Annexure F 1/20

Date: 8 December 2015

Ref: 9721

Your ref: 2228 (2962)

OVERSTRAND MUNISIPALITEIT
11 DEC 2015
OVERSTRAND MUNICIPALITY

TOMMY BRÜMMER
TOWN PLANNERS
7 WOODLANDS CLOSE PINELANDS 7405
T: 021 531 8435 F: 021 531 4520 E:info@tommybrummer.co.za

TP-A Theart (P Roux)

FILE NO: EL 2228-Herm
SCAN NO: 65
COLLABORATOR NO: 863091

Attention: Mr P. Roux

The Director: Infrastructure and Planning
Overstrand Municipality
PO Box 20
Hermanus
7200

Dear Mr Roux

COMMENTS ON OBJECTION: APPLICATION FOR REMOVAL OF RESTRICTIONS AND DEPARTURE: ERF 2228 HERMANUS, 71 TENTH STREET

Introduction

1. Your Department's letter dated 23rd November 2015 in the above regard, refers.

2. Application was made by *Tommy Brummer Town Planners* ('the Applicant') on behalf of *Onshelf Prop Eighty Seven (Pty) Ltd*, on 26th June 2015, for the following:

   - To delete / alter conditions of a servitude registered against the title deed of Erf 2228 Hermanus ('the property') in terms of Section 3 of the Removal of Restrictions Act, 1967 (Act 84 of 1967) to enable the erection of a second dwelling on the property; and

   - To depart from the provisions of the Overstrand Zoning Scheme Regulations in terms of Section 15 of the Land Use Planning Ordinance, 1985 (No. 15 of 1985) to permit setback departures to the existing dwelling on the property.

3. The above application was advertised in the Provincial Gazette on 9th October 2015, the Hermanus Times on the 8th and 15th October, and letters were served via registered mail on surrounding property owners on 7th October 2015. The closing date for comments was 20th November 2015.

4. An objection dated 20th November 2015 was received from *Reillys Attorneys, Notaries & Conveyancers* ("the Objector"), on behalf of *Mr Johannes Jacobus Marthinus van Zyl* - Erf 2226 Hermanus).

5. This letter serves as a comprehensive response to the issues that have been raised in the letter of objection.

6. Each objection raised will be addressed in the same order as they are set out in the objection.

Applicable Legislation

Objection

7. According to the Objector, the application was submitted in terms of the incorrect legislation. The Objector states that the application was submitted in October 2015 and, given that the promulgation of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) on 1 July 2015 effectively repealed the Removal of Restrictions Act, 1967 (Act 84 of 1967) ('RoRA'), the subject application could not and should not have been made in terms of RoRA.

Response

8. The Objector is **entirely incorrect** in his assumption that the application was only submitted in October 2015. The application was submitted by the Applicant and received by the Overstrand Municipality and the Department of Environmental Affairs & Development Planning on 26th June 2015 and 29th June 2015, respectively – see proof of submission thereof in **Annexure A**, attached.

9. On the date of submission of the Application the RoRA was still in force and the Spatial Planning and Land Use Management Act had not yet come into force.

10. We attach hereto a copy of a Circular (DEADP 0009/2015) from the Department of Environmental Affairs & Development Planning dated 9th July 2015 which sets out the procedures regarding the processing of applications in terms of applicable legislation pre-and post 1 July 2015; with reference to **Annexure B**, attached, paragraph 5.1 of the Circular reads as follows:

"5.1 All applications submitted in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967) ('RoRA') before the implementation of LUPA ... must be processed, advertised, assessed and decided upon in terms of the RoRA."

11. Further, we attach hereto the Proclamation by the Premier of the Western Cape which was published in the Provincial Gazette No. 7410 (dated 26th June 2015), in which he determined the commencement date of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) ('LUPA') to be on 1 July 2015 – see **Annexure C**, attached.

12. With reference to the above, it is clear that the subject application was made in June 2015, prior to the commencement of LUPA, and that according to the Provincial Circular, the application has been correctly submitted and is to be processed in terms of RoRA. The entire argument by the Objector that the application should be disregarded on the grounds of having been submitted in terms of the incorrect legislation, should thus be disregarded.

13. Accordingly, the objection of the Objector to the effect that the Application was submitted under the incorrect legislation has no basis and it to be disregarded.

Adjudication Criteria

Objection

14. The Objector is of the opinion that the Applicant failed to deal with the relevant considerations set out in law and that Section 42(1) of LUPA should have been addressed in the application.

