

**AGENDA of the
Municipal Planning Tribunal
25 October 2017**

4.3

**ERF 106, 2 PRIESTLEYA ROAD, ROOIELS, OVERSTRAND MUNICIPAL AREA :
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS : MESSRS INTERACTIVE TOWN
& REGIONAL PLANNERS ON BEHALF OF STRUPA INGENIEURSDIENSTE (PTY) LTD**

106 KRE (3528)

H van der Stoep

14 September 2017

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 29 November 2016 from Messrs Interactive Town & Regional Planners (A Wiehahn) on behalf of Strupa Ingenieursdienste (Pty) Ltd for a removal of restrictive title conditions with reference to Clauses A., B., C., D., E., F.A., F.C. and F.D.(a), (b), (c), (d), (e), (f) & (g) of Title Deed T15960/2016 applicable to Erf 106, Rooi Els in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 in order to accommodate a dwelling house on abovementioned property with its allocated primary rights as per the Overstrand Zoning Scheme;

Clauses A., B., C., D., E., F.A., F.C. and F.D.(a), (b), (c), (d), (e), (f) & (g) of Title Deed T15960/2016 read as follows:

- "A. *Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;*
- B. *Not Subject to condition B on page 2 of Deed of Transfer No. T48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.*
- C. *SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:*
- "By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer."*
- D. *SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which reads as follows:*
- "On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government. That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish*

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there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure."

- E. *SUBJECT FURHTER and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:*

"Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10th March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No. 8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and egress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto."

- F. *SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows:*

A. *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 17 October, 1935, and in the memorandum which accompanied the said regulations.*

B. *The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven 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 of access to 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.*

C. *The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to*

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its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.

D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions 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 or conditions as he may impose.

- (a) It shall not be subdivided;*
- (b) It shall be used for residential purposes only;*
- (c) Not more than one building, excluding a licensed hotel, maisonettes and semidetached houses, together with such outbuildings as are ordinarily required to be used therewith, shall be erected thereon;*
- (d) Not more than half the area thereof shall be built upon;*
- (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;*
- (f) Pending the establishment of local authority for this township the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.*
- (g) To the following conditions contained in Deed of Transfer No. 1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any ore in the Township;*
 - (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes;*
 - (c) No slaughter poles, cattle kraals, pig-sites or cowsheds shall be erected or carried on by any person whomsoever on this erf;*
 - (d) Save with the consent in writing of the Company and of any local authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel lime or stone thereon;*

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- (e) *No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;*
- (f) *No noxious trade of noxious business shall be carried on, on this erf;*
- (g) *The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.”*

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.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf measures 1030m² in extent and is held under Title Deed No. T15960/2016. The Title Deed is attached as Annexure C. The erf is located in the residential area of Rooi Els.

4. SUMMARY OF APPLICANT'S MOTIVATION

The owner intends to develop the property by erecting a dwelling house and subsequently wishes to first remove all potential restrictive, non-applicable and irrelevant conditions, which could potentially restrict the future development of the erf.

The applicant requests the removal of the conditions based on the following:

- The conditions are no longer applicable;
- Potentially restrictive;
- Parties mentioned no longer exist;
- The conditions are out-dated, and
- Regulated by other legislation and serves no purpose.

The site is vacant and all the surrounding properties are developed with the same zoning as the application erf – Residential Zone.

The restrictive Title Deed conditions are motivated as follows:

- Condition A.: The condition is a pivot deed and is duplicated in the applicant's Title Deed T15960/2016.
- Condition B.: The condition is “Not subject to” and therefore is not applicable to the erf.
- Condition C.: The condition restricts land uses on types of buildings on the property concerned, which is already regulated in terms of the Zoning Scheme. The condition is conveyed to the remainder of the original mother erf and cannot be executed by the applicant.

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- Condition D.: The condition made provision for access over the farm, the town of Rooi Els was developed as a farm and the provision has lapsed. Simultaneously the condition addresses animals (cattle) on Waaygat Bay, which in present day will not be allowed.
- Condition E.: Refers to a servitude (1949) to supply water to erf holders and the township. The pipeline is not in close proximity of the erf and is applicable to the Remainder of the Farm Hangklip.
- Condition F.A.: Reference is made to Ordinance 1934, which is no longer in use. The validity of the aforementioned has lapsed during 2013 as per Circular 19/2012 from Western Cape Government : Environmental Affairs and Development Planning.
- Condition F.B.: The condition is encapsulated in the Overstrand By-Law on Municipal Land Use Planning, 2016, Section 29.
- Condition F.C.: The condition is encapsulated in the Overstrand By-Law on Municipal Land Use Planning, 2016, Section 29.
- Condition F.D.: This condition is duplicated in the Overstrand Zoning Scheme. In some cases the Zoning Scheme is more restrictive.

The removal of the conditions will have no impact on the residential character of the area since the development will remain in the residential parameters of the Zoning Scheme. The removal will provide for a singular set of land use management rules and also allow for more updated and appropriate statutory legislation taking the current needs into consideration.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	26 January 2017	3 March 2017
Gazette	Yes	27 January 2017	3 March 2017
Notices	Yes	26 January 2017	3 March 2017
Ward councillor	Yes	19 December 2016	27 January 2017
Total comments	THIRTEEN (13)		
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft 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

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

Name	Date received	Summary of comments	Recommendation
Ward Committee	07/02/17	That the abovementioned application be supported.	Supported
Environmental Services	10/01/17	From an Environmental perspective there should be no problem with the application.	Supported
Engineering Services	27/01/17	No comment.	
Fire Department	31/01/17	No objection provided that all structural development is in compliance with requirements of National Fire Protection Regulations SANS 10400T : 2011.	Supported
Building Control	20/01/17	Supported subject to any building to be erected be in compliance with SANS 10400.	Supported

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION.

The applicant's reply and the town planners comment on each objection

Objections were received from thirteen (13) individuals. It is a summation of the various objectors, the detailed objection letters are attached as Annexure D. The applicant's detailed reply is attached as Annexure E.

Objections were received from the following individuals:

- ❖ A Ayre
- ❖ H Jones
- ❖ KM Leresche
- ❖ JL Aalbers
- ❖ Rooi Els Conservancy (K Barker)
- ❖ Raymond McCreath Inc. (FHL Raymond)
- ❖ E Raymond
- ❖ Rooi Els Ratepayers Association (R Mattison)
- ❖ MW Harrison
- ❖ M Dawkins
- ❖ J Pullen
- ❖ E Brink
- ❖ D & A van der Merwe

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Objection: *Blanket removal – the removal of the conditions is one property only and not to the benefit of the community or in their interest.*

Applicant's reply

The claim that the application is for a blanket removal is not correct. Each and every one of the conditions to be removed has been motivated. It is acknowledged that the Title Deed conditions do take precedent over the Zoning Scheme and is not disputed. The removal of the conditions applied for is to utilize the property in the best possible and legal manner.

Town Planner's comment

The application is not for a blanket removal. All the conditions applied for, was motivated with reasons.

Objection: *Lack of information - the applicant did not give enough information to evaluate the development.*

Applicant's reply

At the time of the application, the building plan of the proposed dwelling was not available. The motivation did mention the reasons for the removal of the restrictive conditions e.g. that the owner intends to develop the property and therefore first remove the non-applicable and irrelevant conditions, which can potentially restrict the development of the property. No additional rights were applied for and thus will remain Residential Zone 1 subject to the applicable development parameters.

Town Planner's comment

The fact that there is no information pertaining to the development on the erf, implies that all Zoning Scheme parameters for Single Residential will be complied with. The building plan will be dealt with as per Zoning Scheme parameters and if not in compliance, an application will have to be submitted in this regard.

Objection: *Environmental Aspects – the erf is located along a sensitive dune system and the removal of the conditions will impact on the system, which is not safe for the and/or in the interest of the community. The removal of the conditions will enable the owner to exceed the developable footprint.*

Applicant's reply

The objectors does not substantiate why the removal of the restrictive conditions will have a negative impact on the environment. The objectors refuse to acknowledge that the erf has existing rights, but have developed their own properties. Even though Condition D(e) described building lines, the area for the erf is precisely the same in terms of the Title Deed (half the erf may be developed) and the Zoning Scheme (50%) may be developed.

The building lines differ in terms of the Title Deed - the street building line is 4,72m, the lateral building line is 1,57m and the rear building line 3,15m. The Zoning Scheme building lines are as follows:

- ❖ street building line - 4m;

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- ❖ lateral building lines - 2m, and
- ❖ rear building line - 2m.

The lateral building line is more restrictive in terms of the Zoning Scheme whilst the street and rear is more restrictive in terms of the Title Deed.

Town Planner's comment

The erf is located within an established township and thus is not subject to an Environmental Assessment. The application property is the only erf not developed and it is unclear why the objectors, who have developed their own erven, do not have to do an Environmental Assessment. The erf is subject to the Zoning Scheme and its development footprint is restricted to 50% of the erf, which relates to the half as indicated in the Title Deed.

The street building lines have been relaxed in terms of the Overstrand Zoning Scheme with a 0,72m and the rear with 1,15m. The lateral building lines has become more restrictive with 0,43m.

Objection: *Environmental Impact Assessment is needed.*

Applicant's reply

The amendment Or removal of the conditions does not trigger any Regulations promulgated in terms of NEMA, Act 107 of 1998. The site is an existing erf with existing land use rights within an approved township.

Town Planner's comment

The Environmental Department did not indicate that an EIA is necessary. The aforementioned Department is the main driver of the Dune Rehabilitation for the area and did not see the application placing any restriction that will inhibit the execution of the Dune Management Plan.

Objection: *Removal of conditions is part of Rooi Els and no single erf should be treated differently.*

Applicant's reply

The application is to optimise the proposed / future development on the application property as well as to simplify the Title Deed to remove conditions already managed in terms of the Overstrand Zoning Scheme. The removal of the conditions does not mean that the property will form part of a different dispensation, but will bring it in line with the Zoning Scheme development parameters.

Town Planner's comment

Any owner of an erf in Rooi Els has the right to lodge an application for the removal of restrictive conditions.

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Objection: *The conditions reflect the heritage and cultural character of Rooi Els.*

Applicant's reply

The street building line will decrease with 0,72m, the rear building line with 1,15m and the side building lines will increase with 0,43m. The Growth Management Strategy, 2010 identified Rooi Els as a no densification area. Thus subdivisions are discouraged and restricted. Should anyone intend to subdivide; an application will have to be lodged and is subject to public participation.

Conditions A., B., C., D. and E. are all historical conditions as emphasized and admitted by the Rooi Els Ratepayers Association and MW Harrison. The description of a Title Deed in the Spatial Planning Land Use Management Act, 2013 reads as follows: *"title deed means any deed registered in a Deeds Registry recording the ownership of land or a real right in land. A title deed has no purpose for historical history"*. Therefore the removal of the restrictions will not influence character or heritage through densification.

Town Planner's comment

The Title Deed reflects the era in which the town was established. Since the original establishment of the town, the environment and needs of the area and its inhabitants has changed and the forward planning documents do take the character of the area into consideration, but still has to take due cognisance of change.

Objection: *The removal of the applied restrictive conditions will create a precedent.*

Applicant's reply

The application is for a specific purpose and is costly and therefore the chance of creating a precedent is slim. The conditions applied for, are either not relevant anymore and or is catered for in the Overstrand Zoning Scheme. The removal of the conditions is unlikely to change the character and or heritage of Rooi Els.

Town Planner's comment

Any person has a right to lodge an applicant to remove restrictive conditions.

Objection: *The relaxation of the 4,72m street building applicable to the former Arctotis Road will result in the destabilising on the front dune with adverse effects on the surrounding properties.*

Applicant's reply

The closure of Arctotis road resulted that the building line changed from a street building line to a side building line, implying that the building line has decreased from 4,72m to 1,57m in terms of the title Deed restrictions. The zoning scheme has a more restrictive side building line of 2m.

Town Planner's comment

The closure of Arctotis Road did not have a condition stipulated that the previous street building line of 4,72m must remain in place to restrict development. No proof

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has been submitted that the removal of the condition will have any detrimental effect on the dune.

Objection: *There is no social benefit for the community and the removal of the conditions is not in the public interest, only individual benefits.*

Applicant's reply

There will not be any benefit, since the use of the erf remains residential. The only change that this application will have is the change in the building lines.

Town Planner's comment

The removal application will have a limited impact on individual interest. The latter refers to the primary land uses available for the applicant should the condition of residential only be removed. However there is no legislation prohibiting any other owner to remove the condition should they want make use of the other primary land uses available on a single residential erf.

Objection: *The Title Deed restrictions have legally more standing than the Zoning Scheme with regard to Conditions F.D.(a) – F.D.(g).*

Applicant's reply

In the field of town planning there is a deliberate action to encourage simplifying procedures towards development. Title Deeds containing conditions that are out-dated and or duplicated in other legislation are a serious cause of delay and complicate applications, which results in increased costs and reduced opportunities.

Conditions F.D.(a) – F.D.(g) are covered by more updated legislation.

Town Planner's comment

There is no dispute that the title deed restrictions as per the Title Deed trump the Zoning Scheme parameters where applicable.

Objection: *The application is fatally flawed due to the following:*

- *the SPLUMA principles are not addressed;*
- *no case is being made for the application;*
- *public interest is ignored;*
- *the reason for implementing the conditions are ignored, and*
- *the consequence of the removal of the conditions has not been addressed.*

Applicant's reply

The application must be evaluated in terms of Section 45 of SPLUMA, 2016 and in terms of Section 35(4) of the By-Law on Land Use Planning, 2015. In terms of the aforementioned the Municipality must have due regard to inter alia financial and or other value of rights. No material change in the development rights is applicable and the personal benefit is the same as per the current situation.

The objectors refer to the General principles, however does not indicate which of the principles was not addressed in the application. Every condition applied for was motivated and reasons given as per paragraph 2, 3a and 4.1 of the Motivation Report.

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The objector does not understand that the application will cause no material change to the existing land use rights, but merely result in amended, but more flexible potential placement of the structure. Most of the conditions being applied for will not affect the property or its existing rights.

All relevant parties were informed via registered post as per Municipal request. Mr Dawkins was informed as per registered letter, RC174 376 882ZA and the claim of not having knowledge of the application is not correct.

Town Planner's comment

The application complies with the stipulations as per the By-Law. None of the objectors have submitted any contradiction with regard to the principles in detail and is thus vague and unfounded.

Internal Departments

No objection has been received by the internal departments.

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

8.1 Background

N/A

8.2 (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.

Spatial Justice

The current title deed restrictions prohibit optimal urban development. The erection of a residential dwelling building is in line with SDF and other municipal policy documents. The actual footprint is in line with the existing character of the area.

Spatial sustainability

The removal of the restrictive conditions will be more in line with the present and future planning documents of the Municipality. The development of the erf will promote densification of the area along the dune system with the development of the erf and promote resource efficient settlement. The development of the erf does create the potential to contribute in future to the financial viability of the Municipality as in the case of the support of the dune rehabilitation effort.

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Efficiency

The proposed development of the erf ensures the optimization of present municipal infrastructure. The infill of the vacant erven in Rooi Els does enhance the viability of municipal services in the area.

Spatial Resilience

The removal of the restrictive conditions makes the development more viable, which will enhance the capability of recovering from market influences. The added income generating infill of the erf will enable the Municipality to counter climate change evident in the present dune system rehabilitation.

Good administration

Procedure was followed and full public participation was applicable.

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

Same.

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

Same.

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

N/A

8.6 Impact on Municipal engineering services

None.

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

An EIA in terms of NEMA is not necessary. An application for removal of restrictive conditions is applicable.

8.8 Existing and proposed zoning comparisons and considerations

The application is in line with the Overstrand Spatial documents and Zoning Scheme

9. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

The applicant will not accrue any financial value since the development is restricted to residential, similar to the adjacent erven.

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

The possible personal benefit will be the additional primary rights as per the Zoning Scheme, such as a second dwelling and occupational practise.

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

The social benefit is not applicable since all of the conditions are catered for in the Zoning Scheme applicable to all residential erven in Rooi Els.

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

The rights to be removed from the Title Deed are limited, the remainder of the rights remain in place, and is also covered in the Zoning Scheme.

10. THE DESIRABILITY OF THE PROPOSAL

The erf is located in Rooi Els on the northern side of Rooi Els in a cul-de-sac in Priestleya Road. The erven on the northern side is adjacent Arctotis Road, Erven 320, 326 and 368 (Arctotis Road closure). The aforementioned erven is zoned Nature Reserve. The residential erven along the northern boundary consist of 19 erven of which only Erf 106 is undeveloped. The erven which are developed on 4,72m street building line is due to the street before it was de-proclaimed, and not the dune stabilisation.

The road closure of Arctotis Road has created Erf 368 with no condition that the 4,72m street building line must remain in place. The closure of the road has resulted that Erf 106 is not in terms of the Zoning Scheme restricted to a street building line, but a lateral building line.

