besware en navrae oor die ongeruimthede erken nie. Die vraag sal nog altyd staan: Hoe is dit moontlik dat die aansoeker uitklaringsertifikaat vir oordrag kon kry met so baie onwettighede?
- Hoe is dit moontlik dat die aansoeker 'n voltooiingsertifikaat en/ of okkupasiesertifikaat kon kry deur sy sogenaamde argitek en die munisipale bouafdeling?
- Vanuit al die munisipale aansoeke wat die aansoeker gedwing word om aan te spreek, asook dié wat nog gaan kom wat aangespreek moet word, is dit duidelik dat daar politieke rampokkery hier plaasgevind het en die eienaar gebruik politieke verbintnisse met sy posisies wat op openbare forums beklee word om die wolwe van sy deur weg te hou.
- Hoekom is ons skrywes vanaf 2016 nie deur die munisipaliteit beantwoord nie en elke keer word West Trust verwys na prokureurs asof die spesie die saak sal oplos?
- Miskien lê die antwoord in die objektiewe evaluering van die plaaslike koerante se voorblaaie waar die Burgermeester, van die Raadslede en die Munisipale Bestuurder dink ons is almal onopgevoed en dat die belastingbetalers soos idiote bestuur moet word en moet bloot "shut up".
- Hierdie plaaslike forums en belastingbetaler assosiasies vorm 'n integrale deel van hierdie stinkse gedrag saam met die OM politici en hierdie aansoek en die geskiedenis sedert 2016 is 'n bewys van hierdie stelling.
- 1.7 Die beplanningskonsultant se gekte woorde van "dat die houtdek geen addisionele impak op privaatheid, "views", ens het, word verwerp. Dit is juis waarom die aansoek en ongelukkighede gaan. West Trust het reeds twee permanente skerms laat opsit (ten duurste) in 'n poging om hul privaatheid te beskerm (dit het nie veel gehelp nie) en kort, kort is daar klagtes van die aansoeker dat daar

4/9

geraas/ musiek kom vanaf Erf 3220, terwyl die aansoeker die een is wat al die oortredings en onwettige bouwerk en houtdeke aangebring het!

West Trust bevraagteken hierdie dek asook 'n watertenk sedert 2016 met die bouafdeling en stadsbeplanners van die Overstrand Munisipaliteit, maar tot op hede is geen antwoorde gegee of optrede teenoor die aansoeker nie, totdat die saak in Februarie 2022 in 'n formele dispuut beland het met 'n formele klag wat gelê is by die OM Stadsbeplanners.

Dit is absoluut snert dat die aansoeker het nie geweet dat hy die reëls oortree nie en "that it was only discovered/realised once a survey of the property has been done". PH Van Niekerk dring daarop aan dat jy spreek hom aan as doktor. Dus aanvaar ons dat PH Van Niekerk geen oningeligte of primitiewe individu is nie. Dit is ook nie die eerste huis wat PH Van Niekerk besit nie, terwyl West Trust bewus is dat dit opsetlik en moedswillige optredes is aangesien die aansoeker die grensmuur met die eienaar van Erf 3220 voorheen bespreek het, wie nie wou toelaat dat PH Van Niekerk onwettige opbouings en aangepaste planke wou installeer sonder bouplanne nie.

2) Grensmuur

Die huidige grensmuur is onwettig verhoog met saamgeslingerde, ou houtplanke wat voorheen deel was van balustrades by die oorspronklike huis wat die aansoeker gekoop het.

Met die destydse verhoging is die huidige muur en planke reeds ±2.5 meter (gemeet vanaf die huidige geplaveide laterale boulyn of noordekant van die muur – dus aan die aansoeker se kant).

Ook is die stukke planke nie eweredig gespaseer nie en onooglik, net soos die onwettige plasing van die watertenk. Hierdie houtbalustrades bied **GEEN PRIVAATHEID** met die verhoging van die muur nie en dit is West Trust se beskeie mening dat die aansoeker geen aanvoeling het ten opsigte van estetika nie en ook geen respek toon vir aangrensende eienaars se eiendomwaardes nie.



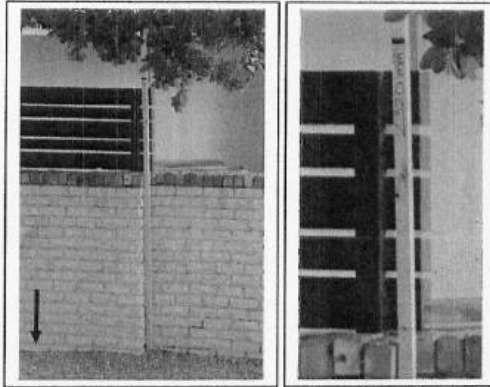
FIGUUR 2: FOTO VERSKAF DEUR COETSEE – VAN ZYL

Soos duidelik gesien kan word van dië foto geneem vanaf Erf 3221 na Erf 3220 Onrusrivier, bied hierdie plankes geen privaatheid nie. As die leser bekend was met die struktuur op Erf 3220 sal hulle let dat daar tot binne die huis gesien kan word deur 'n glasvenster lanks die voordeur, terwyl 'n groot venster links van die voorduur se blindings af was toe die foto geneem was.

Met respek, die huidige gebroke balustrades verseker geen privaatheid nie – jy sien dwars deur die hout planke en daar is absoluut geen manier dat West Trust gespaar gaan word van inmenging en indringing op ons reg tot privaatheid nie. Persone op Erf 3221 en die watertenk gaan nog altyd blatant sigbaar wees deur die huidige hout plank struktuur of 'n verlenging van hierdie struktuur.

West Trust is ten gunste van die verhoging van die muur met hout, maar nie in die huidige vorm nie. West Trust is selfs bereid om toestemming aan die aansoeker te verleen om die muur te ontwikkel tot 2.5m gemeet vanaf Erf 3220 se grondvlak op voorwaarde dat die dek in die agterste boulyn ook verwyder ook word (dit is die enigste manier om die onooglike tenk te verberg in sy huidige posisie. Alternatiewelik moet die tenk verwyder word).

Met die gebruik van eenvoudige "treated pine" (Tonalith) planke wat gesentreer word oor die breë spasies in die huidige balustrade aanbouing bo-op die geboude muur sal voldoende privaatheid skep vir alle partye. Hierdie planke moet dieselfde kleur geveer word soos die bestaande planke reeds geïnstalleer sodra die munisipaliteit 'n aansoek om permanente afwyking toegestaan het vir die hoogte van die grensmuur wat die 2.1m oorskrei.



FIGUUR 3: HOOGTE VAN MUUR = 2320mm

Die swart pyltjie op die foto heel links, toon waar die hout stok geplaas was om die afmeting van die hoogte van die grensmuur te bepaal.

Fotograaf moes die stok plaas in 'n hoek om die foto te kan neem en dus die swart lyn wat bo-oor die balustrade skerm uitsteek.

Dit is duidelik vanaf die foto waar die pyltjie is dat die grusklip Invul is hoër in dié hoek posisie. Die grusklip is laer weerskante van die hoek waar die stok staan met 'n baksteen breedte.