Response

15. As has been addressed in paragraphs 7-10 above, the Objector is incorrect in stating that LUPA is the applicable legislation in terms of which this application should have been made and motivated. The applicable considerations as determined in LUPA and as referred to by the Objector in his letter, are thus not relevant to the subject application. Notwithstanding the above, the adjudication criteria set out in Section 2 of RoRA were comprehensively addressed in the application. For ease of reference, Section 2.(1)(a)(aa) of RoRA provides as follows:

"Whenever the Administrator of a province in which the land in question is situate, is satisfied that it is desirable to do so in the interest of the establishment or development of any township or in the interest of any area, whether it is situate in an urban area or not, or in the public interest; he may, subject to the provisions of this act, of his own accord or on application of any

person in terms of section 3, by notice in the Provincial Gazette of the province alter, suspend or remove, either permanently or for a period specified in such notice and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land by virtue of a restrictive condition or servitude registered against the title deed of the land;"

16. Paragraphs 20-27, below, will demonstrate that the abovementioned adjudication criteria set out in RoRA were comprehensively addressed in the application.

Section 25 of the Constitution and Compensation

Objection

17. The Objector complains that the Applicant has failed to comply with the provisions of Section 25 of the Constitution. As provided for in the Constitution, *"the Applicant has made no attempt or effort to offer the Objector's Client any compensation whatsoever for the deprivation of his property"*.

Response

18. The Constitution provides that –

25(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property; and

25(2) Property may be expropriated only in terms of law of general application—

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court

19. The approval of an application for the amendment or removal of a title deed condition or a servitude amounts, if anything, to a deprivation of property, rather than an expropriation.

20. Section 25(1) requires any deprivation of property must be subject to two conditions, namely –

- That the deprivation occurs in terms of a law of general application; and

- That the law of general application does not permit arbitrary deprivation of property.

21. The RoRA is a law of general application, as it applies to each and every application made in terms of its provisions and to all persons who make such applications. The RoRA applies across the entire Republic and does not discriminate on any basis against any person or class of persons. Accordingly, the first condition referred to in Section 25(1) is met.

22. The RoRA also does not allow for arbitrary deprivation of property. The conditions and requirements necessary for the approval of an application are clearly set out in paragraph 15 above and the Minister or the delegated authority is required to apply himself or herself to an assessment as to whether these conditions have been met. If so, the application may be approved.

23. Therefore, the RoRA does not allow arbitrary deprivations of property.

24. Even were it to be argued that an application under the RoRA amounts to an expropriation rather than a deprivation (which is denied) then, in any event, the conditions contained in Section 25(2) of the Constitution are met, as –

- The RoRA is a law of general application;
- The application is in the public interest, as demonstrated herein; and
- The RoRA makes provision for conditions to be imposed which would include the payment of compensation, if deemed appropriate.

25. We accordingly submit that, given the provisions of RoRA, which is the enabling legislation to deal with the alteration, suspension or removal of restrictive conditions of title and servitudes, the reference made to Section 25 of the Constitution is misguided and irrelevant in the given context.

Agreement

Objection

26. According to the Objector, the Applicant gave the impression in the application that agreement had previously been reached between the owners of Erven 2226 and 2228 insofar as the removal / amendment of the servitude was concerned; however, such impression was not true. Further, the Applicant is requesting the Provincial Government to rid it of an obligation that was imposed contractually.

Response

27. Contrary to the opinion of the Objector, we hereby confirm that an agreement was in fact concluded between the aforesaid owners on 12 December 2002 relating to the development of Erf 2228 in a manner which would have offended against the provisions of the servitude registered over that property in favour of Erf 2226.

28. It is strange that the Objector denies this, as he was instrumental in drawing up the agreement. Attached hereto as **Annexure D** are the first and last pages of the document, signed by the parties, evidencing the agreement, which thereafter lapsed as a result of it not being implemented within the prescribed period.

29. Therefore, the objector is wrong in stating that an agreement was not concluded, but same is of no application or import, due to it having lapsed.

30. The Objector has further implied that it has been untoward on the part of the Applicant to apply to the Provincial Government to have the "contractual obligation" altered. There is nothing untoward in the way in which this application has been made as the RoRA expressly provides for such servitudes to be altered. Section 2.(1)(a)(aa) of the RoRA is set out below:

".. the Administrator ... may, alter, suspend or remove, either permanently or for a period specified in such notice and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land by virtue of a restrictive condition or servitude registered against the title deed of the land;"

Provincial Spatial Development Framework (2009) & Overstrand Municipal Growth Management Strategy (2010)

Objection

31. The Applicant relies heavily on the Provincial Spatial Development Framework (2009) and the Overstrand Municipal Growth Management Strategy (2010) ("the Policies") to justify the densification of the property. The Policies do not constitute rules of law and are aimed at new developments (especially with a view to repairing the injustices of the past).