The conditions that are being requested to be removed from the title deed are discussed as follows:

Condition A.: This condition is already catered for in the present Title Deed of 2016 and is thus duplication.
Remove

Condition B.: The erf is excluded from section 53 of the Mining Titles Registration and has no relevance to erf.
Remove

Condition C.: The conditions address the various land uses not to be allowed on the erf. The only condition that has to remain in place is condition C.(b) to ensure the prohibition of a petrol station. This may in future become relevant should the area densify and need along that coastal zone become a tourist attraction, such an activity will have a detrimental impact on the environment.
Retain

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- Condition C.(d): Which relates to the wood and iron relates to the 1940's to ensure that owners does not erect substandard structures. This is taking into consideration that should this condition be implemented literally, no decks, wooden door frames, windows, garage doors and of roofing material be allowed. Thus due to new technology and materials and the later National Building regulations, this condition has no place in 2017.
Remove
- Condition C.(e): Relates to slaughtering of animals etc. The condition is to ensure that the mentioned practices will not contribute to the detriment of the area and the environment.
Retain
- Condition D.: The condition relates to access to Waaygat to unteam their cattle. This condition is contrary to the Environmental Legislation in terms of cattle still roaming an approved township and coastal zone. Thus the condition is irrelevant and has no public and or private benefit.
Remove
- Condition E.: The pipeline servitude that has been registered in 1948 is not in close proximity on the relevant erf and its path is located on the holdings between Rooi Els and Pringle Bay.
Remove
- Condition F.A.: The Ordinance 1934 has been replaced by Ordinance 1985 and subsequently with the Municipal By-law. Thus any wording and expression in terms of 1934 has lapsed and must be read with the current legislation applicable.
Remove
- Condition F.B.: This condition has been catered for in terms of Section 29 of the Municipal By-Law, however it is in the interest of the Municipality to keep intact in order to make provision should services needs to transgress the property.
Retain
- Condition F.C.: It is unclear to which street the Deed refers to and therefore it will be best practice to keep the condition intact.
Retain
- Condition F.D.(a): *"shall not be subdivided"* - In terms policy documents of the Overstrand this conditions is dealt with in a broad manner namely that erven can only be subdivided if in line with the surrounding properties and that the status quo remain in place. However it is the opinion of the planner that the condition must remain in place, since it is not stipulated specifically that this erf may not be subdivided. In view of the aforementioned and the fact that the Municipality does not

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foresee that Municipal services will be available in the foreseeable future that services will be installed, it is imperative that no subdivision of the erven in Rooi Els will be allowed. The condition must remain in place to ensure that this erf not be subdivided, since it is not stipulated in the Zoning Scheme.

Retain

Conditions F.D.(b): the owner intends to use the house as a residential dwelling and the condition can remain intact.

Retain

Conditions F.D.(c): The applicant did indicate to remove the condition to free up the erf to be in line with the zoning scheme and its parameters pertaining to Residential Zone 1. The parameters are as follows: "guest rooms, second dwelling, home occupation, day care centre and a dwelling house". Except for the second dwelling, the remainder of the primary uses can remain intact. The reasoning for allowing a second dwelling was specifically to ensure that retirees can be accommodated on their own erven as they grow older and need a carer or an additional income. This will ensure to address the growing need to ensure that the Overstrand moves closer to an age friendly municipality.

Amend

Conditions F.D.(d): The zoning scheme stipulates coverage of 50%, which is half and is catered for.

Remove

Conditions F.D.(e): Stipulates building lines. The erf did not have a rear building line due to the existence of Arctotis Road. However with the closure of the road, the erf now becomes subject to the rear building line of the Title Deed of 3,15m. The Zoning Scheme stipulate a 2m rear building line and the applicant needs to remove this restriction to develop the property and built to the Zoning Scheme development parameters. The Title Deed also stipulated a 1,57m lateral building line, which is less restrictive than the Zoning Scheme and the removal will have no benefit to the applicant but rather to the community. The street building line of the previously Arctotis Road has lapsed due to the closure of the road and that no condition was placed that the street building line must remain in place. Thus the Zoning Scheme lateral building line of 2m is now applicable.

Remove

Conditions F.D.(f): Septic tanks are not allowed on residential zone 1 erven and will never be again due to the pollution impact and new technology available.

Remove

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- Condition F.D.(g)(b): The condition refers to wood and iron, which in today's terms is not applicable anymore. No house can be built without iron and or wood, many of the dwellings in the area has wooden decks, wooden doors, wooden windows and wood trusses. The same apply to iron structures which form part of a building. Similarly refers the condition to wood and iron, thus implicating that an only wood or iron building may be erected. The same applies where building material contains other materials which do have iron in it such as zinchiloom and not pure iron.
Remove
- Condition F.D.(g)(c): The condition is to ensure that the mentioned practices will not contribute to the detriment of the area and the environment.
Retain
- Condition F.D.(g)(d): The same as above
Retain
- Condition F.D.(g)(e): The condition was to ensure that the character of the area maintain a certain standard in terms of buildings to be erected, thus to ensure that inhabitants have certain financial means to build and reside in the area. This condition is contrary to the Constitution ensuring that all people have access to property in the town.
Remove
- Condition F.D.(g)(f): The condition ensures that the character of the area remains residential in nature. The condition must remain intact since noxious trade of business in this area of sensitive environment processes will be negatively influenced.
Retain
- Condition F.D.(g)(g): The condition can be removed since the intention was to ensure that no open fires be lit whilst people either visiting and or brought their animals for grazing to the area. The condition if to be implemented will prohibit any normal braai, which each and every owner does have and do.
Remove

The applicant did submit a building plan that complies with all the building lines as per the Title Deed and the Zoning Scheme, but intend to extend the building over the restrictive Title Deed street building line, but still will comply with the Zoning Scheme. The Environmental Department did not object to the application and does not foresee and or require any environmental studies in this regard.

Taking due cognisance that the applicant did not lodge an application for rezoning and or any consent use it is unclear why the amount of negative comments were received on the application. It is the only undeveloped erf along the dune system and

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it is unclear why property owners on the developed erven have a problem with the fact that the owner of Erf 106 wants to develop and built a residential dwelling on the property. It should be made clear that any of the property owners of Rooi Els have a right to lodge an application for the removal of restrictive conditions if they so wish.

The Overstrand Zoning Scheme was extensively advertised and public inputs were received and addressed before its implementation. The rights allocated to erven were in the public domain and the surrounding owners did not object to the development parameters for Single Residential Zone 1 erven.

The erf is part of Rooi Els Township and thus has commenced in terms of the residential rights to build a residential dwelling.

11. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 (By-Law) on Erf 106, Rooi Els for the removal of restrictive conditions Clauses A., B., C.(d), D., E., F.A. and F.D.(d), F.D.(e), F.D.(f) and F.D.(g)(b), F.D.(g)(e) and F.D.(g)(g) of Title Deed T15960/2016 to accommodate a dwelling house on abovementioned property with a second dwelling as per the Overstrand Zoning Scheme, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage;
 - (b) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
 - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
2. the reasons for the approval in Point 1. are as follows:
 - (a) Condition A. was included in the Applicant's Title Deed;
 - (b) Condition B. is irrelevant;
 - (c) Condition C.(d) was relevant during the 1940's, but is no longer applicable;
 - (d) Condition F.A. – there is no argument in retaining the condition, and
 - (e) Conditions F.D.(d), (e), (f), (g)(b), (g)(e) & (g)(g) – the conditions refer to the era during the 1940's and is not applicable anymore. It will not be to the detriment of the character of the area or to any land use.

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3. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 (By-Law) on Erf 106, Rooi Els for the amendment of Clause F.D.(c) of Title Deed T15960/2016, **be approved** in terms of the provisions of Section 61 of the By-Law:
 - (a) that the amendment reads as follows:

“that the erf uses be primarily for residential purposes and that the land use for a second dwelling be allowed.”

4. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 on Erf 106, Rooi Els for the removal of restrictive conditions C.(b), C.(e), F.B., F.C., F.D.(a), F.D.(b), F.D.(g)(c), F.D.(g)(d) and F.D.(g)(f) of Title Deed T15960/2016, **not be approved**, due to the following reasons:
 - (a) the Policy documents of the Overstrand do not explicitly make reference to the prohibition of subdivision;
 - (b) the Overstrand Zoning Scheme does not specifically prohibit subdivision;
 - (c) the Municipality cannot cater for additional erven due to the limited capacity to service additional erven;
 - (d) the conditions deals with services installation and maintenance of the Municipality and is to the benefit for the area as a whole;
 - (e) the conditions ensure that no activity will be to the detriment of the sensitive nature of the area;
 - (f) the conditions will not impact negatively on the owner’s intended use, and
 - (g) the By-Law does not make provision for a relaxation and is in effect an amendment and for the purposes of the Agenda and the advice to the Municipal Planning Tribunal, it will have to be retained for expediency purposes.

5. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

12. REASONS FOR RECOMMENDATION

Approval

- ❖ The application has followed due procedure.
- ❖ The amendment of the Condition F.D.(c) is to cater for a second dwelling, which would have been allowed as a domestic quarters. The latter was in the description as an outbuilding in the previous Scheme Regulations.

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- ❖ The title conditions to be removed are duplications and do not benefit either the environment and or the community.
- ❖ The removal of the conditions will not be to the detriment of the community, since it remains residential.
- ❖ The restrictive conditions are out-dated and not applicable and thus have no benefit for the erf or the character of the area.
- ❖ Many of the houses in Rooi Els do contain wood and iron in the existing dwellings.
- ❖ The servitudes mentioned are applicable when it was still farm land or located far away from the applicable erf.
- ❖ Conditions relating to farm animals are irrelevant with the establishment of a township and subsequent modern interpretation of activities allowed in a residential area.
- ❖ The restrictive conditions are not aligned with the present day planning principles and policies in terms of sustainability and resilience.
- ❖ To remove conditions because they are addressed in legislation may make the enforcement difficult as opposed to the retention thereof in the Title Deed where proof is required in any action.
- ❖ Due regard has been given to the type of restrictive conditions imposed, especially if it contains the characterization of a praedial servitude in favour of the erf holder.
- ❖ The context in which the restrictive conditions were imposed pertaining to the Rooi Els area were taken into consideration to ensure that conditions to be removed are not to the detriment of the character of the area and land owners.

Non-approval

- ❖ the Policy documents of the Overstrand do not explicitly make reference to the prohibition of subdivision;
- ❖ the Overstrand Zoning Scheme does not specifically prohibit subdivision;
- ❖ the Municipality cannot cater for additional erven due to the limited capacity to service additional erven;
- ❖ the conditions deals with services installation and maintenance of the Municipality and is to the benefit for the area as a whole;
- ❖ the conditions ensure that no activity will be to the detriment of the sensitive nature of the area;
- ❖ the conditions will not impact negatively on the owner's intended use, and
- ❖ the By-Law does not make provision for a relaxation and is in effect an amendment and for the purposes of the Agenda and the advice to the Municipal Planning Tribunal, it will have to be retained for expediency purposes.

13. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Title Deed T15960/2016
- Annexure D: Objections received
- Annexure E: Applicant's response to objections received

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REGISTERED PLANNER

Name : **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____

1. Introduction	
<p>a. Brief and Background</p> <p>Refer to Annexure A for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by owner of the property, Strupa Ingenieursdienste PTY LTD, to prepare and submit an application for the removal of title deed conditions in terms of the relevant legislation, for Erf 106, Priestlaya Road, Rooi-Els.</p>
2. The Application Proposal:	
<p>a. Application Proposal: Title Deed Conditions to be removed</p> <p>Refer to Annexure B for the title deed</p>	<p>The owner intends to develop the property, and subsequently wishes to first remove all potential restrictive, non-applicable and irrelevant title conditions, which could potentially restrict the future development of the application area and utilize the application area optimally.</p> <p>The restrictive title deed conditions that are proposed to be removed and considered either:</p> <ul style="list-style-type: none"> • no longer relevant or applicable, • potentially restrictive, • the parties mentioned in the title deed no longer exists • outdated • regulated by other legislation • no longer serves any purpose in the title deed. <p>The title deed condition proposed to be removed are Section A, B, C, D, & F.D.(a) to F.D.(g) from title deed no T15960/2016 which reads as follow:</p>
<p>b. Application:</p> <p>The application form is attached as Annexure D.</p>	<p>Application is hereby made in terms of Chapter IV, Section 1692)(f) of the Overstrand By-Law on Municipal Land Use Planning 2015, for the removal of Title Conditions:</p> <p>A., B., C., D., E. F.A., F.B., F.C., F.D.(a) to F.D.(g) from title deed no T15960/2016 reading as follows:</p> <p>A. Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;</p> <p>B. Not Subject to condition B on page 2 of Deed of transfer No. T 48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.</p> <p>C. SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:</p> <p>“By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer.”</p> <p>D. SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which conditions read as follows:</p> <p>“On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government.</p>

That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure.”

- E. SUBJECT FURHTER and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:

“Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10th March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No. 8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and agress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto.”

- F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows:

- A. 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 17 October, 1935, and in the memorandum which accompanied the said regulations.
- B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven 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 of access to 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.
- C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
- D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions 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 or conditions as he may impose.

- (a) Is shall not be subdivided;
- (b) It shall be used for residential purposes only;
- (c) Not more than one building, excluding a licensed hotel, maisonettes and semidetached houses, together with such outbuildings as are ordinarily required to be used therewith, shall be erected thereon;
- (d) Not more than half the area thereof shall be built upon;
- (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;
- (f) Pending the establishment of local authority for this township the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.
- (g) To the following conditions contained in Deed of Transfer No. 1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any ore in the Township;
 - (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes;
 - (c) No slaughter poles, cattle kraals, pig-sites or cowsheds shall be erected or carried on by any person whomsoever on this erf;
 - (d) Save with the consent in writing of the Company and of any local authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature, not shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel lime or stone thereon;
 - (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;
 - (f) No noxious trade of noxious business shall be carried on, on this erf;
 - (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.

3. Site Information

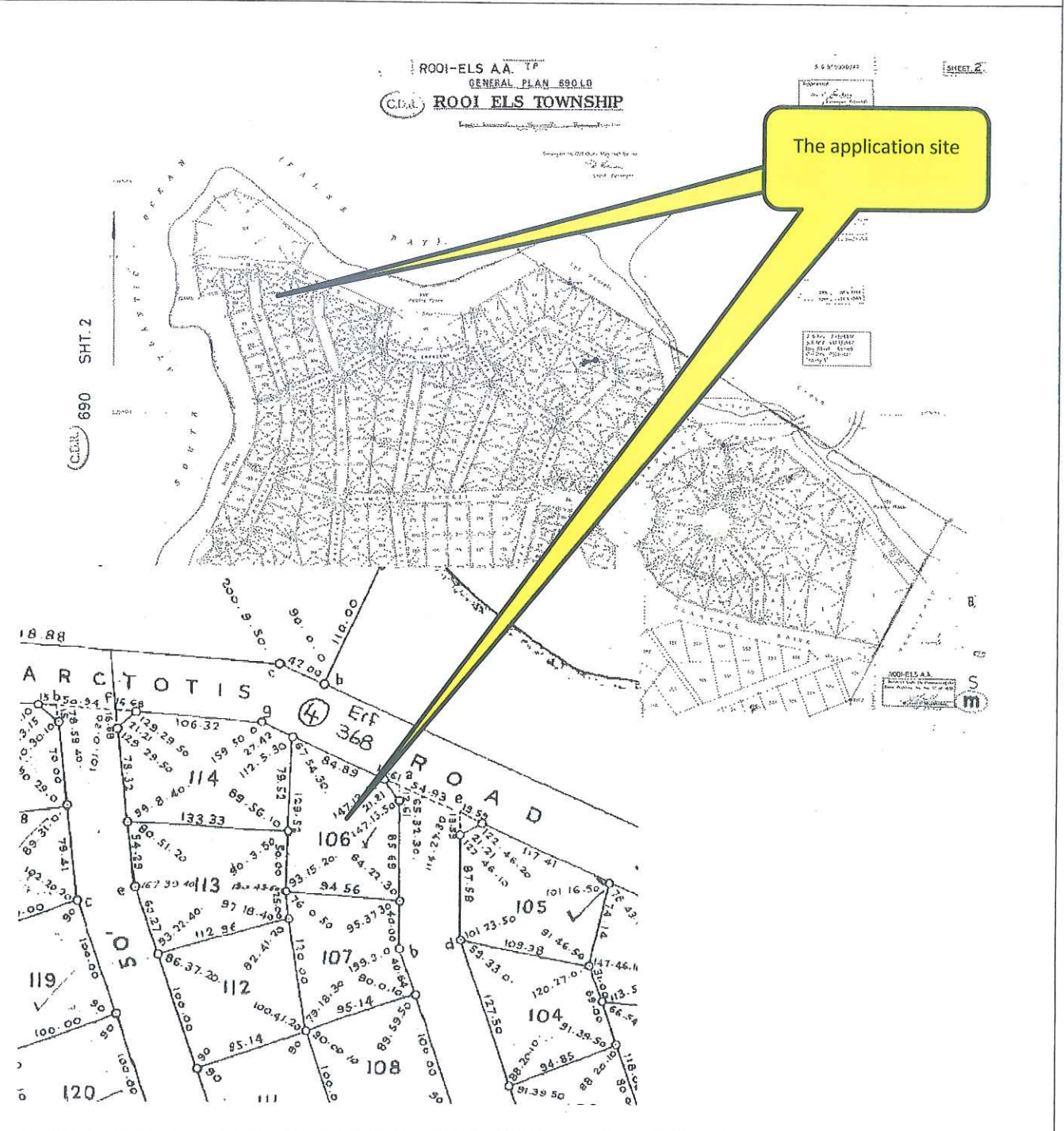
a. Property Description and Title Deed

Property	Extent	Title Deed	Registered Owner
Erf 106 Rooi-Els	1031m ²	T15960/2016	Strupa Ingenieursdienste PTY LTD

The title deed T 15960/2016 contains several potential restrictive and inappropriate title conditions. The Conveyancer, Me Monica Korf issued a certificate confirming that conditions can and need to be removed to utilise Erf 106 Rooi-Els for future improvement and development.

