

4.2

ERF 668, 56 CHINA MARAIS AVENUE, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF WG & J THELANDER

668 HFH (4155/2022)

H Olivier

12 September 2022

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 25 May 2022 from Messrs WRAP on behalf of WG and J Thelander in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 668, Fisherhaven 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.4.(b), E.4.(c) and E.4.(d) as contained in Title Deed T61942/2021 of the property to accommodate a second dwelling unit.

The restrictive title conditions read as follows:

*“E. **SUBJECT FURTHER** to the following special conditions in said Deed of Transfer Number 11236/1974 imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance Nr. 33 of 1934 when approving of the establishment of Fisherhaven Township, namely:*

4. This erf shall be subject to the following further conditions, provided that where, in the opinion of the Administrator after consultation with the Townships Board and the Local Authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose:

(b) it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;

(c) not more than 30% of the area thereof shall be built upon;

(d) no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf, nor within 10 feet of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided with the consent of the local authority and outbuildings not exceeding 10 feet in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this condition shall apply to the consolidated area as one erf.”

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 1487m² in extent and is developed with a dwelling and garage. The erf is located in a residential area and is zoned Residential Zone I.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

- ❖ The owners of the property want to erect a second dwelling unit, and although it is a primary right in terms of the Overstrand Municipality Land Use Scheme, the Title Deed restrictions prohibits it. Hence this application.
- ❖ The rationale to remove all three restrictive conditions is to enable the landowners to be able to develop the property in future to its full potential in terms of the Land Use Scheme.
- ❖ The second dwelling will be used by the applicants' parents.
- ❖ The restrictive conditions were originally intended to protect the residential character of Fisherhaven, the existing Overstrand Municipality Land Use Scheme however now makes provision to manage the area in a similar manner, and the older more restrictive title deed restrictions are not required anymore.
- ❖ All services are available to the property, and access will still be obtained from China Marais Avenue.
- ❖ In terms of need and desirability the second dwelling will provide for an additional residential unit that will provide accommodation for the landowner's parents. This will help increase property value and help the Municipality to obtain additional income.
- ❖ No views, sunlight or the character of the area will be affected.
- ❖ The application will have no Environmental or Heritage impact.
- ❖ The property is not situated in an EMOZ or HPOZ.
- ❖ The application is in line with the SPLUMA and LUPA Planning Principles as follows:

Spatial Justice

The second dwelling will not contribute to spatial injustices.

Spatial Sustainability

Will provide housing opportunity and densify the area, which is in line with the Planning Policies.

Efficiency

It will maximise the usage of the property.

Spatial Resilience

The application is in line with spatial planning policies and the Overstrand Municipality Regulations.

Good Administration

The municipality followed a good consultative process and public participation process.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

- ❖ The rationale to remove the three restrictive conditions is to enable the landowners to be able to construct an additional dwelling for their parents and later extend the primary dwelling.
- ❖ The restrictive conditions were originally intended to protect the residential character of Fisherhaven, the existing Overstrand Municipality Land Use Scheme however now make provision to manage the area in a similar manner, and the older more restrictive title deed restrictions are not required anymore.

Evaluation in terms of Section 39.(5)(a) - (f) of the By-Law is as follows:

- (a) No person or entity will be affected financially by the removal of these restrictive title deed conditions.
- (b) No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
- (c) The applicant will be gaining from the removal of the restrictive condition as it will allow her to utilize her property to its full extent.
- (d) These restrictive conditions do not have a social benefit.
- (e) There is no specific beneficiary of these conditions. And no person or entity will be affected if these are removed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	24/06/2022	29/07/2022
Gazette	Yes	24/06/2022	29/07/2022
Registered Notices	Yes	24/06/2022	29/07/2022
Ward councillor	Yes	24/06/2022	29/07/2022
Total comments	NONE		
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	27/06/2022	No objection.
Building Control	24/06/2022	No objection.
Engineering Services	30/06/2022	See Annexure E.
Telkom	03/08/2022	See Annexure F.
Eskom	28/07/2022	See Annexure G

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

No objections were received during the public participation process.