32. The Policies do not envisage densification at the expense of neighbouring properties and the Policies *"wish to utilise the existing zoning scheme to achieve such a purpose"* (of densification). The subject property falls into Planning Unit 6 where *"incremental*

densification within the existing residential fabric" can take place *"where appropriate";* in this regard, no mention is made of constructing second dwellings on properties, but that densification should be achieved by *"subdividing properties to allow for the construction of further dwelling units."*

Response

33. The Provincial Spatial Development Framework ('PSDF') was approved in 2009 as a Section 4(6) Structure Plan in terms of the Land Use Planning Ordinance, 1985 (No. 15 of 1985). Densification is listed as one of the objectives in the PSDF (Policy UR2) which recommends for the average gross residential density in urban settlements to be increased to 25 dwelling units per hectare (du/ha). Further, it is also recommended in Policy UR3 that the density target should be achieved using a range of urban development tools such as subdivisions, second dwellings and sectional title developments.

34. In support of the above, it is critical to re-iterate a statement that was made in the motivation of the application where reference was made to an answering affidavit, dated April 2012, from the Head: Department of Environmental Affairs and Development Planning ('the Department') with respect to an application for the amendment of restrictive title conditions, and specifically in relation to the question of the public interest of such an application. The Department notes that the densification strategies identified in the PSDF, which *"in essence encourage urban development to reach an average residential density of 25 units per hectare, in order to encourage the most cost-effective use of existing services and urban land, and to increase the accessibility of urban opportunities to a greater number of people ... The Department considers this strategy, and the policy underlying it, to be in the interest of the public."*

35. It is therefore clear that the Department of Environmental Affairs & Development Planning correctly make reference to applicable Policies and Structure Plans when determining whether applications for Removal of Restrictions are in the public interest or not. Contrary to the opinion of the Objector, these Policies are consulted when making decisions in terms of the RoRA and it is clear that the erection of a second dwelling is in the interest of the public and establishment of the area.

36. Insofar as the comment made by the Objector regarding the applicability of PSDF to new developments only, this is completely incorrect and should be disregarded, accordingly. Insofar as its goal regarding densification is concerned, the PSDF specifically states that it relates to urban settlements where a range of urban

development tools such as subdivisions, second dwellings and sectional title developments can be used to achieve the goal of densification.

37. The Objector is of the opinion that the Overstrand Municipal Growth Management Strategy (2010) makes no reference to second dwellings as a means of achieving sensitive densification, but rather that of subdivisions. In response thereto, it is noted that, generally speaking, a subdivision application is regarded as more 'onerous' than an application to permit a second dwelling, even though the desired effect of either mechanism, is an additional dwelling unit on the original erf. Notwithstanding, the Objector has failed to understand a very important underlying right that exists on Erf 2228. This property is zoned Single Dwelling Residential SR1 in terms of the Overstrand Zoning Scheme Regulations where a second dwelling unit is permitted as a primary use in terms of this zone. The right to permit a second dwelling in the existing zone is a clear indication that densification is wholly supported in this area of Hermanus, and the Objector's statements that densification is not in the public interest should thus be disregarded, accordingly.

38. In response to paragraph 46 of the Objector's letter, we note that the property is not located along the R43 or next to the caravan park, and that the 'incremental densification within the existing residential fabric', as recommended by the Strategy, does indeed apply to the subject property.

39. Contrary to the opinion of the Objector, who believes that the Applicant has failed to address specific factors regarding the densification of this area of Hermanus, the following is re-iterated from the original motivation:

"As purported in the Growth Management Strategy, an increase in residential densities hold a number of advantages for urban places in the Overstrand area; these advantages, which are in the interest of the development of the area are noted to be, among others, as follows: densification is a means of improving the efficiency and sustainability of public infrastructure and thereby improving the social and economic vitality of urban precincts, low density is expensive and inefficient, increased density facilitates variety in housing form, higher densities can reduce public costs, increased density conserves land and densification supports efficient service provision."

40. Whilst the PSDF and the Overstrand Municipal Growth Management Strategy may not be laws, it is incumbent on the authorities considering any application which is within their ambit to consider their provisions. The Objector would have been entitled to object to the outcome of the Application had the Applicant not referred to them and had authorities not considered them, but he cannot criticise the authorities for taking them into account.