Refer to **Annexure E** for the SG Diagram and **Annexure C** for the Conveyancer's Certificate

The Surveyor General Plans are reflected in the following sketch here-below:



b. Location:

Refer to Annexure F for the locality plans.

Regional Context:

The application area is located within Rooi-Els. Within the regional context, Rooi-Els is a settlement in Overberg District Municipality located south-east of the Cape Town Central Business area and approximately 80km by road along the scenic and popular Clarens Drive, in the Western Cape province of South Africa. It was declared a township in June 1948, and is situated 5 km north of Pringle Bay, on the eastern shore of False Bay.[2]

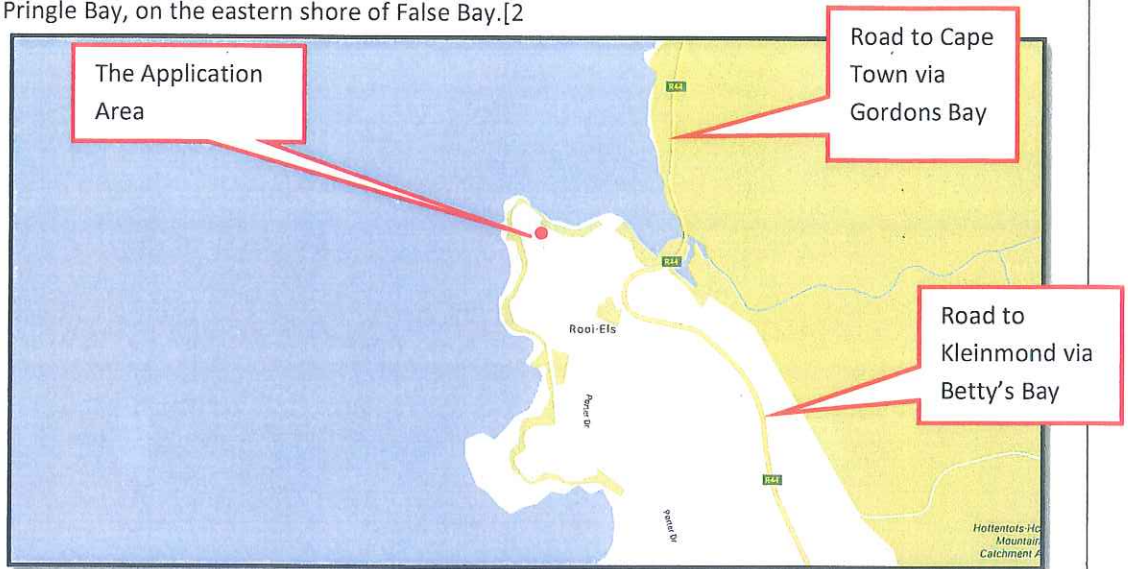


Figure 2: Locality Plan – Regional Context

Local Context:

Within the local context the application area is located on the northern side of Rooi Els at the end of a Cul-de-Sac in Priestleya Road as shown in the following Google image:

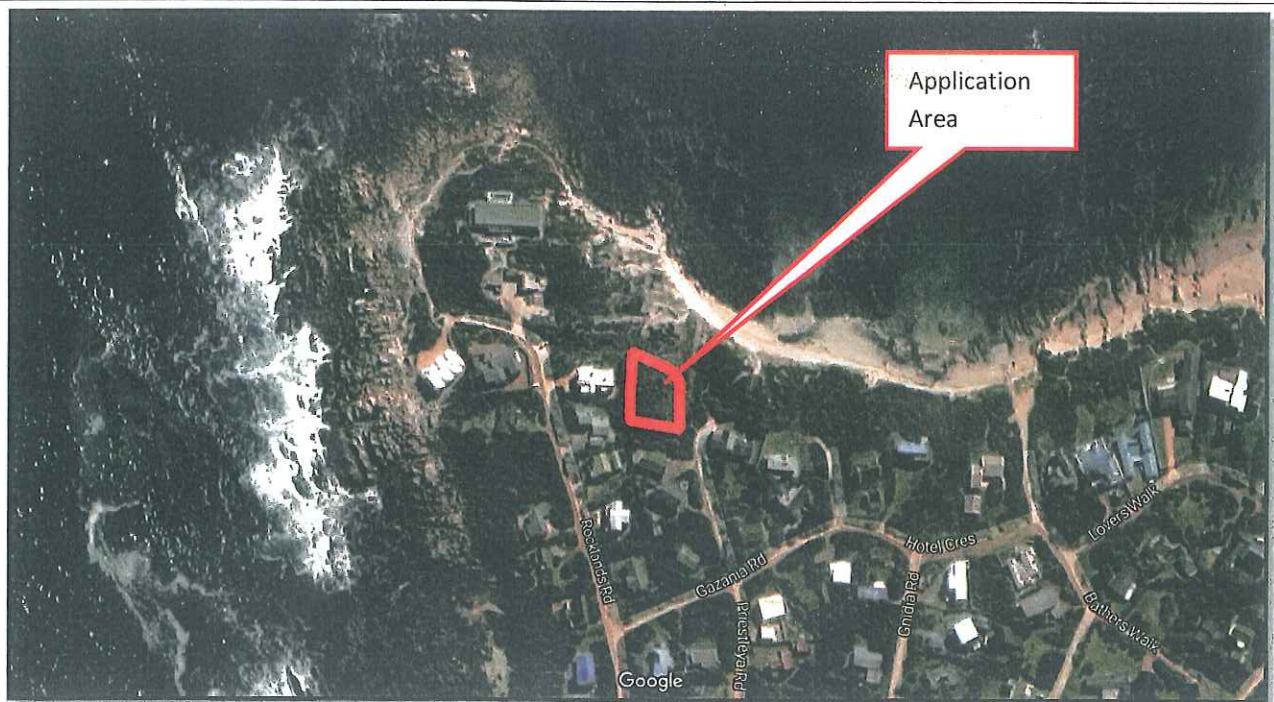


Figure 3: Locality Plan – Local Context

c. Land Use:

Refer to Annexure H for the Land Use Plan.

The application area is currently vacant. The surrounding properties to the east, south and west are developed with single residential dwellings houses. An open space between the application area and the coast line is located north of the application site.

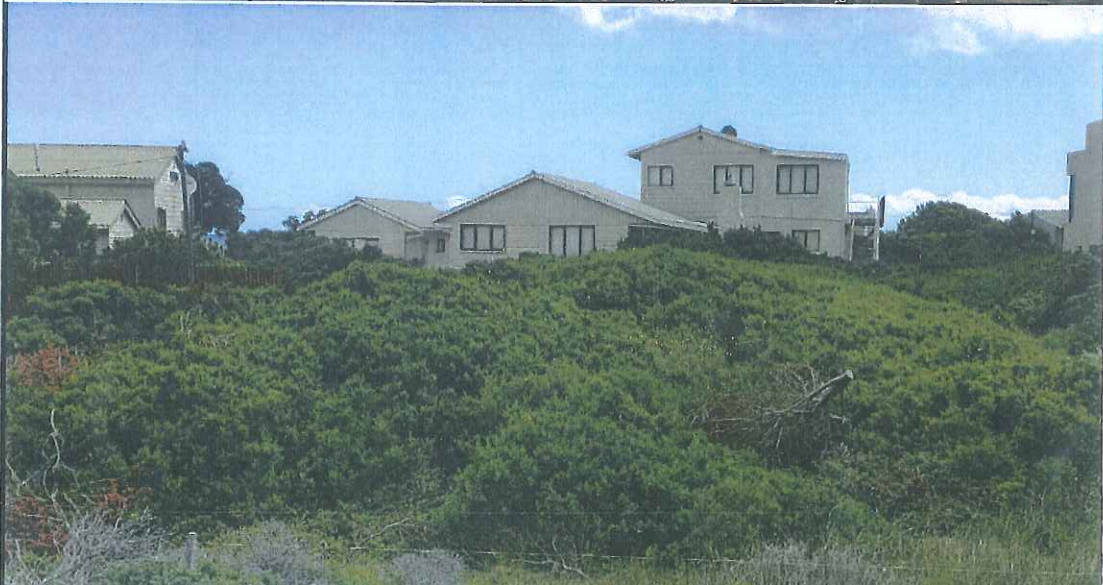
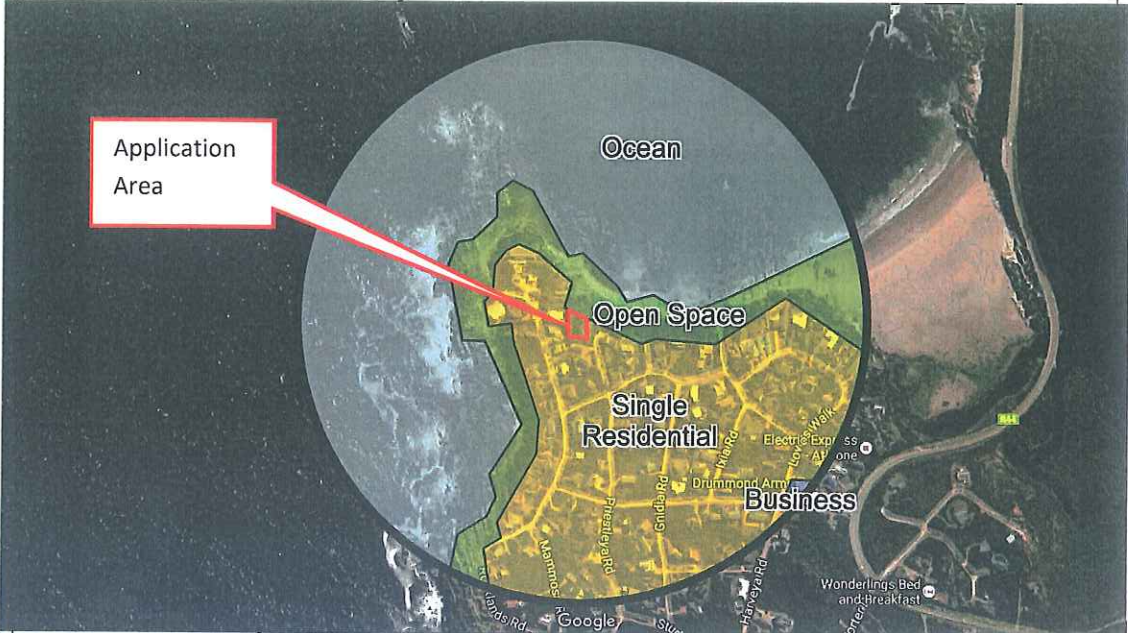


Figure 4: Google Image and a photographs reflecting the land-uses of the application area and surrounding properties

d. Zoning:

The application area, Erf 601, Rooi-Els is zoned Residential Zone 1: Single Residential in terms of the current zoning scheme.

Refer to the Extract of Hermanus Final Zoning 2014 map attached as Annexure G

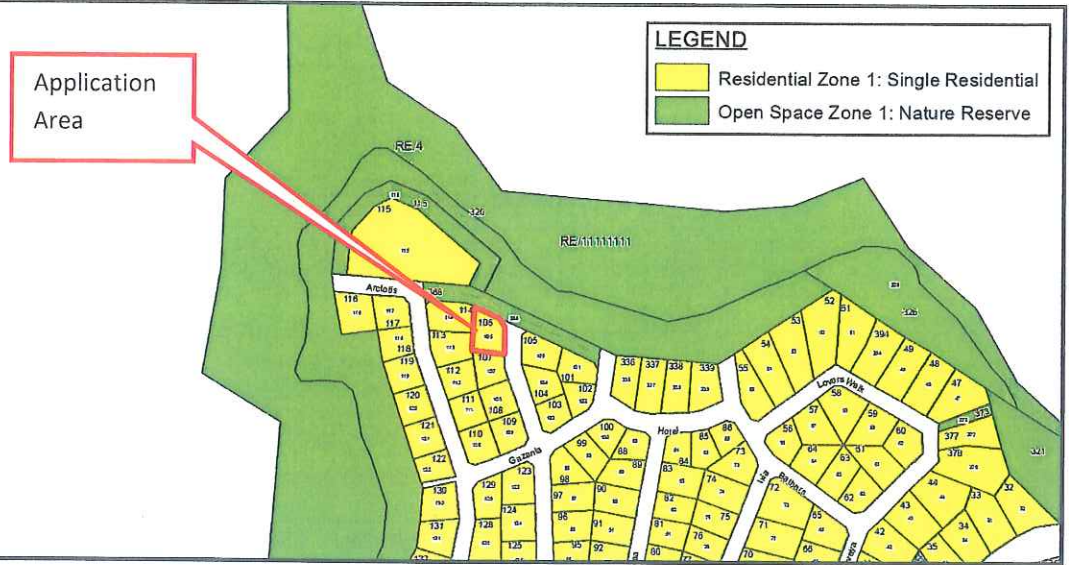


Figure 5: Extract from the Overstrand Municipality: Hermanus Final Zoning 2014 map

In terms of the zoning scheme regulations the following summarized development parameters for Erf 106, Priestlaya Road, Rooi-Els as per the Planning Scheme Regulation, are applicable:

Parameters	Existing Zoning
Zoning	RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)
Primary Use	Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;
Consent Uses	Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.
Coverage	50%
Height	8m
Building lines	Street 4m
	Side 2m
	Rear 2m
Parking	2 bays per du

4. The application motivation

Motivation for the application:

1. Introduction and overview

The current title deed includes several dated and inappropriate title deed conditions transferred from previous title deeds over time with the oldest document dating as far back as 1839.

Documents referred to in the said title deed T15960/2016 includes:

- Certificate of Consolidated Title No.T3720/1937 (year: 1937)
- Deed of Transfer No. 6068/1940 (year: 1940)
- Deed of Grant (year: 1839)
- Deed of Transfer No.T1672/1956 (year: 1956)
- Ordinance 33 of 1934 (year: 1934)

Between 1839 and 1956, land use rights were predominantly managed by virtue of conditions within the title deed. The municipality has since introduced zoning schemes to manage land-use within its authority areas.

The conditions being applied for to be removed are either not relevant any more or managed by virtue of the latest Overstrand Municipal Zoning Scheme. A motivation for each of the title deed conditions are provided in the following section of the report:

Condition	Motivation for the removal of the condition
<p>A. <i>Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;</i></p>	<p>This condition refers to the pivot deed. As indicated in the conveyancer certificate, the same restrictive clauses are found in this pivot deed than in title deed T15960/2016 (the subject property's title deed).</p> <p>Also referred to the Annexure B2 where the specific title deed conditions are referenced to the subject property's title deed conditions.</p> <p>Subsequently it is considered appropriate to remove this condition.</p>
<p>B. <i>Not Subject to condition B on page 2 of Deed of transfer No. T 48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.</i></p>	<p>In this instance the, it is indicated that the condition is "NOT SUBJECT to" and therefore this condition is subsequently not considered applicable to the property and serves no purpose.</p> <p>This specific condition means that the mining rights over the property is cancelled.</p> <p>Therefore it is also considered appropriate to remove this condition from Title Deed T15960/2016, the subject property.</p>
<p>C. <i>SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:</i></p> <p><i>"By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the</i></p>	<p>Title Condition C, as created in 1940, restricts the land-use and type of buildings that may be built on the application area.</p> <p>The current Overstrand Municipal zoning scheme regulates the land use rights whilst the National Building Regulations and Standards Act No. 103 regulates the building types and methods.</p> <p>In essence the said title deed is duplicated and can subsequently potentially create confusion or even an oversight. Therefore it is recommended that the land-use and building specifications be dealt with by only the</p>

remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer.”

D. SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which conditions read as follows:

“On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government. That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure.”

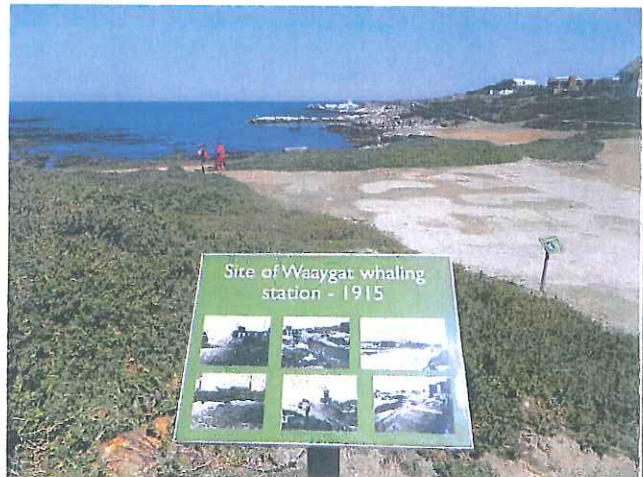
generally accepted norm being the Overstrand Municipality Zoning Scheme and the National Building Regulations and Standards, Act no 103.

In summary, Title Condition D makes provision to ensure access to a farm, which according to information was a part of a former whaling station. Rooi Els is now a town with erven and roads to provide access to the different registered portions of the area.

More specific, Erf 106 Rooi Els is a registered erf that will not restrict any access to any area or farm portion.

Furthermore, due to the urban nature as well as the conservation of the application area it is considered unreasonable to allow the public to unteam cattle, to fish from the application area or to bind the owner of the application in terms of cultivation requirements.

Therefore this condition is considered completely inappropriate to the erf and is recommended to be removed.