It is to be noted that eleven (11) registered notices were sent to surrounding property owners and to the Fisherhaven Ratepayers Association.

A notice board was also placed on the site.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

N/A

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 proposal will promote the alleviation of urban sprawl, and therefore place less pressure on valuable agricultural and sensitive environmental land.

Efficiency

The additional dwelling will make use of existing services and road infrastructure, ensuring services and facilities are used efficiently.

Spatial Resilience

The application is in line with spatial planning policies which promotes a variety of residential opportunities and densification.

Good Administration

Procedure as determined by 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

Same as Point 10.4. above.

10.6 Impact on Municipal engineering services

The area is fully serviced.

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

The Title Deed does contain restrictive conditions, which are being applied for.

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

The personal benefit for the applicant is to create an additional dwelling which can be utilized as a rental unit for financial gain.

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

By removing the restriction only allowing one dwelling on the property, it enables the property owner to create an additional dwelling and providing more rental housing opportunities to the community and increase the property and surrounding property values. It could also lead to an additional increase in rates and taxes for the Municipality.

The restrictive conditions applicable to building lines and coverage are now controlled in terms of the Zoning Scheme. However, this application does not include any building work which traverse such building lines and coverage which can be used as motivation, and to measure such impact. Such blanket removals cannot be supported.

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 that a second dwelling may not be erected on the property, some building line restrictions and a 30% coverage restriction.

12. THE DESIRABILITY OF THE PROPOSAL

The property is developed with a dwelling and outbuildings measuring 201m² in extent. The new second dwelling to be erected will measure 70m² in extend. The total coverage of all the buildings will be 18,23%.

The application includes the removal of a restrictive condition prohibiting the construction of more than one dwelling on the property.

At this stage, the Overstrand Municipality Land Use Scheme allow for second dwellings on properties, therefore the restrictive condition in the Title Deed prohibits the landowner to act on such rights.

In terms of the SDF, 2020 the area is identified for residential purposes. In terms of the Overstrand Municipality Growth Management Strategy, 2010 the area is earmarked for densification up to 10 units/ha. These policy/guideline documents promote densification to make maximum use of infrastructure and facilities. This application complies with such aims. It is therefore foreseen that this part of the application will not have a negative impact on the character of the surrounding area or surrounding property owners.

The proposal is to erect an additional dwelling measuring 70m² in extent on the property. The total coverage of all the buildings would still only be 18,23%, well below the 30% coverage restriction in the Title Deed and 50% restriction in terms of the Land Use Scheme.

The fact that no objections were received against the application indicates that it will have minimal impact on surrounding property owners and their rights.

Application is also made to remove the Title Deed restrictions limiting coverage to 30%, and the condition which stipulated a 4,72m street building line, 1,57m lateral building line and 3,15m rear building line.

The proposed second dwelling will not be constructed over Title Deed or Land Use Scheme building lines, nor will it be over such coverage. Although the applicant motivates that the landowner wants to remove such restrictions for future possible development, the impact thereof cannot be measured with this application to consider the possible impact of removal thereof. This part of the application can therefore not be supported.

The application can therefore be partially 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 668, Fisherhaven for the removal of restrictive title conditions E.4.(c) and E.4.(d) as contained in Title Deed T61942/2021 of the property in order to remove conditions relating to building lines and coverage, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
2. 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 668, Fisherhaven for the removal of restrictive title condition E.4.(b) as contained in Title Deed T61942/2021 of the property in order to enable the construction of a second dwelling unit, **be approved**, in terms of the provisions of Section 61 of the By-Law subject to the following conditions:
 - (a) that this approval is only for the removal of restriction and is not an approval in terms of any other legislation;
 - (b) that building plans be submitted for all new buildings to the Building Control Department for approval, and that all conditions of the Building Control and Fire Departments be complied with at that stage;
 - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (d) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
 - (e) that all the conditions in the Services Report (attached as Annexure E), be complied with, and
 - (f) that the conditions imposed by Telkom (attached as Annexure F), be complied with.
3. that the applicant be notified of its 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**POINT 1**