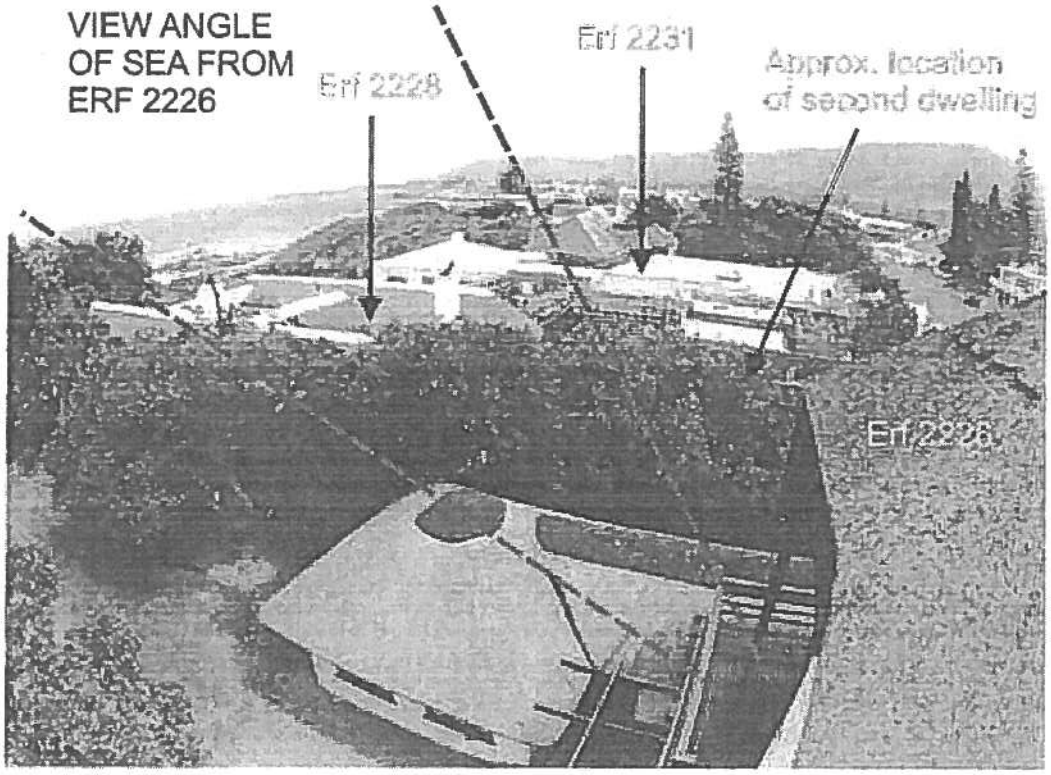
Impact of Alteration of Servitude

Objection

41. The rights of the Objector's Client will be adversely affected by the alteration of the servitude. The servitude is not simply aimed at protecting views, but also privacy, the character of the area and value of Erf 2226. The photograph on page 13 of the application is a dishonest representation of the argument that views will be protected.

Response

42. The Objector has failed to demonstrate how the proposed second dwelling, that will be limited to a single storey [6.4m above base level in height (converted from the existing height restriction in the title deed of 21 feet in height above ground)], will have an adverse impact on the rights enjoyed by his Client (Erf 2226). The photograph that was inserted on page 13 of the application – see below – is conclusive in demonstrating that a second dwelling, that will be erected in the space between erven 2226 and 2231, and that will not exceed the height of the existing thatched dwelling on Erf 2228 and will have no impact on the views enjoyed from Erf 2226 towards the ocean. This is because the position of the second dwelling is not in line of sight of the ocean; the line of sight of the ocean is over the existing dwelling house, which view will continue to be protected by the condition in the title deed that restricts the existing (and proposed) dwelling unit to a height of no more than 6.4m above base level.



43. It is important to note that application has not been made to delete the servitude in question, but to amend it such that the height of the second dwelling be limited to 6.4m above base level. This is regarded as being sensitive and a benefit to the owner of Erf 2226 as it will preserve his current views of the ocean. For ease of reference, it has been recommended that conditions 4 and 5 be combined and amended to read as follows:

MARGARET'S TRUST (PROPRIETY) LIMITED does hereby agree that the buildings erected on Erf 2228 shall be limited to a dwelling house and a second dwelling unit, and their appurtenances, only. These buildings shall have a thatch roof, be single-storeyed and shall not exceed 6.4m in height, measured above base level. Further, Erf 2228 shall not be subdivided without the written consent of the owner of Erf 2226 Hermanus.

44. Insofar as the alleged loss of privacy is concerned, the proposed second dwelling will be a single storey building and will have no windows facing Erf 2226 that will be tantamount to overlooking. The allegations made by the Objector are therefore without substance and should be disregarded, accordingly.

Departure Application

Objection

45. The departure application should be refused as the Applicant has failed to demonstrate compliance with Section 36 of LUPO.

Response

46. The setback departures relate to the existing dwelling house on the property and the Objector has failed to demonstrate why these departures are undesirable. The two minor departures will enable the existing bedroom and tv room to be extended along the same line that the existing dwelling house has been erected from the eastern and western common boundaries. These minor extensions will have no impact on the owner of Erf 2226 whatsoever.

Conclusion

47. This letter has demonstrated that the objection to the application on the grounds of it having been submitted in terms of the incorrect legislation is completely incorrect as the application was submitted prior to 1 July 2015 when LUPA came into effect.

