

4.3**ERF 2099, MELKHOUT STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF APPROVAL, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF PSP EIENDOMME CC****Erf 2099 GPB (3648/2021)****SW van der Merwe****20 September 2022****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

To consider an application received on 14 April 2021 from Messrs Plan Active Town and Regional Planners on behalf of PSP Eiendomme CC, the owner of Erf 2099 Pearly Beach, in terms of the provisions of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1 in terms of Section 16(2)(a) of the By-Law in order to establish five resort zone portions (holiday accommodation) of 110m² each;
- ❖ amendment of a condition of approval and approved Site Development Plan in terms of Section 16(2)(h) and 16(2)(l) of the By-Law, and
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law to accommodate existing unauthorised additions.

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUD / SITE HISTORY

Erf 2099 Pearly Beach Resort measures 3303m² in extent and is developed with five holiday accommodation units. In terms of the historic resort approval Erf 2099 has a split zoning limiting the footprint of the existing chalets at the time of approval to Resort Zone (holiday accommodation) and a remainder Open Space Zone 3: Private Open Space. Condition 2.1.4 of the approval of the Department of Environmental Affairs and Development Planning, dated 14 April 2005 states as follows:

“That only the footprints of the 5 chalets (indicated on R5 and R6 on Annexure I) be rezoned, and that the zoning be Resort 1.”

Since formalisation of the Pearly Beach Holiday Resort additions were constructed to the chalets on Erf 2099 without approval in terms of the Overstrand Municipal Land Use Planning Amendment By-Law, 2020, the National Building Regulations or the approval of the Pearly Beach Resort Homeowners Association (HOA). The said additions encroach on the Open Space Zone 3 portion of Erf 2099, thereby not in accordance with the approval conditions stipulated above. The extent of the

unauthorised additions are illustrated in the table below and to be read together with the SDP as per Annexure C:

Chalet No	Total Footprint	Unauthorised Footprint Increase	Description
1	51m ²	18m ²	Canopy
2	48,25m ²	15,25m ²	Canopy
3	59,4m ²	26,4m ²	Living area
4	47,52m ²	14,52m ²	Canopy
5	69,4m ²	36,4m ²	Canopy
TOTAL	275,57m²	110,57m²	

The property owner did not adhere to compliance notices served in terms of the By-law and National Building Regulations pertaining to the unauthorised additions as per the table above resulting in litigation between Overstrand Municipality and PSP Properties, which eventually resulted in an order of the High Court South Africa, Western Cape Division dated 14 January 2021 (court order attached as Annexure D).

The court order confirmed the contraventions in terms of the By-Law as well as the approval conditions imposed by the Department of Environmental Affairs and Development Planning in 2005. The planning application has been submitted in accordance with paragraph 3 of the court order and comprises the following:

- ❖ rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1 in terms of Section 16(2)(a) of the By-Law in order to establish five resort zone portions (holiday accommodation) of 110m² each;
- ❖ amendment of a condition of approval and approved site development plan in terms of Section 16(2)(h) & 16(2)(l) of the By-Law, and
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law to accommodate existing unauthorised additions.

In terms of the court order the required applications was to accommodate the existing development as per the SDP. The application as submitted intends to increase the resort footprint to 110m² each over and above the requirements of the court order.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- ❖ Application will rectify irregularities on site.
- ❖ There are no restrictive conditions in the title deed that restricts the development.
- ❖ There will be no impact upon municipal services.
- ❖ The proposal does not have a negative impact upon surrounding land uses in the area.
- ❖ The proposal is compatible with the existing land uses in the area.
- ❖ The proposal will not adversely impact the bio physical environment.
- ❖ The development will not have an additional impact on traffic and parking.
- ❖ The proposal is consistent with the SDF and OMGMS.
- ❖ The proposal does not trigger Section 38 of the National Heritage Resources Act.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA and are motivated as follows:

Spatial Justice: Legalisation of the existing resort footprints and future extension to 110m² is in line with land use tendencies in the area and will be to the benefit of the guests making use of the accommodation.

Spatial Sustainability: The proposal does not impact upon conservation worthy areas and is in line with the resort character of the area.

Spatial Efficiency: The chalets are easily accessible and conveniently located within the resort in close proximity to tourist attractions.

Spatial Resilience: Not applicable.

Good Administration: Plan Active is committed and will co-operate with the municipality to ensure a time efficient uncomplicated land use planning process.

❖ The application for determination of an administrative penalty are motivated as follows:

Nature, duration, gravity and extent of the contravention:

The extent of the unauthorised additions as reflected in the table above amounts to 110,57m² as set out in the table under paragraph 3. The applicant motivates the nature of the additions to be unobtrusive and not to impact negatively on the surrounding area.

The conduct of the person involved in the contravention:

The owner was made aware of the illegality of the alterations to the chalets. The matter was dealt with by the High Court and subsequently this application was lodged because of the court order.

Whether the unlawful conduct was stopped:

Application has been submitted to rectify the contravention.

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

The applicant is willing to submit a report from a QS should an administrative penalty be payable.

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

The owner was made aware of the illegality of the alterations and the matter was dealt with by the High Court, which resulted in the submission of the application as per the court order. The applicant appeal that the low impact of the structures / additions and the fact that no objections were received to be considered. Alterations made improved the structures (visually) and do not have a negative impact upon property values of surrounding properties. The owner with the application intends to rectify the defaults and will submit building plans following conclusion of the land use application. It is therefore requested that an administrative penalty not be imposed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Internal Departments	Yes	10/06/2021	16/07/2021
Ward councillor	Yes	10/06/2021	16/07/2021
Local Press	Yes	11/06/2021	16/07/2021

Notices	Yes	11/06/2021	16/07/2021
Total comments	Two (2) letters of objections and one (1) letter of comment		
Total letters of support	None		
Was public participation undertaken in accordance with Section 45 - 50 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

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

Name	Date received	Summary of comments
Waste Management	10/06/2021	No objection.
Fire Services	14/06/2021	No objection, subject to compliance with the provision of SANS 10400-A:2016, 10400-T:2020 and the By-Law relating to community fire safety.
Engineering Services	29/06/2021	Attached as Annexure H.
District Health	16/07/2021	No comment.
Environmental Section	16/07/2021	No objection.
Telkom	04/08/2021	Attached as Annexure I.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Notice of the application was served onto the Pearly Beach Homeowners Association (HOA) who further distributed internally amongst HOA members for comment. Municipal notices were also served onto adjoining property owners by the municipality whilst the application was also advertised in the local press in accordance with the By-Law. Two letters of objection from D Viljoen, the owner of Erf 2202, Pearly Beach Resort and D and P duToit on behalf of the owners of Erf 2516 Pearly Beach Resort were received. The Chairman of the Pearly Beach Resort HOA did not object but submitted a letter of comment.

The letters of objection and comment is attached per Annexure E and the applicant's response thereto is attached as per Annexure F.

The objections are similar and summarised as follows:

The resort approval provides for chalets with a footprint of 33m² under Resort Zone 1 that needs to stay the same since the remainder of the resort is zoned Resort Zone 2 with Private Open Space in order to improve the density.

Response from applicant

We take cognisance of the fact that a previous approval limited the size of the footprints to 33m² as stated by the objector. We are however applying to increase the footprint size to make provision for the existing chalets that already have an increased footprint beyond the prescribed 33m² to a maximum footprint of 110m² each, to make provision for possible future extensions, should the need arise. The number of chalets established on Erf 2099 Pearly Beach will remain 5 and the number of chalets will not be increased. Subsequently the density of the site will remain the same.

Response from town planner

The objector is correct saying that the approval provided for a 33m² resort footprint. It must be pointed out that the 2005 approval by DEA&DP limited the extent of the resort footprint to the existing buildings and did not refer to 33m². Thus, the extent of the resort zoning had been a long-standing dispute between PSP Properties and the municipality resulting in litigation, a court order in the Western Cape High Court and subsequently the application as set out by the applicant in his comment above.

The original Pearly Beach Resort approval provides for 5 chalets situated on a private open space erf. The zoning of the chalets was resort zone (Resort Zone 1 in terms of the former scheme regulations) with holiday accommodation as a primary right. The purpose of the application is to legalise the unauthorised additions to the chalets which additions is situated outside the resort zone footprint as per the original approval. As such, as part of the application it is proposed to increase the resort footprint to 110m². Apart from the increased footprint the zoning and applicable primary rights (i.e. holiday accommodation) remains the same.

The owner of Erf 2099 promised the HOA that the chalets will not be rented out for short term accommodation (day visitors). The proposed changed zoning opens the door for additions and leasing of the chalets.

Response from applicant

The application constitutes the change of zoning of a portion of the area that surrounds the chalets from Open Space Zone 3 to Resort Zone 1. The chalets had a zoning of Resort Zone 1 and it is proposed that the area of the footprint zonings be increased. It should be noted that the same zoning, Resort Zone 1 will be retained and that it would be increased. The land use will therefore remain the same.

In terms of the Resort Zone 1 zoning the chalets may only be used for holiday accommodation and this has always been the case. Subsequently the chalets may only be used as per the definition of "holiday accommodation". Long term rental of the chalets is not permitted under the mentioned zoning.

Response from town planner

The applicant's comment is noted and agreed with. The alleged commitment of the property owner to the HOA is not in accordance with the zoning and development approvals, since the use of the chalets (holiday accommodation) is limited to short term accommodation purposes and is also enforced to the this effect with refence to paragraph 2 of the court order (refer to Annexure D).

The owner of Erf 2099 Pearly Beach did not transfer the property to the HOA.

Response from applicant

The objection pertaining to the transfer of Erf 2099 Pearly Beach to the Homeowners Association has been resolved as per the letter from MTB Attorneys dated 14 July 2020 that reads as follow: *“There is / was also an issue of whether the private open space zoned on Erf 2099 which surrounds the chalets zoning which totals $5 \times 110\text{m}^2 = 550 \text{m}^2$ in size, is for the exclusive use of the 5 chalets, as PSP claims. Our client previously held the view that it is similar to the other open spaces in the resort, for the benefit of all members, and the only reason why it was not transferred from the developer PSP to the HOA with the other open spaces, was because it was not possible to transfer only the private open space zoned area of Erf 2099, without the 5 Chalets belonging to PSP. The committee of the HOA, will no longer dispute PSP's claim in this regard, which we trust should resolve that issue insofar as it may still be relevant.”* Please refer to a copy of this letter that we have attached as Annexure J.

Response from town planner

The subject property is in private ownership but forms part of the Pearly Beach Resort and is bound to the constitution. The dispute regarding ownership of Erf 2099 is a civil legal matter between PSP Properties and the HOA and not relevant to the application under consideration.

The proposal will change the character of the resort should the chalets be rented out for short term accommodation / day visitors which might have influenced the decision of members that is not aware thereof when buying property in the resort.

Response from applicant

The formerly approved Resort Zone 2 erven, now Resort Zone, with a consent use for holiday housing, does not apply to Erf 2099 Pearly Beach. Erf 2099, Pearly Beach is 3303m² in extent. The current total footprint of the 5 chalets is ±275.57m² and should the extension of the footprints be approved as such in its current state, the coverage will be ±8.35%. Should the Overstrand Municipality support and approve a footprint of each chalet up to 110m², the total coverage will be ±16.67%. Respectively a total of ±3024.43m² or ±2750m² and will remain private open space.

The increase of the footprints of the chalets will be beneficial to both the owner and the resort should the owner decide to extend or upgrade the chalets. It also makes provision for opportunities to possibly create 5 chalets of better quality and size within the proposed size limit providing more exclusive holiday accommodation in accordance with the primary rights (holiday accommodation).

Response from town planner

The comment with regard to impact on the resort is not agreed with. The proposal will not change or upgrade development rights, save for the increase in the resort zone footprint. With reference to the remainder of the resort erven varies between 100m² up to 250m² with a maximum permissible coverage of 70% of the respective erf sizes in terms of the development rules (only applicable to the resort zone: holiday housing erven). The opinion is held that the matter could be mitigated with approval conditions and despite the proposed increase coverage would be extremely low as alluded to by the applicant. It is further recommended that the development of the resort zone portions on Erf 2099 be made applicable to the same rules as the remainder of the resort, should the application be supported. This will ensure that the character of the resort is not adversely impacted upon.

The application cannot be approved with the minister's involvement.Response from applicant

Since the original approval was obtained up till now, planning legislation has changed. Town planning application as listed in Section 16 of the Overstrand Municipality Bylaw on Municipal Land Use Planning are dealt with by the Overstrand Municipality and does not require the input from the Department of Environmental Affairs and Development Planning, being the former decision maker.

Response from town planner

The application falls within the ambit of municipal planning, decision making thereby a municipal competency. Legally there is no requirement for involvement of the Department of Environmental Affairs and Development Planning.

Homeowners should not be allowed to build first and then apply.Response from applicant

The subject property and the resort have a long history with reference to structures that were constructed without any building plan approvals. All the owners rectified their individual properties and obtained the required building plan approvals as per the former conditions of approval. The owner of Erf 2099, Pearly Beach did the same in 2015 by means of building plan submission that could however not be approved due to the fact that the footprints exceeded the 33m² imposed as a condition of approval. The court ruled that the owner must rectify the matter and submit an application within a set time limit that was subsequently done. It cannot be argued that this is a case of build first and obtain approvals later. This application must be dealt with on its own merit and also taking the history of the site and the resort development into consideration.

Response from town planner

Following approval of the resort and the architectural guidelines a 24-month period was provided to enable property owners to submit plans for as built structures not in accordance with the approved plans. The owner of Erf 2099, Pearly Beach did not abide with this deadline but did eventually submit building plans to the Overstrand Building Control Department. The building plans had been endorsed for submission purposes by the HOA but could not be recommended for approval due to the fact that the portions of the structures were in contravention with the historic resort approval and the applicable planning law.

The municipality cannot refuse to accept an application to legalise unauthorised development or land use. However, in accordance with the Overstrand Municipal Land Use Planning Amendment By-Law, 2020, each application is to be considered on merit whilst part of the consideration of such application are the determination of an administrative penalty which the decision maker may impose. Accordingly, the application also incorporates and application for determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law.

The proposed increased footprint will allow alterations up to 70% of the plot size.