- 3) Die beplanningskonsultant se stelling dat "the proposal is only to accommodate the existing dwelling and deck" is weereens verkeerd! Wat van die hoogte van grensmure, mure wat buite die erfgrense ontwikkel is, reg van toegang oor 'n parkeergebied en oop ruimte, ens?
- 4) Die beplanningskonsultant se stelling van "Good Administration" is ook verkeerd en word ligtelik in sy dokument aangespreek. Dit gaan nie hier oor 'n paar ou foutjies wat histories gemaak is nie – die feit is die aansoeker het nie 'n keuse as om die gemors op sy Erf 3221 reg te stel nie en kan nie net toegesmeer word as "historic and unknowingly" nie. Die foutiewe aspekte op hierdie perseel of dit nou histories is of nie is sò blatant en om te noem dat die aansoeker "unknowingly" voortgegaan het met 'n koop van 'n eiendom stel die applikant beslis nie in 'n besondere aantreklike lig nie. Die beplanningskonsultant insinueer dus dat hul klient, PH Van Niekerk was "not aware" / het "unknowingly" met sy sake aangegaan.

Met ander woorde, die klient se beplanner maak die deur oop vir die leser om tot die slotsom te kom dat PH Van Niekerk eintlik 'n ongehoorsame individu is aangesien "unknowingly" of "not aware" beteken ook "heedless, ignorant, negligent, oblivious, unconcerned, uninformed, incognisant, blind, careless" ens. Dit is West Trust se mening dat "unknowingly" nie as verskoning gebruik kan word vir hierdie aansoeker se aksies nie.

Die volgende feite moet deur die Raad of amptenare uitgeklaar word alvorens aan die SPLUMA voorskrifte voldoen kan word:-

- i) Hoe is dit moontlik dat hierdie spesifieke eienaar met al die onwettighede wegkom by die OM, na al die skriftelike en telefoniese samesprekings en klagtes deur West Trust?
- ii) Hoe is dit moontlik dat die aansoeker 'n uitklaringsertifikaat en okkupasiesertifikaat by die OM gekry het (politieke inmening is West Trust se raaiskoot met die evaluering van al die beskikbare inligting tot ons beskikking)?
- iii) Hoe is dit moontlik dat OM amptenare druk op eienaars kan plaas om hul wettige bouplanne aan ander organisasies soos OREF of ORHA te gee sonder PAIA (weereens is die raaiskoot, politieke rampokkery by die OM).

OPSOMMING

Vanuit die voorafgaande is dit tog duidelik dat die aansoeker se oneerlike en moedswillige optredes nog steeds voortduur. Die aansoeker het die huis gekoop en laat opknop en het geweet van die oortredings.

West Trust, die eienaars van Erf 3220 maak gevolglik ten sterkste beswaar teen die onvolledige aansoek en behou die reg voor om

- i) Die beswaar terug te trek indien 'n skikking bereik kan word tussen die onderskeie eienaars met betrekking tot die afskerming/verwydering van die onooglike watertenk, die verhoging van grensmuur wat totale privaatheid vir alle partye voorsien en die verwydering en verskuiwing van die houtdek in die agterste boulyn om privaatheid aan Erf 3220 se beplande en ontwerpte eenheid te herstel.

Ontvangserkenning sal waardeer word en indien daar enige onduidelikhede is, skakel gerus die ondergetekende.
Die uwe

Michelle Grime
Begunstigde West Trust
0729919915



NS: Aangeheg: Afskrif van Notules dat Michelle Grime geregtig is om namens West Trust administratiewe sake te hanteer.

AFSKRIFTE: DGF Attorneys – Naas Fischer
Creative Profile Town Planners – Francois du Toit

WEST TRUST

TRUST REGISTRATION NUMBER: IT2092/2002

RESOLUTION OF THE TRUSTEES OF THE TRUST

IT IS RESOLVED THAT:

- CHAIRPERSON:** ANDRIES FRANCOIS ODENDAAL DU TOIT be and is hereby appointed as chairperson of the board of trustees and will arrange trust meetings as deemed necessary.
- REPRESENTATIVE TRUSTEE:** ANDRIES FRANCOIS ODENDAAL DU TOIT be hereby and also accept being appointed as the main representative trustee of the trust, and is hereby authorized to:
- sign all relevant SARS documents for and on behalf of the trust
 - to undersign all relevant documents, on behalf of the trust, required for the opening of a bank account(s) and the day to day operations of such bank account(s).
- FIXED ASSETS:** ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME is authorised to purchase and sell any fixed assets, by submission and final approval by the board of trustees through a communication medium available at the time, and will be responsible for managing and recordkeeping of the Fixed Asset Register.
- LISTED INVESTMENT MANAGEMENT:** ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME is authorised to manage all meetings and correspondence with brokers of the Trust regarding the listed investment portfolio. It was furthermore resolved that ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME is authorised to purchase and sell the listed investment on the portfolio, and to give report to the other trustees.
- UNLISTED INVESTMENT MANAGEMENT:** It was resolved that ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will attend the shareholders meetings on behalf of the trustees of the Trust.
- | | | |
|------------------------------------|------------|------|
| Snailssnow Properties 19 (Pty) Ltd | 100 shares | 100% |
|------------------------------------|------------|------|
- ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME is authorised to sign all minutes on behalf of the trust, as shareholder, including the annual financial minutes provided by the accountants.
- LOAN(S):** It was resolved that ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will decide on any loans made or received and the amount of the loan(s), considering the funds available and the risk of the Trust.

Initial

D

ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will also ensure that necessary loan agreements, where applicable, will be drawn up and signed before funds are made available to the borrower and / or received by the trust.

ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will ensure that the conditions of existing loan agreements (if any) are met, and if not, be brought to the attention of the other trustees, through a communication medium available at the time, so that the trustees can decide what action should be taken.

TRUST ADMINISTRATION:

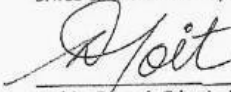
It was resolved that ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will be responsible for all the administration and record keeping of the trust. ANDRIES FRANCOIS ODENDAAL DU TOIT and/or MICHELLE GRIME will provide the accountants with all the necessary information to prepare the trust's annual financial statements and to submit the tax returns to SARS.

SIGNING OFF ANNUAL FINANCIAL STATEMENTS:

It was resolved that ANDRIES FRANCOIS ODENDAAL DU TOIT will liaise with the auditors to discuss the annual financial statements of the Trust and to sign same on behalf of the trustees. ANDRIES FRANCOIS ODENDAAL DU TOIT will bring the financial statements under the attention of the other trustees and provide any significant explanations deemed necessary or requested by any trustee.

By their signature hereof, the Trustees of the Trust hereby acknowledge that they have read, understand and agree to the resolution set forth in this document.

DATED on this the 01st day of March 2022.