Further, the applicable adjudication criteria are not those found in LUPA, but rather in Section 2 of RoRA, which have been duly addressed and re-iterated in this letter.

48. Given the provisions of the RoRA, which provide for the alteration of a servitude, the reference to the Constitution is not applicable in the given circumstance. Further, the Objector's allegation that the application to the Provincial Government to cancel a "contractual obligation" is somewhat untoward, should be disregarded as the Applicant is acting in terms of his right to make such an application.

49. As has been confirmed by the Provincial Government, applying densification strategies as provided for in the PSDF is indeed in the interest of the public. The Objector has overlooked the fact that a second dwelling is permitted as of right in the existing Single Dwelling Residential SR1 zone, which is proof that sensitive densification is supported in this area of Hermanus.

50. We have re-iterated the reasons why the proposed second dwelling will not have a negative impact on the rights of the owner of Erf 2226; in fact the alteration (vs deletion) of the servitude will protect the views currently enjoyed from Erf 2226.

51. The setback departures relate to minor extensions to the existing dwelling house and will have no impact whatsoever on the rights of Erf 2226.

52. We trust that this application will be supported by the Minister: Environmental Affairs & Development Planning.

Yours faithfully
TOMMY BRUMMER CC

pp b. bampbell

Tommy Brummer

Annexure F 12/20

'ANNEXURE A' ✓

Munisipaliteit • U - Masipala • Municipality
OVERSTRAND

Navrae:
Enquiries: P Roux (Town Planner)

Lêerverwysing:
File Reference: 2228 HVK (2962)

Datum:
Date: 30 June 2015

TOWN PLANNING / STADSBEPLANNING
HERMANUS

Tommy Brummer Town Planners
7 Woodlands Close
PINELANDS
7405

RECEIVED BY TBTP
07 JUL 2015

REGISTERED MAIL

Dear Sir/Madam

ERF 2228, 71 TENTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: TOMMY BRUMMER TOWN PLANNERS ON BEHALF OF ONSHELF PROPERTY EIGHTY SEVEN PTY LTD

Receipt is hereby acknowledged of your application regarding the above dated 26 June 2015.

The application will be processed as soon as Western Cape Government : Environmental Affairs and Development Planning provide our offices with the Removal of Restrictions advert.

Yours faithfully

pp C Pieters
S MÜLLER
DIRECTOR : INFRASTRUCTURE AND PLANNING

Tel: 028 3138900
Fax: 028 3132093
E-mail: alida@overstrand.gov.za

PO Box 20 / Posbus 20
HERMANUS
7200

Annexure F 13/20

APPLICATION : ERF 2228 HERMANUS

PROVINCIAL ADMINISTRATION: WESTERN CAPE

ALTERATION, REMOVAL, SUSPENSION OF RESTRICTIONS

Application for Alteration, Removal or Suspension of Restrictions in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967), as amended

NOTE

Part A is to be completed by the Applicant in triplicate, two copies of which must be submitted to the Local Authority in whose area of jurisdiction the property is situated and one copy to the Chief Directorate Planning, Private Bag X9083, Cape Town, 8000

PART A

(1) Has one copy of the application form been submitted to the Chief Directorate Planning in accordance with the above note?

YES

Please note that a copy is required by the Chief Director: Planning to enable him to advise the Council on what basis the application must be advertised. Failure to submit a copy of the application to the Chief Directorate will cause considerable delay in finalising the application.

(2) Name of Local Authority in whose area the property is situated:

HERMANUS

(3) Applicant's full names and address:

TOMMY BRUMMER TOWN PLANNERS

Note: If the applicant is a company or any other legal person except a natural person, a properly certified copy of the empowering resolution must be attached.

(4) Name and address to which correspondence must be sent and reference number, if any:

7 WOODLANDS CLOSE
PINELANDS 7405

Telephone number: 021 531 8435

Fax No.: 021 531 4520

(5) Full names and address of registered owner:

ONSHELF PROP EIGHTY SEVEN (PTY) LTD

PROVINSIALE ADMINISTRASIE: WES-KAAP

WYSIGING, OPHEFFING, OPSKORTING VAN BEPERKINGS

Aansoek om die Wysiging, Opheffing of Opskorting van Beperkings ingevolge die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), soos gewysig

NOTA

Deel A moet deur die Aansoeker in drievoud ingevul word, waarvan twee kopieë by die Plaaslike Owerheid in wie se regsgebied die eiendom geleë is en een kopie by die Hoofdirektoraat Beplanning, Privaatsak X9083, Kaapstad, 8000 ingedien moet word.

DEEL A

(1) Is een kopie van die aansoekvorm by die Hoofdirektoraat Beplanning ingedien in ooreenstemming met die nota hierbo?