Response from applicant

The current total footprint of the 5 chalets is $\pm 275.57\text{m}^2$ and should the extension of the footprints be approved as such in its current state, the coverage will be $\pm 8.35\%$. Should the Overstrand Municipality support and approve a footprint of each chalet up to 110m^2 , the total coverage will be $\pm 16.67\%$. Respectively a total of $\pm 3024.43\text{m}^2$ or $\pm 2750\text{m}^2$ will remain private open space depending on the municipality's decision.

Response from town planner

Should the application be considered desirable coverage will be limited to 70% of each of the resort zone footprints and not 70% of Erf 2099 as per the objector. Thus, the opinion is held that the impact of the proposal will not adversely impact the character of the resort or vested rights of adjacent property owners.

Why was the developer not forced to subdivide Erf 2099, Pearly Beach which each chalet on a separate erf with individual service connections?Response from applicant

The payment of an availability fee for the chalets has been dealt with by means of arbitration and with reference to a Court Confirmation it has been decided that 2.5 times the availability fee is payable. The size of the chalets has not increased since the Court Confirmation. It should also be noted that the number of chalets will not increase. Subsequently it is the owner's opinion that no additional availability fees will be payable and that the Court Confirmation stands. Please refer to the Court's Decision that we have enclosed for easy reference as Annexure B.

Response from town planner

The subject property is situated within a gated development with bulk services up to the property boundary. The court case between the owner of Erf 2099 and the HOA is an internal matter and has no bearing on the consideration of the application. Furthermore, the Overstrand Land Use Scheme provides under resort zone for the accommodation of more than one dwelling unit on an erf.

The alterations were done illegally, thus the owner is grasping at straws to get it legalised. Should it be considered for approval it would still be subject to the resort aesthetic and building design guidelines.Response from applicant

The proposed application to increase the 33m^2 footprint size as prescribed in a former approval will make provision for the submission of the as-built building plans for approval by the Overstrand Municipality. It will also make provision for an owner to later increase the footprint of the chalets, if the need arises. The chalets will be utilized as holiday accommodation as per the definition, as it was intended for, thus staying in line with the resort character. The possibility to increase the footprint of the chalets will also be beneficial to the resort as the value of the property would be increased.

The chalets will be single storey and in line with the current architectural guidelines applicable to the Pearly Beach Resort, as stated in our motivation report. Future building plans will be presented to the Pearly Beach Homeowner's Association for consideration.

Please take note that as built plans of the 5 chalets have already been drawn up and approved by the Pearly Beach Homeowner's Association on 14 July 2015. Please refer to the stamps on the respective building plans that accompanied our application (attached as Annexure K). These plans were submitted to the Overstrand Municipality at the time but could not have been approved, due to the fact that the chalets were limited to 33m² and the footprints of the existing chalets exceeded the prescribed footprint size. The process of the approval of the building plans can commence after the application at hand has been approved. The Pearly Beach Homeowner's Association will be supplied with copies of the approved building plans for their records.

Response from town planner

There is no dispute that the additions to the structures are indeed illegal as confirmed by the court order. The application under consideration seeks to legalise the unauthorised additions amongst others and should despite the history be considered on merit. Should the application be supported the owner of Erf 2099 will have to adhere to the building and aesthetic guidelines applicable to the Resort Zone: Holiday Housing erven within the resort.

The Chair of the Pearly Beach Resort HOA did not object but raised the following comments:

- **Any alterations and / additions to the structures on Erf 2099 must be submitted to the HOA for consideration and approval before building plans are submitted to the municipality for approval.**
- **Reference is made to a settlement agreement between PSP properties and the HOA that might be affected by future additions to the existing chalets. The HOA will therefore require that the agreement be renegotiated between the property owner and the HOA prior to HOA approval of building plans pertaining to additions and alterations.**
- **Building plans must be submitted for the current completed additions for approval to the municipality and must be made available to the HOA for record keeping.**

Response from applicant

The increase of the footprints of the chalets will be beneficial to both the owner and the resort should the owner decide to extend or upgrade the chalets. It also makes provision for opportunities to create 5 chalets of better quality and size within the proposed size limit providing more exclusive holiday accommodation. The chalets will be single storey and in line with the current architectural guidelines. Future building plans will be submitted to the HOA for consideration.

Please take note that as built plans of the 5 chalets have already been drawn and approved by the Pearly Beach Homeowner's Association on 14 July 2015. Please refer to the stamps on the respective building plans that accompanied our application. These plans were submitted to the Overstrand Municipality at the time but could not have been approved, due to the fact that the chalets were limited to 33m² and the footprints of the existing chalets exceeded the prescribed footprint size. The process of the approval of the building plans can commence after the application at hand has been approved. The Pearly Beach Homeowner's Association will be supplied with copies of the approved building plans for their records.

The payment of an availability fee for the chalets has been dealt with by means of arbitration and with reference to a Court Confirmation it has been decided that 2.5 times

the availability fee is payable. The size of the chalets has not increased since the Court Confirmation. It should also be noted that the number of chalets will not increase. Subsequently it is the owner's opinion that no additional availability fees will be payable and that the Court Confirmation stands. Please refer to the Court's Decision that we have enclosed for easy reference as Annexure B.

Response from town planner

Building plans for the unauthorized development had already been endorsed by the HOA and submitted to the Building Control Department and is dependent on the outcome of the application. Further, the comments of the HOA can be incorporated / mitigated in terms of approval conditions. The Pearly Beach Resort is a gated development. The municipality only provides a bulk service up to the property boundary and not responsible for internal services, save for property rates being levied onto transferred erven. The court order is a civil matter between the HOA and property owner and has no bearing on the application. Should the recommendation be accepted conditions will be imposed to ensure that the building and aesthetic guidelines of the remainder of the resort is applicable to Erf 2099, including approval by the HOA prior to submission of building plans.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

N/A

All municipal and external departments support the application.

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

10.1 Background

N/A

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

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

The objectives relating to:

Spatial Justice

The proposal being situated on an existing erf within the Pearly Beach Resort will have no adverse impact in terms of historic imbalances.

Spatial Sustainability

The proposal does not impact upon conservation worthy areas and is in line with the resort character of the area.

Spatial Efficiency

The chalets are easily accessible and conveniently located within the resort in close proximity to tourist attractions.

Spatial Resilience

Not applicable.

Good administration

Procedures were followed and a public participation was applicable.

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

Same as 10.2 above.

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

The proposal is consistent with the SDF.

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

N/A

10.6 Impact on Municipal Engineering Services

The proposal will not have an additional impact upon services and is supported by the Municipal Engineering Services Department.

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

The proposal does not trigger NEMA or the provisions of the National Heritage Resources Act.

10.8 Existing and proposed zoning comparisons and considerations

Unauthorised encroachments of existing buildings onto the Open Space Zone 3: Private Open Space portion of Erf 2099, Pearly Beach are being addressed by means of the application.

11. THE DESIRABILITY OF THE PROPOSAL

Application for rezoning, amendment of SDP and condition of approval

The subject property has a split zoning comprising of 5 Resort Zone: Holiday Resort (holiday accommodation units) of 33m² each and a remainder Open Space Zone 3: Private Open Space. Unauthorised additions to the chalets between the period 2007 to 2013 resulting in encroachments onto the Private Open Space portion of the property, thus in contravention of the 2005 development approval and the approved SDP for the Pearly Beach Resort.

The application for rezoning, amendment of a condition of approval and approved Site Development seeks to legalise the unauthorised additions and will facilitate formalisation thereof by means of building plan approval giving effect to the provisions of the court order, whilst at the same time seek to increase the 5 existing resort zone footprints from 33m² to 110m² each.

The application for rezoning of a portion of Erf 2099, Pearly Beach from open Space Zone 3: Private Open Space to Resort Zone (holiday accommodation), amendment of a conditions of approval and SDP is desirable for the following reasons:

- The development of Erf 2099 will be subject to submission of a detailed SDP for municipal approval following endorsement by the HOA.
- The development of Erf 2099 will subject to compliance with the Pearly Beach Resort Architectural and Building Guidelines.
- Each individual resort zone portion will be considered an erf for the purposes of maximum permitted coverage that will be restricted to 70% of each of the five resort zone portions.
- The maximum permitted coverage of each resort portions of Erf 2099 is limited to 70% of each of the 5 resort portions of 110m², thus a maximum building footprint of 77m² for each chalet that equates to 11,66% coverage on Erf 2099 that measures 3303m² in extent.
- The coverage of the proposed development is not out of keeping with the character of the resort that allows for 70% coverage on erven measuring between 100m² up to 250m² in size.
- The proposal will not change the primary rights applicable to the resort zone, i.e. holiday accommodation, as such; no adverse impact on the character of the area or vested rights of adjoining property owners is foreseen.
- The proposal does not affect the density of the resort.
- The objections could be sufficiently mitigated in terms of conditions of approval.
- The resort development comprises over 300 erven, only two objections were received whilst the HOA did not object.
- The proposal is consistent with the SDF.
- The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

Determination of administrative penalty

The application for determination of an administrative penalty is only applicable to the additions that occurred to the chalets beyond the original 33m² footprint which had been motivated in accordance with the provisions of Section 90(3) of the By-Law as follows:

Nature, duration, gravity and extent of the contravention:

The extent of the unauthorised additions as reflected in the table above amounts to 110,57m². The applicant motivates the nature of the additions to be unobtrusive and not to impact negatively on the surrounding area.

The conduct of the person involved in the contravention:

The owner was made aware of the illegality of the alterations to the chalets. The matter was dealt with by the High Court and subsequently this application was lodged because of the court order.

Whether the unlawful conduct was stopped:

Application has been submitted to rectify the contravention.

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

The applicant is willing to submit a report from a QS should an administrative penalty be payable.

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

The owner was made aware of the illegality of the alterations and the matter was dealt with by the High Court, which resulted in the submission of the application as per the court order. The applicant appeal that the low impact of the structures / additions and the fact that no objections were received to be considered. Alterations made improved the structures (visually) and do not have a negative impact upon property values of surrounding properties. The owner with the application intends to rectify the defaults and will submit building plans following conclusion of the land use application. It is therefore requested that an administrative penalty not be imposed.

Having had regard to the above the applicant's motivation is noted but has not been correctly portrayed. The Building Control Department severed several stop notices in connection with unauthorised building works on 8 August 2013 and 11 April 2015 as well as a final notice dated 11 May 2015. Only following the final notice on 26 June 2015, building plans were submitted to the Building Control Department (notices attached as Annexure L).

Similarly, a compliance notice in terms of the Overstrand Municipal Land Use Planning By-Law dated 15 June 2016 was ignored following dismissal of the property owner's objection to the compliance notice by the Municipality dated 24 January 2017 resulting in litigation between Overstrand Municipality and the property owner and eventually an order of the Western Cape High Court (notices attached as Annexure L).

Having had regard to the background above and the fact that notices in terms of the National Building Regulation and Planning By-Law were ignored; an administrative penalty of 20% of the built should be made applicable.

According to the municipal tariff list-built cost for formal structures amounts to R6008,75 per m² (VAT inclusive), whilst built cost for non-habitable formal structures are determined by the average of two formal quotations. Quotations were obtained from Demar Roofing R51 318,00 and Abricor Roofing for R53 522,96. The average-built cost therefore amounts to R52 420,48.

The canopies to chalets 1, 2, 4 and 5 are not considered formal structures, being open on at least two sides. The administrative penalty is therefore calculated as follows:

$$R52\,420,48 \times 20\% = R10\,484,00 \text{ (VAT inclusive)}$$

The unauthorised addition to chalet 3 comprises a living room. Therefore, the administrative penalty is calculated as follows:

$$(R6008,75 \text{ per m}^2 \times 26,4\text{m}^2) \times 20\% = R31\,726,20 \text{ (VAT inclusive)}$$

Based on 20% of the built cost as set out above an administrative penalty of R42 210,20 (VAT inclusive) is payable.

Having had regard to the above the application for rezoning, amendment of conditions of an existing approval and amendment of an approved Site Development Plan subject to payment of an administrative penalty is considered desirable as it not considered to detract from the character of the Pearly Beach Resort of vested rights of adjoining property owners. The application is therefore considered desirable.

12. RECOMMENDATION

1. that the objections and comment be noted;
2. that the application for rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1 in terms of Section 16(2)(a) of the By-Law in order to establish five enlarged resort zone portions (holiday accommodation) of 110m² each, **be approved** in terms of Section 61 of the By-Law;
3. that the application for amendment of a condition of approval and approved Site Development Plan in terms of Section 16(2)(h) and 16(2)(l) of the By-Law, **be approved** in terms of Section 61 of the By-Law;
4. that an administrative penalty in terms of Section 90(4) of the By-Law be imposed for 20% of the built cost in accordance with the municipal tariff list for the amount of R42 210,20 (VAT inclusive);
5. that the approvals in terms of paragraphs 2. to 4. above be subject to the following conditions:
 - (a) that a detailed Site Development Plan in accordance with municipal requirements be submitted for municipal approval duly endorsed by the Pearly Beach Homeowners Association indicating amongst others the total extent of the 110m² resort zone area with coordinates in accordance with municipal requirements in respect of Erf 2099, Pearly Beach;
 - (b) that chalets on the resort zone portions may only be utilised for holiday accommodation purposes in accordance with the Municipal Land Use Scheme;
 - (c) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department at that stage, be complied with;
 - (d) that the development of Erf 2099, Pearly Beach be subject to compliance with the Pearly Beach Resort Development rules except the maximum permitted coverage as defined within the development rules;
 - (e) that the maximum coverage of the chalets be restricted to 70% of each of the 110m² resort zone portions;
 - (f) that all the conditions in the Services Report (attached as Annexure H), be complied with;
 - (g) that the administrative penalty in paragraph 3 above be payable within 30 days of the decision date;
 - (h) that this approval does not absolve the applicant from compliance with any other relevant legislation, and

- (i) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with.
6. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law Amendment on Land Use Planning, 2020 with regard to the above conditions of approval.

13. REASONS FOR RECOMMENDATION

- ❖ The application will not adversely impact upon vested rights of the Pearly Beach Resort HOA or adjoining property owners.
- ❖ The development will not detract from the character of the area, comprising 300+ resort units (holiday housing).
- ❖ None of the internal departments have objected to the application.
- ❖ Objections could be mitigated with conditions of approval
- ❖ Application gives effect to an order of the Western Cape High Court.

14. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Proposed Site Development Plan
Annexure D:	Court order dated 16 September 2015
Annexure E:	Objections and comment
Annexure F:	Applicant's comment on objections and comment
Annexure G:	Pearly Beach Resort approval, Provincial Government Western Cape, dated 14 April 2005
Annexure H:	Services Report
Annexure I:	Comment: Telkom
Annexure J:	Letter from MTB Attorneys dated 14 July 2020
Annexure K:	Building plans stamped by Pearly Beach Homeowners Association dated 14 July 2015
Annexure L:	Compliance Notices to PSP Properties

SIGNATURE

REGISTERED PLANNER

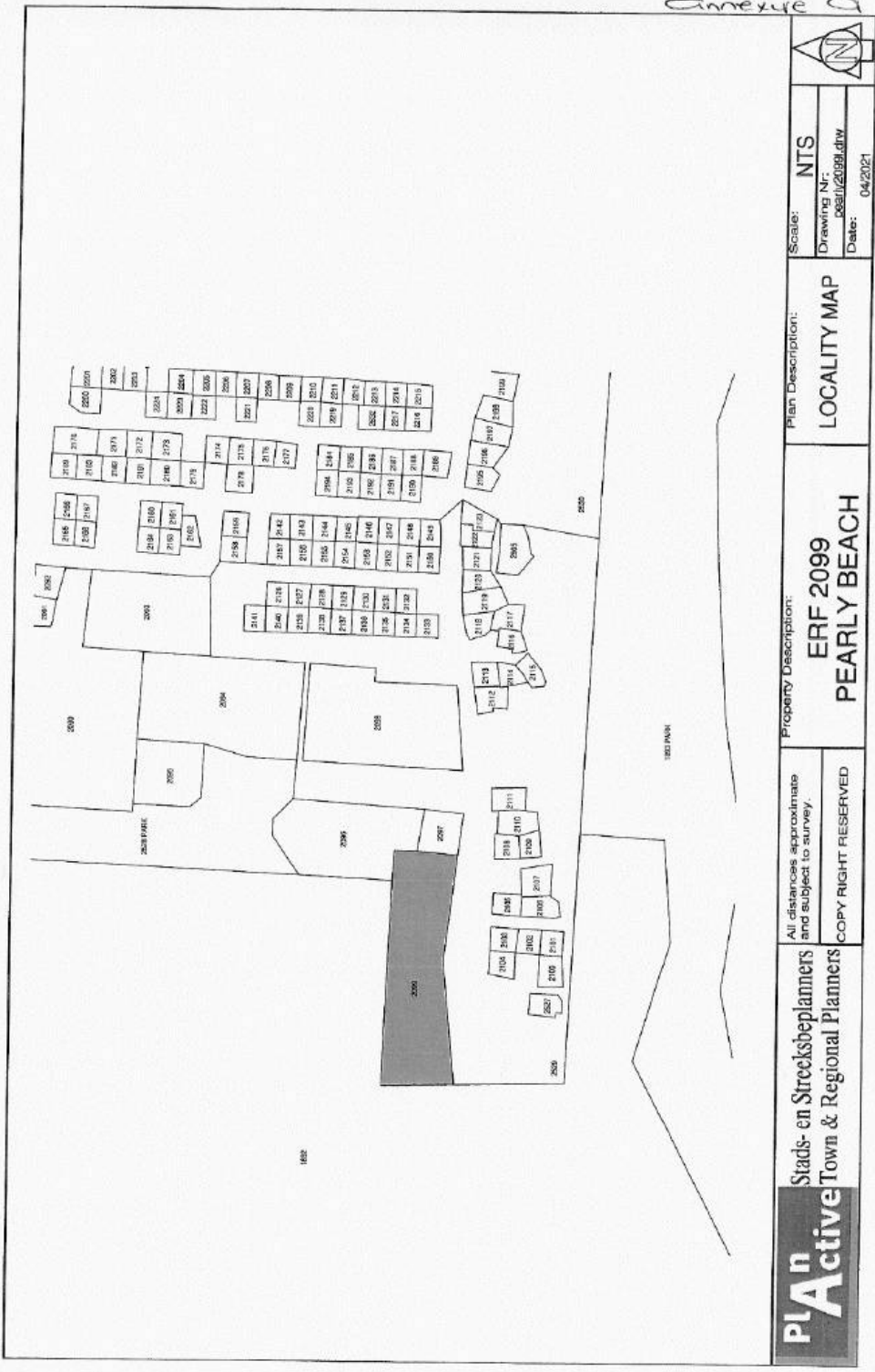
Name: **SW VAN DER MERWE**

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

Signature: _____

Date: _____

Annexure A



PLAN Stads- en Streetsbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: ERF 2099 PEARLY BEACH		Plan Description: LOCALITY MAP	Scale: NTS Drawing Nr: 0881/2099.dwg Date: 04/2021



ERF 2099 PEARLY BEACH
PROPOSED REZONING, AMENDMENT OF A
CONDITION OF APPROVAL, AMENDMENT OF THE
SITE DEVELOPMENT PLAN AND DETERMINATION
OF AN ADMINISTRATIVE PENALTY
DIVISION: CALEDON
OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by PSP Eiendomme CC, the owner of Erf 2099 Pearly Beach to apply for a rezoning, amendment of a condition of approval, amendment of the site development plan and determination of an administrative penalty, in order to change the size of the footprint zoning of the chalets established on Erf 2099 Pearly Beach from $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively, as a result of a High Court Order.

Erf 2099 Pearly Beach is located within the Pearly Beach Resort and has a split zoning consisting of Open Space Zone 3 and Resort Zone 1 zonings. 5 Chalets are established on the subject property. Erf 2099 Pearly Beach is held by Title Deed T56294/08 and is $3\,300\text{m}^2$ in extent. Please refer to the enclosed Windeed Report and a copy of the Title Deed.

The subject property is primarily used for holiday accommodation purposes and will continue to be used as such.

In terms of a former approval a condition of approval was imposed by the Department of Environmental Affairs and Development Planning that read as follows: "That only the footprints of the 5 chalets (indicated on R5 and R6 on Annexure I) be rezoned, and that the zoning be Resort 1". This condition was also adopted in terms of the approvals obtained from the Overstrand Municipality. Subsequently only the $\pm 33\text{m}^2$ footprint of each of the 5 chalets was zoned Resort Zone 1 with the remaining extent of Erf 2099 Pearly Beach having a zoning of Open Space Zone 3. In order to increase the size from $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively it would be required that we apply for a rezoning, amendment of a condition of approval, amendment of the site development plan and determination of an administrative penalty. The detail of the application is as follows:

2. APPLICATION DETAILS



Application is made for / in terms of:

- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1;
- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the amendment of a condition of approval applicable to Erf 2099 Pearly Beach;
- Chapter 4, Section 16(2)(l) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the amendment of the site development plan applicable to Erf 2099 Pearly Beach;
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION



Erf 2099 Pearly Beach is situated within the Pearly Beach resort and is located east of the guardhouse at the main entrance. Please refer to the enclosed locality map.

The chalets established on Erf 2099 Pearly Beach are used primarily for tourist / holiday accommodation. The additions have been made to the chalets, without the required approvals, that consist of canopies and a living area. The chalet areas and addition sizes can be tabled as follows:

Chalet No.	Chalet Size	Type of addition	Addition Size
1	±33m ²	Canopy	±18m ²
2	±33m ²	Canopy	±15.25m ²
3	±33m ²	Living Area	±26.4m ²
4	±33m ²	Canopy	±14.52m ²
5	±33m ²	Canopy	±36.4m ²

3.2 ZONING

Erf 2099 Pearly Beach has a split zoning that consist of a Resort Zone 1 zoning and an Open Space Zone 3 zoning. In terms of the Court Order and a condition of the approval, only the original footprints of the chalets that were ±33m² in extent each, excluding the additions, have a Resort Zone 1 zoning. The remaining extent of Erf 2099 Pearly Beach excluding the original chalets footprints is zoned Open Space Zone 3.

3.3 LAND USE

As mentioned above, 5 chalets are established on Erf 2099 Pearly Beach. Without the required approvals, additions were constructed at each of the chalets consisting of canopies and a living area. The remaining extent of Erf 2099 Pearly Beach, excluding chalets, is used as private open space.

Erf 2099 Pearly Beach is located within the Pearly Beach Resort that consists of privately owned resort erven, private open spaces, private roads, a shop, a secure access point and parking.

3.4 PROPOSED DEVELOPMENT



An application is lodged in terms of:

- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1;
- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the amendment of a condition of approval applicable to Erf 2099 Pearly Beach;
- Chapter 4, Section 16(2)(l) of the Overstrand Municipality's revised By-law on Municipal Land Use Planning, 2020, for the amendment of the site development plan applicable to Erf 2099 Pearly Beach.

A previously approved site development plan indicated the areas of the chalets as being $\pm 110\text{m}^2$ each. In terms of the Court Order it had to be changed to conform with the former condition of approval stating that only the footprints of the chalets be zoned Resort Zone 1. The original size of the chalets was $\pm 33\text{m}^2$ in extent. In order to increase the size of the footprints of the chalets, to now make provision for the additions, it is

Motivation report

required that we apply for a rezoning, amendment of a condition of approval and amendment of the site development plan.

The detail of the application is as follows:



3.4.1 Rezoning:

As mentioned above, only the original footprint of the existing 5 chalets have a Resort Zone 1 Zoning. The original footprint of each of the chalets are $\pm 33\text{m}^2$ in extent. In order to accommodate the existing additions and possible future additions a footprint of 110m^2 is proposed for each of the chalets that would require the submission of a future revised site development plan. Subsequently it would be required that portions of the remaining area, excluding the original resort footprints will have to be rezoned from Open Space Zone 3 to Resort Zone 1 to make provision for the existing footprints that includes the unauthorised additions.

With reference to the site plan the original chalets are indicated in grey that constitutes $\pm 33\text{m}^2$ and the unauthorised additions are indicated in orange. The proposed footprint rezoning including the unauthorised additions can be tabled as follows:

Chalet No.	Original Size	Proposed Footprint	Footprint increase
1.	$\pm 33\text{m}^2$	$\pm 51\text{m}^2$	$\pm 18\text{m}^2$
2.	$\pm 33\text{m}^2$	$\pm 48.25\text{m}^2$	$\pm 15.25\text{m}^2$
3.	$\pm 33\text{m}^2$	$\pm 59.4\text{m}^2$	$\pm 26.4\text{m}^2$
4.	$\pm 33\text{m}^2$	$\pm 47.52\text{m}^2$	$\pm 14.52\text{m}^2$
5.	$\pm 33\text{m}^2$	$\pm 69.4\text{m}^2$	$\pm 36.4\text{m}^2$

Please refer to the enclosed set of "as built" building plans that were submitted to the Overstrand Municipality. The combined area of the increased 5 Resort Zone 1 erven will now be $\pm 275.57\text{m}^2$. The Remaining extent of Erf 2099 Pearly Beach will be $2\,753\text{m}^2$ in extent and will retain the zoning of Open Space Zone 3.

Motivation report

With reference to possible future expansion needs for the 5 chalets a footprint of not exceeding 110m² is proposed. The development of the chalets will be single storey and in line with the current architectural guidelines applicable to the Pearly Beach Resort. Subsequently the Pearly Beach Resort Architectural Guidelines will also apply to the chalets situated on Erf 2099 Pearly Beach.

3.4.2 Amendment of a condition of approval:

With the former approval to formalise the Pearly Beach Resort a condition of approval was imposed that read as follows:

"That only the footprints of the five chalets (indicated on R5 and R6 on Annexure I) be rezoned and that the zoning be Resort Zone 1."

In order to make provision for the additions consisting of canopies and a living area it is required that the abovementioned condition of approval be amended. The footprints of the chalets have increased beyond the approved area of $\pm 33\text{m}^2$. We are therefore proposing an increased footprint of 110m², in order to make provision for possible future extensions of the chalets should the need arise.

We are therefore applying for the amendment of the condition of approval to increase the footprint zoning of the chalets from $\pm 33\text{m}^2$ each, to a maximum future footprint of 110m² each.

3.4.3 Amendment of the site development plan:

A site development plan was approved for the Pearly Beach Resort. The size of the footprint zoning of the chalets was incorrectly indicated on the plan and should have been the size of the original chalet footprints only. In order to rectify the matter it would be required that the approved site development plan be amended with reference to Erf 2099 Pearly Beach.



As mentioned earlier in this report, the unauthorised additions have now been taken into consideration and the configuration of the footprints of the chalets varies in size from $\pm 47.25\text{m}^2$ to $\pm 69.4\text{m}^2$. The current chalets consist of the original $\pm 33\text{m}^2$ chalets with additional canopies and a chalet with an additional living room and differs from the approved site development plan. Subsequently the site development plan specifically with reference to Erf 2099 Pearly Beach will have to be replaced by the enclosed proposed site development plan for the said erf.

3.5 DETERMINATION OF AN ADMINISTRATIVE PENALTY

The original chalets situated on Erf 2099 Pearly Beach were approved and erected with a building footprint area of 33m^2 . Alterations were made to the original structures without any building plans or approvals, which resulted in the enlargement of the original approved building footprints. The alterations to the chalets occurred between 2007 and 2013. The intention is to correct these defaults by applying for a rezoning, amendment of a condition of approval and the amendment of the site development plan.

The intention of the owner is to rectify these irregularities and the alterations as a result of a court order. The owner now intends to legalise the alterations in order to submit "as built" building plans, after the land use application has been finalized.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

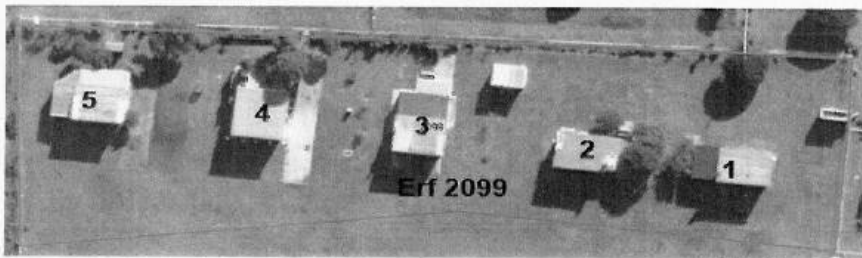


In terms of **Chapter 9, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

3.5.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

a) The nature, duration, gravity, and extent of the contravention

There are 5 chalets established on Erf 2099 Pearty Beach as indicated on the picture below.