Andries Francois Odendaal Du Toit



Christiaan Hendrik Van Rheede van Oudtshoorn



C2M Trust Management Services (Pty) Ltd
represented by C K Bester

Loretta Gillion

From: Henk Olivier
Sent: Tuesday, 28 February 2023 12:35
To: Loretta Gillion
Subject: FW: ERF 3221 ONRUSRIVIER



From:
Sent: Tuesday, 28 February 2023 09:30
To: Henk Olivier <holivier@overstrand.gov.za>
Cc:
Subject: ERF 3221 ONRUSRIVIER

FILE NO.	Er 3221
	1 Jan
SCAN NO.	
COLLABORATOR NO.	1818525

Hi Henk, hoop dit gaan goed.

Ek is tans nog in die buiteland maar samesprekinge met my kantoor toon dat die aansoekadvertensie en dokumentasie soos ontvang vir Mnr Van Niekerk se stadsbeplanningsaansoek "flawed" is en nie al die onreëlmattighede aanspreek nie, bv.

1. Die suid-oostelike hoek se muur is oor die boulyn en is op publieke oop ruimte ontwikkel en word nie op die beplanningsvoorstel uitgelig/bespreek nie.
2. Op die noord-westelike hoek (teenaan Lagoon Rylaan) is daar 'n hek wat Mnr Van Niekerk gebruik vir voertuigbeweging ens. Die hek verleen toegang vanaf sy Erf 3221 oor publieke oop ruimte asook deel van padreserwe en waar die formele parkering en toekomstige ablusiegeriewe moet kom (vanwee die hoof rioollyn wat daar verbystrek vir maklike aansluiting sowel as die +/- 32m terugsetlyn vanaf die hoogwatermerk (waar niks gebou mag word nie). Dus sal daar 'n servituut reg van weg geregistreer word asook padsluiting plaasvind - of die hek moet verwyder word - ons dring daarop aan dat 'n heradvertensie as 'n erratum gedoen moet word.
3. Die dekking van die huis wat op 'n argiteksplan uitgespel is as 42% word bevestigteken gegewe al die ongeruimthede wat plaasgevind het na die huis bewoon is. Kan jy asb die dekking ondersoek en bevestig asb of ons kan dit self laat ondersoek - laat weet my of jy ons gaan akkommodeer met hierdie aspek asb.
4. Die beplanningsverslag wat op publieke deelname proses uit is bevat hierdie anomalieë wat geignoreer word. Kan jy asseblief hierdie aspekte onder die beplanningskonsultante se aandag bring en 'n heradvertensie plaas aangesien dit nie net my maar die breë publiek raak (o/a omringende eienaars in Lagoonrylaan).
5. Elke onreëlmattigheid ten opsigte van hierdie eiendom (en daar is talle ter sprake) sal reggestel word. Hierdie "kyk ander kant toe" gaan nou ordentlik aangespreek word aangesien die OM aan my voortdurend uitwys dit is deel van persoonlike hofgedinge.

Ontvangserkenning sal waardeer word en ek kan wel Whatsapp oproepe ontvang of epos indien daar navrae is.

Groete
 Francois

TP 28 FEB 2023

Annexure F 1/18



InterActive Town & Regional Planning
PO Box 980
Overstrand
7200

Reference: Erf 3221 Onrus
Date: 26 May 2023



ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF PH VAN NIEKERK

With reference to your request dated 31 March 2023 please find our response to the objections for the application for the removal of restrictive title deed condition, building line departure and the determination of an administrative penalty.

Kind Regards

Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)

TP. N. Theak
(H. Olivia)

FILE NO.	EF 3021
	Onrusriver
SCAN NO.	
	HON 3221
COLLABORATOR NO.	
	1861581

TP 26 MAY 2023

3/18

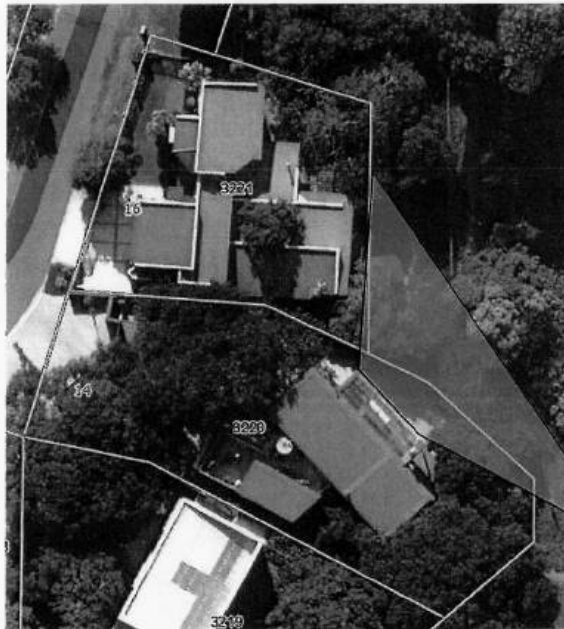
For contextual background the character of the area in terms of the erf sizes, layouts and tree-rich and natural area should also be noted.



With reference to the adjacent aerial photograph, it is evident that the objector's house was designed and located in such a manner that the views from the outside recreational area cannot be obstructed by the applicant's property. The objector's dwelling was built after the applicant's dwelling.

d. Background history of the neighbours

For the purposes of the report, it is considered necessary that the deciding authority be made aware that since building their house there have been increasingly acrimonious complaints from West Trust about their neighbours' property and activities thereon. The details of their ongoing complaints are not considered necessary for the purposes of this response.



2. Methodology

The response to the Objection is dealt with by analysing and interpreting the points made therein. Each of the points is responded to.

3. Summary of the application

The northern side of the dwelling encroaches the northern zoning scheme 2m lateral building line. This building line was originally a 1.5m building line.

The dwelling house encroaches the street and rear title deed building lines, which are larger than the zoning scheme building lines in terms of the street and rear building lines, but consistent with the zoning scheme building lines. Thus by removing the title deed building lines the dwelling house will be consistent with the applicable zoning scheme's street and rear building lines. An application was therefore made for the following:

- A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling. (Previous approval was for 1.5m.)
- Removal of a restrictive title deed condition pertaining to building lines.
- The determination of an administrative penalty.

4. Summary of Objection

The Objection of Messrs West Trust appears to be based on personal gripes from the objector against his neighbour.

It is evident that the objector went out of his way to seek any possible relevant and irrelevant problem he could find, whether applicable or not.

In essence the Objection consists of two main points:

1. The application is incomplete and
2. Other.

Under the first point it is stated that the application is incomplete regarding the following topics:

1. The south-eastern boundary wall is built on a public open space.
2. On the north-western corner a vehicle gate was installed by the owner of Erf 3221 and is used by him.
3. The objector insists on a height certificate to evaluate purported height encroachment.
4. The objector claims that the coverage of the buildings on the property exceeds the allowable 50% coverage and claims that blatant, misleading and irregularly approved building plans and as-built building plans were presented by the applicant and the consultant.
5. The boundary walls exceed the 2,1m height restriction.