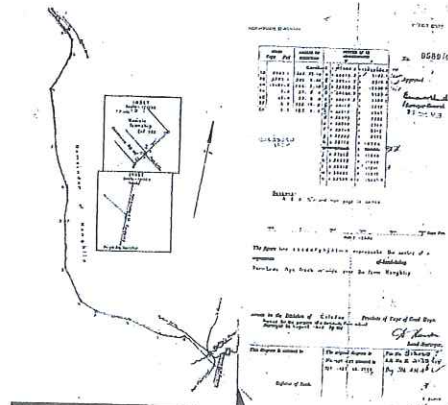


E. SUBJECT FURTHER and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:

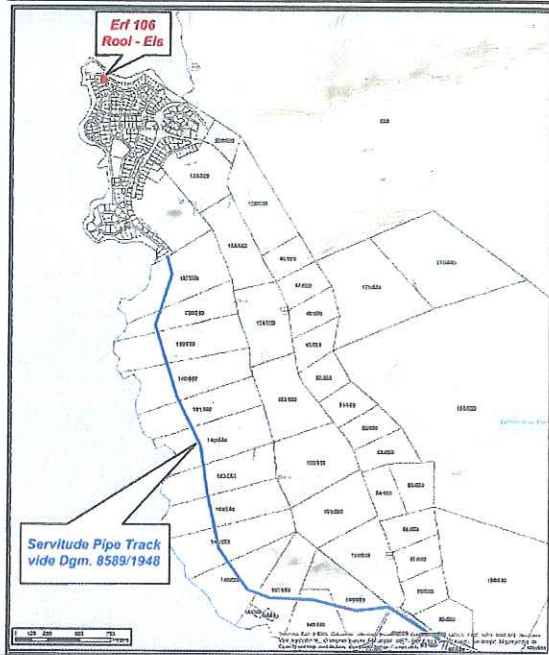
“Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10th March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No.

The pipeline refer to does not affect the property as reflected in the following servitude diagram and sketch (also refer to Annexure I)



8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and agress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto.”



F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows.

A. 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 17 October, 1935, and in the memorandum which accompanied the said regulations.

This clause specific refers to “Any words and expressions used” under the provision of the Ordinance 33 of 1934. This validity of the said ordinance expired on 30 June 2013 in terms of Section 14(2) of Land Use Planning Ordinance, 1985 and is therefore not applicable anymore. Also refer to Circular 19/2012 from the Department of Environmental Affairs and Development Planning attached as **Annexure J**.

B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven 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 of access to 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.

This is a condition taken up in the recent implemented Overstrand By-Law on Municipal Land-Use Planning, 2105, Section 29 reading as follows:

“29. Services arising from subdivision

Subsequent to the granting of an application for subdivision in terms of this By-law the owner of any land unit originating from the subdivision must—

(a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:

- (i) gas mains;
- (ii) electricity cables;
- (iii) telephone cables;
- (iv) television cables;
- (v) other electronic infrastructure;
- (vi) main and other water pipes;

	<p>(vii) foul sewers; (viii) storm water pipes; and (ix) ditches and channels;</p> <p>(b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:</p> <p>(i) surface installations such as mini-substations; (ii) meter kiosks; and (iii) service pillars;</p> <p>(c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs(a) and (b); and</p> <p>(d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.”</p> <p>Subsequently this condition in the said title deed is not necessary any more.</p>
<p>C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.</p>	<p>Refer to the paragraph here-above with specific reference to Section 29(d) of the Overstrand Municipal By-Law on Land Use Planning, 2015 where this condition is covered and therefore considered appropriate to remove.</p>
<p>D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions 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 or conditions as he may impose.</p> <p>(a) Is shall not be subdivided; (b) It shall be used for residential purposes only; (c) Not more than one building, excluding a licensed hotel, maisonettes and semi-detached houses, together with such outbuildings as are ordinarily required to be used therewith, shall</p>	<p>These conditions refer to the typical land-use management conditions. The Overstrand Municipality Zoning Scheme effected on 1 January 2014 contains conditions relating to the land use management of all erven within the Overstrand Municipality, hence resulting to a duplication between conditions D(a) to (g) of title deed no T15960/2016 and that of the Overstrand Municipality Zoning Scheme, 2014.</p> <p>Subsequently the need to rather use the latest more applicable conditions compared to the dated conditions found the said title deed no T15960/2016 of Erf 106 Rooi Els.</p> <p>In this instance it will also contribute the more efficient use of the property with lesser building lines (common as well as street building lines)</p>

- be erected thereon;
- (d) Not more than half the area thereof shall be built upon;
- (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;
- (f) Pending the establishment of local authority for this township the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.
- (g) To the following conditions contained in Deed of Transfer No.1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any ore in the Township;
- (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes;
- (c) No slaughter poles, cattle kraals, pig-sites or cowsheds shall be erected or carried on by any person whomsoever on this erf;
- (d) Save with the consent in writing of the Company and of any local authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel lime or stone thereon;
- (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;
- (f) No noxious trade or noxious business shall be carried on, on this erf;
- (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.

2. The proposed application

The purpose of this application is to remove dated title deed conditions to allow for the property to be planned and developed in terms of the relevant zoning scheme instead of the duplicated and restrictive title deed conditions.

3. Existing character of the environment

The application area is within an area where mostly holiday homes are developed and is adjacent to a nature reserve that includes dunes and the beach. The area is within an urban area with mostly single residential zoned properties. The application area and surrounding properties falls within a No Densification Zone in terms of the Overstrand Growth Management Strategy 2010.

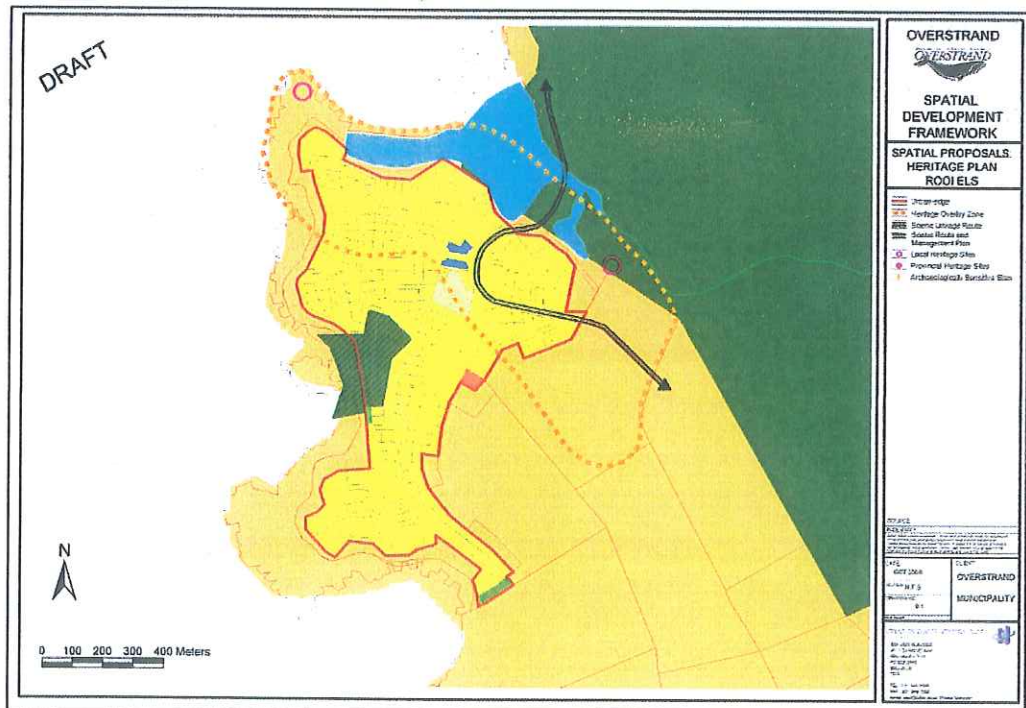
4. Desirability of the proposal

The removal of the above mentioned title deed restrictions will provide for a singular set of land use management rules and also allow for more updated and appropriate statutory legislation taking the current need but also the land economy and conservation into consideration more aligned with the character of the existing area.

5. Laws and policies relevant to the consideration of the application and forward planning and land use documents

In terms of the law and policies, the following are applicable relevant to the application site and this application:

a. The Overstrand Spatial Development Plan, 2006



"5.5.5 Housing policy

(i) Motivation

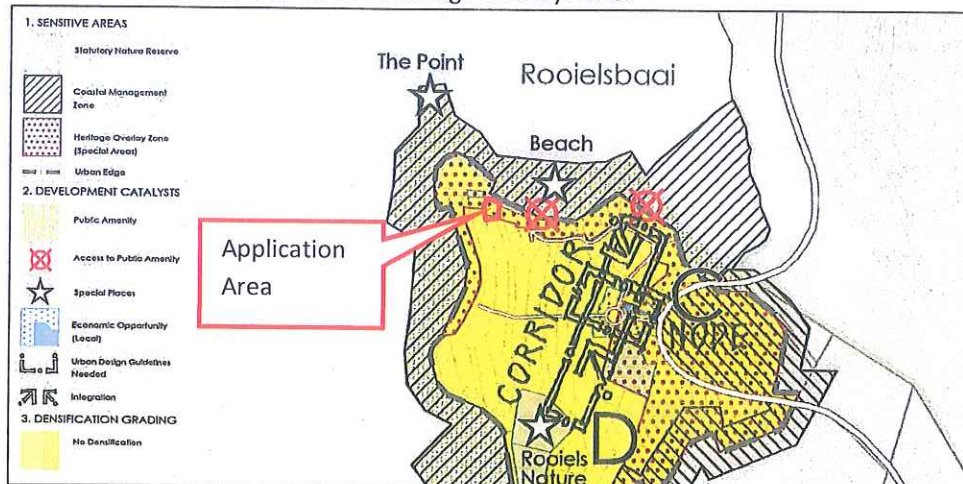
The projected population growth in Overstrand municipality will increase pressure on the demand for housing. The SDF is *inter alia* concerned with the optimum use of land within the context of the study area. An appropriate balance thereof needs to be achieved between densities, which control the location and amount of land used for residential development and the need to provide satisfactory residential environments and the protection of the natural attributes of the area's setting. Furthermore, a full range of residential needs must be catered for. The needs of the poor, youth, the single and the elderly are becoming more prevalent and therefore must be addressed in future residential policies.

LPL 2: Balanced Housing Provision

- The ongoing provision of land and / or redevelopment opportunities for residential / housing uses, within the urban edge, must be viewed as a priority. This together with the need to provide for integration and a balanced mix of housing types for the full range of income groups must also inform decision making.

b. Overstrand Municipality: Growth Management Strategy – 2010

In terms of the Overstrand Growth Management Strategy, the application area falls within a No Densification Zone as well as a Heritage Overlay Zone.

**6. The impact of the proposal on municipal engineering services**

The removal of the said title deed restrictions will allow for a more flexible approach to the provision of services to the site and will allow the municipality to fully regulate the services to be installed.

7. Planning Principles

Spatial justice: The current restrictive title deed conditions limit the potential of the application area and are considered consistent with the latest scientific and researched standards and regulations to ensure optimal urban development planning. The removal of the said restrictive title deed conditions will subject the application to rules and regulations managed by the municipality that reflects the current character of the area.

Spatial sustainability: The proposal of the removal of the restrictive title deed conditions is not only consistent, but will bring the application area more aligned with all policy and future planning documents and principles of the Municipality and different spheres of government .


	<p>Efficiency: The removal of the restrictive title deed conditions such as the restrictive building lines will allow for more efficient options in terms of the upgrading of the property in future.</p> <p>Spatial resilience: By removing restrictive title deed conditions, the application area's potential improves, making it more desirable and more capable of recovering from market shocks.</p> <p>Good administration: This application is fully consistent with the general science of land-use planning by ensuring the land economy is enhanced and the relevant land-use legislation respecting by following the process prescribed in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015.</p> <p>The latter is also considered part and partial of good administration where inter alia consultive planning practices is pursued and financial, social, environmental matters are positively contributed towards and enhanced.</p>
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1267

141

Prepared by me

Fee endorsement		Office fee
	Amount	R.
Purchase price/Value	R. 3.800 000 00	R. 1.600 00
Mortgage capital Amount	R.	R.
Reason for exemption	Exempt i.t.a	
	Act.	section.


 CONVEYANCER
 PAULA SHARON DE LORENZO

T00015960 / 2016

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

LYNNE BOTHA

DATA/VERIFIED
 07 APR 2016
 LAMANI VUYELWA

appeared before me, the Registrar of Deeds at Cape Town, the said appearer, being duly authorised thereto by a power of attorney signed at PRETORIA on 28 January 2016 and granted to him by

PIETER HENDRIK KRITZINGER
 Identity Number 500919 5072 08 3
 Married out of Community of Property

DATA / CAPTURE
 2016 -04- 04
 PUMELELA MNAMATA

And the appearer declared that:

Whereas her principal had on 13 December 2015 truly and legally sold, the undermentioned property by Private Treaty

Now therefore the Appearer on behalf of the Transferor, did by these presents, cede and transfer to and on behalf of

STRUPA INGENIEURSDIENSTE PROPRIETARY LIMITED
Registration Number 1992/002525/07

its successors in title or assigns, in full and free property

**ERF 106 ROOI-ELS, IN THE OVERSTRAND MUNICIPALITY, CALEDON DIVISION,
WESTERN CAPE PROVINCE**

IN EXTENT 1031 (ONE THOUSAND AND THIRTY ONE) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No. T1672/1956 with Diagram No. 52/1956 relating thereto and held by Deed of Transfer No. T48879/2009.

- A. **SUBJECT** to such conditions as are referred to in Certificate of Township Title No. T13367/1948;
- B. **NOT SUBJECT** to condition B on Page 2 of Deed of Transfer No. T48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act 24 of 2003.
- C. **SUBJECT FURTHER** and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:

"By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer."

- D. **SUBJECT FURTHER** to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which conditions read as follows:

"On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order of Government. That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay - and be allowed, without hindrance, to fish there, and he shall be bound (according to the existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall in future be established in respect of land granted under similar tenure."

- E. **SUBJECT FURTHER** and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:

"Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10th March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No. 8589/1948 by the letters a, b, c, d, e, f, g, h, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works (d) aqueducts (e) purification works and reservoirs (f) access to and egress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto."

Haal out uit.

- F. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance 33 of 1934 reading as follows:

A. 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 17 October, 1935, and in the memorandum which accompanied the said regulations.

B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any other erf or erven 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 of access to 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.

-By-law

- C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as 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. -18.1.3.
- D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions 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 or conditions as he may impose.
- (a) Is shall not be subdivided;
 - (b) It shall be used for residential purposes only;
 - (c) Not more than one building, excluding a licensed hotel, maisonettes and semidetached houses, together with such outbuildings as are ordinarily required to be used therewith, shall be erected thereon; -Zoning
 - (d) Not more than half the area thereof shall be built upon; -Zoning
 - (e) No building or structure except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3,05 metres 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary; -Zoning +
 - (f) Pending the establishment of local authority for this township the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it. -17.3.!
 - (g) To the following conditions contained in Deed of Transfer No. 1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any erf in the Township;
 - (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes;

- (c) No slaughter poles, cattle kraals, pig-sties or cowsheds shall be erected or carried on by any person whomsoever on this erf;
- (d) Save with the consent in writing of the Company and of any local authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles, or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or stone thereon;
- (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square metres;
- (f) No noxious trade or noxious business shall be carried on, on this erf;
- (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the Company.

WHEREFORE the appearer, renouncing all the right and title the said

PIETER HENDRIK KRITZINGER
Married as aforesaid

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

STRUPA INGENIEURSDIENSTE PROPRIETARY LIMITED

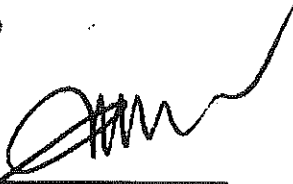
its successors in title or assigns, now is and henceforth shall be entitled thereto, conformably to local customs; the State, however, reserving its rights, and finally acknowledging that the purchase price is the amount of R 3 800 000.00 (Three Million Eight Hundred Thousand Rand).

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.

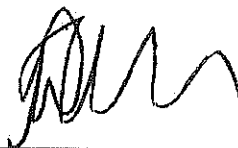
THUS SIGNED, EXECUTED AND SEALED at the Office of the Registrar of Deeds at Cape Town on

18 March 2016.

In my presence



Registrar of Deeds



Signature of appearer q.q.



Loretta Gillion - FW: ERF 106 ROOIELS - OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS

From: "Alison Ayre" <alison.raringtogo@gmail.com>
To: <loretta@overstrand.gov.za>, <dlakey@overstrand.gov.za>, <rerarebv@gmail...>
Date: 06/03/2017 03:53 PM
Subject: FW: ERF 106 ROOIELS - OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS

*TP A Theart
CH vld Stoep*

TO WHOM IT MAY CONCERN :

Alison Ayre Owner Erf 147 Rocklands Rd Rooi Els

Dear Madam/Sir

FILE NO:	EL 106
	Rooi els
SCAN NO:	
COLLABORATOR NO:	1001129

YOUR REF 14/2017 REMOVAL OF TITLE DEED RESTRICTIONS ERF 106 ROOIELS

I herewith object in the strongest terms to this application to remove ALL title deed restrictions in respect of erf 106.

1. I believe that the application is defective, because it asks for a so-called "blanket removal", which are not as afr as I am aware permitted. This application needs to be refused on this ground alone.

2. The application should furthermore be dismissed on the grounds that it does not give adequate (any) information regarding the type of development on erf 106 which is planned by the owner. This is patently unjust towards the rest of the community wishing to object but not being furnished with any information. This renders the process unfair and irregular.