The nature, duration, gravity, and extent of the contravention can be tabled as follow:

Chalet Number	Original extent of Chalet in m ²	Extent of the chalet after alterations in m ²	year alterations were made	Type of alterations made
1	33	18	2013	Canopy
2	33	15.25	2013	Canopy
3	33	26.4	2010	Living area
4	33	14.52	2007	Canopy
5	33	36.4	2009	Canopy

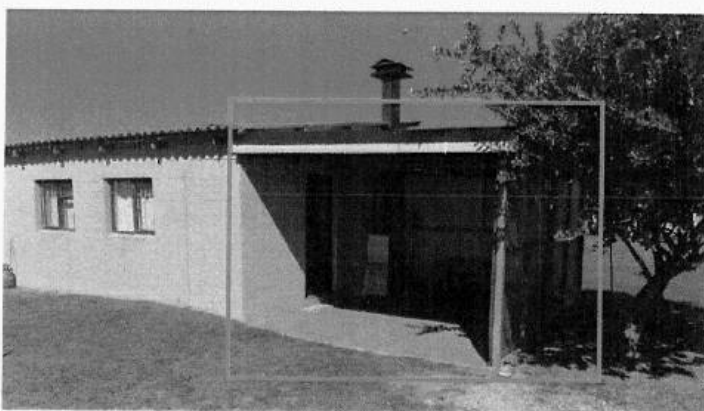


Motivation report

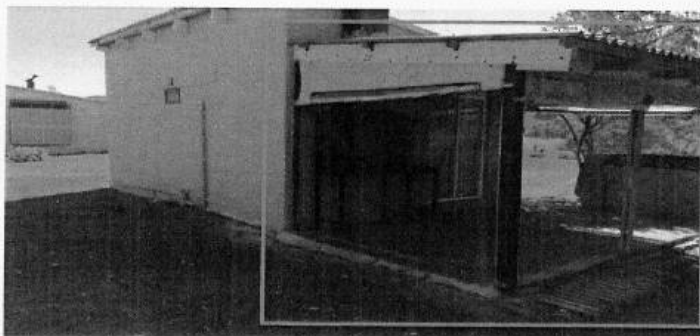
As previously mentioned, the original chalets on Erf 2099 Pearly Beach were approved with a footprint area of 33m². Alterations were made to the original chalets between 2007 and 2013. As seen in the table above the alterations that were made were minimal. The owner is now in the process of correcting these defaults by applying for a rezoning, amendment of a condition of approval and the amendment of the site development plan.

The extent of the alterations can be seen in the pictures below:

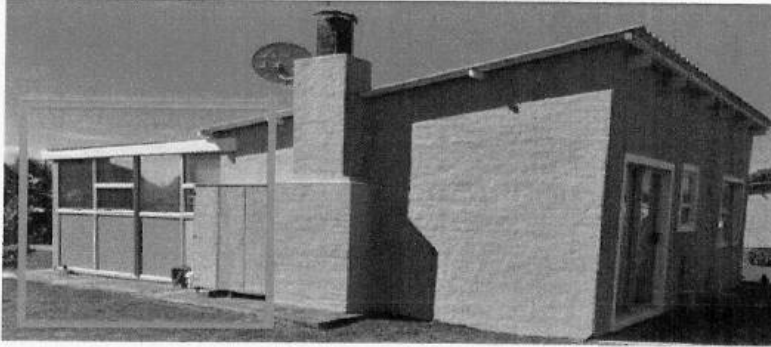
Chalet 1



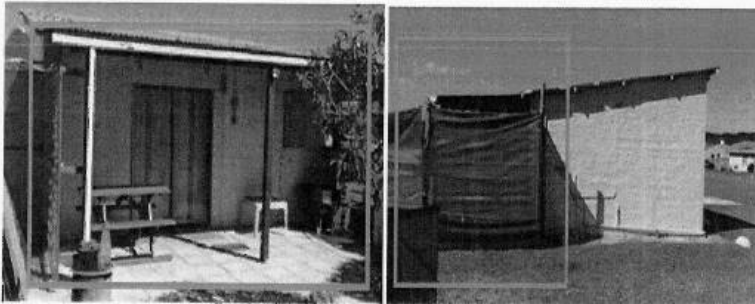
Chalet 2



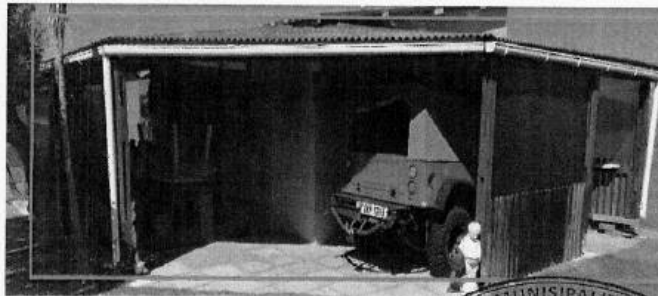
Chalet 3



Chalet 4



Chalet 5



The owner of the subject property intends to provide full co-operation to the Overstrand Municipality to rectify the encroachments.

The position and nature of the unauthorised building work of the chalets are unobtrusive in nature and do not impact negatively on the surrounding properties. A rezoning, amendment of a condition of approval and amendment of the site development plan are also applied for, to rectify the defaults.

b) The conduct of the person involved in the contravention

The owner has been made aware of the illegality of the alterations that were made to the chalets. The matter was dealt with by the High Court and subsequently this application has been lodged as result of the Court Order.

c) Whether the unlawful conduct was stopped

The owner is in the process of rectifying the contravention by applying for a rezoning, amendment of a condition of approval and the amendment of the site development plan. The building work has already been completed.

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

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, we will submit a report from a quantity surveyor with reference to the unauthorised building work. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.



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

The owner has been made aware of the illegality of the alterations that were made to the chalets. The matter was dealt with by the High Court and subsequently this application has been lodged as result of the Court Order.

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. It should also be considered that no complaints from surrounding properties have been made with regards to the illegal building work. It should also be considered that the alterations that were made improved the structures visually and do not have a negative impact on the property values of the surrounding properties.

With the proposed application the owner intends to rectify the defaults on the subject property and will also submit building plans in order to obtain the necessary approvals from the building control department, as soon as the land use application has been concluded. We therefore respectfully request that a penalty fee not be imposed on the property owner for the reasons given above.

3.6 **CHARACTER OF THE ENVIRONMENT**

Erf 2099 Pearly Beach is located within the Pearly Beach Resort. Subsequently the proposed rezoning, amendment of a condition of approval and the amendment of the site development plan will not have a negative impact on the appearance or the nature of the resort and will not have a negative impact on the environmental value of the resort.

The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan are in line with land use tendencies of the area it is clear that the proposal will not have a negative impact on the character thereof.



3.7 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

Erf 2099 Pearly Beach is located within the Pearly Beach Resort as previously mentioned. The application in essence is only the increase of the Resort Zone 1 footprints of the chalets to be increased from its original size that was $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively, as indicated on the site plan. The use of the chalets will continue to be in line with the primary rights as defined under the Resort Zone 1 zoning. Subsequently the proposed rezoning, amendment of a condition of approval and amendment of the site development plan will not have a negative impact on the appearance or the nature of the resort and will not have a negative impact on the environmental value of the resort.

In the light of the above it is clear that the proposed rezoning, amendment of a condition of approval and the amendment of the site development plan can be supported from a desirability point of view due to the fact that the proposal is in line with the land use tendencies within the area. It is also compatible with the current resort land uses and tourist related land uses found in the area.

3.8 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.8.1 PROVISION OF SERVICES

The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan constitutes the increase of a zoning footprint from $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively, in order to make provision for 5 existing chalets and additions. All the chalets are serviced and no additional services will be required. It is furthermore our opinion that no additional strain will be put on the existing services network with the increase of the zoning footprints from $\pm 33\text{m}^2$ to $\pm 110\text{m}^2$ respectively, in the future, to make provision for the possible expansion of these chalets as described in this motivation.



3.9 TRAFFIC IMPACT, PARKING AND ACCESS

With this application for the rezoning, amendment of a condition of approval and the amendment of the site development plan it is proposed that the footprint zoning of the chalets be increased from $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively, and possibly 110m^2 in the future, to make provision for the existing chalets, additions and possible future additions. No additional chalets will be created. Subsequently the proposed application will have no impact on traffic, parking and the existing access.

3.10 TITLE DEED

There are no restrictive Title Deed conditions in Title Deed No. T56294/2008 that will have to be removed to accommodate the proposed rezoning, amendment of a condition of approval and the amendment of the site development plan as described earlier in this motivation report.

There is no bond registered against Erf 2099 Pearly Beach.

3.11 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.11.1 HERITAGE VALUE

The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan do not trigger any listed activities in terms of Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).



3.11.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan have no impact on the biophysical environment.

3.12 FORWARD PLANNING AND LAND USE DOCUMENTS

The ***Overstrand Spatial Development Framework (2006)*** earmarks the area where Erf 2099 Pearly Beach is situated, as a caravan park.

The ***Overstrand Municipal Growth Management Strategy (OMGMS, 2010)*** indicates that Erf 2099 Pearly Beach is situated within the resort.

The proposed application is for the rezoning, amendment of a condition of approval and the amendment of a site development plan of erf 2099 Pearly Beach in order to increase the resort footprint of each of the existing 5 chalets. The proposals are in line with the ***Overstrand Municipality Spatial Development Framework (May 2020)*** that indicates that Erf 2099 Pearly Beach is within the urban edge and earmarked for urban development.

From the above it is evident that the proposed rezoning, amendment of a condition of approval and the amendment of the site development plan adhere to the spatial planning policies for the area and consequently falls within the existing planning for the area.

3.13 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:



Motivation report

Spatial Justice: The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan to increase the zoning footprint of the chalets from $\pm 33\text{m}^2$ to ± 51 , ± 48 , ± 59 , ± 48 & $\pm 69\text{m}^2$ respectively and a possible footprint of 110m^2 in the future are in line with the current land use tendencies. The extension of the footprint zoning of the chalets will be to the benefit of guests making use of the holiday / tourist accommodation.

Spatial sustainability: The proposed application for rezoning, amendment of a condition of approval and the amendment of the site development plan will have no impact on the conservation worthy areas and the land use will be in line with the resort character of the area.

Efficiency: The 5 existing chalets are easily accessible and conveniently located in a resort area in close proximity of tourist attractions.

Spatial Resilience: Spatial resilience is not applicable to this application.

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



4. RECOMMENDATION

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

- The application for rezoning, amendment of a condition of approval and the amendment of the site development of Erf 2099 Pearly Beach will rectify the irregularities onsite. It will also bring the size of the footprint zonings in line with the actual size of the current chalets and additions.
- There are no Title Deed conditions that restrict the proposed rezoning, amendment of a condition of approval and the amendment of the site development plan of Erf 2099 Pearly Beach.
- There will be no impact on services;
- The proposed rezoning, amendment of a condition of approval and the amendment of the site development plan do not have a negative impact on the surrounding land uses of other erven within the area;
- The proposal is compatible with the existing land uses of the area.

It is our opinion that the proposal for the rezoning, amendment of a condition of approval and the amendment of the site development plan can be supported for your favourable evaluation as it would have no negative impact on the surrounding erven.

We also appeal that no administrative penalty be imposed.



Annexure D/2

PS 18

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Case No. 4831/2020

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CAPE TOWN: Thursday 15 October 2020

BEFORE THE HONOURABLE MS. JUSTICE ALLIE

In the matter between:



OVERSTRAND MUNICIPALITY

And

PSP PROPERTIES CC

JOHANNA CORNELIA KOESEMÖER

LIONEL ELI SIMON

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA WESTERN CAPE DIVISION, CAPE TOWN	
Private Bay 20020, Cape Town 8001	
	
2021-01-14	
WCD-005	
REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA WESTERN CAPE DIVISION, CAPE TOWN	

Applicant

1st Respondent

2nd Respondent

3rd Respondent

Having heard the Legal Representative for the Applicant and Respondents
and having read the documents filed of record;

IT IS ORDERED:

1. That the extensions to the five Chalets on Erf 2099 which extend beyond their individual footprint of 33 m² as depicted on annexure "A" to the Notice of Motion:
 - 1.1 are in contravention of condition 2.1.4 imposed in terms of section 42(1) of the Land Use Planning Ordinance 15 of 1985 ("LUPO") by the Department of Environmental and Development Planning when approving the subdivision and rezoning of Erf 2099;
 - 1.2 have been erected contrary to the Property's split zoning as Resort Zone and Private Open Space 3 in terms of the Overstrand Zoning Regulations promulgated on 29 November 2013 and as subsequently amended ("the Zoning Scheme") and in contravention of the Overstrand By-Law on Municipal Land Use Planning, 2015 ("the By-Law") and are unlawful;
2. That the respondents are interdicted from using or permitting the use of the property, or any portion thereof, in a manner which contravenes the Property's split zoning as Resort Zone and Private Open Space 3 in terms of the Zoning Scheme;

- 3. That the respondents shall submit an administrative penalty, rezoning application and to the extent necessary, a consent use application in respect of the Property in terms of the By-Law to the Municipality for the latter's consideration, within 30 days of the granting of the order;
- 4. That the respondents shall submit any further information requested by the Municipality within 20 days of receiving such request;
- 5. That the respondents shall pay the administrative penalty to the Municipality within 30 days of its determination;
- 6. That in the event that the applications referred to in paragraph 3 above are approved, the respondents shall submit the necessary building plans to the Municipality within 30 days of the Municipality's final determination of the respondents' applications;
- 7. That the respondents shall submit any further information requested by the Municipality in respect of the building-plan application within 30 days; and
- 8. That in the event that such building plans are approved, the respondents shall demolish within 50 days of such approval any and all of the structures that are not approved. If the respondent fails to so demolish the un-approved portions of the structures, the Municipality is authorised return to court for an order to demolish the unlawful buildings on the property, to remove the material of which such buildings consist and otherwise clean up such site, with the assistance of the Sheriff is so required, and to recover the costs from the respondents;
- 9. That in the event that the respondent fails to submit the applications referred to in paragraph 3 or paragraph 6 above, the Municipality will be entitled to return to court for an order to demolish the unlawful buildings on the property, to remove the material of which such buildings consist and otherwise clean up such site, with the assistance of the Sheriff if so required, and to recover the costs from the respondent;
- 10. That the respondents shall pay the costs on an attorney and client scale.