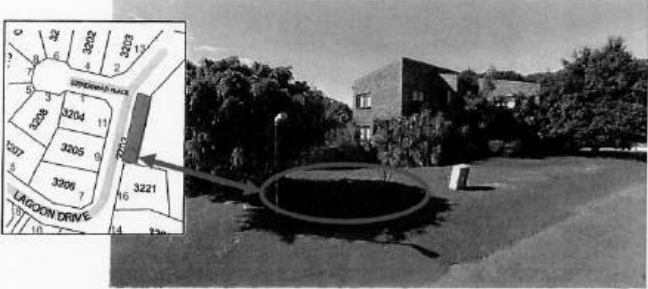
Secondly, with reference to the "Other Matters", the objector's main concern is about privacy with the following points made:

1. The wooden deck exceeds the 1m height restriction.
2. The wooden deck should be lowered to natural ground level in order to prevent sight lines.

From the analysis below it can be derived that, apart from the discord between the neighbours, the Objection is essentially about Privacy and Aesthetics.

In the following section each summarized point of objection is discussed individually:

Summary of objection	Response
<p>The Application is incomplete and not all the irregularities and illegalities have been addressed, for the reasons listed below.</p>	<p>The comments of the objector are excessively confusing as it appears on the one hand that he is concerned about privacy from the application site onto his property. On the other hand he is concerned about all other potential matters that he is of opinion are illegal on the property.</p> <p>It is emphasised in the introduction of the application report that “<u>The application objective is to legalise the existing dwelling and a deck</u>”.</p> <p>Subsequently, in order to legalise the existing dwelling and deck, the application proposal is for:</p> <ul style="list-style-type: none"> • A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling. (Previous approval was for 1.5m.) • Removal of a restrictive title deed condition pertaining to building lines. <p>As part of the above it is also proposed to amend the size of the deck in accordance with the property boundary.</p> <p>Subject to the approval of above application proposal and the amendment of the deck, the existing dwelling and deck will be consistent with the Overstrand Municipality Planning By-Law, 2020.</p>
<p>1. The south-eastern boundary wall, being part of the rear boundary wall, is built on the adjacent public open space.</p>	<p><u>This point of objection has no relevance to the application and should thus be ignored.</u></p> <p>The south-eastern boundary wall does not form part of the application to legalise the existing dwelling or deck.</p> <p>A section of the wall was built incorrectly and not exactly on the boundary as per cadastral survey, but the wall is estimated to be only 35cm out of position. This is considered insignificant in having any impact in terms of privacy, view, sunlight, aesthetics or anything else.</p> <p>This point of objection emphasises that the objector seeks with several irrelevant and insignificant details to malign the applicant and the application.</p> <p>Should this point be of real concern, it can be corrected. It should also be noted that the applicant currently rents that portion of land from the local authority.</p>

Summary of objection	Response
<p>2. The north-western corner of the subject property shows a motor gate used for access. The road reserve adjacent to the gate is formal parking for the public open space and accordingly clearly shown on the municipality's zoning plans as well as on the application's zoning plans.</p>	<p>Once again, <u>this point of objection is not relevant to the application.</u></p> <p>The following sketch and photograph are of the area the objector refers to:</p>  <p>The objector is factually incorrect in the sense that the gate is not used as a regular access gate. The regular daily use access gate to the property is directly in front of the garage.</p> <p>The referred gate accesses directly onto the widened road reserve.</p> <p>This gate is also not adjacent to the formal parking area for the public open space. The gate is used principally for access for the maintenance of the area shown above (mowing the lawn, etc.) and on odd occasions for garden refuse removal. This gate is on the opposite side of the objector's property and has no impact at all on his privacy.</p>
<p>3. The dwelling exceeds the statutory height restriction and a height certificate is required.</p>	<p>The height of the dwelling was officially approved at 8,3m. Therefore the application did not include a departure for the height.</p> <p>Consequently the point of objection is factually incorrect and thus not applicable. It should be ignored by the deciding authority.</p>
<p>4. The coverage as reflected on the approved building plans is questioned and these plans are considered blatantly misleading and irregular.</p> <p>The 2013 "as-built" building plans were wilfully and sneakily held back due to illegal encroachments.</p>	<p>The objector makes serious accusations without any facts.</p> <p>The dwelling's coverage of 42% is clearly within the town planning scheme limits.</p> <p>It is clear that these accusations constitute a personal matter between the objector and the owner which the objector is using, without any facts or investigations, making unfounded accusations. The objector provides no proof of his statements.</p> <p>Given the above, the point of objection should be omitted.</p>

Summary of objection	Response
<p>5. The boundary wall exceeds the 2.1 m height restriction. Measured from the subject erf it is already approximately 2.5m high.</p> <p>On the objector's side of the boundary wall, with fill of 200mm, the wall height from natural ground level is 2.32m, thus also exceeding the 2.1m height restriction.</p>	<p>The height of the boundary wall does not form part of the application and objection relating to the height of the wall is thus not applicable.</p> <p>The elevation of the boundary wall will be dealt with via a separate building plan application, post the current subject application.</p>
<p>Other Matters:</p> <p>1. With regards to other matters, the objector has no objection to the repair or replacement of the old title deed to accommodate the existing dwelling, but the following needs to be addressed to ensure the privacy of both the owners of Erven 3221 and 3220.</p> <p>It is the illegal buildings of wall, wooden deck, the positioning of the water tank as well as the illegal use and enclosing of the public open space that requires an application.</p>	<p>The matter regarding the objector's comment on the removal of the restrictive title conditions is noted.</p> <p>From the objector's grievance it is becoming clear that privacy is his main concern.</p> <p>According to the owner of the application site, the enmity from the neighbours originated many years ago and is continuing.</p> <p>As mentioned in the original application, the objective of the application is to legalise the existing dwelling as well as the deck, i.e. all land-use matters not aligned with the town planning scheme.</p> <p>The matters relating to the water tank, the boundary wall as well as the matters regarding the public open space have no relevance to this application and subsequently the decision-makers should ignore the mentioned points of objections accordingly.</p>

Summary of objection	Response
<p>a. The wooden deck is elevated more than 1m from the natural ground level, resulting in everybody's privacy being impacted.</p>	<p>The objector exaggerates with this point of objection. The reality is that the deck is on the same level as the back door and provides easy level access from the back door to the back yard as reflected in the following photographs and extract from the survey :</p> <div data-bbox="568 443 1222 696"> </div> <div data-bbox="568 696 1086 1003"> </div> <p>It is also evident, and factually proven through the survey by the registered land surveyor, that the deck is not elevated more than 1m from the natural ground level (only approximately 25 cm for most of the deck area). It is factually clear that the objector's statement that the deck is elevated more than 1m from natural ground level is incorrect.</p> <p>It should further be noted that the highest point of the deck is used as a level pathway for the residents.</p> <p>The objector's statement that the elevated deck will impact on everybody's privacy is taken completely out of context.</p> <p>The impression is created that the objector is attempting to malign the application and the applicant. It is consequently requested that the deciding authority take note of the objector's tactics and nullify this point of objection.</p>