3. Erf 106 is situated on the coastal dunes of Rooiels. The stability and protection that these dunes offer to other properties should not be further undermined by increasing the applicant's rights to build and develop a greater extent of this sensitive property. It is not safe. It is not the interest of the environment, nor is it in the interest of other inhabitants of Rooiels, beach users and property owners.

4. Why would the applicant wants to remove conditions that are common to ALL the properties in Rooiels. Surely erf 106 is part of the Rooiels village and should not have a different dispensation compared to all the other erven? What makes it so special? This application should be turned down on the basis that it is not fair to the community as a whole and benefits only one property owner.

✓
KRE

5. I have own property in Rooiels for over 20 years and have invested here because this village has a natural character and spacious feel, with privacy as the houses are not too close to each other. Rooiels is not a place suitable for densification with a small number of erven in comparison to Pringle Bay and Betty's Bay. In addition to this the village borders the World Biosphere of the Kogelberg and as such

TP - 8 MAR 07

Overstrand Municipality has a duty to preserve the heritage and character of the village of Rooiels. This application will detract from this and set an unfortunate precedent. It should be turned down.

Please acknowledge receipt of this email before close of business today. Kindly also confirm that it will be tabled when the application of erf 106 is considered.

Alison Ayre,

PO Box 45

Pringle Bay

7196

TP A Theart
C H vd Stoep

Loretta Gillion - ERF 106 ROOIELS OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS



From: "bisbus13" <bisbus13@gmail.com>
To: <loretta@overstrand.gov.za>
Date: 04/03/2017 07:28 AM
Subject: ERF 106 ROOIELS OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS
Cc: "Desmond Lakey" <dlakey@overstrand.gov.za>, "Estelle" <eraymond@mweb...>

From: Helen Jones, Owner of property in Rooi Els

Dear Madam/Sir

YOUR REF 14/2017 REMOVAL OF TITLE DEED RESTRICTIONS ERG 106 ROOIELS

I herewith object to this application to remove ALL title deed restrictions in respect of erg 106.

1. I believe that the application is defective, because it asks for a so-called "blanket removal. Blanket removals are not permissible. This application needs to be refused on this ground alone.
2. The application should furthermore be dismissed on the grounds that it does not give adequate (any) information regarding the type of development on erf 106 which is planned by the owner. This is patently unjust towards the rest of the community wishing to object but not being furnished with any information. This renders the process unfair and irregular.
3. Erf 106 is situated on the coastal dunes of Rooiels. The stability and protection that these dunes offer to other properties should not be further undermined by increasing the applicant's rights to build and develop a greater extent of this sensitive property. It is not safe. It is not the interest of the environment, nor is it in the interest of other inhabitants of Rooiels, beach users and property owners.
4. I find it strange that the applicant wants to remove conditions that are common to ALL the properties in Rooiels. Surely this erf 106 is part of the Rooiels village and should not have a different dispensation compared to all the other erven? What makes it so special? This application should be turned down on the basis that it is not fair to the community as a whole and benefits only one property owner.
5. I have owned property in Rooi Els since 1986 and I have invested here because this village has a natural character and spacious feel, with privacy as the houses are not too close to each other. Rooiels is not a place suitable for densification. Overstrand Municipality has a duty to preserve the heritage and character (unique sense of place) of the village of Rooiels. This application will detract from this and set an unfortunate precedent. **It should be turned down.**

Please acknowledge receipt of this email before close of business today. Kindly also confirm that it will be tabled when the application iron erg 106 is considered.

KRE

FILE NO:	EL 106
SCAN NO:	Rooiels ✓
COLLABORATOR NO:	1001107

TP

06 MAR 2017

TP - A Theart
(Child Stoop)

Loretta Gillion - REF 14/2017 Removal of Title Deed Restrictions 106 Rocklands Rd



From: Kay Leresche <bandroop@gmail.com>
To: <loretta@overstrand.gov.za>
Date: 03/03/2017 04:24 PM
Subject: REF 14/2017 Removal of Title Deed Restrictions 106 Rocklands Rd

Dear Madam/Sir

I am not a legal person and am uncertain of all the detail of this application. However, I would ask that you ensure that you have paid attention in full to the following:

1. That you request more detail from the applicant on what it is they intend to do with the property and why they are applying for the removal of restrictions
2. We would like to retain the rural character of Rooiels which adds greatly, not only to the aesthetic value to those of us living in Rooiels, but which is also important to the land values of Rooiels village and to tourism throughout the Overstrand. We would therefore prefer to take a precautionary approach to lifting restrictions - and we would like to ensure that any development is in keeping with the active, and often articulated, preference of its residents and owners for the character of Rooiels to remain as natural as possible and in harmony with nature.
3. We, as villagers, have invest much time and money in dune reclamation -- there is concern that development on this plot should be subject to a rigorous and full environmental impact assessment. This is needed both for the sustainability of the property and dwelling that will be built, as well as for the safety of all the neigjbouring properties.
4. Please can we ask Overstrand to report back on any decision they make in this regard.

Yours faithfully,

Prof. Kay Muir Leresche

FILE NO:	EL 106 Rooiels
SCAN NO:	
COLLABORATOR NO:	1001102

✓
KRE

TP
03 MAR 2017

151



TP - A Theart
(Huld stoep)

JL Aalbers
Erf 99
Gazania Road
ROOI ELS
Tel: 073 458 1666

Town Planning Department
Overstrand Municipality
PO Box 20
HERMANUS
7200

Dear Sir,

Objection to Municipal Notice 14/2017 – Removal of Restrictive Conditions: A Wiehahn – Erf 106 Rooi Els

As a previous Rooi Els Councillor on the Hangklip-Kleinmond Town Council, I was personally associated with the deproclamation of Arctotis Road, immediately adjacent to erf 106 (on the seaward side).

The deproclamation of Arctotis Road was done to protect the vulnerable dune environment and this area has now become part of Public Open Space: Zone 1 (Nature Reserve).

I object to any removal of title deed restrictions related to building lines as any relaxation of the 4.72 metre line to the erstwhile Arctotis Road will likely result in destabilising the frontal dune with adverse effects on the surrounding properties and the beach environment which is enjoyed by many visitors to our area.

Current grass coverage of the dune is being maintained with very careful attention by the Environmental officials in collaboration with the Rooi Els Conservancy.

Erf 106 is of considerable size and offers adequate space for a residential building within the current title deed conditions.

Yours Sincerely,

JL Aalbers
JL Aalbers
(Vice-Chairperson - RERA)

FILE NO:	EL 106 Rooi Els
SCAN NO:	
COLLABORATOR NO:	1000550

✓

TP
03 MAR 2017

152



PO Box 89, Bettys Bay, 7141



The Municipal Manager
Overstrand Municipality
Hermanus

Email: loretta@overstrand.gov.za
Fax: 0283132093

FILE NO:	EL 106	1 March 2017
SCAN NO:	Rooiels	
COLLABORATOR NO:	1 000 478	

Dear Sir

OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS ERF 106 ROOIELS
Your reference 14/2017

The village of Rooiels is an established Conservancy and is registered with CapeNature.

The aims of the Conservancy include the conservation of the environment of Rooiels for generations to come and the practical implementation of the principles set out in the Rooiels Vision (our community ethos). In this regard we have compiled an extensive practical document entitled "Living the Rooiels Vision", which is attached for background purposes only.

Unfortunately the applicant does not disclose any **substantial and practical** reasons for its application, nor does it disclose its future plans for the property. This **compromises the process** and makes meaningful comment exceedingly difficult.

We can only speculate that the true reason for this application is that the applicant wishes to disregard the percentage of the property that may be built upon and/or the set back lines and/or the height restrictions and/or the restriction of number of buildings. Most of the other conditions are not onerous at all and are part of Rooiels' interesting heritage.

It is regretted that the applicant has not been forthright in furnishing it reasons for the application. This creates the impression that the "blanket approach" is used as a trick to **obfuscate** the pertinent conditions relating to building lines, footprint, etc.

1. CONTEXT AND PRECAUTIONARY PRINCIPLE

Rooiels is situated within the proclaimed Kogelberg Biosphere Reserve and the Rooiels beach borders on the **core** zone of Biosphere Reserve. Erf 106 Rooiels is

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situated on a dune next to a green belt (Open Space Zone I Nature Reserve) and falls within this most sensitive coastal zone.

The purpose of a title deed is to set out the rights and extent of the ownership to a property. The applicant is now asking for those rights to be amplified by the removal of all the restrictive conditions which were applicable when the property was purchased by it.

In the light of the above two facts; namely:

- (1) that the area is situated in an ecologically significant and sensitive area; and
- (2) that additional rights are being sought (i.e. not initially included in the property as per title deed),

it is submitted that the planning tribunal needs to take a restrained and cautionary approach to this application.

2. PRACTICAL IMPACT ON THE DYNAMIC DUNE SYSTEM

It is well known that Erf 106 is situated within a Dynamic Dune System. There have been problems with moving dunes on nearby properties in the past in Rooiels. Solutions have been partial and costly for both the property owners and the previous municipality.

It is likely that any additional increase in the footprint and/or change of building set back lines will add to the destabilisation of this delicate system which is already under stress. This property can only be developed with the utmost care.

In our opinion a **full environmental impact study** needs to be done, failing which, the controlling authorities may well be held legally liable in years to come. Even without the proposed removal of restrictions, the nature of erf 106 is such that any building work must be overseen by an Environmental Control officer.

3. NATURAL SEEPAGE UNDER DUNE

There is a natural seepage of ground water which runs underneath the dune on erf 106 into the green belt/nature reserve in front of the property. Any increase of the footprint of the development can lead to unforeseen consequences regarding the natural flow of water. In the final instance, Overstrand Municipality (and its ratepayers), will have to bear the financial burden in dealing with problems resulting from interference with the natural flow of water.

The deletion of these title deed conditions would therefore impact negatively on the environment and also set a bad precedent for the rest Rooiels. It should be noted that most erven in Rooiels have the same/similar title deed restrictions as erf 106.

We are furthermore concerned about the potential of contamination of this ground water seepage. Presently cement laden water is being washed down the driveway into the road at the lowest level - where the possibility exists that it may contaminate the ground water.

4. PUBLIC INTEREST

There is widespread opposition to the removal of these title deed restrictions among Rooielsers and members have requested both the Rooiels Conservancy and Rooiels Ratepayers Association to object to this on behalf of the community. There is no social benefit arising from the proposed application – only social disadvantages. The benefit which would accrue to the individual applicant, if the application would be granted is small in comparison to the actual and future harm caused to the community and environment. The cumulative impact of this application, precedent and ripple effect need to be considered.

5. VARIOUS MISLEADING AND/OR LEGALLY INCORRECT STATEMENTS AS MOTIVATIONS FOR REMOVAL

Apart from the vagueness and lack of substance of the reasons provided in the application, we wish to point out that some assertions are patently incorrect or misleading.

For example, on page 11 of the application regarding D. (a) – (g), it is stated that the zoning scheme regulations lead to a “duplication of conditions D. (a) to (g)”. The law is that title deed conditions co-apply with zoning scheme regulations and that stricter provision of the two apply.

CONCLUSION

The title deed conditions in question are common to most properties in Rooiels and were imposed to create the open, rural, natural character of this village. It makes no sense and is inappropriate to remove these conditions from a single property only.

These title deed conditions afford Rooiels a unique character and sense of place and removing them will negatively impact the whole community.

The social and environmental benefits of retaining these title deed conditions by far exceeds the personal benefit sought by the applicant

We accordingly request that the planning tribunal **refuse** this application.



On behalf of the Rooiels Conservancy

RAYMOND McCREATH INC. INC.

24 Bright Street | PO BOX 2962
Somerset West 7130
Deeds Office BOX 143
High Court Box No. 319

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TR A Theart
(Huld Stoep)



Your Ref: 14/2017
Our Ref: H Claassens
March 2017

Overstrand Municipality
Hermanus

By Fax 0283132093
Email: loretta@overstrand.gov.za

FILE NO:	EL 106 Rooi Gls
SCAN NO:	
COLLABORATOR NO:	1000 313

Dear Sir or Madam

OBJECTION TO THE APPLICATION (14/2017) TO REMOVE EACH AND EVERY TITLE DEED RESTRICTION RELATING TO ERF 106 ROOIELS

We have been instructed by our client, Ms H Claassens, the owner of erf 179 Rooiels to lodge a formal objection to the above application on her behalf.

We are instructed as follows:

Locus standi

1. Our client is a long standing resident of Rooiels and the registered owner of erf 179 Rooiels.
2. The conditions under consideration for removal are conditions imposed upon the establishment of Rooiels township and accordingly common to all/most properties in Rooiels. These are in effect praedial servitudes or conditions inserted for the benefit of other even in the Rooiels Township. Each erf in Rooiels is accordingly both simultaneously both a servient tenement and a dominant tenement. It follows from the foregoing that our client has the necessary *locus standi* to object.

Application 14/2017

3. The owner of erf 106 Rooiels has applied to have each and every title deed restriction removed because it wishes to develop the property.
4. Nowhere in the said application does the applicant state how it intends to develop the property, what the scale and nature of the development is, when the development is to take place and what its reasons/motivations for the development are.

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3 MAR 2017

5. The applicant simply makes the unsubstantiated statement (without any evidence) on page 16 of its application that its application is “desirable” and “within its local context” and “well-integrated within existing community land-use activities”.

SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (SPLUMA)

6. All applications for the removal of title deed restrictions must be in accordance with SPLUMA.

7. The relevant principles underpinning SPLUMA are , *inter alia*:

7.1 inclusive development (preamble)

7.2 sustainable development (preamble)

7.3 integration of social, economic and environmental considerations (preamble)

7.4 integrated development plans (section 5)

7.5 spatial justice (section 7)

7.6 upholding consistency of land use measures in accordance with environmental management instruments (section 7)

7.7 integrated approach to land use and land development (section 7)

8. In terms of Section 47 of SPLUMA any removal, amendment or suspension of a restrictive condition must have due regard to the respective rights of all those affected and to the public interest.

“PUBLIC INTEREST”

9. Judge Griesel in the Camps Bay Ratepayers case, laid down the test for “public interest” as follows:

“... the personal interest of the applicant for removal is irrelevant. The interest which must be served by the removal are the broader interests of the township, area or public. ...The fact that the removal may not be undesirable does not in logic mean that such a removal is as a fact desirable.”

The test is the presence of a positive advantage to the community which will be served by granting the application, not the absence of a negative.

{See Camps Bay Ratepayers and Residents’ Association and Other v Minister of Planning, Culture and Administration Western Cape 2001(4)294 (C) }

10. Judge Griesel had the following to say about branding title deed conditions as “relics of the past” and abolishing them in favour of the applicable zoning scheme:

“However, this is not the philosophy of the Removal Act and it was inappropriate and irregular for the Minister to have allowed himself to be swayed by this consideration.”

{See 324 E to G of the Camps Bay Ratepayers case]
The same principle still applies under SPLUMA.

11. This principle was also followed in *Walele v City of Cape Town and others* 2008 (6) SA 129 (C)

12. A matter concerning very similar title deed conditions to those pertaining to erf 106 Rooiels, was decided by the Eastern Cape courts in *Van Rensburg N.O. and another v MEC for Housing, Local Government and Traditional Affairs* (Case no 3399/2010).

Judge Revelas found that the insertion of restrictive conditions into the title deed could be for no other reason than to preserve the amenities of the other erven as low-density, single residential properties with sea views and to maintain this character of the township.

APPLICATION IS IRREGULAR AND FATALLY FLAWED

13. The application simply ignores the fundamental principles of integrated development. (See principles of SPLUMA).

14. The applicant makes no case for its application. (See paragraph 9 re public interest above).

15. The application totally ignores the principle of public interest as well as the reasons why these title deed conditions were imposed in the first place on all the properties in Rooiels upon establishment of the Rooiels township.

16. The application does not set out what the consequences of removal of the title deed conditions will be.

17. Any approval given by a tribunal on a procedurally and/or substantively flawed application before a tribunal will likewise be contaminated and irregular.

NATIONAL ENVIRONMENTAL MANAGEMENT ACT INTEGRATED COASTAL MANAGEMENT ACT, 2008

18. The property in respect of which the application is brought is situated on the coast and on a dynamic coastal dune system.

19. In terms of the precautionary principle, the Municipality should lodge an investigation into the current building work. It should not exacerbate an already undesirable situation by increasing the impact on the coastal dune system by allowing the removal of the title deed restrictions.

20. No further development should take place on erf 106 before an Environmental Impact Assessment has been positively concluded.

RECORDAL

21. Our client objects to each and every removal and/or amendment and/or suspension of any of the title deed restrictions applicable to erf 106 Rooiels.

22. All our client's rights are reserved; including the right to fair hearing before the Planning Tribunal, the right of appeal and/or review of any decision.

Kindly acknowledge receipt of this letter and keep our offices advised of any developments in this matter.

Yours faithfully

FHL RAYMOND

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TR A Theart
C H vd Stoep)



From: Estelle Raymond <eraymond@mweb.co.za>
To: <loretta@overstrand.gov.za>
CC: Desmond Lakey <dlakey@overstrand.gov.za>, Estelle <eraymond@mweb.co.za>,...
Date: 02/03/2017 11:23 AM
Subject: ERF 106 ROOIELS OBJECTION TO REMOVAL OF TITLE DEED RESTRICTIONS

Dear Madam/Sir

YOUR REF 14/2017 REMOVAL OF TITLE DEED RESTRICTIONS ERF 106 ROOIELS

I herewith object to this application to remove ALL title deed restrictions in respect of erf 106.