+ considered at appeal evidence

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
 WESTERN CAPE DIVISION
 CAPE TOWN
 BY ORDER OF THE COURT
 Private Bag 19024, Cape Town 8001

2021-01-14

COURT REGISTRAR
 42 Fairbridge, Gertheim Bekker
 CAPE TOWN

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA
 WESTERN CAPE DIVISION,
 1242 CAPE TOWN

lg

amexwe 8113

TP-A Theart
(Suld merke)

A Conradie

From: Danie & Anneléne Viljoen <
 Sent: Thursday, 15 July 2021 14:32
 To: A Conradie
 Subject: FW: Pearly Beach Oord - Hersoneering van erf 2099

Ons Danie & Anneléne Viljoen eienaar van Elfstraat 30 Pearly Beach Oord maak beswaar teen die aansoek vir hersoneering van erf 2099 binne die PB Oord.

Redes vir beswaarmaking:

1. Slegs die 5 klein chalets was destyds met hul voetspoor van 33vkt/m as sone 1 goedgekeur by ontstaan van die PB Oord. Die bedoeling was dat dit so moet bly want die Oord was In totaal Sone 2 met gemeenskaplike area's (Sone 3) om digtheid te verbeter.
2. Die eienaar van erf 2099 het aan die HEV belowe dat die 5 chalets nie bedryf sal word as verhuring aan dagbesoekers (korttermyn)nie. Die veranderde soneering aansoek nou maak die deur oop dat die eienaar die 5 chalets en moontlike nuwe uitbreiding op erf 2099 kan verhuur aan dagbesoekers.(Sone 1). Erf 2099 was destyds op die nippertjie onttrek om oorgedra te word na die HEV en het as gemeenskaplike area (sone 3) in privaat besit gebly. Dit versterk die vermoede nou dat toekomstige uitbreiding wel beplan was maar nie met die HEV bespreek was nie.
3. Die Oord se karakter gaan totaal verander indien punt 2 gaan plaasvind en die lede wat in die Oord gekoop het was nie van dit bewus nie en dit sou n rol gespeel het by neem van eienaarskap.

Dankie

Danie Viljoen

Virus-free. www.avast.com

FILE NO: EL 2099- GPB
SCAN NO: 13
COLLABORATOR NO: 1560363

15 JUL 2021

TP



Pearly Beach Oord

Dear Alida

**Overstrand municipality Erf 2099, Melkhoutstreet, Pearly Beach.
Application for rezoning, Amendment of Condition of Approval and Approved Site Development plan and determination of an Administrative Penalty.**

Thank you for your communication of 10 June 2021.

As requested, your email was circulated to all the home owners and should you need to see copies of "send" reports, this can be made available to you.

As the Pearly Beach Home Owners representatives, the committee would like to bring the following **Approval Conditions** under your attention from our side as the PB HOA Committee:-

- All new alterations, changes, improvements of even additions made to any of the current bungalow structures on Erf 2099 must be submitted to the Pearly Beach Home Owners Association for consideration and supported by the PBHOA before and building plans are submitted to the municipality for approval.
- The settlement agreement reached during the arbitration process of 16 September 2015 has provided PSP with the allowance of only paying a 2.5 times (or 50%) availability fee applicable to Erf 2099 with effect from 01 September 2015 for the 5 bungalow units. It has to be noted that this settlement agreement was reached based on the maximum surface (footprint) of 33sqm per unit (as was originally erected). In the matter where the rezoning application is approved to 110sqm and PSP wants to take up the increased rights of 70% of the increased surface (110 sqm footprint) it will be contradictory to the current settlement agreement. In such case a new agreement will have to be negotiated between PSP and the PB HOA BEFORE support for such building plans and or further additions can be supported by the PB HOA.
- Current new additions already completed for which there are no approved building plans in existence must be submitted to the local authority for approval. Copies of the approved building plans must be submitted and made available to the PBHOA offices for record purposes.

Thank you for your favourable consideration of the above. We look forward to hearing from you at your earliest convenience as to when this matter will be concluded as we would like to keep our home owners informed.

Yours faithfully

VICUS VAN DER MERWE (Cell: 083 324 7640)

CHAIRMAN

Pearly Beach Home Owners Association

Afsaal Street

Pearly Beach

14 JUL 2021

Pearly Beach Strandoord / Resort

Huiseienaarsvereniging / Home Owners Association

Afsaalstraat, Pearly Beach • Posbus 5, Pearly Beach, 7221 • Tel / Faks: 026 361-9796 • E-pos: pearlyoord@gmail.com

A Conradie

From: Pieter Du Toit <pieter@du-toit.co.za>
Sent: Tuesday, 13 July 2021 10:31
To: A Conradie
Cc: Patrys (h)
Subject: Pearly Beach Resort Erf 2099 - Amendment of Condition of Approval and Approved Site Development Plan

Dear Alida

The municipality's written communication dated 10 June 2021 and received by us homeowners distributed to us by email dated 29 June 2021 has reference.

Myself (Pieter Joubert du Toit) and my wife (Miemie Cornelia du Toit), joint owners of 57 Melkhout Street, Pearly Beach Resort (Plot No: 2516), wishes to submit the following objections (submission deadline date 16 July 2021) to the said application of PSP properties:

- There was only a footprint of 33sqm per bungalow unit (x5 units) authorised by the Minister. Should PSP want to enlarge this footprint to 110sqm the municipality should acknowledge the Minister in this regard again – the application cannot be approved without the Minister's involvement.
- By approving the enlarged footprint the principle of build first and then get approval is created by our Municipality – and although it being applied in the past it is an option that home owners should not be allowed to exercise.
- Should the enlarged footprint of the bungalows be allowed PSP will be able to make further alterations and additions to the full extent of the 70% building of plot size regulations applicable to the Pearly Beach Resort.
- Why the municipality have not "forced" PSP to apply for the subdivision of Plot 2099 boggles our minds – how can 5 properties (buildings) be standing on one plot, each having its own service points and getting serviced individually?
- The alterations and additions made to the bungalows was done illegally – PSP is now grasping at straws to get this legalised before the court order has to be fulfilled.
- Should the municipality still decide to grant PSP's application for the enlarged footprint this should be subject to the submission of approved plans as per our resort's aesthetic and building regulations. Any current additions or alterations not fulfilling with the building regulations of the Resort should be complied with. This all should be subject to a specific but reasonable timeframe and if not complied with the alterations and additions should be demolished as per court order.

We as owners and complying residents within the parameters of the Pearly Beach Resort falling under the Gansbaai Municipality is opposed to the approval of the said application and trust that our objections will be reviewed in the spirit of what is prescribed in Municipality laws, by laws and building regulations.

Yours sincerely





Annexure F/111

TP - A Theart
(Suid merwe)6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:planactive@hermanus.co.za
Website: www.planactive.co.zaTOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS

Our reference: PA21026

6 August 2021

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
PO BOX 20
HERMANUS
7200

For attention: Mr. S.W. van der Merwe

Sir

FILE NO: EL 2099 - GPB ✓
SCAN NO: GPB 2099
COLLABORATOR NO: 1569532

COMMENTS ON THE OBJECTIONS RECEIVED:ERF 2099 PEARLY BEACH:APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF APPROVAL,
AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND THE DETERMINATION
OF AN ADMINISTRATIVE PENALTY

Your letter dated 23 July 2021 with the objections attached thereto refer. Our comments on the objections received are as follow:

- We take cognisance of the fact that a previous approval limited the size of the footprints to 33m² as stated by the objector. We are however applying to increase the footprint size to make provision for the existing chalets that already have an increased footprint than the prescribed 33m² to a maximum footprint of 110m² each, to make provision for possible future extensions, should the need arise. The number of chalets established on Erf 2099 Pearly Beach will remain 5 and the number of chalets will not be increased. Subsequently the density of the site will remain the same.
- The application constitutes the change of zoning of a portion of the area that surrounds the chalets from Open Space Zone 3 to Resort Zone 1. The chalets had a zoning of Resort Zone 1 and it is proposed that the area of the footprint zonings be increased. It should be noted

Page 1

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340John Mc Lachlan: Ndtip (Town Planning) Tech Witswatersrand; MSAPI No. 10908; SACPLAN Tch.Pln B/8250/2014
Paulline Spronk: B (Soc Sci) US, BA Hon (UNISA)
Meriké Lenn: B Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009
Darrin Adams: BTech (Town and Regional Planning) CPUT; SACPLAN Pr.Pln A/3002/2021

06 AUG 2021

that the same zoning, Resort Zone 1 will be retained and that it would be increased. The land use will therefore remain the same.

- In terms of the Resort Zone 1 zoning the chalets may only be used for holiday accommodation and this has always been the case. Subsequently the chalets may only be used as per the definition of "holiday accommodation". Long term rental of the chalets is not permitted under the mentioned zoning.
- The objection pertaining to the transfer of Erf 2099 Pearly Beach to the Homeowners Association has been resolved as per the letter from MTB Attorneys dated 14 July 2020 that reads as follow:

"There is / was also an issue of whether the private open space zoned on Erf 2099 which surrounds the chalets zoning which totals $5 \times 110\text{m}^2 = 550 \text{ m}^2$ in size, is for the exclusive use of the 5 chalets, as PSP claims. Our client previously held the view that it is similar to the other open spaces in the resort, for the benefit of all members, and the only reason why it was not transferred from the developer PSP to the HOA with the other open spaces, was because it was not possible to transfer only the private open space zoned area of Erf 2099, without the 5 Chalets belonging to PSP. The committee of the HOA, will no longer dispute PSP's claim in this regard, which we trust should resolve that issue insofar as it may still be relevant."

Please refer to a copy of this letter that we have attached as Annexure A.

- The proposed application to increase the 33m^2 footprint size as prescribed in a former approval will make provision for the submission of the as-built building plans for approval by the Overstrand Municipality. It will also make provision for an owner to later increase the footprint of the chalets, if the need arises. The chalets will be utilised as holiday accommodation as per the definition, as it was intended for, thus staying in line with the resort character. The possibility to increase the footprint of the chalets will also be beneficial to the resort as the value of the property would be increased.
- The chalets will be single storey and in line with the current architectural guidelines applicable to the Pearly Beach Resort, as stated in our motivation report. Future building plans will be presented to the Pearly Beach Homeowner's Association for consideration.

- Please take note that as built plans of the 5 chalets have already been drawn and approved by the Pearly Beach Homeowner's Association on 14 July 2015. Please refer to the stamps on the respective building plans that accompanied our application. These plans were submitted to the Overstrand Municipality at the time but could not have been approved, due to the fact that the chalets were limited to 33m² and the footprints of the existing chalets exceeded the prescribed footprint size. The process of the approval of the building plans can commence after the application at hand has been approved. The Pearly Beach Homeowner's Association will be supplied with copies of the approved building plans for their records.
- The payment of an availability fee for the chalets has been dealt with by means of arbitration and with reference to a Court Confirmation it has been decided that 2.5 times the availability fee is payable. The size of the chalets has not increased since the Court Confirmation. It should also be noted that the number of chalets will not increase. Subsequently it is the owner's opinion that no additional availability fees will be payable and that the Court Confirmation stands. Please refer to the Court's Decision that we have enclosed for easy reference as Annexure B.
- Since the origin approval was obtained up till now, Planning Legislation has changed. Town Planning application as listed in Section 16 of the Overstrand Municipality Bylaw on Municipal Land Use Planning are dealt with by the Overstrand Municipality and does not require the input from the Department of Environmental Affairs and Development Planning, being the former decision maker.
- The subject property and the resort have a long history with reference to structures that were constructed without any building plan approvals. All the owners rectified their individual properties and obtained the required building plan approvals as per the former conditions of approval. The owner of Erf 2099 Pearly Beach did the same in 2015 by means of building plan submission that could however not be approved due to the fact that the footprints exceeded the 33m² imposed as a condition of approval. The Court ruled that the owner must rectify the matter and submit an application within a set time limit that was subsequently done. It cannot be argued that this is a case of build first and obtain approvals later. This application must be dealt with on its own merit and also taking the history of the site and the resort development into consideration.
- Erf 2099 Pearly Beach has a split zoning that is Open Space Zone 3 and Resort Zone 1. Erf 2099 Pearly Beach is a single erf on which 5 chalets are established and does not consist of 5 resort erven within the boundaries of Erf 2099 Pearly Beach. The 70% coverage applicable

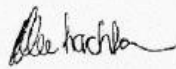
to the formerly approved Resort Zone 2 erven, now Resort Zone, with a consent use for holiday housing, does not apply to erf 2099 Pearly Beach. Erf 2099 Pearly Beach is 3300m² in extent.

The current total footprint of the 5 chalets is ±275.57m² and should the extension of the footprints be approved as such in its current state, the coverage will be ±8.35%. Should the Overstrand Municipality support and approve a footprint of each chalet up to 110m², the total coverage will be ±16.67%. Respectively a total of ±3024.43m² or ±2750m² will remain private open space depending on the municipality's decision.

- The increase of the footprints of the chalets will be beneficial to both the owner and the resort should the owner decide to extend or upgrade the chalets. It also makes provision for opportunities to possibly create 5 chalets of better quality and size within the proposed size limit providing more exclusive holiday accommodation.

With reference to our comments above is it clear that the proposed application for a rezoning, amendment of a condition of approval, amendment of an approved site development plan and the determination of an administrative penalty has merit and can be supported. We trust that you will find our comments on the objections received in order and look forward to a favourable outcome of the application.