Geliewe kennis te neem dat die Hoofdirekteur: Beplanning 'n kopie benodig om hom in staat te stel om die Raad te verwittig op watter grondslag die aansoek geadverteer moet word. Versuim om 'n kopie van die aansoek by die Hoofdirekteur in te dien, sal aansienlike vertraging by die afhandeling van die aansoek meebring.

(2) Naam van Plaaslike Owerheid in wie se gebied die eiendom geleë is:

(3) Volle name en adres van aansoeker:

Nota: Indien die aansoeker 'n maatskappy of enige ander regspersoon is, uitgesonderd 'n natuurlike persoon, moet 'n behoorlik gesertifiseerde kopie van die magtigende besluit aangeheg word.

(4) Naam en adres waaraan korrespondensie gerig moet word en verwysingsnommer, indien daar is:

Telefoonnommer:

Faks no.:

(5) Volle name en adres van geregistreerde eienaar:

Western Cape Government
Environmental Affairs and Development Planning

Head of Department
Piet van Zyl
Reference: 15/3/3,
15/2 and 15/4/1

CIRCULAR: EADP 0009/2015

ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS, SALGA, SAPI, SACPLAN, AND ALL ORGANISATIONS AND PRIVATE-SECTOR BODIES INVOLVED IN THE SPATIAL AND LAND USE PLANNING SECTOR IN THE WESTERN CAPE

AN UPDATE ON THE LAW REFORM PROCESS INCLUDING THE PUBLICATION OF THE LAND USE PLANNING ACT, 2014 (ACT 3 OF 2014) REGULATIONS, THE IMPLEMENTATION OF LUPA IN THE CITY OF CAPE TOWN, TRANSITIONAL MEASURES FOR REMOVAL OF RESTICTIVE TITLE APPLICATIONS, AND OTHERS

1. PURPOSE

1.1. The purpose of this External Circular is to update all relevant municipal office bearers and officials, private sector bodies and other role-players involved in spatial and land use planning in the Western Cape with regards to:

a. the publication of the regulations in terms of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) (LUPA);
b. the proclamation and implementation of LUPA in the City of Cape Town on 1 July 2015;
c. the Department of Environmental Affairs and Development Planning's (henceforth referred to as the Department) response to the joint Circular 1 of 2015 issued by the Department of Rural Development and Land Reform and the South African Local Government Association (SALGA) undated and circulated on 22 June 2015; and
d. the transitional measures when dealing with Removal of Restrictive Conditions applications as of 1 July 2015.

2. THE PUBLICATION OF THE LUPA REGULATIONS

2.1. The Provincial Minister of Local Government, Environmental Affairs and Development Planning has made regulations in terms of Section 76 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA).

2.2. These regulations were published in the Extraordinary Provincial Gazette number 7412 on 26 June 2015. The regulations are attached for your information.

2.3. It should be noted though that these regulations will only come in force in a municipality once LUPA has been implemented in that municipality. Refer to Section 3.1 below.

3. THE IMPLEMENTATION OF LUPA IN THE CITY OF CAPE TOWN

3.1. As communicated in Departmental Circular EADP 0006/2015, issued on 5 June 2015, LUPA will be implemented in the Western Cape in a staggered manner. Implementation is dependent on municipal readiness and consists of completing the following four actions:

a. Municipalities must have adopted and gazetted their Bylaw on Municipal Land Use Planning.
b. Municipalities must be at an advanced stage of establishing their Municipal Planning Tribunal. An advanced stage is regarded as having completed Step 7 of the Municipal Planning Tribunal establishment Manual included in Departmental Circular EADP 0003/2015.
c. Municipalities must have Council adopted delegations. This includes appointing the Authorised Official(s) and adopting their categorisation of land use applications.
d. Municipalities must have Council adopted tariff structures in place for receiving land use management applications in terms of the new legislation.

3.2. As the City of Cape Town successfully completed these actions the Acting Premier of the Western Cape signed the proclamation notice for the implementation of LUPA in the City of Cape Town. The proclamation notice was signed on 19 June 2015 and was published in the Provincial Gazette number 7410 on 26 June 2015.

3.3. According to the proclamation notice, LUPA will commence, with the exception of the sections listed in the proclamation notice, in the City of Cape Town on 1 July 2015.

3.4. As such, all planning applications within the City of Cape Town municipal area must be submitted in terms of the City of Cape Town's Municipal Planning Bylaw.

3.5. The City of Cape Town is the only municipality in the Western Cape where LUPA has been implemented.

4. THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT 16 OF 2013)(SPLUMA) CIRCULAR 1 OF 2015

4.1. The National Department of Rural Development and Land Reform (DRD&LR) and the South African Local Government Association (SALGA) issued Circular 1 of 2015 on 22 June 2015.

4.2. Section 2.3 of the Circular notes that municipalities may continue to operate under the current legislative dispensation once SPLUMA has been implemented, but only insofar as these older-order planning laws are not inconsistent with SPLUMA.