1. I believe that the application is defective, because it asks for a so-called "blanket removal. Blanket removals are not permissible. This application needs to be refused on this ground alone.
2. The application should furthermore be dismissed on the grounds that it does not give adequate (any) information regarding the type of development on erf 106 which is planned by the owner. This is patently unjust towards the rest of the community wishing to object but not being furnished with any information. This renders the process unfair and irregular.
3. Erf 106 is situated on the coastal dunes of Rooiels. The stability and protection that these dunes offer to other properties should not be further undermined by increasing the applicant's rights to build and develop a greater extent of this sensitive property. It is not safe. It is not the interest of the environment, nor is it in the interest of other inhabitants of Rooiels, beach users and property owners.
4. I find it strange that the applicant wants to remove conditions that are common to ALL the properties in Rooiels. Surely this erf 106 is part of the Rooiels village and should not have a different dispensation compared to all the other erven? What makes it so special? This application should be turned down on the basis that it is not fair to the community as a whole and benefits only one property owner.
5. I own two properties in Rooiels and have invested here because this village has a natural character and spacious feel, with privacy as the houses are not too close to each other. Rooiels is not a place suitable for densification. Overstrand Municipality has a duty to preserve the heritage and character (unique sense of place) of the village of Rooiels. This application will detract from this and set an unfortunate precedent. It should be turned down.

Please acknowledge receipt of this email before close of business today. Kindly also confirm that it will be tabled when the application iro erf 106 is considered.

Estelle Raymond
cell: 0832309658
Owner Erf 282 Rooiels & Erf 278 Rooiels
Postal address:
27 Kendal St
Eversdal
7550

FILE NO:	EL 106 Rooi ELs
SCAN NO:	
COLLABORATOR NO:	999993

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FILE NO:	EL 106 Rooi Els
SCAN NO:	
COLLABORATOR NO:	RooiEls Ratepayers Association
	999986 PO Box 89 Betty's Bay 7141 - rerarebv@gmail.com

TR A Theart
(Hubstorp)

2 March 2017

Municipal Manager Overstrand Municipality

BY FAX: 028 313 2093

Email to: loretta@overstrand.gov.za



YOUR REF: APPLICATION 14/2017

OBJECTION TO THE APPLICATION TO REMOVE ALL TITLE DEED RESTRICTIONS RELATING TO ERF 106 ROOI ELS

Kindly note that the Rooiels Ratepayers Association herewith lodges its objection to the removal of all/any of the title deed restrictions applicable to erf 106 Rooiels.

THE STANDING OF ROOIELS RATEPAYERS ASSOCIATION AND THE ROOIELS VISION

The Rooiels Ratepayers Association is the elected representative for the Rooiels community on Ward Committee 10. The Association was established in 1972 and has since then been recognised by the authorities as the representative of the residents of Rooiels. Our constitution has the following objects:

- to protect the rights and promote the interests of Rooiels ratepayers;
- to encourage ratepayers to protect the fauna and flora and sea life within the Rooiels area and;
- to promote the Rooiels Vision

The Rooiels Vision is a living document which embodies our community ethos and it has been drafted with the input and consensus of the whole community. In terms of the Rooiels Vision, Rooiels is a Conservation Community and its ethos is that of an ecologically sensitive village where *"nature will be nurtured; flora, fauna and marine life protected; our every impact on the area, limited"*. Although the Vision is not strictly speaking a legal document, it is very much our social contract with one another and sets out the values and culture of this small community.

We have appreciation for the fact that Overstrand Municipality does not adopt a "one size fits all" approach to the various towns which makes up this very large municipality, and that it respects the unique character and heritage of each village and town.

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Some of the title deed conditions which the applicant wishes to have removed (specifically those pertaining to height restrictions, setback lines and extent of property that may be built upon) are also specifically guarded in our roll-out of the Rooiels Vision. The reciprocal retention of these restrictions are of the utmost importance to the majority of the inhabitants of our village and it would NOT be in the public interest to remove them. Section 47 of the Spatial Planning and Land Use Management Act stipulates that due regard must be given the public interest as opposed to the owner's interest.

REASON FOR EXISTENCE OF THE TITLE DEED RESTRICTIONS

Regard needs to be had to the reasons why these title deed conditions were imposed in the first place. They were inserted as conditions upon the establishment of the Rooiels township in order to protect the amenity and character, experienced in our village. These title deed conditions were intended to create a rural and natural "feel" in Rooiels. For example, the atmosphere and character of the village of Rooiels is very different from that of neighbouring Gordon's Bay and attracts residents and property owners who value this specific character.

The removal of the title deed conditions in respect of just a single property (while the vast majority of properties in Rooiels are governed by the very same title deed conditions), would allow development to occur in a disharmonious and *ad hoc* manner. The social benefit of keeping these title conditions in place, by far outweighs the relatively small benefit that will be bestowed upon the individual applicant in question.

SPECIAL ENVIRONMENTAL CONSIDERATIONS REGARDING THE PROPERTY

This property is situated in a particular sensitive area and more restrictive conditions to its development should ideally be imposed, ensuring that at least some of the natural vegetation and features of this property are retained. The removal of any restrictions which will in effect, increase the footprint and impact on the environment, is totally inappropriate and undesirable.

THE APPLICATION IS FATALLY FLAWED

The applicant, Strupa Ingenieurs Dienste Pty Ltd, submitted the application for removal of each and every title deed condition applicable to erf 106.

It is submitted that all applications to a local authority and planning tribunal must be *bona fide*. This implies that FULL disclosure of the benefit sought for the removal of each and every condition must be made. Vague and generalised statements like "... to utilize the application area optimally", simply do not suffice.

There has been a complete lack of transparency by the applicant in this regard and the application is accordingly incomplete and flawed. It is submitted that the planning tribunal has no option other than to refuse the application *in toto* on these grounds.

We respectfully refer you to the Spatial Planning and Land Use Management Act, 2013 and more particularly to section 5 that refers to the accepted principle of "integrated development". Integrated development requires full disclosure of all the details and extent of a development so that the CUMMULATIVE impact of a development can be properly assessed and considered.

It is furthermore submitted that automatic "blanket" removals of title deed restrictions are highly irregular and it would therefore be improper for a planning tribunal to consider this application in part, it needs to be refused outright.

SPECIFIC COMMENTS ON THE CONDITIONS OF TITLE WHICH THE APPLICANT WISHES TO BE REMOVED

Ad Paragraph A, B, C, D and E

These provisions form part of the history of the Rooiels Township. These provisions do not impact the applicant and should be kept as a historical record as part and parcel of the heritage of the village. Their removal is unlikely to benefit the applicant.

Ad Paragraph F (A) – (C)

No compelling reasons are given to remove these restrictions.

D (a) – (e)

These title deed conditions encapsulate the unique character of Rooiels as an ecologically sensitive township, aspiring to create a balance between human activity and nature. These conditions are applicable to ALL the residential properties in Rooiels and any such removal would NOT be in the public benefit and or interest. Property owners purchased their property knowing that it is conservation community and the majority by far, wish to keep it that way.

Paragraph D (f)

This is a necessary provision and needs to be retained.

Paragraph D(g)

These are historical and heritage provisions and should remain. It is unlikely that they would have any impact on the applicant.

CONCLUSION

We note with concern that the owner wants to delete all building lines, restrictions on subdivision, the extent of the erf that can be built upon, all servitudes and all historical provisions.

The owner also does not offer any counter-proposal, he just requests a blanket removal of all title deed restrictions.

It is important to bear in mind that there needs to be a clear benefit when restrictive conditions are removed because not only are MORE rights/benefits conferred upon the applicant, but also simultaneously the rights/benefits of other properties for whose benefit those restrictions originally were intended are impacted negatively. In this case the benefit accruing to the owner applicant appears to be small compared to the injustices and harm caused to the greater Rooiels community.

This application is definitely not in the public interest.

No compelling reasons are given for the necessity for the removal of these title deed conditions. Instead vague and glib phrases and platitudes are offered, devoid of any real substance.

This application is neither desirable nor is it integrated within the existing land use activities in Rooiels.

We accordingly request that this application be refused *in toto*. We believe that it would be improper and procedurally incorrect to allow any one condition to be removed, on the basis of a flawed and incorrect application.

We are also of the opinion that the current building is in contravention of the National Environmental Management Act and that a full Environmental Impact Assessment must be initiated. The property is situated in a dynamic dune area. The building as it is (even without removal of any title deed restrictions) will already have a severe impact on the natural environment.

Kindly acknowledge receipt of this objection.

We also request also a hearing at the tribunal to amplify our views. Kindly advise us of the date and time the hearing.

Yours faithfully

Ruth Mattison
Chairperson

Michael W Harrison, PO Box 82, Betty's Bay, 7141

The Municipal Manager
Overstrand Municipality
16 Paterson Street
Hermanus
7200



2 March 2017

TPA Theart
(Huld Stoop)

BY FAX: 028 313 2093

Email: cgroenewald@overstrand.gov.za

dlakey@overstrand.gov.za

loretta@overstrand.gov.za

FILE NO:	EL 106 Rooiels
SCAN NO:	
COLLABORATOR NO:	999983

NOTICE 14/2017: ERF 106 ROOIELS: OBJECTION TO THE APPLICATION TO THE "BLANKET" REMOVAL OF THE TITLE DEED RESTRICTIONS

I am the owner of a small holding (portion 137 of the farm Hangklip), which abuts Rooiels village. I have resided in Rooiels for more than 27 years and know the area well.

I object to the application for removal of title deed conditions pertaining to Erf 106 Rooiels and request that the application be turned down on the following grounds:

1) Heritage and Historical Value

Many of the title deed conditions included in this application (mostly those in A. B. C. D. E.) are completely innocuous, but serve as a reflection of the history and development of Rooiels as a township. As such they are of historical importance and very much part of the heritage and character of Rooiels. The applicant has not advanced any compelling practical reasons whatsoever for the removal of

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02 MAR 2017

the majority of these title deed conditions which provide an important historical and cultural frame of reference. Rooiels as a community has as much right as any other, to preserve its heritage.

2) Disparity, Unjust and Anomaly

Most of these title deed conditions are common to the title deeds of *all* properties in Rooiels. To allow the removal of these from just a *single* property in isolation is unjust. It would result in an anomalous situation with regard to the rest of the Rooiels community. In any community the individual must conform to the conditions pertaining to that community and not *vice versa*.

3) The application is flawed due to the lack of substantial reasons advanced for the removal of the title deed restrictions.

The so-called "reasons" and "motivations" advanced (see also section 2 of the Application Proposal) are either vague, unspecific, untrue and/or misleading.

- For example the bald statement is made that these conditions "are no longer relevant or applicable". This untrue and misleading. It is trite law that a town planning scheme does not override title deed restrictions and that both are relevant and applicable.
- The assertion that the conditions are "potentially restrictive", begs the question: restrictive for what? Nowhere in the application does the applicant inform the community what kind of "future development of the application area" is envisaged. This is a crucial flaw in the application. It is submitted that *full detailed disclosure* needs to be made before this application can be properly commented upon. It is accordingly also submitted that any approval by a planning tribunal on a flawed and incomplete application would likewise render that planning tribunal's decision irregular and reviewable.
- The applicant's assertion that "the parties in the title deed no longer exist", is disingenuous. Legislation clearly provides that the municipality steps into the shoes of a developer or other controlling authority who no longer exists.
- The heritage considerations set in paragraph 1 of this letter of objection, apply to the applicant's assertion that the conditions are "outdated". The conditions referred to are part of Rooiels' heritage and history and should be retained for exactly that reason.
- The statement that the title deed conditions are now "regulated by other legislation" is likewise disingenuous and incorrect. Land-use legislation (in some form or another) has *always* been applicable to the property in question and is certainly not a brand new scenario. The law is clear: *both* planning legislation *and* title deed conditions are applicable. Both should

be read together and where one is more restrictive than the other, the more restrictive of the two apply.

- The motivation that the title deed conditions “no longer serves any purpose in the title deed” is blatantly incorrect. A more forthright statement would have been to say that the title deed conditions do not serve the developer’s plans for the property (which have still not been disclosed to the community).

4) The “blanket” removal appears to be a ruse/disguise for the removal of specific conditions which are intended to conserve the environment and the character of the village. The removal of these conditions will negatively impact upon both the environment and the Rooiels community

- Condition F. B. is crucial in so far as it pertains to stormwater and natural run-off. This property is situated on a dune. There is a natural and necessary seepage of rainwater which runs *underneath* the dune into the fynbos belt (zoned as public open space nature reserve). The deletion of this condition (and F.D.) would be detrimental to the environment and would set a dangerous precedent for the rest of Rooiels.
- Likewise, Condition F.D. (a) – (f) is crucial to protect the specific rural and natural character of Rooiels village (with a different look and feel to most other villages in Overstrand). Very pertinent to retaining Rooiels village’s natural rural character is:
 - the prohibition on subdivision (a),
 - the extent of the erf that may be built upon (d),
 - the building lines and height restrictions (e)

No substantive motivation is given for the removal of these conditions which are intended to create a village and community with a distinctive natural feel.

5) There are numerous errors, including incorrect references to outdated policy documents and legislation in the application.

6) Lack of environmental concern

Apart from stating that the “application area” is “adjacent to a nature reserve that includes dunes and the beach”, this application shows no sign of any sensitivity towards the environment. The statement on page 13 of the application under “Desirability of the proposal” makes no sense whatsoever when it refers to taking into consideration “conservation” “more aligned with the character of the existing area”.

Nothing could be further from the truth. It appears the the applicant aims to obtain complete freedom to increase the footprint of the building beyond what is the norm for Rooiels.

7) Lack of transparency and lack of full disclosure

In the application the developer is not transparent about his plans for this property in future and simply seems to want a blank cheque "for more efficient options in terms of the upgrading of the property in future" (see page 13 of the Application).

Approval of such an application would be totally irresponsible and unlawful.

8) Rooiels Community Vision

No mention or consideration is given to the rights and ethos of the existing community of Rooiels which has an accepted Vision of Rooiels as a conservation community where every impact on nature is limited. It would be unjust toward the community of Rooiels to allow the removal of these title deed restriction.

9) There is no mention of Environmental Justice in the Application.

The developer is making a significant impact on the natural dynamic (moving) dune system. He also apparently wishes to build upon more of the property than he is entitled to, yet there is no offer of mitigation of such environmental impacts.

10) The removal of these title deed conditions are clearly not in the public interest.

11) An application for "blanket" removal of title deed conditions is highly irregular and sets an unacceptable precedent.

In the light of the above, I trust that the application will be turned down in due course.

Yours faithfully

Michael W Harrison

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The Municipal Manager
Overstrand Municipality
P.O. Box 20
Hermanus, 7200
February 21st 2017



TP - A Theart
(H. van der Stoep)

Proposed Removal of Restrictive Conditions Erf 106, 2 Priestley Road Rooiels

Dear Sir/Madam,

I refer to the communication (Municipal Notice No. 14/2017) on the above matter. I am a co-owner with my wife and Mr and Mrs Weimer of 113 Rocklands Road, Erf 113 Rooiels which is situated on the west side of Erf 106. I am responding to the above on their behalf.

We would require it be put on record that we object to the request for the removal of 'restrictive title conditions' applicable to Erf 106 Title Deed T15960/2016. Our objections refer in general to the statement 'no longer relevant or applicable and potentially restrictive' and specifically to the following:

Clause D pages 2 and 3 of the application in its entirety

We would bring to your attention that no attempt has been made to contact us as obviously interested parties in this development. We have to date not seen any of the plans of the development. While this may not be a legal requirement we would consider it common courtesy.

To the best of our knowledge considering the highly sensitive environmental considerations concerning the Rooiels region we have seen no evidence of an environmental impact assessment having been conducted for the development. (The municipality will be aware of the restrictions placed on the owners of Erf 115 in this regard, prior to allowing the construction of the building).

As per the instructions I will email a copy of this letter to :
Loretta@overstrand.gov.za and post a copy to the Municipality, P.O. Box 20, Hermanus 7200 before March 3rd 2017.

Yours sincerely

Malcolm Dawkins

Malcolm Dawkins

P.O. Box 688
Paulshof 2056
Mobile:
+27833888267

FILE NO:	EL 106 Rooiels
SCAN NO:	
COLLABORATOR NO:	999667

Ms H. van der Stoep
 Senior Town Planner
 Overstrand Municipality
 PO Box 20
 Hermanus
 7200
 27 February 2017



A. Theart
 (H vld Stoep)

Dear Ms van der Stoep

Application for removal of clauses from Title deed T15960/2016 applicable to Erf 106 Rooiels

With reference to the Municipal notice of 14/2017 I hereby wish to lodge my comments.

I am the co- owner of Erf 112, along with my son, Nicholas and daughter, Aimee. I speak on behalf of all the owners of Erf 112 Rocklands Road, bordering on Erf 106.

I would like it on record that we object to the removal of certain restrictive title conditions specifically those referred to in clauses D,E,F (D a – f) in their entirety. It is important that the clause D objection be observed in conjunction with the Arctotis road extension (Erf 368) which is currently under dune rehabilitation and forms the Northern border of Erf 106.

Rooiels is part of a conservancy and as such building and zoning restrictions safe guard the integrity of the area. If outdated title deed conditions are no longer be relevant, they surely do not need to be removed. How can they be potentially restrictive (as quoted in the application) if the building project is well under way? Has an environmental impact study been conducted for this property as it adjoins the dunes which are currently being rehabilitated?