Yours faithfully



John Mc Lachlan

5/11

ANNEXURE A



Attorneys, Notaries & Conveyancers • Prokureurs, Notarisse & Transportbesorgers

T (023) 348 6690 • F (023) 342 8131 • www.mtb.co.za
Kerkstraaat 66 Church Street, Worcester, 6850 • Postbus / PO Box 7 Worcester 6849 • Doos 2 Worcester

FAIRBRIDGES WERTHEIM BECKER ATTORNEYS
Attention: **DEIRDRE OLIVIER**

E-MAIL: dolivier@fairbridges.co.za
CC: pearlyoord@gmail.com

URGENT

Ons verw.
Our Ref. **HFV/mv/OP0253**

U Verv
Your
reference **DO/aa/OVE4/0148**

Datum /
Date **14 July 2020**

Dear Sir / Madam

PEARLY BEACH HOLIDAY RESORT HOA / OVERSTRAND MUNICIPALITY

We refer to the above matter. Writer phoned your offices and cell phone early today but you were not available, and trust that this communication shall be sufficient.

We now had the opportunity to consult with both the Resort Manager and the Chairman of the Home Owners Association ("HOA") of our client.

Both the current serving Resort Manager and Chairman replaced their predecessors more than a year ago (Ben Gericke and Chairman, Martin Groenewald respectively) and given the Covid-19 lockdowns, writer only formally met with both of them now for the first time.

In recent weeks, Mr. Koekemoer of the Respondent, approached our clients to discuss *inter alia* the 5 chalets and the extent to which our client can accommodate and cooperate with PSP Eiendomme CC ("PSP") for the approval of building plans / legalization of the 5 chalets. (also referred to in correspondents as the 5 bungalows)

This meeting was productive and our client is in principle willing to cooperate with both your client and with PSP to have the structures and additions thereto on Erf 2099 approved insofar as it complies with the standards imposed on other property owners in the resort.

MULLER TERBLANCHE & BEYERS INGELYF / INCORPORATED

• Reg Nr / Reg No 1989/022287/21 • BTW / VAT Reg no 4320190772 • BEE Level 4 Contributor

Direktore / Directors:
WG Robertson (BA LLB) • AA Strydom (B Jur B Proc) • HF Venter (B Com LLB)

Kon-Executive Director / Nie-uitvoerende Direkteur:
DR Henney (B Proc Dip Constitutional Legislation, Dip Project Management)

Bygestaan deur / Assisted by:
H du Toit (BA LLB) • M. De Vries (LLB) • MR Phillips (LLB)

Kandidaatprokureurs / Candidate Attorneys:
GS Reddie • M Carstens (B Com LLB) • RD Cupido (LLB) • J Naude (LLB)

member of
phatshoanehenney
GROUP OF ASSOCIATED LAW FIRMS

2019/1

USE OF PRIVATE OPEN SPACE AREA ON ERF 2099

There is / was also an issue of whether the *private open space* zoned on Erf 2099 which surrounds the chalets zoning which totals $5 \times 110 \text{ m}^2 = 550 \text{ m}^2$ in size, is for the exclusive use of the 5 chalets, as PSP claims.

Our client previously held the view that it is similar to the other open spaces in the resort, for the benefit of all members, and the only reason why it was not transferred from the developer PSP to the HOA with the other open spaces, was because it was not possible to transfer only the private open space zoned area of Erf 2099, without the 5 Chalets belonging to PSP.

The committee of the HOA, will no longer dispute PSP's claim in this regard, which we trust should resolve that issue insofar as it may still be relevant.

SIZE OF FOOTPRINTS / STRUCTURES of

Historically, our client objected to extensions beyond the original 33 m^2 structures on the larger 110 m^2 footprint of each chalet.

Our client is further now willing to accommodate PSP by giving its consent and building plan approvals for additions to the original 33 m^2 structures on the 110 m^2 "erven". (But not on the private open space portion of Erf 2099)

These approvals must be obtained by submission of plans for approval, similar to what any other owner of an Erf in the development must do who wish to build a structure or add to an existing structure. PSP can expect similar treatment from our client, as any other owner of an Erf.

Our client is however not mandated to give permission to any re-zoning or amendments to the Site Development Plan. Should there be such a request, our client and its members will give consideration thereto.

FURTHER STEPS REGARDING CHALETS

In light of the good relationship which developed between our client, PSP and Mr. Koekemoer, as well as the prospect of better cooperation in resolving issues than in the past, our client is reluctant to incur further costs and spend time to assist your client with the pending litigation.

Our firm has also been instructed to minimize our further involvement to the absolute minimum.

Our client will not be playing an active role in participating in the process insofar it is not absolutely necessary.

Our client will abide by whatever the Court may rule on the matter, and cooperate where necessary in order to resolve the issues in the event of an amicable settlement of issues between the parties to the litigation.

Our client will further have no objection to any amicable settlement between your client and the Respondents, provided that the rights and zoning of the property in the resort is not affected, and that our client will have the opportunity to sign off on the building plans of the chalets, as is done in normal process of building plan approvals in the resort.

We wish to reiterate our client's intention not to unreasonably withhold any approval of the chalet structures, and our client is in favour of giving PSP the opportunity of submitting plans for approval, prior to enforcing demolition of any existing structures on Erf 2099.

YOUR REQUEST FOR CORRESPONDENCE

Prior to our consultation with our client's representatives, you requested for copies of letters sent to your client by our client between 2014/2015, which you were unable to acquire from your client, given the COVID-19 lockdown situation at the Municipal offices.

Although our client brought a number of files and records to consultation, the specific communication we understand you requested, was not included in what we had available. We trust that you have acquired the necessary from your client in the meantime.

If it cannot be found, we can again ask our client if you provide specifics of exactly what our client's resort manager must search for, with reference to dates and descriptions.

Yours faithfully
MULLER TERBLANCHE & BEYERS



HF VERWOERD
hendrik@mtb.co.za

ANNEXURE B

IN DIE ARBITRATRASIE VOOR OUD-REGTER GRIESEL

In die saak tussen:

PSP EIENDOMME BK (PSP)

Eiser

En

DIE VOORSITTER, BESTUURSKOMITEE, PEARLY BEACH

Eerste Verweerder

STRANDOORD ("DIE VOORSITTER")

PEARLY BEACH STRANDOORD HUISEIENAARS

Tweede Verweerder

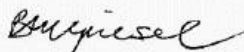
VEREENIGING (PBHEV)

SKIKKINGSOOREENKOMS

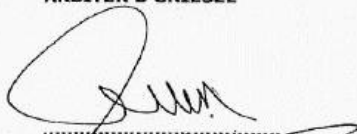
DIE PARTYE KOM OOREEN SOOS VOLG:

1. Die Eiser sal R273,880.22, ten opsigte van die uitstaande beskikbaarheidsfooi aanslag tot 31 Augustus 2015, aan die Tweede Verweerder betaal, op die basis dat erf 2099 se beskikbaarheidsfooi aanslag terugwerkend halveer word;
2. Vanaf 1 September 2015 sal erf 2099 'n 2,5 maal beskikbaarheidsfooi betaal;
3. Die Tweede Verweerder sal die Eiser ondersteun met enige uitsettingsaksies wat Eiser teen inwoners van sy eiendomme in die Oord wat agterstallig is met hulle betalings uit te sit, op die basis dat die Eiser nie geldelike bydraes daartoe sal maak nie;

4. Die Eiser is nie aanspreeklik vir betalings van beskikbaarheidsfooie en / of heffings op onverbeterde eiendomme tot tyd en wyl die dienste ten opsigte daarvan aan huise gekoppel word;
5. Die Eiser onderneem om die onverkoopte eiendomme ywerig te bemark;
6. Klousule 15.1 van die Konstitusie bly in stand soos voor die wysiging daarvan;
7. Die nuwe Konstitusie bly verder van krag;
8. Elke party betaal sy eie gedingskoste, wat die helfde van die arbitrasie koste insluit.



.....
ARBITER B GRIESEL



.....
C F HAASBRÖEK
Eiser se Prokureur
Datum:

16 September 2015



.....
H F VERWOERD
Verweerders se Prokureur
Datum: 16 September 2015

Annexure G1/3

Verwysing
Reference E17/2/23/AP6/ErF 1892, Pearly Beach
Isicathiso

Navrae
Enquiries B van Zyl
Imibuto

Detum
Date 1 & 16 2006
Umqhla



Departement van Omgewingsake en Ontwikkelingsbeplanning
Department of Environmental Affairs and Development Planning
ISebe leMicimbi yeNdalo esiNgqongileyo noCwangciso loPhuhliso

Pearly Beach Ratepayers' Association
P O Box 527
GANSBAAI
7220

[Same letter to all
appellants]

775
Sir

OVERSTRAND MUNICIPALITY: APPEALS: PROPOSED REZONING AND SUBDIVISION: PORTION OF ERF 1892, PEARLY BEACH (PEARLY BEACH CARAVAN PARK) AND REMAINDER OF FARM KLEYN HAGEL KRAAL NO 321

1. Your letter of 2 September 2002 has reference.
2. The Competent Authority for the administration of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) has, in terms of sections 42 and 44 of said Ordinance taken the following decision with regard to the appeal lodged against the municipality's approval of the subdivision of the Remainder of the Farm Kleyn Hagel Kraal No 321, the subdivision of Erf 1892 and the rezoning of the subdivided portions of the Farm Kleyn Hagel Kraal No 321 and Erf 1892, Pearly Beach from Agriculture I and Resort Zone I to Subdivisional Area:
 - 2.1 The appeal is **upheld in part** (the subdivision of the Remainder of the Farm Kleyn Hagel Kraal No 321 (the portion to the north of Erf 1892 is not approved). The following additional conditions are imposed (over and above the conditions imposed by the Overstrand Municipality and the former Chief Directorate: Environmental Affairs):
 - 2.1.1 That the number of Resort Zone units be confined to the units depicted in Plan No 20 (Annexure I) to the south of the power line, and with the exclusion of sites N15; N17; N19; N25; N27; N29; O15 - O20; O25 - O30. See Annexure I. Erven that have been developed be allocated the zoning of Resort Zone II while erven that have not been developed, as indicated in yellow on Annexure I, will retain their Resort Zone I status (and can only therefore be utilised for short term caravanning and camping purposes).

Umhlalagobu, Dorpsstraat 1
Private Bag X9085 Kaapstad 8000

Utilitas Building, 1 Dorp Street
Private Bag X9086 Cape Town 8000

Tel No.: (021) 483-4033
Fax No.: (021) 483-3098
Ifakst:

12

9/19

- 2.1.2 That a site development plan be drawn up for the subject property, after consensus is reached with the municipality on the exact use and extent of every section of the property. After approval by the municipality of the site development plan, it is to become the blueprint of the final development to take place in this area.
- 2.1.3 That the use of the two parking areas be confined to parking purposes only.
- 2.1.4 That only the footprints of the five chalets (indicated on R5 and R6 on Annexure I) be rezoned, and that the zoning be Resort Zone I.
- 2.1.5 That the future of the uncompleted hall should be determined by the municipality and the applicants (to legalise the situation). The owners should either submit building plans for the abovementioned hall, or demolish it.
- 2.1.6 The future of the industrial site should be discussed between PSP Properties, the camping committee and the municipality. A decision should be reached on what activities are to be permitted on the site. If the intention is to store and maintain maintenance equipment for the area, a decision should be taken as to whom should accept responsibility and ownership. The correct zoning of the site should also be decided upon. No other activities than that of warehouse will be permitted on the property.
- 2.1.7 No camping shall be allowed on the site presently indicated for camping purposes (R7 on Annexure I). The zoning of the erf should be changed to Open Space II. A decision should be reached for a suitable use for this site, e.g. a children's playground.
- 2.1.8 The main road on the southern side of the caravan park shall be tarred by the applicant and the other roads covered with gravel. Street lighting and fire hydrants shall be installed at strategic places (according to municipal standards) by the applicant.
- 2.1.9 A specific date should be set by the municipality, at which time all existing structures should conform to the parameters set up for the area.
- 2.1.10 The municipality, together with PSP Properties and the camping committee should consider the relocation of the occupants of Erf D19 (Annexure B) and Erf N17 (Annexure I), whose erven are to fall away. Consideration should be given to relocate the occupants to two of the erven indicated in yellow on Annexure I. Should such relocation be viable, the responsibility of the relocation costs should be determined by the municipality, PSP Properties and the camping committee. Should the relocation prove successful, the applicant must apply to this Department for the rezoning of the relevant two erven from Resort Zone I to Resort Zone II (i.e. the amendment of the conditions of approval).



13

3
10/19

- 2.1.11 The Monitoring Committee, previously appointed to oversee the process up to the present, should not be disbanded but should meet annually to monitor compliance with the Environmental Management Programme as stipulated in the ROD. The committee should report back to the municipality. This should continue until the municipality expresses its satisfaction at the state of the development.

- 2.1.12 The municipality should also, in terms of section 39 of LUPO, ensure that the developer complies with all the conditions associated with this approval for the resort development of the property in question.

Yours faithfully

HEAD OF DEPARTMENT

Aimee H

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF
APPROVAL & APPROVED SITE DEVELOPMENT PLAN & DETERMINATION OF
ADMINISTRATIVE PENALTY: ERF 2099, PEARLY BEACH**

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

Conditions

1. that the Department Engineering Services has No Comment.

pp. M. Lodge
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

29.06.2021
DATE

Annexure I, 2



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

04 August 2021

OVERSTRAND MUNICIPALITY
ATTENTION: MARILZE MILLER

Our reference: WWIP_WPB+2567_21
Your Reference: ERF 2099 GPB
Enquiries: Wayleave Office Southern Region
Tel: +27 41 407 8226
Email: WayleavesSR@telkom.co.za

SERVICES ARE NOT AFFECTED

RE: ERF2099, MELKHOUT STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF APPROVAL AND APPROVED
SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS
PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF PSP EINDOMME CC.

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

- Openserve services **will not be affected**.
- This approval has a validity period of 12 months. If your proposed services are not installed before the 12 months period has expired, a new approval must be obtained from this Company
- Any deviation from the original proposal should be brought to my notice prior to undertaking, please.

Yours faithfully

Sizwe Nyengane

A handwritten signature in black ink, appearing to be "Sizwe Nyengane", written over a horizontal line.