Summary of objection	Response
<p>b. The owners of Erf 3221 (the objector) were forced to relocate sections of the main building as well the entrance to ensure that the foundations do not damage the roots of the existing 300 to 400 year old milkwood trees.</p> <p>It is also important to note that Erf 3220 is located higher than Erf 3221, sloping from Erf 3220 toward Erf 3221.</p>	<p>This comment is noted but is not relevant to the application.</p>
<p>c. The objector recommends that the wooden deck be replaced with stairs from the existing braai room to the outside on natural ground level.</p> <p>Increasing the boundary wall will ensure that there will be no sight lines onto people sitting or standing inside the dwelling into Erf 3220 from Erf 3221.</p>	<p>This point conflicts with the previous point of objection where the objector claims that the boundary wall is too high.</p> <p>It is ironic that the objector makes the allegation that the wall is too high and on the other hand wants the wall higher to ensure more privacy.</p> <p>The changes proposed by the objector by providing stairs will make no difference to the views as the level when walking out of the braai room remains the same.</p> <p>It should be noted that most of the deck area is only on average 0.5m above ground level and that the removal of the deck will have no impact on privacy at all.</p> <p>With respect to height; the fact that the deck does not exceed 1m means that it will be legal in terms of the 2020 Amended Overstrand Municipality Planning By-Law, once the restrictive title condition has been removed. The objector clearly indicated he has "no objection to the repair and replacement of the old title deed to accommodate the existing dwelling". By implication, should the current restrictive title condition be removed, the height of the deck will be statutorily compliant.</p> <p>In the light of the above, the point of objection should be omitted.</p>
<p>d. Raising the boundary wall with 200mm on Erf 3220 will not prevent the sight lines from the illegal deck on Erf 3221 to ensure privacy.</p>	<p>The previous comments regarding the wall are also applicable to this point of objection, being that it is not applicable to this application.</p>

Summary of objection	Response
<p>e. The best solution will be to relocate the deck toward a northern orientation as it was with the previous owners where everybody respected each other's privacy in terms of sight and sound, being within 5m from the 1st floor designed decks from the illegal built up deck on Erf 3221.</p> <p>The main structure was planned, designed and positioned on Erf 3220 to retain privacy and the applicant ruined this planning with the construction of this illegal structure within the rear building line.</p>	<p>It appears that the objector does not take cognisance that their property is located within a residential area where 100% privacy is not possible from all positions.</p> <p>Contradictory to the objector's opinion of privacy; social interactions, good neighbourship and good relationships between residents are encouraged in a healthy urban environment.</p> <p>The issues of the objector are not considered as the norm of standard residential living.</p> <p>The objector's statement is exaggerated since the deck is approximately 8m from the objector's 1st floor deck, not within 5m. The sight lines from the deck to the first-floor balcony are also mostly blocked by trees. Furthermore, as shown in the introduction of the application, the objector has located and built his dwelling in such a manner that his views cannot be affected by neighbouring residential properties.</p> <div data-bbox="568 730 1075 1249" style="text-align: center;"> </div> <p>The statement made by the objector that the applicant ruined his house planning and design is considered ridiculous given that, if it was not a deck built, but merely a level paved area, the effect would have been exactly the same. The restrictive title deed condition, reading "7. No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf,..." does not restrict a paved area as example.</p> <p>This point of objection is considered irrelevant and should also be omitted by the Municipal Planning Tribunal.</p>

Location of neighbour's first floor balcony, hidden behind trees

Deck mostly approximately 25cm from the ground level.

Summary of objection	Response
<p>f. The municipality also owes a lot to the irregularities and illegal buildings and will not acknowledge the written objections and enquiries.</p> <p>The objector accuses the municipality of several matters such as political hooliganism and that the owner uses political relationships to prevent actions against him.</p>	<p>The objector makes serious accusations and allegations against the municipality without any evidence.</p> <p>The accusations and allegations have <u>no relevance to the application</u>.</p> <p>The point of objection must be strongly rejected.</p>
<p>The objector stated that the applicant's statement that the deck will not have an impact on privacy is rejected. This is a core matter of this objection.</p> <p>The objector has erected two permanent screens to improve their privacy. The objector states that there are regular complaints from the applicant about noise from the objectors.</p> <p>The objector accuses the owner of Erf 3221 of purposely, with knowledge, contravening the law.</p> <p>The objector questions the legal status of the water tank and deck which has been taken up with the building department and town planning since 2016 to which no response was received until it was formally disputed in February 2022.</p>	<p>This point of objection is a repeat from previous points of objection. However, this objection covers several matters. In summary it is about privacy in terms of vision and sound, purposely breaking the law as well as the legality of the applicant's water tank and the deck.</p> <p>The objector should be reminded that he resides within an urban residential area of medium density. Secondly he should be reminded that neighbours do not have any say in the design or layout of dwellings, subject thereto that it complies with the Municipal Planning By-Law and the title deed conditions. Hence, the reason for the application, where he has the opportunity to comment as part of a public participation process on the matters falling outside the Municipal Planning By-Law's zoning parameters and title deed conditions. These matters will then be considered on merit by the relevant local authority, in this matter being the Overstrand Municipality.</p> <p>The legal status of the deck and water tank:</p> <p>The water tank as well as the deck are compliant within the zoning scheme parameters in terms of height. This is confirmed by the following extract from the registered land surveyors:</p>

12/18



PO Box 2245
Heemskus, 7200
Tel: 028-313 1236
Fax: 028-313 1237
info@geomatics-africa.co.za

Date: 24 November 2022

To Whom It May Concern:

Height Certificate Erf 3221 Onrustvler

This document must be read in conjunction with my topographic plan.

Using my survey and the survey of erf 3220 completed in 2013 I determined a natural ground level for the southern boundary of erf 3221.

There has been an amount of cut on the northern side of the boundary.

Water Tank:

Natural Ground Level	37.70m
Top of Water Tank	39.54m

My topographic survey determines a fair approximation of natural ground level. During this process the deck level was also surveyed.

Wooden Deck:

Natural Ground Level	36.50m
Top of Deck	37.47m

Please contact me if there are any queries in this regard.

Yours faithfully
geomatics-africa

NA Clark (PLS 1072)
Pr. Land Surveyor

As these were considered consistent with the zoning scheme, no application for any departures were made and do not form part of the application.

The title condition:

The deck is considered as a structure by the Overstrand Municipality in terms of the following condition of the title deed; hence the reason for the application:

"7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –

- (i) *an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same*

height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;

(ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."

Accusation of purposely breaking the law:

The application is clear that the unapproved structures are motivated in detail and the application included the determination of an administrative penalty.

Privacy between neighbours:

It should clearly be noted that based on general South African Property Law, the principle is applicable that you have no automatic entitlement to retain amenities such as privacy, access to light, views and the like. To stop your neighbour from building to your prejudice you will generally have to prove either:

- That the building is in contravention of a legal restriction – think title deed conditions, town planning/zoning/building restrictions and the like; or
- That the building, although complying with all legal restrictions, is "so unattractive or intrusive that it exceeds the legitimate expectations of the parties".

In the light of the above, these points of objection should clearly be omitted.