- ❖ The application do not involve any new building work over the Title Deed building lines or the 30% coverage limitation and do not require the removal of such building lines for the proposed second dwelling.
- ❖ To evaluate the impact of the removal of Title Deed Restrictions a detailed motivation and proposal must be provided for the decision maker to measure the impact of the removal of such restrictions. The applicant only motivated that the reason to remove these restrictions were to allow future development in line with the Overstrand Municipality Land Use Scheme, with no detailed proposal or motivation to properly measure the impact.

POINT 2

- ❖ The application has followed due procedure.
- ❖ No new municipal services will be needed.
- ❖ The proposed construction of a second dwelling is in line with Policy Plans which promote densification.
- ❖ The proposed second dwelling of smaller than 120m² will be in line with the primary rights in terms of the Residential Zone I zone in terms of the Land Use Scheme.
- ❖ The restrictive condition prohibits the property to be developed to its full potential, and the removal of the restrictive conditions is thus supported.
- ❖ No negative impact on the character of the area.
- ❖ No objections were received from neighbours; therefore, the impact on neighbours' privacy and rights will be minimal.
- ❖ The application is desirable.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T61942/2021
Annexure E:	Services Report
Annexure F:	Comments: Telkom

SIGNATURES**AUTHOR:**

Name: **HENK OLIVIER**

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

Signature: _____

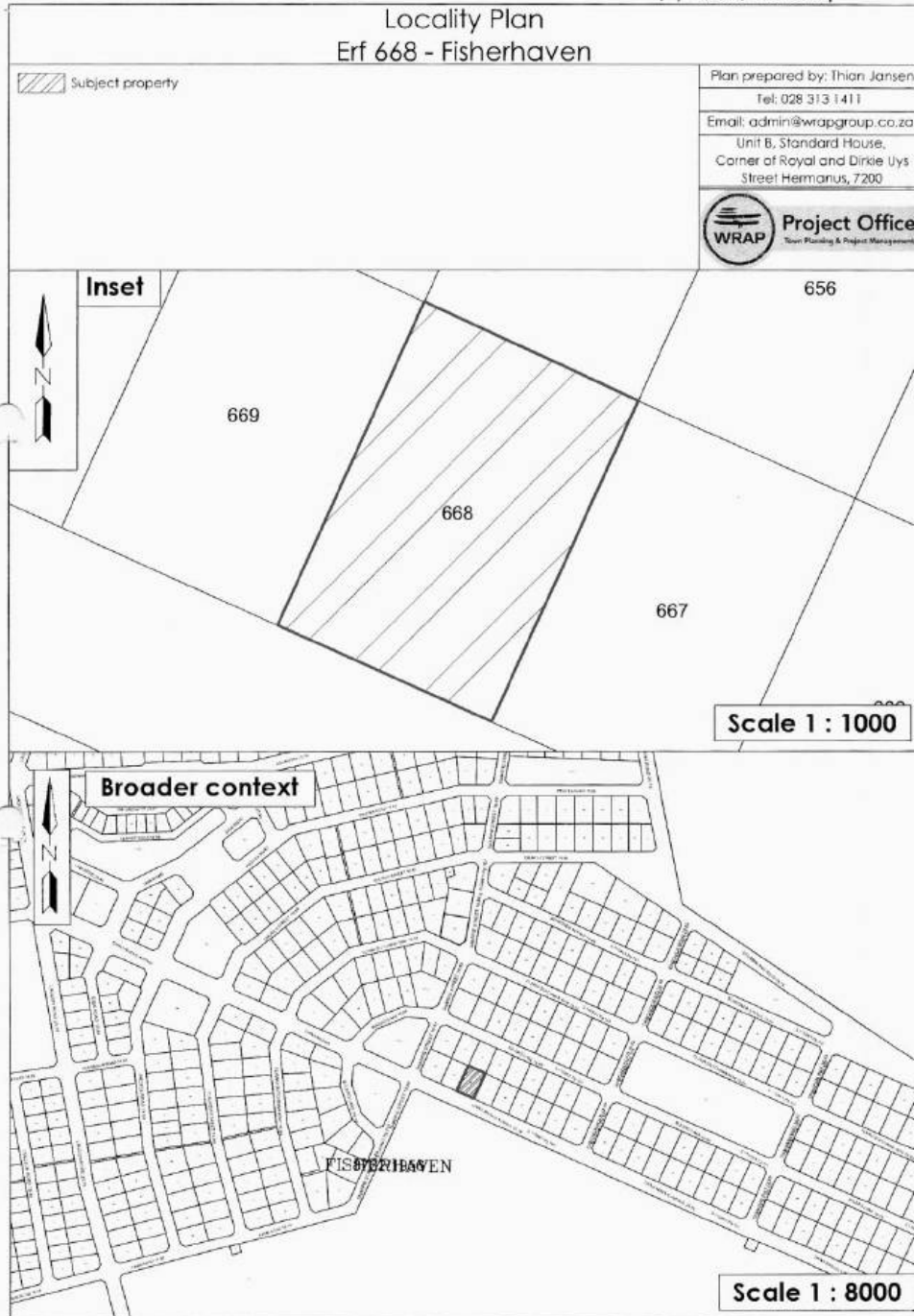
Date: _____

REGISTERED PLANNERName: **SW VAN DER MERWE**SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

Annexure A



Annexure B 1/9



MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 668 Fisherhaven
Restrictive title deed conditions	Condition E 4(b), (c) and (d)
Extent	1487m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 668 Fisherhaven, hereafter referred to as the subject property, is located on China Marais Avenue, Fisherhaven (refer **Plan 1 – Locality Plan**). The property owners (Werner Gustav Thelander and Julicha Thelander) appointed WRAP Project Office to submit this application on their behalf (refer **Annexure A – Power of Attorney**). The property owners purchased the property in 2021 with the intention to construct a second dwelling unit in the form of a granny flat to be home to the property owners' parents.