4.3. It goes on to state that the "Municipal Planning Tribunal or Authorised Official must take decisions on such applications in accordance with the categorisation of applications and the system of delegations as approved by Council".

4.4. The Department does not agree with the guidance contained in Circular 1. The main points of concern include:

a. The Western Cape Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)(LUPO); the Removal of Restrictions Act, 1967 (Act 84 of 1967)(RoRA); the Less Formal Township Establishment Act, 1991 (Act 113 of 1991)(LFTEA) and the Rural Areas Act, 1987 (Act 9 of 1987)(RAA) were assigned (either entirely or partially) to the Province. These Acts constitute provincial legislation and can only be repealed by the Provincial Parliament. As such these Acts, insofar as they have been assigned to the Province, will remain in force in the Western Cape after 1 July 2015, until repealed by the Premier of the Western Cape;

b. The old order legislation must be applied in its full extent as assigned until the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014)(LUPA), comes into operation and repeals those laws; and

c. The transitional provisions set out in Section 78 of LUPA will apply in municipalities when LUPA comes into operation in a specific municipal area.

4.5. The legislation listed in item 4.4(a) must continue to be utilised (including decision making structures) until LUPA is implemented. It is not legally advisable to adopt a 'hybrid' situation.

4.6. The Department obtained legal advice on this matter and a response has been submitted to both the Deputy Director-General of DRD&LR and the Chief Executive Officer of SALGA, via email dated 30 June 2015, requesting that they amend the said Circular.

5. TRANSITIONAL MEASURES FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND RELAXATION APPLICATIONS

5.1. All applications submitted in terms of the Removal of Restrictions Act, 1967 (Act 84 of 1967)(RoRA) before the implementation of LUPA a municipality must be processed, advertised, assessed and decided upon in terms of the RoRA.

5.2. Once LUPA has been implemented in a municipality, all new applications must be decided by the municipality in question in accordance with their municipal planning bylaw.

5.3. With regard to relaxation applications, the 30 June 2015 was the last day on which the Department could sign off relaxation applications for all municipalities within the Western Cape as SPLUMA Section 45(6) replaces "Administrator" in a title condition with "municipality".

5.4. On 1 July 2015, the Department will revert all relaxation applications currently in the system to the relevant municipality. The municipality must then decide on and finalise these applications.

5.5. The Department will be contacting all the municipalities that currently have relaxation applications in the system. An agreement between the municipality in question and the

Department will need to be reached to ensure that these relaxation applications can be finalised appropriately. It is important to note that this represents a relatively small number of applications and not all municipalities will be affected.

6. CONCLUDING REMARKS

6.1. Once again, we thank you for your cooperation and continued support in working towards the implementation and operation of LUPA and the municipal bylaws in all municipalities within the Western Cape.

Yours sincerely

HEAD OF DEPARTMENT
DATE: 09.07.2015

Annexure F 18/20
ANNEXURE C

PROCLAMATION

BY THE PREMIER OF THE WESTERN CAPE

NO. 9/2015

COMMENCEMENT OF THE WESTERN CAPE LAND USE PLANNING ACT, 2014
(ACT 3 OF 2014)

Under section 79 of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014), I determine that this Act, except for sections 22(4), 25, 26, 27, 28*(c)* and 66(4)*(c)*, will come into operation in the City of Cape Town, a municipality established in terms of Provincial Notice 479/2000 published in *Provincial Gazette* 5588 of 22 September 2000, on 1 July 2015.

Dated at Cape Town this 19th day of June 2015.

DR I.H. MEYER
ACTING PREMIER

Countersigned by:

A. BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT, ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

PROKLAMASIE

DEUR DIE PREMIER VAN DIE WES-KAAP

NR. 9/2015

INWERKINGTREDING VAN DIE WES-KAAPSE WET OP GRONDGEBRUIKBEPLANNING, 2014
(WET 3 VAN 2014)

Kragtens artikel 79 van die Wes-Kaapse Wet op Grondgebruikbeplanning, 2014 (Wet 3 van 2014), bepaal ek dat hierdie Wet, behalwe vir artikels 22(4), 25, 26, 27, 28*(c)* en 66(4)*(c)*, in werking tree in die Stad Kaapstad, munisipaliteit ingestel ingevolge Provinsiale Kennisgewing 479/2000 gepubliseer in *Provinsiale Koerant* 5588 van 22 September 2000, op 1 Julie 2015.

Geteken te Kaapstad op hierdie 19de dag van Junie 2015.