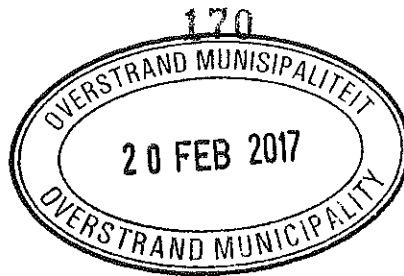
This correspondence will be e-mailed to Loretta@overstrand.gov.za before 3 March 2017.02.28

Yours sincerely

Julette Pullen
 0836513536
 021 6711173 W
 11 Weltevreden Avenue
 Rondebosch
 7700

FILE NO:	EL 106 Rooi EIS
SCAN NO:	
COLLABORATOR NO:	998394

TP 28 FEB 2017



Overstrand Munisipaliteit

Pateronstraat 16

Hermanus

7200

Posbus 12772

Meulstraat

8010

17 Februarie 2017

Selnommer 082 5759801

TR ATheart
(Huld Stoep)

Menere,

ERF 106 PRIESTLEYAWEG, ROOI-ELS: BESWAAR TEEN OPHEFFING VAN TITELVOORWAARDES.

Ek is die eienaar van erf 237 Rooi-Els. Ek het belang by die opheffing van die titelvoorwaardes waarvoor gevra word, omdat goedkeuring van die aansoek om die afskaffing van die titelvoorwaardes 'n presedent sal skep vir die afskaffing van dieselfde voorwaardes wat ook op my erf geld en die van my bure.

Ek wil nie die voorwaardes afgeskaf hê nie.

Ek heg vir u aan voorligtingsmateriaal van die Wes-Kaapse Regering: Provincial Support Document: Restrictive Conditions ("PSD"). Die PSD handel oor die beginsels by 'n aansoek vir die opheffing van beperkende voorwaardes. Dit verwys na die betrokke wetgewing sowel as beginsels uitgespel deur ons howe.

1. DIE AANSOEK IS PROSEDUREEL FOUTIEF EN MOET ASSEBLIEF TERUGVERWYS WORD VOORDAT DIE MUNISIPALITEIT KAN BESLUIT.

Para 2 van die PSD lees: "Any procedural flaws on applications should be rectified prior to a decision being taken".

Ek noem hieronder wat na my mening prosedurele gebreke is.

1.1 DIE GEVRAAGDE VOLSKAALSE, OFTEWEL "BLANKET", VERWYDERING VAN VOORWAARDES IS NIE TOELAATBAAR NIE.

PSD para 2 lees: "There can be no automatic removal of title deed restrictions. ("Blanket Removals)".

By die naslaan van "Blanket" se betekenis word dit beter verklaar as "fullscale, overall, global, total".

Die aansoek vra die volskaalse verwydering van alle titelvoorwaardes, insluitend die verbod op onderverdeling van die erf.

Dit is dus nie 'n prosedureel geldige aansoek nie en moet asseblief terugverwys word.

1.2 DIE PERSOONLIKE VOORDELE WAT DIE AANSOEKER SAL TOEVAL WORD NIE UITEENGESIT NIE.

Para 4 van die van die PSD haal artikel 39(5) van die Land Use Planning Act aan:

" ... the municipality must have regard to at least the following:

(c) the personal benefits which will accrue to the person seeking the removalof the restrictive condition if it isremoved...."

Die Overstrand By-Law on Municipal Land Use Planning in art 35(4)(c) het dieselfde bewoording

FILE NO:	EL 106 Rooi Els
SCAN NO:	
COLLABORATOR NO:	991176

TR
20 FEB 2017

Die aansoeker motiveer slegs dat verwydering van al die voorwaardes die toekomstige ontwikkeling van die erf en van alle ander erwe in Rooi-Els sal vergemaklik.

Hoe die aansoeker voornemens is om die erf te ontwikkel as die voorwaardes afgeskaf is, word nie verduidelik nie.

Die munisipaliteit moet asseblief van die aansoeker in terme van die wet hierbo vereis om te motiveer hoe die verwydering van 'n spesifieke voorwaarde spesifiek tot voordeel van die aansoeker sal wees, byvoorbeeld die opheffing van die bestaande titelakteverbod op onderverdeling teneinde die erf te onderverdeel.

2. TITELVOORWAARDES KAN NIE VERWYDER WORD BLOOT OMDAT DIT DEUR WETGEWING OF STADSBEPLANNINGSKEMAS OOK GEREËL WORD NIE.

Die aansoeker motiveer dat al die voorwaardes afgeskaf kan word omdat dit met latere wetgewing gereël word.

Dit is foutief. PSD para 2 verwys na ons hofbeslissings wanneer dit lees: "A town planning scheme does not override title deed restrictions. Both are relevant and applicable"

3. ROOI-ELS HET HERHAALDELIK BEVESTIG DAT HY NIE TEN GUNSTE VAN ONDERVERDELING VAN ERWE IS NIE, BEHALWE IN BAIE SPESIALE OMSTANDIGHEDEN.

As die "blanket" verwydering van titelvoorwaardes op erf 106 sou slaag, dan sou, om maar een voorbeeld te noem, dit die eienaar van erf 106 vergemaklik om later die erf te onderverdeel.

Die voorganger van die huidige munisipaliteit, die Caledonse Afdelingsraad, het destyds op my versoek as plaaslike gebiedsvertegenwoordiger vir Rooi-Els genotuleer dat geen onderverdelings van erwe in Rooi-Els, behalwe in buitengewone omstandighede, toegelaat sal word nie, in ooreenstemming met die bestaande titelvoorwaardes by Rooi-Els.

Daardie besluit is nog nie vir Rooi-Els herroep deur die die Afdelingsraad se opvolgers nie.

4. 'N ONAANVAARBARE PRESEDENT SAL GESKEP WORD.

As die aansoek vir die verwydering van al die voorwaardes soos versoek sou slaag, dan sal 'n onaanvaarbare presedent geskep word vir enige ander erfeienaar om by die munisipaliteit aan te dring dat die bestaande titelvoorwaardes, wat per slot van sake tot voordeel van al die erfeienaars is, ook vir sy erf opgehef word.

Die uwe



E Brink

172

TR A Theard
C H vld Stoep

Loretta Gillion - ERF 106 Priestleya weg Rooi Els Overstrand - Kommentaar insake
Voorgestelde Opheffings van Beperkende Voorwaardes



From: "Annette van der Merwe" <annette@wynlandproperties.co.za>
To: <loretta@overstrand.gov.za>
Date: 08/02/2017 11:19 AM
Subject: ERF 106 Priestleya weg Rooi Els Overstrand - Kommentaar insake Voorgestelde Opheffings van Beperkende Voorwaardes
Cc: "Dawid van der Merwe" <ninesecondsdesign@gmail.com>

Goeiemore Mevr H van der Stoep,

Ek het gister die dokument oor die beoogde opheffings vir Erf 106 per geregistreerde pos ontvang. Die voorgestelde opheffings is 'n groot verrassing, aangesien ek pertinent die bouinspekteur verlede jaar November gevra het of Erf 106 se bouplanne voldoen aan die vereistes van die titelakte. Sherwin Rossouw het bevestig dat die planne goedgekeur is binne die vereistes van die oorspronklike titelakte. Die versoek vir opheffing van die beperkings is daarom nie relevant tot die gebou en die erf nie, veral aangesien die bouers reeds (verlede jaar) met die uitgrawings en verlede maand met bouwerk begin het.

Ek sou graag wou weet waarom die aansoek nou eers gemaak word?

In die lig van die feit dat die planne reeds goedgekeur is binne die vereiste van die oorspronklike titelakte is hierdie aansoek van Erf 106 se eienaar nie ter sake. My man en ek staan die versoek vir die opheffing van beperkende voorwaardes teen.

Groete

Dawid en Annette van der Merwe
 114 Rocklandsweg
 Rooi Els
 0827731994 / 0825650615

FILE NO:	EL 106 Rooi Els
SCAN NO:	18
COLLABORATOR NO:	994312

TP
10 FEB 2017

ERF 106 ROOI ELS: RESPONSE TO OBJECTIONS

The letter of objections 106 KRE (3528) dated 16 March 2017 was received from the Overstrand Municipality in which the Municipality requests a reply to the objections within 30 days from the date of the letter (i.e. 15 April 2017). Objections were received from 13 parties consisting of the following:

1. A Ayre
2. H Jones
3. KM Lereche
4. JL Aalbers
5. Rooi Els Conservancy (K Barker)
6. Raymond MvCreath Inc (FHL Raymond)
7. E Raymond
8. Rooi Els Ratepayers Association (R Mattison)
9. MW Harrison
10. M Dawkins
11. J Pullen
12. E Brink
13. D&A van der Merwe

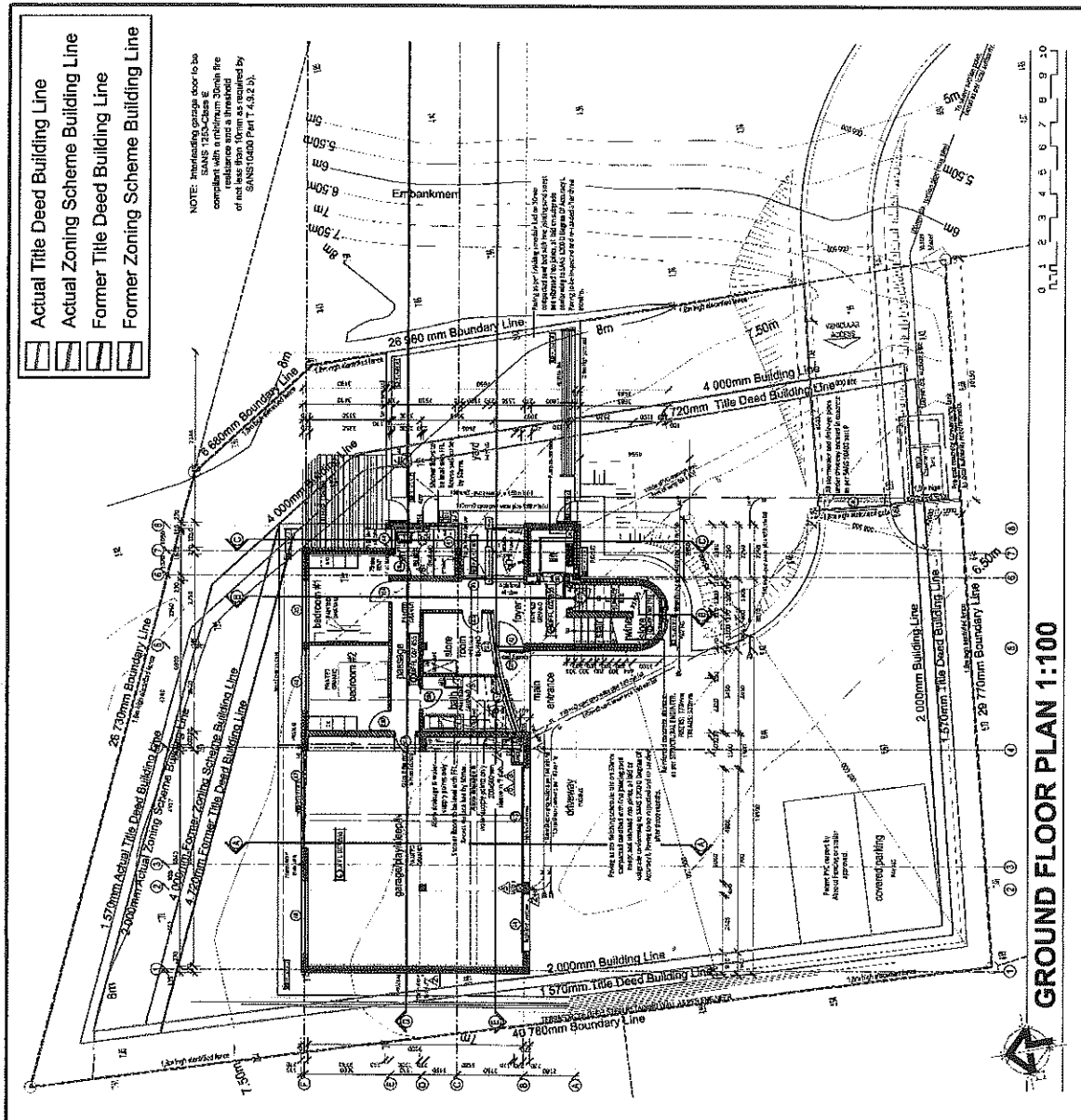
As part of this reply, some background information on the application is provided followed by a thematic summary of the objections with a reply to each of the different themes of objections.

It is considered vitally important that the decision-makers do understand the existing status and development rights of the property, in order to make an objective decision on this application.

The subject erf forms part of an existing residential area in Rooi Els. The application site, Erf 106 Rooi Els is zoned Residential Zone 1: Single Residential (SR1) in terms of the Overstrand Planning Zoning Scheme, 2014. This implies that on the property, Erf 106 Rooi Els, a building may be constructed on 50% of the property. Furthermore the building may be constructed 8m high, which in normal circumstances represent a double storey building.

As primary right this building may be used for a day care centre, a dwelling house, guest rooms, home occupation and also for a second dwelling unit.

However, the conditions in the title deed do take dominance over that of the zoning scheme. In terms of the title deed "Not more than half the area thereof shall be built upon." Thus the footprint area permitted between the zoning scheme and the title deed is exactly the same; 50% of the erf may be developed in terms of its rights.



It should be noticed that in the title deed conditions no restriction in height of the main dwelling structure is provided, but an eight meter height restriction exist in terms of the zoning scheme conditions

In terms of the building lines a difference exist between the title deed conditions and that of the zoning scheme as shown in the sketch here-above.

The predominant reason for the application is the relaxation of the title deed building lines. Cognisance must be taken that at the stage when the application was prepared the design of the dwelling was not yet completed and subsequently not included in the application for the removal of some of the title deed conditions. The building plan was since completed, submitted and approved based on the most restrictive conditions of both the title deed conditions and the zoning scheme conditions. The construction of the building has also since been started and is as per the writing of this response the dwelling is under construction. The owner however intends to do some additions should this application be approved. The additions are planned within the areas of removal of the title deed building lines but within the zoning scheme building lines.

A matter that is considered important to be highlighted to the decision-makers is that with the closure of the Arctotis Street along the northern boundary of the application site, the title deed building line by implication reduced from 4.72m to 1.57m. Then on the other hand, the approval of the removal of the subject title conditions will imply that this building line will then increase again to 2 m in terms of the Overstrand Zoning Scheme, 2014.

Another important factor that should be taken into consideration by the authorities deciding on this application is the fact that the owner respected the original 4.72m building line along the former Arctotis Street, taking the original building line in terms of the title deed into consideration.

In addition to the application for the removal of the conditions relating to the building lines, application was also made for the removal of a series of other conditions as well (Conditions A,B,C,D,E,F,A, F.B, F.C, F.D(a) to F.D(g)) which application was made solely for the purpose to **uncomplicate** the existing title deed. These mentioned conditions had no bearing on the subject erf or was already dealt with in other legislation as explained in the motivation report (like the zoning scheme), hence serves no purpose in the title deed.

Summary of objections:

In the following section a summary of the objections with a response to each of the objection themes identified from the thirteen objectors.

However, it is clearly evident from the objections that the main concerns of the objectors are the potential threat to the environment, increased development rights and that the application will change the character and heritage of Rooi Els, as a result of the application for the removal of the restrictive title conditions.

What is clearly also noticed from the objections, as is often found in objections, is that alternative points of objections are made to find possible weaknesses in the application to declare the application defective and wish to resolve the concerns in such a manner. These objections include matters like the application is fatally flawed, unjust, wrong procedures were used, not sufficient information is provided, an environmental impact assessment is required etc.

In essence and clearly explained in Paragraph 11 here-below, the correct procedures were followed and that the application is consistent with the requirements for such application as per the Spatial Planning Land Use Management Act, 2013 as well as the Overstrand Municipal By-Law, 2013.

Furthermore, cognisance must be taken that the application is for the removal of title conditions which does not trigger any Regulations promulgated in terms of the NEMA, Act No 107 of 1998.

It is also interesting to note that several of the objectors agree that most of the conditions in the title deed are innocuous.

Various objections were made directly or indirectly that the application is hiding something / ruse / disguising / trick. The matter of the fact, as clearly stated in the application, the owner intends to develop the property (has since submitted building plans which were approved and is currently in process of construction within the boundaries of the existing development legislation) and wishes to remove all potential restrictive, non-applicable and irrelevant title conditions, which could potentially restrict the future development of the application area and utilize the application area optimally.

It should clearly be mentioned that the removal of especially condition F,D(e) alone, the owner will achieve his objective which is to allow him to extend the proposed dwelling house up to the 4m building line. As previously mentioned, the application for the removal of the other conditions was solely made to simplify the title deed for the current and future interpretation and understanding of the title deed. These conditions have no impact whatsoever on the application property and the removal of the applied conditions will have no implication on any other property or the heritage and history of the town. The removal of these conditions will also not increase the development rights on the property but merely allow more flexibility to position and use the dwelling better / optimally.

It should further also be noted that deliberate and conscious actions are encouraged to simplify procedures towards development. Title deeds containing outdated conditions and/or duplicated conditions covered through other legislation are a serious cause that delay and complicate development and subsequently result in increased cost and reduced opportunities.

Therefore the objections are considered not valid and does not take the bigger picture into consideration. The application also does not result to the compromise of the existing character or heritage of the town.

The following table summarises the objections based on the different themes of objections with the names of the objectors relating to the themes of objections.