A second dwelling unit is a primary right in the OMLUS on a property zoned SR1. The title deed however contains restrictive title deed conditions, which only allows one dwelling unit on the subject property.

As a result, the following application is required:

- Removal of restrictive title deed conditions E 4(b), (c) and (d);

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

WRAP compiled this report to ensure the applicant's vision is achieved. The following is proposed:

4.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

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



2/9

MOTIVATION

Restrictive Title Deed Conditions
Condition E 4(b) – "it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;"
Condition E 4(c) – "not more than 30% of the area thereof shall be built upon;"
Condition E 4(d) – "no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf not within 10 meters of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"

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

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

5. APPLICATION

Considering the above, application is made for the following:

5.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed second dwelling is not out of the ordinary and is allowed in terms of the OMLUS.

7. TITLE DEED

Title deed T61942/2021 (refer **Annexure B**) was perused and there are several restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit that the applicant's intent with the subject property can be realised.

Title deed restrictions



MOTIVATION

Condition E 4(b) – "it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;"

Condition E 4(c) – "not more than 30% of the area thereof shall be built upon;"

Condition E 4(d) – "no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf not within 10 meters of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"

Motivation

The rationale for the proposed removal

The subject property is currently being used for a single dwelling unit. The property owners have the vision and opportunity to expand on their primary right in terms of the OMLUS by building a second dwelling unit. The second dwelling will be used by their parents, but the proposed development is however restricted by the conditions mentioned above and therefore require removal.

Title deed condition background

The restrictive title deed conditions were originally intended to protect the residential character of the Fisherhaven area, and the new/modern intention is to create additional residential options within the Fisherhaven area. Any amendment or removal of these conditions require the consent of the Administrator. This authority now vests with the Overstrand Municipality.