14/18

Summary of objection	Response
<p data-bbox="261 309 400 331">Boundary Wall</p> <p data-bbox="261 365 528 443">The current boundary wall is illegally raised with old material.</p> <p data-bbox="261 477 544 712">With the increase at the time, the current wall and timber slats were already approximately 2.5 m measured from the applicant's side of the boundary. These timber slats were not evenly spaced and an eyesore as well as the water tank.</p> <p data-bbox="261 745 544 981">This timber balustrade provided no privacy as a result of the elevation of the wall and in the humble opinion of the owners, the applicant has no sense of aesthetics and shows no respect for the neighbouring owners' property value.</p> <p data-bbox="261 1014 539 1205">The currently broken balustrades ensure no privacy and there is absolutely no way that the owners are spared from interference and intrusion on our right to privacy.</p> <p data-bbox="261 1238 544 1473">West Trust are in favour of raising the boundary wall with timber, but not in the current form and are even prepared to provide permission that it be raised up to 2,5m subject thereto that the section of the deck within the building line be removed.</p> <p data-bbox="261 1507 517 1552">Alternatively the water tank must be removed.</p>	<p data-bbox="571 309 1241 387">As mentioned in the previous point, privacy is not an automatic right, providing that all structures are legally compliant and do not negatively impact on the character of the area.</p> <p data-bbox="571 421 1241 499">The objection raised by Messrs West Trust regarding the wall height and the aesthetics about the timber slats and water tank is considered irrelevant as it does not form part of the application.</p> <p data-bbox="571 533 1241 589">It is considered that the objector is niggling and obviously looking for reasons to invalidate the application.</p> <p data-bbox="571 611 1241 667">It is clear that this is more about petty fault finding than about privacy. Therefore this point of objection should be removed.</p>

Summary of objection	Response
<p>The Town Planning consultant's statement that "the proposal is only to accommodate the existing dwelling and deck" is incorrect in the sense that the application does not address</p> <ul style="list-style-type: none"> • the height of the boundary walls, • the wall built outside the property boundary, • the right of access over the parking area, • etcetera. 	<p>We hereby emphasise that the objective of the application is to legalise the existing dwelling.</p> <p>Thus the comments from the objector are irrelevant.</p>
<p>The town planning applicant's statement of "Good Administration" is also incorrect. This is not about a few mistakes historically made; the fact is that the applicant has no choice but to correct the mess on his Erf 3221 and cannot be glossed over as "historic and unknowingly". The following facts should be cleared by the Council or officials before the SPLUMA requirements can be complied with:</p> <ol style="list-style-type: none"> i. How is it possible that the specific owner can get away with all the illegalities at the Overstrand Municipality after all the written and telephone discussions and complaints from West Trust? ii. How is it possible that the applicant obtains a clearance and occupational certificate from the Overstrand Municipality? (political interference is West Trust's guess with the available information at our disposal). 	<p>The objector's comment in terms of "Good Administration" is taken out of context.</p> <p>In terms of SPLUMA, "Good Administration" means in the context of land use planning the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.</p> <p>The emphasis lies in the consultative planning practices in terms of this specific application. All due consultation has taken place in terms of this application by the relevant local authority.</p> <p>Therefore this point of objection should also be omitted.</p>

16/18

<p>iii. How is it possible that Overstrand Municipality officials can pressure owners to give their legal building plans to other organizations like OREF or ORHA without PAIA? (again the guess is political racketeering at the OM).</p>	
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17/18

Summary of objection	Response
<p>Conclusion:</p> <p>It is clear that the applicant's dishonest and wilful conduct still continues. The owner bought the house and had it renovated and knew about the violations.</p> <p>West Trust, owners of Erf 3220, therefore strongly objects to the incomplete application and reserves the right to withdraw the objection if a settlement can be reached between the respective owners in relation to the shielding/removal of the unsightly water tank, the raising of the boundary wall which provides privacy for all parties and the removal and relocation of the wooden deck in the rear building line to provide privacy to Erf 3220 to restore planned and designed unity.</p>	<p>As mentioned on several occasions in this response, the objective and purpose of this application is to legalise the existing dwelling of which the deck (being interpreted as a structure) forms part.</p> <p>Once the restrictive title deed condition 7 of Title Deed T3925/2014 in terms of Chapter IV, Section 15(2)(f) is removed, the deck as well as the existing dwelling house will be compliant in terms of the Overstrand Municipality Planning By-Law, 2020, zoning scheme.</p> <p>The height of the wall and the accommodation of the water tank in its existing location is legally consistent.</p> <p>The existing deck has no legal bearing on the privacy of the objector.</p>

5. Conclusion

The objection received from the neighbour is considered in essence to be a continuation of a personal vendetta against the applicant.

The matters referred by the objector, namely that the height of the sharing wall between them and the dwelling and the deck exceeding the zoning scheme height requirements, plus the coverage of the property, are incorrect. All of these matters are consistent with the Overstrand Municipality Planning By-Law, 2020 zoning scheme requirements.

The height of the wall and water tank are also not applicable to the application.

The matters objected to in terms of the position of the side gate and a small portion of a boundary wall built over the boundary of the property are also not relevant to the application.

The aesthetic matters of the boundary wall are considered a personal exaggeration of a minor matter.

Regarding privacy, the objector should clearly note that in terms of the South African Property Law, the principle of no automatic entitlement to retain amenities like privacy, access to light, views and the like is applicable.

The objector's objection in terms of "Good Administration" is invalid as all processes in terms of the SPLUMA law were followed.

The many points of objection to illegalities and irregularities by the local authority are not substantiated at all, nor are these relevant to the application at hand.

In the light of the above it is requested that this application for building line departures, removal of restrictive title deed conditions and the determination of an administrative penalty be approved.

Kind Regards



Andre Wiehahn Pr Pln A/927/1996
B Art et Sc (Town and Regional Planning)
Tel: 082 466-0490

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION,
DEPARTURE & DETERMINATION OF AN ADMINISTRATIVE PENALTY: ERF
3221, ONRUS RIVER (4299/2022)**

Stormwater (SW) : In order
Electricity : Eskom
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 should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to 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 stormwater be allowed to discharge through Erf 3221, Onrus River, unobstructed;
6. that any additional and / or extended vehicles entrances will be for the owner's account;
7. that no on-street parking be allowed.

p.p. R. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

21/02/2023
DATE



TP - A Theart
(H Olivier)

Annexure I 1/4

FILE NO. Erf 3221 - HON
SCAN NO.
COLLABORATOR NO.
1812969

10 Jan Smuts Drive
Pinelands
7404

Stefan Geldenhuys
Tel: 021 414 5546
Email: StefanG@openseve.co.za

Our Ref.: WWIP_WONR0531_23
Your Ref.: 3221 HON

16 February 2023

Attention : H Olivier
Overstrand Municipality
Hermanus

Wayleave application : Removal or restrictive title deed condition, Erf 3221, 16 Lagoon Drive
Onrust River

PLANT AFFECTED : COPPER AND OPTIC FIBRE

With reference to your letter received **10 February 2023**

Important cables and other infrastructure are affected, please contact our representative
Melt Van As / 021 852 1717 / 081 363 7873 / Meltva@openseve.co.za
48 hours prior to commencement of construction work.