Objectors	Thematic summary of objections	Response to objections
Alison Ayre, Helen Jones, Estelle Raymond, Rooi Els Ratepayers Association, MW Harrison, E Brink	<p>1. Blanket removal- consider it not as a legal objection</p> <p>The removal of conditions from just one single property in isolation is unjust and would result in an anomalous situation with regard to the rest of Rooi Els.</p>	<p>This claims made by the objector that it is a blanket objection is wrong.</p> <p>Each of the conditions proposed to be removed have been motivated specifically and clearly indicated that the conditions are either replaced with other legislation or is not relevant to the application site. This statement is made with the acknowledgement of the fact that conditions of title take precedent over the use rights and development rules defined in terms of the zoning scheme. However, zoning schemes are the appropriate and more dynamic management tool to manage land-use as such.</p>

<p>The "blanket" removal appears to be a ruse /disguise for the removal of specific conditions.</p>	<p>It should furthermore be acknowledged that each property is unique and legislation makes provision for amendment and / or removal of title conditions, which is being applied for in this application to suite the existing as well as the potential situation best.</p> <p>It is also categorically hereby stated as per the assertion made in the application report that the application was made to remove pro-actively any restrictive conditions in order to develop the property in the best possible and legal manner. Therefore the cumbersome and monetary costly approach was also followed.</p> <p>Therefore this objection is not valid and should be rejected.</p>
<p>2. Lack of information- Not adequate (any) information regarding the type of development is provided planned by the owner.</p> <p>Objections to specific conditions.</p>	<p>It is clear that the application was interpreted incorrectly and/or misunderstood by the subject objectors.</p> <p>It appears that the objectors rather wanted to know what is planned for the property than the reasons provided for the removal of the title deed conditions.</p> <p>Cognisance should be taken that at the time the application was prepared and lodged, the specific design of the proposed dwelling house proposal was not yet known at that stage.</p> <p>In the meantime buildings plans were submitted and approved based on the most restrictive land-use management conditions applicable to the property.</p> <p>As mentioned in the motivation report, application were made to remove all potential restrictive non-applicable and irrelevant title</p>
<p>Alison Ayre, Helen Jones, Estelle Raymond, Kay Muir Leresche, Rooi Els Conservancy, MW Harrison, M Dawkins, J Pullen</p>	

<p>conditions, which could potentially restrict the future development / design of the application area (Erf 106 Rooi Els) and utilize it optimally. The above was done with the clear knowledge that restrictive conditions of title take precedent over the use rights and development rules as defined in terms of the zoning scheme. However, a zoning scheme is considered the more appropriate instrument to manage land-use matters in a town.</p> <p>These reasons / objectives for the removal were clearly mentioned at least three times in the motivation report.</p> <p>In Paragraph 2 a of the application report it is mentioned that that the "owner intends to develop the property, and subsequently wishes to first remove all potential restrictive non-applicable and irrelevant title conditions, which could potentially restrict the future development of the application area and utilize the application area optimally."</p> <p>This was further emphasized / accentuated in paragraph 4.1 and 4.2 of the motivation report where the removal of each of the conditions applied for to be removed were motivated.</p> <p>Given that no additional development rights are allocated through the application, the desirability of the subject property, being a single residential erf with the purpose to provide housing, will remain the same as with the original township establishment application.</p> <p>Since the subject erf forms part of the existing township, it remains integrated as part of the Rooi Els town/village.</p>	
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<p>Thus in summary, the information on what was planned at the stage of preparing the application, it was not yet knowns and could subsequently not been provided.</p>	<p>The objectors made false assumptions and without doubt did not study the content of the application or the title deed. The objections are also unsubstantiated as no clear reasons are provided why the removal of conditions will have a negative impact on the environment.</p> <p>The objectors also refuse to admit that the application site is a site with existing development rights, similar to those which the objectors reside on; therefore the question may be raised why they consider themselves more privileged to develop their properties but does not grant the owner of the subject application property the same?</p> <p>In summary the objectors makes the false conclusion that the removal of the title conditions will increase the applicants' right to build and develop a greater extent / footprint of the property.</p> <p>Even-though Condition D(e) of the said title deed prescribe the building lines, which differ slightly with that of the Overstrand Zoning Scheme, the <u>area/footprint allowed for development</u> by both the Title Deed and that of the Overstrand Zoning Scheme (i.e. Coverage) is exactly the same as compared in the table below</p>
<p>Alison Ayre, Helen Jones, Estelle Raymond, Rooi Els Conservancy, Rooi Els Ratepayers Association, MW Harrison, J Pullen</p>	<p>3. Special Environmental Considerations- The application erf is located on the coastal dunes; the stability and protection that these dunes offer to other properties should not further be undermined by the increasing the applicants rights to build and develop a greater extent of this sensitive property- not safe- not in interest of the environment, inhabitants, beach users and property owners. The removal of any conditions which will in effect, increase the footprint and impact on the environment, is totally inappropriate and undesirable.</p>

Legislation	Street	Rear	Side	Coverage
Overstrand Zoning Scheme	4 m	2 m	2 m	50%
Title Deed	4,72 m	3,15 m	1,57	Half

This objection is thus fatally flawed and subsequently should be rejected by the decision-makers of this application.

<p>Kay Muir Leresche, Rooi Els Conservancy, Raymond McCreath Incorporated, M Dawkins, J Pullen</p>	<p>4. Environmental impact assessment is required.</p>	<p>The call for an environmental impact assessment is considered inappropriate.</p> <p>The amendment or removal of any title conditions does not trigger any of the Regulations promulgated in terms of the NEMA, Act No 107 of 1998. Furthermore, the application site is an existing erf, with existing land-use rights within an approved township.</p> <p>Thus, the request for an impact assessment due to the removal of restrictive title conditions is an invalid request and therefore the objection should be ignored.</p>
<p>Alison Ayre, Helen Jones, Estelle Raymond, Rooi Els Conservancy</p>	<p>5. Removal of conditions common to all properties in Rooi-Els- The application erf is part of Rooi Els and should not have a different dispensation.</p>	<p>Cognisance should be taken by the decision makers that the purpose of this application was to optimise the proposed / future development on the application property as well as to simplify the title deed by applying to remove the conditions not relevant or already being managed by the Overstrand zoning scheme.</p> <p>The removal of any conditions does not mean that the subject property will form part of a different dispensation.</p> <p>The application is meant to remove title deed conditions which are</p>

<p>predominantly land-use management related conditions governed by the existing Overstrand Zoning Scheme as well as conditions not relevant to the application site at all.</p> <p>The land-use of all properties in Rooi Els is managed by the Overstrand Zoning Scheme as well as each individual property's title deeds, with cognisance that restrictive conditions of title take precedent over the use rights and development rules defined in terms of the zoning scheme. This does not mean that the application site will have a different management dispensation.</p> <p>In the light of the above it is requested that this objection be set aside.</p>		
<p>It is clear that the objectors did not make any effort to understand the implication of the applied removal of conditions.</p> <p>The reality is:</p> <ol style="list-style-type: none"> The <u>street building</u> line will decrease with 0.72 m from 4.72 m to 4.0 m, The <u>rear building</u> line will decrease with 1.15m from 3.15m to 2.0m The <u>side building</u> lines will increase with 0.43m from 1.57m to 2.0m. <p>Furthermore, Rooi Els is identified by virtue of the Growth Management Strategy, 2010 as a no densification area. Subdivisions are also discouraged / restricted / not recommended in</p>	<p>6. Implications of the removal of the title deed conditions on the character and heritage- The removal of the title deeds will change the character and heritage through densification, privacy compromised, amplify the property's rights</p>	<p>Alison Ayre, Helen Jones, Estelle Raymond, Kay Muir Leresche, Rooi Els Conservancy, Raymond MvCreath Incorporated, Rooi Els Ratepayers Association, MW Harrison, M Dawkins, D&A van der Merwe</p>

the Overstrand Municipal Wide Spatial Development Framework, 2006 where it is contextualised that that "subdivisions that are not consistent with existing plot sizes" be restricted.

In addition to the above and despite the mentioned policy, if a person indeed wants to subdivide their property, it will be subject to an application where a public participation process is involved and the resident will have the opportunity to object to such application.

The implication of the removal of the title conditions in actual fact allows more options to position the proposed dwelling on the property given the outdated building lines.

Conditions A, B, C, D and E are all historical conditions as emphasised and admitted by the Rooi Els Ratepayers Association and MW Harrison.

The purpose of title conditions is described in the definition of a title deed as per the Spatial Planning Land Use Management Act, 2103 reading as follows: "title deed" means any deed registered in a Deeds Registry recording the ownership of land or a real right in land;" A title deed has no purpose for historical history / record of a town / village to record its heritage. The objectors mistaken the purpose of the function of a title deed and therefore this objection is invalid and not appropriate.

Subsequently the removal of the applied conditions will not change the character or heritage through densification and therefore this objection can be omitted.

<p>Alison Ayre, Helen Jones, Estelle Raymond, MW Harrison, E Brink</p>	<p>7. Precedent - The application will create a precedent resulting to changes in the heritage and character of the town</p>	<p>The application is made for a specific purpose which involves a cumbersome and costly application process and therefore the likelihood is very slim.</p> <p>In addition to the above, most of the conditions being applied for to be removed are either not relevant to the application site, or already being dealt with in the Overstrand zoning scheme; therefore the even if it in an unlikely case become a precedent to remove such title conditions, it will not change the character or heritage of Rooi Els.</p>
<p>JL Aalbers, Rooi Els Ratepayers Association</p>	<p>8. Building lines- any relaxation of the 4.72 m building line to the erstwhile Arctotis Road will likely result in destabilising the frontal dune with adverse effects on the surrounding properties</p>	<p>The objector makes a factual mistake in his objection regarding the interpretation of the position of the building line along Arctotis Road.</p> <p>The closure of the former Arctotis Road resulted that the building line changed from a street building line to a side building line, implying that the building line actually decreased from 4.72m to 1.57m in terms of the title deed conditions.</p> <p>The removal of the title deed conditions will imply that the zoning scheme conditions will be relevant to the property resulting that the building line will now increase from 1.57m to 2.0m.</p> <p>However, the land owner preferred to use the original building line of 4,0m for the construction of his dwelling house.</p> <p>Subsequently the objector's objection is factually incorrect and should therefore be ignored.</p>

<p>Rooi Els Conservancy, Raymond MvCreath Incorporated, Rooi Els Ratepayers Association, MW Harrison, E Brink</p>	<p>9. Social benefit / Public Interest- No benefit exists arising from this application, but only disadvantages</p>	<p>The application will not have any impact on the social benefit or public interest.</p> <p>The use of the property remains the same namely single residential.</p> <p>Should the application be approved, the <u>only</u> real change will be in terms of the building lines (i.e. reduced rear and street building lines and increased side building lines)</p> <p>The developable area (coverage) remains exactly the same.</p> <p>Thus, the social benefit / detriment of public interest will remain the same. Therefore this objection should be discarded.</p>
<p>10. Misleading and/or legally incorrect statements as motivation- Duplication of conditions D (a) - (g) with that of the zoning scheme- the law states that title deed conditions co-apply with zoning scheme regulations and that the stricter provisions apply.</p>	<p>This statement made by the objectors is interpreted that the objectors do not understand the application.</p> <p>Especially in the field of town planning and economic development deliberate and conscious actions are encouraged to simplify procedures towards development. Title deeds containing outdated conditions and/or duplicated conditions covered through other legislation are a serious cause that delay and complicate development and subsequently result in increased cost and reduced opportunities.</p> <p>The fact that restrictive conditions of title take precedent over the use rights and development rules defined in terms of the zoning scheme is respected and acknowledged.</p> <p>As distinctly mentioned in the application report, the removal of the conditions D (a) to (g) are covered by the more appropriate regularly</p>	<p>The application will not have any impact on the social benefit or public interest.</p> <p>The use of the property remains the same namely single residential.</p> <p>Should the application be approved, the <u>only</u> real change will be in terms of the building lines (i.e. reduced rear and street building lines and increased side building lines)</p> <p>The developable area (coverage) remains exactly the same.</p> <p>Thus, the social benefit / detriment of public interest will remain the same. Therefore this objection should be discarded.</p>

	<p>updated legislation and specifically aimed at land use management will deal with the land use matters referred to in the said conditions.</p> <p>Thus the claim that the application is misleading and/or legally incorrect is false and should thus be rejected.</p> <p>For the purposes of the adjudicators of this application and point of objection a breakdown of the prescribed requirements of an application for the removal of title conditions are provided here-below:</p> <p>In terms of Section 47 of the Spatial Planning and Land Use Management Act, 2013 restrictive conditions may be removed, amended or suspended in the prescribed manner. The prescribed manner; "the principals, norms and standards and requirements as listed in Section 42 SPLUMA, No 16 of 2013 and Section 35 (4) of the Overstrand Municipality By-Law on Land Use Planning will form the basis for the decision making process and therefore should be discussed as part of the motivation."</p> <p>Section 42 SPLUMA, No 16 of 2013 reads as follows:</p> <p>"Deciding an application</p> <p>42. (1) In considering and deciding an application a Municipal Planning Tribunal must—</p> <p>(a) be guided by the development principles set out in Chapter 2;</p> <p>(b) make a decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the municipal spatial development framework; and</p>
	<p>11. Application is irregular and fatally flawed in terms of SPLUMA, 2013 for the following reasons:</p> <ul style="list-style-type: none"> • the fundamental principles are ignored • No case made for the application • Principles of public interest ignored • Reason for the implementation of the title deed conditions totally ignored • No consequences of the removal of the conditions provided <p>The application is also considered to be improper and procedurally incorrect.</p> <p>No attempt has been made to contact interested parties</p>
<p>Raymond MvCreath Incorporated, Rooi Els Ratepayers Association, MW Harrison, E Brink</p>	

<p>(c) take into account—</p> <ul style="list-style-type: none"> (i) the public interest; (ii) the constitutional transformation imperatives and the related duties of the State; (iii) the facts and circumstances relevant to the application; (iv) the respective rights and obligations of all those affected; (v) the state and impact of engineering services, social infrastructure and open space requirements; and (vi) any factors that may be prescribed, including timeframes for making decisions. <p>(2) When considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation.</p> <p>(3) An application may be approved in whole or in part, or rejected.”</p>	<p>Section 35 (4) of the Overstrand Municipality By-Law on Land Use Planning reads as follows:</p> <p>“35. Requirements for amendment, suspension or removal of restrictive conditions</p> <p>(4) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following:</p> <ul style="list-style-type: none"> (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement; (b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition; (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed; (d) the social benefit of the restrictive condition remaining in place in its existing form; (e) the social benefit of the removal or amendment of the restrictive condition; and (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.”
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<p>As per the above requirement, the Municipality must have regard to inter alia financial or other value of rights....." No material change in the development rights is applicable and therefore the personal benefits will also remain the same as per the current situation.</p> <p>Should these requirements be compared with that of the application, the application is without doubt consistent with the above requirements and clear that the application was followed procedurally correct and proper.</p>	<p>The objector in his objection refers to generalised principles, but does not mention the prescribed required principles giving the impression that he is not familiar with the SPLUMA. These principles were specifically addressed in Paragraph 4.7 of the application report.</p>	<p>The point of objection that no case is made for the application is blatantly false. The case / reason for the application is repeatedly mentioned in the application report. Refer Paragraph 2, 3a and 4.1. In addition to the afore-mentioned, the reason for the removal of each of the applied title conditions is also provided.</p>	<p>The claim made by the objector that the principles of public interest and reason for the implementation of the title deed conditions are totally ignored is incorrect. The objector consciously and deliberately seeks to discredit this application.</p>	<p>The reason for the provision of title deeds is common knowledge and already defined in the SPLUMA, 2013 and therefore no need exist</p>
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	<p>to provide reasons for the existence of the title deed conditions.</p> <p>It is evident that the objector does not see / understand that the application does not cause any material change to the land-use rights but merely result to an amended but more flexible potential placement / positioning of a development structure within the same developable area (coverage of 50%). Most of the conditions being applied for to be removed do not affect the property or the removal will have no impact on existing rights.</p> <p>In Paragraphs 4.1 and 7 the consequences of each or the covering conditions are provided.</p> <p>A list of all parties to be contacted was provided by the local authority and accordingly notified by the applicant. The specific objector, Mr Dawkins was informed and the registered letter RC 174 376 882 ZA serves as evidence to the latter. The claim made by the objector is thus false and incorrect.</p> <p>This objection as a whole is invalid and should thus be rejected by the decision-makers of this application.</p>
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Conclusion:

The objections against the application for the removal of restricted conditions have shown in general that the objectors were predominately concerned about the possible impact of the application on the sensitive environment and heritage of the town. A variety of points of objections were made to disqualify the application.

The application made was procedural correct and it was evident from all the objections, none of the objectors have made the effort to analyse the conditions to realise that the conditions being applied for to be removed have no impact on the area outside the existing boundary of the property and that no additional rights will result, should the application be approved.

Lastly, the main objective of the application was to create more flexible usage of Erf 106 Rooi Els implying optimal use of the property. Therefore the removal of Condition F.D. (e) of title deed T15960/2016 would have been sufficient to achieve the above objective. However in order to simplify the title deed Conditions A,B,C,D,E,F,A, F.B, F.C, F.D(a) to F.D(g) were also applied for to be removed which, as explained in the motivation report, was already dealt with in other legislation, were non-applicable or were outdated.

Therefore, it is requested that the objections made to this application be rejected and the application for the removal of Conditions A,B,C,D,E,F,A, F.B, F.C, F.D(a) to F.D(g) of title deed T15960/2016 be approved.