Status quo

The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand Area's residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

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

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

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective</i>	No person or entity will be affected financially by the removal of these restrictive title deed conditions.



4/9

MOTIVATION

<i>of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	These restrictive conditions do not have a social benefit.
<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

8. ZONING

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



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House and Second Dwelling Unit	Comply
Consent use	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
Development parameters			
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: ➤ 400m ² and greater = 50%	Area of site = 1487m ² Existing Dwelling = ±201m ² Proposed Second Dwelling area = ±70m ² Coverage = ±271m ² / 18.23%	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: ➤ 400 m ² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: ➤ Greater than 400 m ² = 2m		Comply
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8.0 m.	Existing Dwelling House – Single Storey Proposed Second Dwelling – Single Storey	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Two parking bays for each dwelling	Comply



6/9

MOTIVATION**9. SERVICES**

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

Electricity, Water, Sewage and Solid Waste

The subject property is connected to an electrical network, as well the OM's water network and a conservancy tank that is serviced by the OM. The proposal of this application will not greatly affect these networks.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from China Marais Avenue and the proposal will not affect this.

10. NEED AND DESIRABILITY

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

Need and desirability

The need for the land use application is to ensure the property meets all the needs of the property owners. The desirability is more often a personal feeling of the property owners. The intent is to build a secondary dwelling house and create additional space to occupy on their property for their parents. The proposed dwelling will not benefit any other users or person, but it will increase the property's value and, in the future, may yield additional income for the OM.

To achieve their vision, the applicant has appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the proposed dwelling house will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

Economic impact

There is little to no impact on the economy. The building of the proposed additional dwelling house will temporarily employ a contractor that will use workers to assist in the construction phase. Building materials will be purchased at local suppliers.

Opportunity cost

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



MOTIVATION

Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental impact

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

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is not located within the 'Category D – Urban Conservation'. The purpose of the zone is to protect and manage undeveloped conservation-worthy public owned land within the Overstrand's urban edge, and adjacent buffer areas, while promoting the retention of viable priority ecological corridors in areas that are to be developed, to ensure an integrated 'conservation and development' approach that will enhance living conditions for the communities of the Overstrand.

The subject property is located adjacent (across the road) from an agricultural land unit. The proposal for a second dwelling unit (removal of restrictive title deed conditions) is not going to negatively affect the above-mentioned land unit.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within this zone.

11.3 Spatial Planning Policies

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

12. PLANNING PRINCIPLES

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

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling will not contribute to spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a second dwelling will add housing opportunities into the Fisherhaven area, densifying an existing property.

Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the applicant's requirements are met.

Spatial resilience



8/9

MOTIVATION

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

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process. The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.

9/9

**RECOMMENDATION****13. EVALUATION**

The property owners envision constructing a second dwelling unit that requires the removal of the previously mentioned restrictive title deed conditions. The removal of the restrictive title deed conditions was motivated in terms of SPLUMA and LUPA.


The proposed land use is not out of context with the surrounding area and is not seen as an intrusive land use. The proposed second dwelling unit will also not impede on views, sunlight or negatively affect the character of the area. The proposal for a second dwelling unit is in harmony with all relevant spatial planning policies which illustrates that the applicants did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

14. RECOMMENDATION

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

- 14.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Annexure C 1/2

Site Development Plan Erf 668 - Fishershaven	
Proposed Second Dwelling Unit Area - ±70m ²	
Existing Dwelling Unit Area - ±201m ²	
Coverage Site Area - 1487m ² Existing Dwelling Unit - ±201m ² Proposed Second Dwelling Unit - ±70m ² Total Coverage - ±271m² / 18.23%	
Plan prepared by: Thom Jansen All dimensions are approximate and subject to a survey Tel: 028 313 1811 Email: admin@wrap.co.za Unit B, Standard House, Corner of Poplar and Dible Lys Street, Memfontein, 7520	
 Project Office <small>Surveying & Project Management</small>	