I hereby inform you that Openseve approves the proposed work indicated on your drawing in principle. This approval is valid for **06 MONTHS ONLY**, after which reapplication must be made if the work has not been completed

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Openseve infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,
Private Bag X881, Pretoria, Gauteng, 0001

16 JAN 2023

2/4

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should Openserve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Openserve rights remain reserved.

Yours faithfully



For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

3/4

PLANT AFFECTED : COPPER AND OPTIC FIBRE

This wayleave, Reference Number WWIP_WONR0531_23 valid for 06 months from date here of and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three metres of any Openserve plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Melt Van As / 021 852 1717 / 081 363 7873 / Meltva@openserve.co.za must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration should the applicant require our plant to be relocated. The cost of such relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Openserve immediately should the applicant locate any Openserve plant which is not indicated on the plans.
5. Should the applicant expose any Openserve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for the damage or loss as a result thereof.

Date: 16 February 2023By: S Geldenhuys
For Regional General Manager

Legend	
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC)	
5. Jointing Pit / AJB	
6. Jointing Pillar (PJ)	
7. Pipe Junction Box (B/S)	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable (A/C)	
Optic Fibre indicated in PINK on the plan	

The pipeline indicated (in Pink) contains OPTIC FIBRE cables.





Overstrand Municipality

Loretta@overstrand.gov.za

FILE NO. <i>St 3221</i>
<i>Onusriev</i>
SCAN NO.
COLLABORATOR NO.
<i>1859583</i>

*TP- D/Heart
(11.Olivia)*

Annexure T 1/4



Date: 2023/05/19

Enquiries:

WayleavesWesternOU@eskom.co.za

WAYLEAVE APPLICATION: Removal of Restrictive Title Deed Condition Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive : 16 I AGNON DRIVE ONRIIS RIVER · Hermanus

YOUR REF: 3221 HON

ESKOM REF: 09043-23

THIS IS NOT AN APPROVAL TO START CONSTRUCTION

I hereby inform you that Eskom has no objection to the proposed work indicated on your drawing in principle. This approval is valid for **12 months** only, after which reapplication must be made if the work has not been completed.

1. **Eskom services are affected by your proposed works and the following must be noted:**

- Eskom has no objection to the proposed work and include a drawing indicating Eskom 11kV/LV underground services in close proximity.
- Please note that underground services indicated are only approximate and the onus is on the applicant to verify its location.
- There may be LV overhead services / connections not indicated on this drawing.
- The successful contractor must apply for the necessary agreement forms and additional cable information not indicated on included drawing, in order to start construction.

Application for Working Permit must be made to:

Customer Network Centre: Caledon

Dirk Swart / Francois Swart

028 214 5710 / 028 214 5713 / 083 502 2590

SwartDi@eskom.co.za

Include Eskom Wayleave as-built drawings and all documentation, when applying for Working Permit.

Should it be necessary to move, relocate or support any existing services for possible future needs, it will be at the developer's cost. Application for relocating services must be made to Customer Services on 08600 37566 or customerservices@eskom.co.za

Distribution Division - Western Region [Land Development]
Western Region
Eskom Road Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 86 003 7566 www.eskom.co.za
Eskom Holdings SOC Limited Reg No 2002/015527/30

22 MAY 2023

2. Underground Services

The following conditions to be adhered to at all times:

- a) Works will be carried out as indicated on plans.
- b) No mechanical plant to be used within 3.0m of Eskom underground cables.
- c) All services to be verified on site.
- d) Cross trenches to be dug by hand to locate all underground services before construction work commences.
- e) If Eskom underground services cannot be located or is grossly misplaced from where the wayleave plan indicates, then all work is to be stopped and Lianne Muller from the Land Development Office to be contacted at MullerLE@eskom.co.za , to arrange the capturing of such services.
- f) In cases where proposed services run parallel with existing underground power cables the greatest separation as possible should be maintained with a minimum of 1000mm.
- g) Where proposed services cross underground power cables the separation should be a minimum of **300mm** with protection between services and power cables. (Preferably a concrete slab)
- h) No manholes; catch-pits or any structure to be built on top of existing underground services.
- i) Only walk-behind (2 ton Bomac type) compactors to be used when compacting on top of and 1 metre either side of underground cables.
- j) If underground services cannot be located then the Customer Network Centre (CNC) should be consulted before commencement of any work.
- k) **No work can take place within the servitude of a 66kV Cable or 13kV Cable if indicated.** Should you need to undertake any work within the proximity of our 66kV or 132kV Cables please contact Lianne Muller at MullerLE@eskom.co.za to arrange a site visit.

3. O.H. Line Services:

- a) The following building and tree restriction on **either side of centre line** of overhead power line must be observed:

Voltage	Building restriction either side of centre line
11 / 22kV	9.0 m
66kV	11.0 m
132kV	15.5 m

- b) No construction work may be executed closer than **6 (SIX) metres** from any Eskom structure or structure-supporting mechanism.
- c) No work or no machinery nearer than the following **distances from the conductors:**

Voltage	Not closer than:
11 / 22kV	3.0 m
66kV	3.2 m
132kV	3.8 m

- d) Natural ground level must be maintained within Eskom reserve areas and servitudes.
- e) That a **minimum ground clearance** of the overhead power line must be maintained to the following clearances:

Voltage	Safety clearance above road:
11 / 22kV	6.3 m
66kV	6.9 m
132kV	7.5 m

314

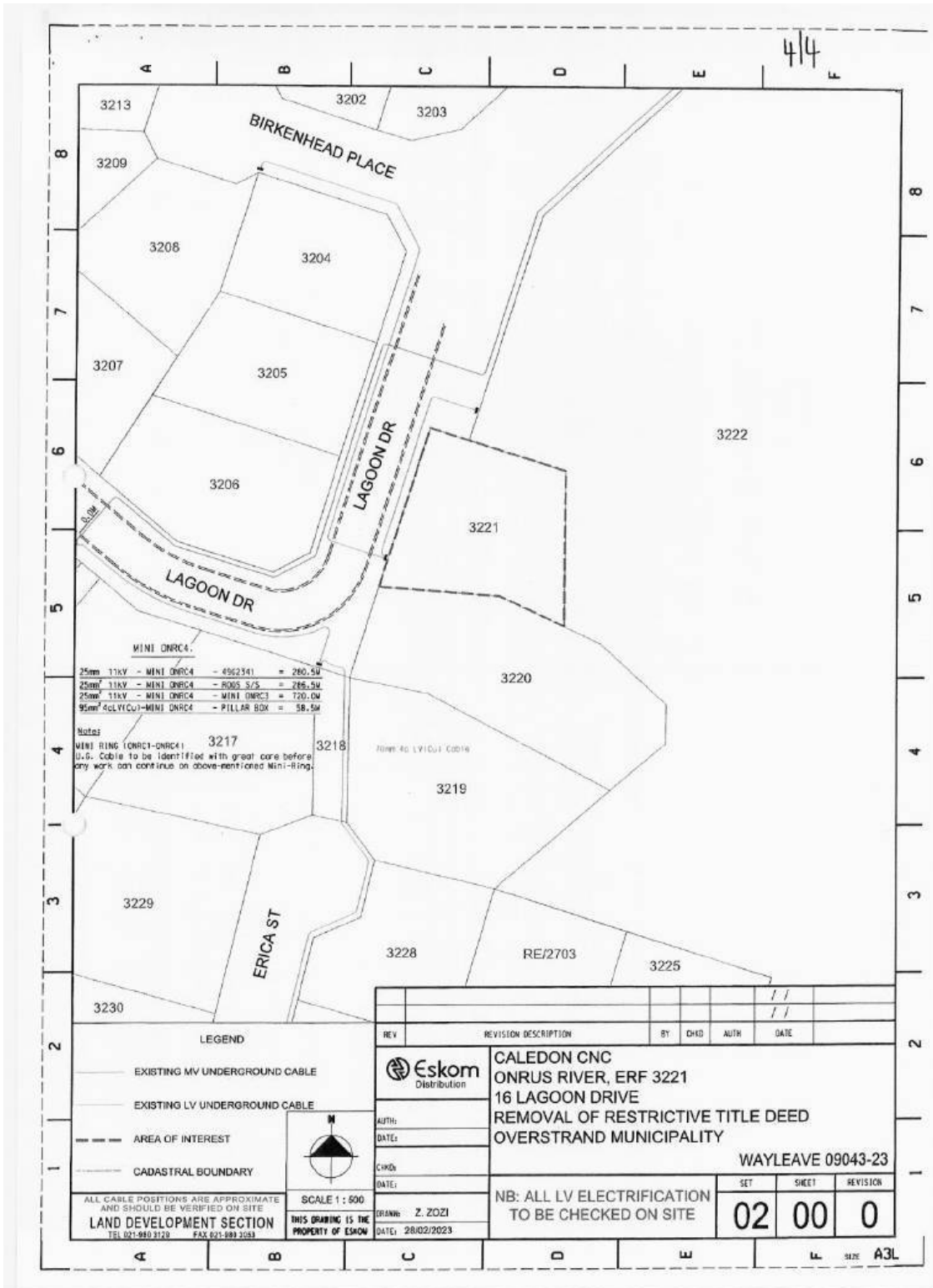
- f) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.
- g) That Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
 - i. Having 24 hour access to its infrastructure according to the rights mentioned in (a) above,
 - ii. To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules,
 - iii. To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom,
 - iv. To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure.
- h) Eskom must have at least a 10m obstruction free zone around all pylons (not just a 10m radius from the centre).
- i) Eskom shall not be liable for the death or injury of any person, or for loss of or damage to any property, whether as a result of the encroachment or use of the area where Eskom has its services, by the applicant, his/her agent, contractors, employees, successors in title and assignee.
- j) The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
- k) Eskom shall at all times have unobstructed access to and egress from its services.
- l) Any development which necessitates the relocation of Eskom's services will be to the account of the developer.
- m) Lungile Motsisi Motsisl@eskom.co.za, Eskom: Transmission must be contacted on 011 800 5734 to comment on behalf of the 400 kV OVERHEAD POWERLINES. NO WORK WITHIN THIS SERVITUDE OR UNDERNEATH POWERLINES IS ALLOWED until comment from Eskom Transmission has been obtained.

4. **NOTE**

Wayleaves, Indemnity form (working permit) and all as-built drawings issued by Eskom to be kept on site at all times during construction period.

Yours faithfully

LAND DEVELOPMENT (BRACKENFELL)





Annexure J

CONSERVATION INTELLIGENCE

postal 16 17th Avenue, Voëlkop, Hermanus, 7200
physical 16 17th Avenue, Voëlkop, Hermanus, 7200
website www.capenature.co.za
enquiries Rhett Smart
telephone 087 087 8017
email rsmart@capenature.co.za
reference LS14/2/6/1/7/2/3221_departure_Onrus
date 5 April 2023

Overstrand Municipality
 P.O. Box 20
 Hermanus
 7200

TP - A Theart
(H Olivier)



Attention: Henk Olivier
 By email: loretta@overstrand.gov.za

Dear Mr Olivier

Application for Departure, Removal of Title Deed Conditions and Administrative Fine for Alterations to a Dwelling on Erf 3221, Onrus, Hermanus (Overstrand Municipality ref. no.: 3221 HON; 4299/2022)

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

The application is for an amendment to building lines for a residential dwelling including a deck. It is proposed to reduce the size of the deck. The property is located adjacent to the Onrus River Estuary which is a sensitive ecological feature. The application will however result in a slight reduction in the total footprint due to the reduced deck.

As the property is within 100 m from the boundary of the estuary, the associated NEMA listed activities would be relevant. The only structure which increased the footprint of the dwelling is the deck. The deck is however elevated on supporting poles. The footprint of an elevated structure is considered to be the footprint of the supporting structures (i.e. the poles) and therefore the threshold of 50 m² would not have been exceeded and similarly for excavation of 5 m³ of material.

In conclusion, CapeNature does not object to the application.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely

Rhett Smart
For: Manager (Landscape Conservation Intelligence)

FILE NO. Erf 3221
HON
SCAN NO.
COLLABORATOR NO.
1843675

The Western Cape Nature Conservation Board trading as CapeNature
 Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Reddinghule, Mr Paul Slack

6 APR 2023



BREED-GOURITZ

CATCHMENT MANAGEMENT AGENCY

Cnr Mountain Mill & East Lake Road, Worcester 6850, Private Bag X3055 Worcester 6849

Enquiries: Vhehngani Ligudu Tel: +27 23 346 8000 Fax: +27 23 347 2012 E-mail: vilgudu@bgcma.co.za

REFERENCE NO: 4/10/1/G40G/ERF 3221, ONRUS
Date: 24 March 2023

The Municipal Manager
Overstrand Municipality
P. O. Box 20
Hermanus
7200

TP N. Theobald
(H. Olivia)
cc/ H. Bignaut

Attention: Loriaan Isaacs

RE: ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

With reference to the above-mentioned document received by this office on the 10/02/2023 requesting comments.

This office has reviewed the above-mentioned report and has no objections on the proposed activities subject to the following comments:

1. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered.
2. The property is located next to the Estuary wetland, please note that an Estuary is not a watercourse in terms of the National Water Act, 1998 (Act 36 of 1998) and therefore Section 21 (c) and (i) water uses are not triggered by the development.
3. No storm water runoff from any premises containing waste, or water containing waste emanating from premises may be discharged into a water resource.

This office reserves the right to amend and revise its comments as well as to request any further information.

The onus remains on the registered property owner to confirm adherence to any relevant legislation concerning the activities that might trigger and/or need authorization.

Please do not hesitate to contact the above official should there be any queries.

Yours faithfully

Liguduwc
MR JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (Acting)

TP 24 MAR 2023

Annexure K

OVERSTRAND MUNISIPALITEIT
27 MAR 2023
OVERSTRAND MUNICIPALITY

FILE NO.	EF 3221
SCAN NO.	02
LABORATOR NO.	1833839