On Behalf of Selwyn Bowers
(Operations Manager – Wayleaves)

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

Annexure J1/3



Attorneys, Notaries & Conveyancers • Prokureurs, Notarisse & Transportbesorgers

T. (023) 348 6000 • F. (023) 342 8131 • www.mtb.co.za
Kerkstraat 66 Church Street, Worcester, 6650 • Postbus / PO Box 7 Worcester 6849 • Dacex 2 Worcester

FAIRBRIDGES WERTHEIM BECKER ATTORNEYS
Attention: DEIRDRE OLIVIER

E-MAIL: dolivier@fairbridges.co.za
CC: pearlyoord@gmail.com

URGENT

Ons verw.
Our Ref. **HFV/mv/OP0253**

U Verw
Your
reference: **DO/aa/OVE4/0148**

Datum /
Date **14 July 2020**

Dear Sir / Madam

PEARLY BEACH HOLIDAY RESORT HOA / OVERSTRAND MUNICIPALITY

We refer to the above matter. Writer phoned your offices and cell phone early today but you were not available, and trust that this communication shall be sufficient.

We now had the opportunity to consult with both the Resort Manager and the Chairman of the Home Owners Association ("HOA") of our client.

Both the current serving Resort Manager and Chairman replaced their predecessors more than a year ago (Ben Gericke and Chairman, Martin Groenewald respectively) and given the Covid-19 lockdowns, writer only formally met with both of them now for the first time.

In recent weeks, Mr. Koekemoer of the Respondent, approached our clients to discuss *inter alia* the 5 chalets and the extent to which our client can accommodate and cooperate with PSP Eiendomme CC ("PSP") for the approval of building plans / legalization of the 5 chalets. (also referred to in correspondents as the 5 bungalows)

This meeting was productive and our client is in principle willing to cooperate with both your client and with PSP to have the structures and additions thereto on Erf 2099 approved insofar as it complies with the standards imposed on other property owners in the resort.

MULLER TERBLANCHE & BEYERS INGELYF / INCORPORATED
 • Reg No / Reg No 1999/02228721 • BTW / VAT Reg no 4320190772 • BEE Level 4 Contributor

Direktore / Directors:
 WG Robertson (BA LLB) • AA Snydam (B for B Proc) • HF Verweerd (B Com LLB)

Non-Executive Director / Nie-uitvoerende Direkteur:
 DR Henney (B Proc Dip Constatuone/Ligging, Dip Project Management)

Bygestaan deur / Assisted by:
 M du Toit (BA LLB) • MC De Vries (LLB) • NR Phillips (LLB)

Kandidateprokureurs / Candidate Attorneys:
 GS Radebe • M Carrara (B Com LLB) • RD Cupido (LLB) • J Naudé (LLB)

member of
phatshoanehenney
 GROUP OF ASSOCIATED LAW FIRMS

2019 |

USE OF PRIVATE OPEN SPACE AREA ON ERF 2099

There is / was also an issue of whether the *private open space* zoned on Erf 2099 which surrounds the chalets zoning which totals $5 \times 110 \text{ m}^2 = 550 \text{ m}^2$ in size, is for the exclusive use of the 5 chalets, as PSP claims.

Our client previously held the view that it is similar to the other open spaces in the resort, for the benefit of all members, and the only reason why it was not transferred from the developer PSP to the HOA with the other open spaces, was because it was not possible to transfer only the private open space zoned area of Erf 2099, without the 5 Chalets belonging to PSP.

The committee of the HOA, will no longer dispute PSP's claim in this regard, which we trust should resolve that issue insofar as it may still be relevant.

SIZE OF FOOTPRINTS / STRUCTURES of

Historically, our client objected to extensions beyond the original 33 m^2 structures on the larger 110 m^2 footprint of each chalet.

Our client is further now willing to accommodate PSP by giving its consent and building plan approvals for additions to the original 33 m^2 structures on the 110 m^2 "erven". (But not on the private open space portion of Erf 2099)

These approvals must be obtained by submission of plans for approval, similar to what any other owner of an Erf in the development must do who wish to build a structure or add to an existing structure. PSP can expect similar treatment from our client, as any other owner of an Erf.

Our client is however not mandated to give permission to any re-zoning or amendments to the Site Development Plan. Should there be such a request, our client and its members will give consideration thereto.

FURTHER STEPS REGARDING CHALETS

In light of the good relationship which developed between our client, PSP and Mr. Koekemoer, as well as the prospect of better cooperation in resolving issues than in the past, our client is reluctant to incur further costs and spend time to assist your client with the pending litigation.

Our firm has also been instructed to minimize our further involvement to the absolute minimum.

Our client will not be playing an active role in participating in the process insofar it is not absolutely necessary.

Our client will abide by whatever the Court may rule on the matter, and cooperate where necessary in order to resolve the issues in the event of an amicable settlement of issues between the parties to the litigation.

Our client will further have no objection to any amicable settlement between your client and the Respondents, provided that the rights and zoning of the property in the resort is not affected, and that our client will have the opportunity to sign off on the building plans of the chalets, as is done in normal process of building plan approvals in the resort.

We wish to reiterate our client's intention not to unreasonably withhold any approval of the chalet structures, and our client is in favour of giving PSP the opportunity of submitting plans for approval, prior to enforcing demolition of any existing structures on Erf 2099.

YOUR REQUEST FOR CORRESPONDENCE

Prior to our consultation with our client's representatives, you requested for copies of letters sent to your client by our client between 2014/2015, which you were unable to acquire from your client, given the COVID-19 lockdown situation at the Municipal offices.

Although our client brought a number of files and records to consultation, the specific communication we understand you requested, was not included in what we had available. We trust that you have acquired the necessary from your client in the meantime.

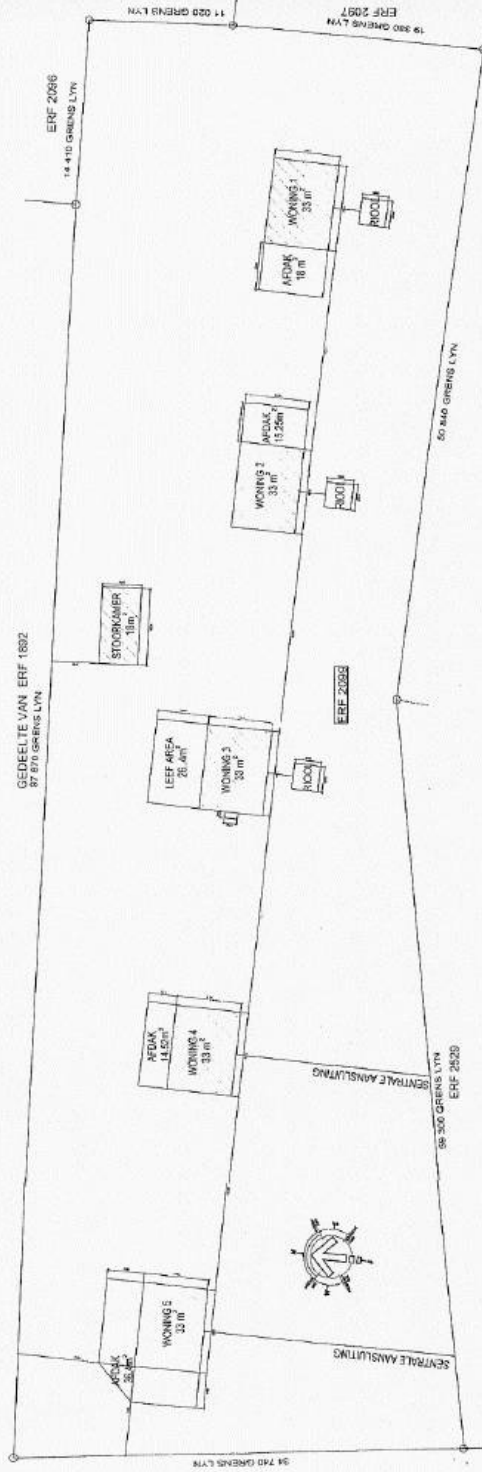
If it cannot be found, we can again ask our client if you provide specifics of exactly what our client's resort manager must search for, with reference to dates and descriptions.

Yours faithfully
MULLER TERBLANCHE & BEYERS



HF VERWOERD
hendrik@mtb.co.za

VOORGESTELDE REEDS GEBOUDE VAKANSIE WONINGS VIR
P.S.P EIENDOMME
OP ERF NO. 2099
PEARLY BEACH OORD



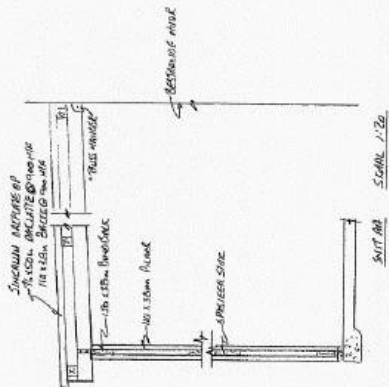
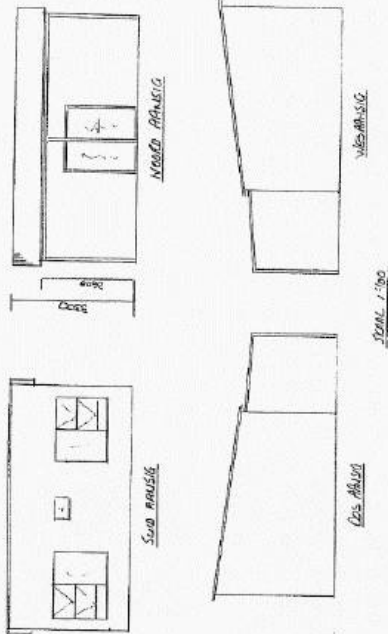
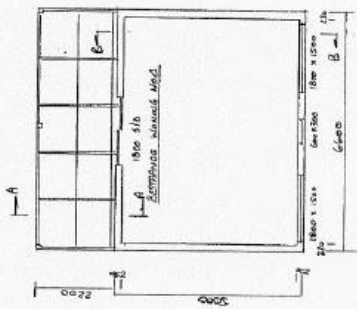
J.J. VAN DER NEST
 0824868580
 SACAP D2730

GETEKEN: *J.J. van der Nest*
 DATUM: 26.1.2015
 TEK. NO.: J.J. 4015

TERREIN PLAN
SKAAL 1:200

GETEKEN
 J.J. VAN DER NEST
 0824868580

Omara K116



Verreëde huis no. 1, 2, 3, 4 van 5

STENWERK:
Buite mure baksteen en "gebag"

DAK:
Big Six op 150 X 50 balie

VLOER:
75mm Betonvloer

AFDAK/AANBOUING:
Soos op plan

OPPERVLAK:
Bestaande woning: 135 m²
Aftak: 125 m²
Aanbouing: 1.100 m²
Plan no.: 5/6

ALGEMEEN
Alle mure en hoekes moet op sement uitgegiet word voor met slag begin. Voorwerk is af te gewalt met 300 mm boor. Voorwerk moet onder alle oopstelling in hoekes voorsien word. Kante bevestiging met vlakke skroefdele moet nie afgehoeg word by geteekte mure. ALLE BOUWERKE VOLGENS NATIONALE PROVINSIALE EN NEDERLANDSE WETGEWINGE. ALLE WERKE MOET VOLGENS NEDERLANDSE WETGEWINGE. ALLE WERKE MOET VOLGENS NEDERLANDSE WETGEWINGE.

GETEKEN: J. J. van der Voort
Boujaar: 1933
Kantoor: 1220
Datum: 1933

GETEKEN: J. J. van der Voort
NUM: NS PERITYBICHO STUDBOORD N.E.V.
DATUM: 1933



Enquiries / Navras: rdtckson/mc

File Ref. / Lêer Verw.: 15/3/10/2
Erf 2099, Pearly Beach Oord

Date / Datum: 11 Ma 2015

BOU AFDELING / BUILDING DEPARTMENT

GANSBAAI

GEREGISTREERDE POS:

PSP Eiendomme cc
Posbus 10
Pearly Beach
7221

Geagte Mnr Koekemoer

FINALE KENNISGEWING - INSAKE: ERF 2099, PEARLY BEACH OORD – ONGEMAGTIGDE STRUKTURE

Gedurende 'n roetine-inspeksie is daar gevind dat daar afdakke en ander aanbouings op bogenoemde perseel opgerig is sonder die nodige goedkeuring van die plaaslike owerheid.

U aandag word gevestig op die bepalings van artikel 4(1) en 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en regulasie A25(10) en (11) van die Nasionale Bouregulasies wat onderskeidelik soos volg lui:

- 4 (1) Niemand mag 'n struktuur ten opsigte waarvan planne en spesifikasies ingevolge hierdie Wet opgestel en voorgelê moet word sonder die voorafgaande skriftelike goedkeuring van die betrokke plaaslike bestuur oprig nie.
- 4(4) Iemand wat 'n gebou in stryd met die bepalings van subartikel (1) oprig, is aan 'n misdryf skuldig.
- A25(10) Indien 'n gebou, uitgesonderd 'n tydelike gebou, opgerig word sonder dat die skriftelike goedkeuring bedoel in artikel 4(1) van die Wet vooraf verkry is, moet die plaaslike bestuur aan die eienaar van die gebou 'n kennisgewing beteken waar hy gelas word om die skriftelike goedkeuring wat die Wet vereis, te verkry voor 'n datum wat in die kennisgewing gespesifiseer word.

A25(11) Indien 'n persoon wat versuim om te voldoen aan die bepalings van 'n kennisgewing in hierdie regulasie bedoel, is hi/ sy aan 'n misdryf skuldig.

U word met hierdie kennisgewing beveel om die ongemagtigde strukture op bogenoemde perseel onmiddellik te verwyder of alternatiewelik die nodige skriftelike aansoek vir die oprigting van strukture soos vereis in terme van bogenemde wetgewing by ondergetekende in te dien binne een en twintig (21) dae vanaf datum van hierdie kennisgewing.

.12

Tel: 028 3845321
Fax: 028 3848337
E-mail: rdtckson@overstrand.gov.za

PO Box 26 / Posbus 26
Gansbaai
7220

Geliewe kennis te neem dat die indiening van 'n bouplan nie vertolk moet word dat dit outomaties goedgekeur sal word nie. Wysigings aan die bouplan en veranderings aan die struktuur mag vereis word en sloping moet nie uitgeskakel word nie.

Indien u sou versuim om uitvoering aan bogenoemde vereistes te gee soos gespesifiseer, sal geregtelike stappe ingestel word ingevolge die bepalinge van artikel 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en Regulasie A25(11) van die Nasionale Bouregulasies.