Copies of As



Annexure D 1/5

BOX 8 / CTN 1536

LVDM ATTORNEYS
SEC 9 FLORENTIA
329A BEACH ROAD
BANTRY BAY
8005

Prepared by me

[Handwritten Signature]

CONVEYANCER
LISA VAN DER MERWE (94271)

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R 2.100.000,00	R 1770,00
Reason for exemption	Category Exemption	Exemption 11 a Sec/Reg Ad/Proc

VERBOND		MORTGAGED	
R 1.800.000,00			
B	34781-2021	<i>[Handwritten Signature]</i>	
8-12-2021		REC	

T 000061942 / 2021

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

LISA VAN DER MERWE (94271)

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney granted to him/her by

JACOBUS CORNELIUS KLAASSEN
Identity Number 640125 5018 08 1
and
HELENA AMANDA KLAASSEN
Identity Number 690209 0033 08 6
Married in community of property to each other

DATA / CAPTURE
17-12-2021
VUYELWALAMANI

which said Power of Attorney was signed at FISHERHAVEN on 8 November 2021

DATA / VERIFY
17-12-2021
JENNY VAN WYK

Page 2

And the appearer declared that his/her said principal had, on 13 October 2021, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

WERNER GUSTAV THELANDER
 Identity Number 831013 5089 08 9
 and
JULICHA THELANDER
 Identity Number 860417 0079 08 2
 Married in community of property to each other

their Heirs, Executors, Administrators or Assigns.

ERF 666 FISHERHAVEN
 IN THE OVERSTRAND MUNICIPALITY
 DIVISION CALEDON
 WESTERN CAPE PROVINCE

IN EXTENT 1487 (ONE THOUSAND FOUR HUNDRED AND EIGHTY SEVEN)
 Square metres

FIRST TRANSFERRED BY DEED OF TRANSFER NO. T11236/1974 WITH
 DIAGRAM NO. 552/74 RELATING THERETO AND HELD BY DEED OF
 TRANSFER NO. T11715/2021.

A. SUBJECT to the conditions referred to in Deed of Transfer No
 T14022/2014.

B. SUBJECT FURTHER to the condition mentioned in Deed of Partition
 Transfer No. T9000/1931 in favour of Josias Servaas Delpport, that Petrus
 Johannes Delpport and his successors in title of the property called ROOI
 SAND, part of AFDAKS RIVIER, transferred to him on 22nd October 1931,
 Nr. 7998 shall have the right of trekking with his sheep twelve times a year
 over the property hereby transferred at a spot to be indicated by the said
 transferee and his aforesaid.

C. SUBJECT FURTHER as set forth in Certificate of Uniform Title Nr.
 5659/1959:

(a)

(b) To the right to take land and remove materials for making and repairing
 public roads.

Page 3

D. SUBJECT FURTHER to the condition referred to in the Endorsement dated 11th May 1970 on Deed of Transfer No. T11975/1967, which Endorsement reads as follows:

"Registration of Servitude

The within described land is subject to a servitude with regard to apportionment of water in terms of an Order of the Water Court (Water Court District Nr. 11/64) dated 1st February 1965 as will more fully appear on reference to the copy of the said Order annexed to Deed of Transfer No. 11190/60."

E. SUBJECT FURTHER to the following special conditions contained in said Deed of Transfer No. T11236/1974 imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance Nr. 33 of 1934 when approving of the establishment of Fisherhaven Township, namely:

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 Administration Notice No. 401 dated 17th October 1935, and in the memorandum which accompanied the said regulations.
2. The owner of this erf shall without compensation, be obliged to allow electricity and water mains and the sewage and drainage, including stormwater of any other erf or erven, within or without this township, to be conveyed across this erf if deemed necessary by the Local Authority and in such manner and position as may from time to time be reasonably required. This shall include the right to access the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
3. 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.
4. This erf shall be subject to the following further conditions, provided that where, in the opinion of the Administrator after consultation with the Townships Board and the Local Authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose:
 - (a) it shall not be subdivided;
 - (b) it shall be used only for the purpose of erecting thereon one dwelling together with such buildings as are ordinarily required to be used therewith;

WJ

Page 4

- (c) Not more than 30% of the area shall be built upon;
- (d) No building or structure or any portion thereof except boundary walls and fences, shall be erected nearer than 15 feet to the street line which forms a boundary of this erf, nor within 10 feet of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority and outbuilding not exceeding 10 feet in height measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven this conditions shall apply to the consolidated area as one erf.
- (e) In the event of provisions of a Town Planning Scheme being made applicable to this erf, which provisions are more restrictive than the provisions contained in the above, then the provisions of such scheme apply.

F. **SUBJECT FURTHER** to the condition contained in Deed of Transfer No T11236/1974 and imposed by LAKE MARINA PROPERTIES (PROPRIETARY) LIMITED in its favour as owner of the remainder of Fisherhaven Township, and its successors in title, and held by it by said Deed of Transfer No. T11975/1967, namely:

"No buildings shall be place on the land hereby sold until the plans and locations of the buildings have been submitted and approved by both the Company and Local Authority."

In the foregoing condition the expression "the Company" shall mean LAKE MARINA PROPERTIES (PROPRIETARY) LIMITED and its successors in title.

Page 5

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

**JACOBUS CORNELIUS KLAASSEN and HELENA AMANDA KLAASSEN,
Married as aforesaid**

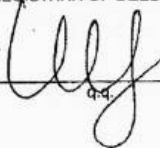
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

WERNER GUSTAV THELANDER and JULICHA THELANDER, Married as aforesaid

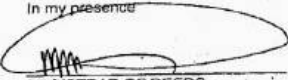
their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R2 100 000,00 (TWO MILLION ONE HUNDRED THOUSAND RAND).

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

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 8 December 2021



d.d.

In my presence


REGISTRAR OF DEEDS



Annexure E

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS:
ERF 668, FISHERHAVEN**

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 668, Fisherhaven, 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

20/06/2022
DATE



TR N. (Inoor)
(I.H. Olivier)

Annexure F1/2



Cape Rd, Linton Grange Microwave
Gqeberha, 6025
P.O. Box 1142, Gqeberha, 6000

Our reference: WWIP_WHWS2913_22
Your Reference: Erf 668 Fisherhaven
Enquiries: Wayleave Office Southern Region
Tel: +27 41 407 8226
Email: WayleavesSR@telkom.co.za

2 August 2022

OVERSTRAND MUNICIPALITY
ATTENTION: S MULLER

SERVICES ARE AFFECTED

RE: ERF 668, 56 CHINA MARAIS AVENUE, FISHERHAVEN: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: WRAP (OBO WG & J THELANDER).

Your proposal as depicted on the attached drawing has been examined and the following are applicable:

- Openserve services **will be affected**. (Note the important optic fibre in **PINK**)
- The existing and proposed underground/overhead plant has been indicated on the attached plan, as requested. Telkom cables are normally buried at a depth of $\pm 600\text{mm}$.
- Although the positions of the Openserve services are shown as accurately as possible, these positions must be regarded as approximate only.
- Please contact and inform our representative Melt van As before commencing with any civil works. Telephone number 0218521717 Email: MeltVA@openserve.co.za
- This approval has a validity period of 12 months. If your proposed services are not installed before the 12 months period has expired, a new approval must be obtained from this Company
- Any deviation from the original proposal should be brought to my notice prior to undertaking, please.