U samewerking sal op prys gestel word.

Die uwe



nms J SIMSON
BESTUURDER: BOUDIENSTE



Enquiries / Navrae: rdlckson/mc

File Ref. / Lêer Verw.: 15/3/10/2
Erf 2099, Pearly Beach Oord

Date / Datum: 11 April 2015

BOU AFDELING / BUILDING DEPARTMENT

GANSBAAI

GEREGISTREERDE POS:

PSP Eiendomme cc
Posbus 10
Pearly Beach
7221

Geagte Mnr Koekemoer

FINALE KENNISGEWING - INSAKE: ERF 2099, PEARLY BEACH OORD – ONGEMAGTIGDE STRUKTURE

Gedurende 'n roetine-inspeksie is daar gevind dat daar afdakke en ander aanbouings op bogenoemde perseel opgerig is sonder die nodige goedkeuring van die plaaslike owerheid.

U aandag word gevestig op die bepalings van artikel 4(1) en 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en regulasie A25(10) en (11) van die Nasionale Bouregulasies wat onderskeidelik soos volg lui :

4 (1) Niemand mag 'n struktuur ten opsigte waarvan planne en spesifikasies ingevolge hierdie Wet opgestel en voorgelê moet word sonder die voorafgaande skriftelike goedkeuring van die betrokke plaaslike bestuur oprig nie.

4(4) Iemand wat 'n gebou in stryd met die bepalings van subartikel (1) oprig, is aan 'n misdryf skuldig.

A25(10) Indien 'n gebou, uitgesonderd 'n tydelike gebou, opgerig word sonder dat die skriftelike goedkeuring bedoel in artikel 4(1) van die Wet vooraf verkry is, moet die plaaslike bestuur aan die eienaar van die gebou 'n kennisgewing beteken waar hy gelas word om die skriftelike goedkeuring wat die Wet vereis, te verkry voor 'n datum wat in die kennisgewing gespesifiseer word.

A25(11) Indien 'n persoon wat versuim om te voldoen aan die bepalings van 'n kennisgewing in hierdie regulasie bedoel, is hy/sy aan 'n misdryf skuldig.

U word met hierdie kennisgewing beveel om die ongemagtigde strukture op bogenoemde perseel onmiddellik te verwyder of alternatiewelik die nodige skriftelike aansoek vir die oprigting van strukture soos vereis in terme van bogemelde wetgewing by ondergetekende in te dien binne een en twintig (21) dae vanaf datum van hierdie kennisgewing.

../2

Tel: 026 3848321
Fax: 026 3848337
E-mail: rdlckson@overstrand.gov.za


PO Box 26 / Posbus 26
Gansbaai
7220

Geliewe kennis te neem dat die indiening van 'n bouplan nie vertolk moet word dat dit outomaties goedgekeur sal word nie. Wysigings aan die bouplan en veranderings aan die struktuur mag vereis word en sloping moet nie uitgeskakel word nie.

Indien u sou versuim om uitvoering aan bogenoemde vereistes te gee soos gespesifiseer, sal geregtelike stappe ingestel word ingevolge die bepalings van artikel 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en Regulasie A25(11) van die Nasionale Bouregulasies.

U samewerking sal op prys gestel word.

Die uwe



nms J SIMSON
BESTUURDER: BOUDIENSTE



Enquiries / Navrae: rdickson/mc

File Ref. / Lêer Verw.: 15/3/10/2
Erf 2099, Pearly Beach Oord

Date / Datum: 8 August 2013

BOU AFDELING / BUILDING DEPARTMENT

GANSBAAI

GEREGISTREERDE POS:

PSP Eiendomme cc
Posbus 10
Pearly Beach
7221

Geagte Mnr Koekemoer

INSAKE: ERF 2099, PEARLY BEACH OORD – ONGEMAGTIGDE STRUKTURE

Gedurende 'n roetine-inspeksie is daar gevind dat u 'n struktuur op bogenoemde perseel opgerig het sonder die nodige goedkeuring van die plaaslike owerheid.

U aandag word gevestig op die bepalings van artikel 4(1) en 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en regulasie A25(10) en (11) van die Nasionale Bouregulasies wat onderskeidelik soos volg lui :

4 (1) Niemand mag 'n struktuur ten opsigte waarvan planne en spesifikasies ingevolge hierdie Wet opgestel en voorgelê moet word sonder die voorafgaande skriftelike goedkeuring van die betrokke plaaslike bestuur oprig nie.

4(4) Iemand wat 'n gebou in stryd met die bepalings van subartikel (1) oprig, is aan 'n misdryf skuldig.

A25(10) Indien 'n gebou, uitgesonderd 'n tydelike gebou, opgerig word sonder dat die skriftelike goedkeuring bedoel in artikel 4(1) van die Wet vooraf verkry is, moet die plaaslike bestuur aan die eienaar van die gebou 'n kennisgewing beteken waar hy gelas word om die skriftelike goedkeuring wat die Wet vereis, te verkry voor 'n datum wat in die kennisgewing gespesifiseer word.

A25(11) Indien 'n persoon wat versuim om te voldoen aan die bepalings van 'n kennisgewing in hierdie regulasie bedoel, is hy/sy aan 'n misdryf skuldig.

U word met hierdie kennisgewing beveel om die ongemagtigde strukture op bogenoemde perseel onmiddellik te verwyder of alternatiewelik die nodige skriftelike aansoek vir die oprigting van strukture soos vereis in terme van bogemelde wetgewing by ondergetekende in te dien binne een en twintig (21) dae vanaf datum van hierdie kennisgewing.

../2

Tel: 028 3848321
Fax: 028 3848337
E-mail: rdickson@overstrand.gov.za


PO Box 26 / Posbus 26
Gansbaai
7220

Geliewe kennis te neem dat die indiening van 'n bouplan nie vertolk moet word dat dit outomaties goedgekeur sal word nie. Wysigings aan die bouplan en veranderings aan die struktuur mag vereis word en slooping moet nie uitgeskakel word nie.

Indien u sou versuim om uitvoering aan bogenoemde vereistes te gee soos gespesifiseer, sal geregtelike stappe ingestel word ingevolge die bepalings van artikel 4(4) van die Wet op Boustandaarde (Wet 103 van 1977 soos gewysig) en Regulasie A25(11) van die Nasionale Bouregulasies.

U samewerking sal op prys gestel word.

Die uwe



nms J SIMSON
BESTUURDER: BOUDIENSTE

7/11

Navrae:
Enquiries: SW vd Merwe (Senior Town Planner)

Lêerwysing:
File Reference: 2099 GPB

Datum:
Date: 24 January 2017



TOWN PLANNING / STADSBEPLANNING
HERMANUS

Mr Jan Koekemoer
PSP Properties
PO Box 10
PEARLY BEACH
7221

REGISTERED MAIL

Dear Sir

ERF 2099, PEARLY BEACH HOLIDAY RESORT : OBJECTION TO COMPLIANCE NOTICE

Your objection in terms of Section 87 of the Overstrand Municipality Bylaw on Municipal Land Use Planning, 2016 dated 16 June 2016 against the compliance notice dated 15 June 2016 refers

The Municipal Manager on 8 December 2016 **dismissed** your objection in terms of Section 87 of the Overstrand Bylaw on Municipal Land Use Planning

The resolution is as follows:

RESOLVED:

1. *after having had regard to the content of the documents submitted the objection is dismissed. The notice of non-compliance must thus be adhered to.*

Your attention is hereby drawn to the Notice of Non-Compliance dated 15 June 2016 (attached for ease of reference), for adherence thereof **within 30 days** of receipt of this letter.

Yours faithfully

S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

Copies

The Chairperson, Pearly Beach Home Owners Association, PO Box 5, Pearly Beach, 7221
(email: pbgericke@gmail.co.za)

Senior Manager: Building Department – John Simson

Building Inspector: Russel Dickson

Senior Manager: Gansbaai Administration – Francois Myburgh

Tel: 028 313 8178
Fax: 028 313 2093
E-mail: atida@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200



Nawrae:
Enquiries: SW van der Merwe (Senior Town Planner)

Lêerwysing:
File Reference: 2099 GPBR

Datum:
Date: 15 June 2016

TOWN PLANNING / STADSBEPLANNING
HERMANUS

Mr Jan Koekemoer
PSP Properties
PO Box 10
PEARLY BEACH
7221

REGISTERED MAIL

Dear Sir

NOTICE OF NON-COMPLIANCE

UNAUTHORISED ADDITIONS, ERF 2099, PEARLY BEACH RESORT

This Municipality has reasonable grounds to suspect that you are guilty of the following offence in terms of Section 84 (1) (c) of the Overstrand Municipality By-Law on Municipal Land Use Planning.

Utilizing land in a manner other than prescribed by the Overstrand Municipality Zone Scheme without the approval of the Municipality as elaborated upon below:

Erf 2099, Pearly Beach Resort has a split zoning, namely Resort Zone: Holiday Resort (Resort Zone 1) in terms of the former Gansbaai Zoning Scheme Regulations and Open Space Zone III: Private Open Space purposes and contain 5 resort units that has been extended without the necessary approvals in terms of the National Building Regulations (NBR) and the Zoning Scheme Regulations since additions were constructed onto the Private Open Space portion of the subject property.

In terms of the conditions of approval the resort footprint is restricted to the existing building footprint whilst the approved Site Development Plan (SDP) indicates the resort footprint to have a combined extent of 550m². The SDP is thus in conflict with the conditions of approval. Following the meeting with you on 20 November 2015 as well as our meeting with the Resort Home Owners Association the matter was referred to Council's Legal Advisor for further direction since there is a discrepancy between the resort footprint as per the conditions of approval and the extent of the resort footprint as per the resort SDP. The discrepancy needs to be resolved prior to the finalization of the "as built" building plans in terms of the NBR. In order to resolve the aforementioned conflict you are hereby instructed to submit an application for amendment of the conditions of approval, namely condition 2.1.4 in order to ensure that the combined extent of the five resort footprints do not exceed 550m², thereby ensuring that the conditions of approval and the approved SDP correlate with each other.

Tel: 028 313 8179
Fax: 028 313 2093
E-mail: svdmerwe@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200

9/11

ADDENDUM B 2/2

Having had regard to the aforementioned you are hereby instructed in terms of the provisions of Section 85 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 to cease the unlawful utilization of land with immediate effect. You must submit an application for the amendment of the conditions of approval within 30 days from the registration date of this compliance notice.

You may in terms of Section 85 (6) of the By-Law object to this notice by submitting written representation to the Municipality within 30 (thirty) days of receipt of the notice in terms of Section 87 (1) of the Overstrand By-Law on Municipal Land Use Planning, 2016.

Kindly note that failure to comply with the above request may result in further action (legal or otherwise) being taken against you in terms of the provisions of Section 88 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016.

Yours faithfully



S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

Copies

The Chairperson, Pearly Beach Home Owners Association, PO Box 5, Pearly Beach, 7221
(email: pbgericke@gmail.co.za)
Senior Manager: Building Department – John Simson
Building Inspector: Russel Dickson
Senior Manager: Gansbaai Administration – Francois Myburgh

Tel: 028 313 8179
Fax: 028 313 2093
E-mail: svdmerwe@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200



Navrae:
Enquiries: SW van der Merwe (Senior Town Planner)

Lêervervysing:
File Reference: 2099 GPBR

Datum:
Date: 15 June 2016

**TOWN PLANNING / STADSBEPLANNING
HERMANUS**

Mr Jan Koekemoer
PSP Properties
PO Box 10
PEARLY BEACH
7221

REGISTERED MAIL

Dear Sir

NOTICE OF NON-COMPLIANCE

UNAUTHORISED ADDITIONS, ERF 2099, PEARLY BEACH RESORT

This Municipality has reasonable grounds to suspect that you are guilty of the following offence in terms of Section 84 (1) (c) of the Overstrand Municipality By-Law on Municipal Land Use Planning.

Utilizing land in a manner other than prescribed by the Overstrand Municipality Zone Scheme without the approval of the Municipality as elaborated upon below:

Erf 2099, Pearly Beach Resort has a split zoning, namely Resort Zone: Holiday Resort (Resort Zone 1) in terms of the former Gansbaai Zoning Scheme Regulations and Open Space Zone III: Private Open Space purposes and contain 5 resort units that has been extended without the necessary approvals in terms of the National Building Regulations (NBR) and the Zoning Scheme Regulations since additions were constructed onto the Private Open Space portion of the subject property.

In terms of the conditions of approval the resort footprint is restricted to the existing building footprint whilst the approved Site Development Plan (SDP) indicates the resort footprint to have a combined extent of 550m². The SDP is thus in conflict with the conditions of approval. Following the meeting with you on 20 November 2015 as well as our meeting with the Resort Home Owners Association the matter was referred to Council's Legal Advisor for further direction since there is a discrepancy between the resort footprint as per the conditions of approval and the extent of the resort footprint as per the resort SDP. The discrepancy needs to be resolved prior to the finalization of the "as built" building plans in terms of the NBR. In order to resolve the aforementioned conflict you are hereby instructed to submit an application for amendment of the conditions of approval, namely condition 2.1.4 in order to ensure that the combined extent of the five resort footprints do not exceed 550m², thereby ensuring that the conditions of approval and the approved SDP correlate with each other.

Tel: 028 313 8179
Fax: 028 313 2093
E-mail: svdmerwe@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200

Having had regard to the aforementioned you are hereby instructed in terms of the provisions of Section 85 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 to cease the unlawful utilization of land with immediate effect. You must submit an application for the amendment of the conditions of approval within 30 days from the registration date of this compliance notice.

You may in terms of Section 85 (6) of the By-Law object to this notice by submitting written representation to the Municipality within 30 (thirty) days of receipt of the notice in terms of Section 87 (1) of the Overstrand By-Law on Municipal Land Use Planning, 2016.

Kindly note that failure to comply with the above request may result in further action (legal or otherwise) being taken against you in terms of the provisions of Section 88 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016.

Yours faithfully



S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

Copies

The Chairperson, Pearly Beach Home Owners Association, PO Box 5, Pearly Beach, 7221
(email: pbgericke@omail.co.za)
Senior Manager: Building Department – John Simson
Building Inspector: Russel Dickson
Senior Manager: Gansbaai Administration – Francois Myburgh