Yours faithfully

Sizwe Nyengano

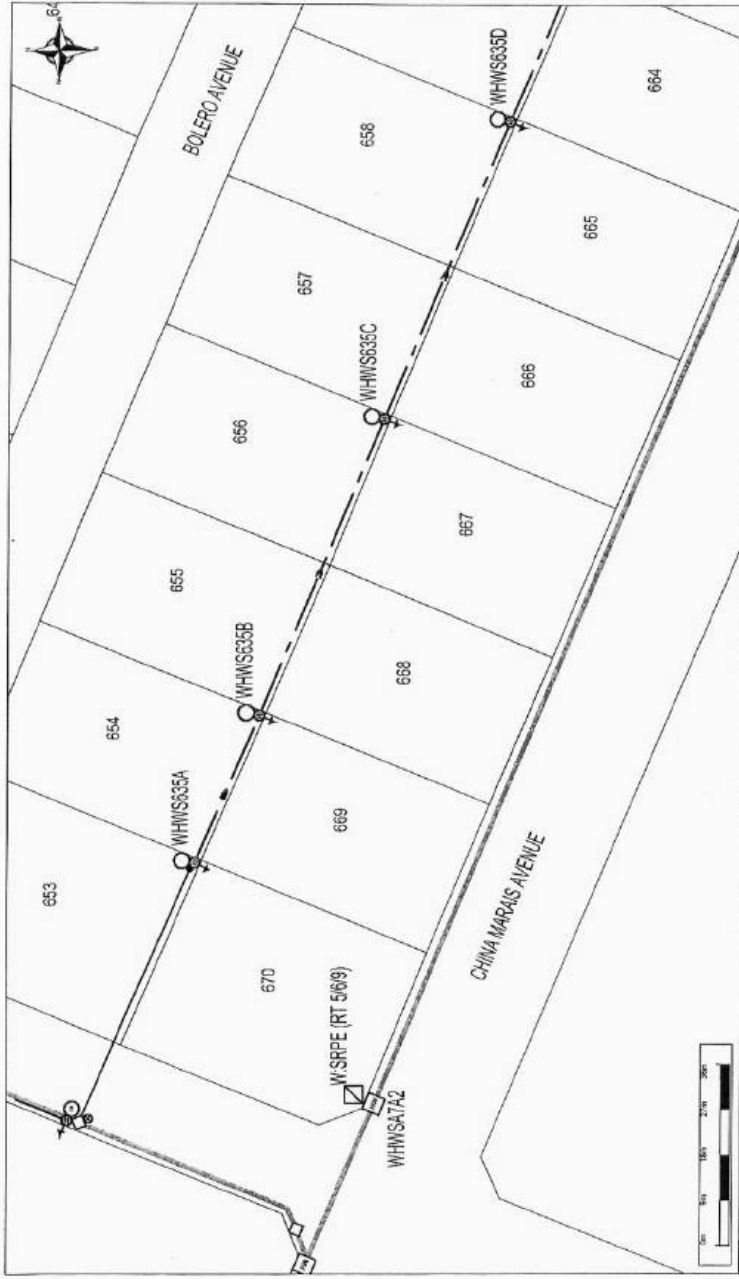
On Behalf of Selwyn Bowers
(Operations Manager – Wayleaves)

FILE NO.	EF 668
	Fisherhaven
SCAN NO.	
	HFH 668
COLLABORATOR NO.	
	1725802

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

Internal Use

TR - 2 AUG 2022



Legend

	Existing Manhole		Existing DUC		Existing Pole		Planned Overhead Route		Conduit Terminus (Visual Element)
	Planned Manhole		Planned DUC		Planned Pole		To Be Recovered Overhead Route		
	To Be Recovered Manhole		To Be Recovered DUC		To Be Recovered Pole		Existing Underground Route		
	Existing Utility Pole		Existing Fiber Joint		Shut		Planned Underground Route		
	Planned Utility Pole		Planned Fiber Joint		Shut		To Be Recovered Underground Route		
	To Be Recovered Utility Pole		To Be Recovered Fiber Joint		Access Point (Visual Element)		Existing Overhead Route		
	To Be Recovered DUC								

Scale: 1:816
Date: 10/08/2012
Created By: rnyngus