DR I.H. MEYER
WAARNEMENDE PREMIER

Medeonderteken deur:

A. BREDELL
PROVINSIALE MINISTER VAN PLAASLIKE REGERING, OMGEWINGSAKE EN ONTWIKKELINGSBEPLANNING

LOMPOPOSHO

WENKULUMBUSO YENTSHONA KOLONI

NOMB. 9/2015

UKUQALISA KOKUSEBENZA KOMTHETHO WOCWANGCISO LOSETYENZISO LOMHLABA WENTSHONA KOLONI, 2014
(UMTHETHO 3 KA-2014)

Phantsi kwecandelo 79 loMthetho woCwangciso loSetyenziso loMhlaba weNtshona Koloni, 2014 (uMthetho 3 ka-2014), ndimisela ukuba lo Mthetho, ngaphandle kwala macandelo 22(4), 25, 26, 27, 28*(c)* nelama-66(4)*(c)*, uza kusebenza kwiSixeko saseKapa, wamiselwa ngumasipala ngokweSaziso sePhondo 479/2000 esapapashwa *kwiGazethi yePhondo* 5588 yama-22 kweyoMsintsi 2000, ngomhla ka wo-1 kweyeKhala 2015.

Lutyikitywe eKapa ngalo mhla we-19 kweyeSilimela 2015.

UGqr. I.H. MEYER
IBAMBELA NKULUMBUSO

Luqinisekiswe ngu:

A. BREDELL
UMPHANTHISWA WORHULUMENTE WENGINGQI WEPHONDO, IMICIMBI YOKUSINGQONGILEYO NOCWANGCISO LOPHUHLISO

Annexure F 19/20

'ANNEXURE D'

J J M VAN ZYL

1st FLOOR, KOH-I-NOOR BUILDING
82 MAIN ROAD CLAREMONT 7700
P. O. BOX 23301 CLAREMONT 7735
SOUTH AFRICA
TELEPHONE (021) 674-1130
FAX (021 683-6989
e-mail: jjmvzyl@mweb.co.za

11 December 2002

Mr J J C Newman
71 10th Street
HERMANUS
7200

Dear Mr. Newman

RE: **PROPOSED IMPROVEMENTS: ERF 2228 HERMANUS (BEING NO. 71, 10TH STREET, HERMANUS)**

I refer to your request for permission to erect certain buildings on Erf 2228 Hermanus ("your property") owned by Onshelf Property Eighty Seven (Pty) Ltd, Registration number 1999/017178/07 ("Onshelf" or "the company"), notwithstanding the fact that they fall within the area referred to in Clause 3 of the Deed of Servitude No. 3/1949 and within the area mentioned in the restrictive Title Deed Condition number C(j) contained in the Title Deed (No:T18856/86) in respect of your property.

Please be advised that I am prepared to consent on the following terms and conditions:

1. The registration by my attorneys, Messrs Reillys of Cape Town ("my attorneys"), in the Deeds Office of a Notarial Deed of Amendment in accordance with the draft annexed hereto marked "X" ("the Notarial Deed of Amendment") read with the servitude diagram referred to therein to be prepared (at your cost and expense) by a surveyor representing the sketch plan annexed hereto marked "Y" ("the plan"), amending and amplifying the existing Deed of Servitude (Number. 3/1949) registered against your property and in favour of Erf 2226 Hermanus ("my property"), all costs and expensed relating thereto being for your account and payable on demand to my attorneys.

2. An amount of R50 000.00 (fifty thousand Rand) must be lodged with my attorneys to be held by them in trust in an interest-bearing account to ensure completion of the improvements in terms of this undertaking, the Notarial Deed of Amendment and the plan and, also, to ensure that no damage to or removal of trees or shrubs occurs with the exception of those which are on the direct route of access to the garage or where the building itself is going to be erected. If any such damage or removal occurs, then these funds will be available to be utilised to make good the damage or loss. Repayment of your deposit (or the balance thereof), together with accrued interest thereon, will be effected by my attorneys on completion of the work in accordance with this letter, the Notarial Deed of Amendment and the plan to my reasonable satisfaction.

5.2 If the company or you, as the case may be, should give me (or my successor(s) in title) written notice that the company wishes to sell the property or you wish to sell shares representing a controlling interest in the company, indicating in the notice the price and terms upon which the company or you, as the case may be, wish to so sell the property or shares, then I (or my successor(s)-in-title, as the case may be) will have a period of forty five (45) days after receipt of such written notice within which to indicate to you in writing whether or not I (or they) wish to exercise the right of first refusal to purchase the property or shares at such price and upon such terms. Should I (or my successors-in-title, as the case may be) fail or refuse to so exercise the right of first refusal at such price and upon such terms within that period, then the company will be free to sell the property (and you will be free to sell such shares in the company) to any third party, provided that the sale is done at a price and upon terms which are not more favourable to the third party than those contained in such notice, whereupon the right of first refusal shall lapse.

Notwithstanding the aforegoing, the right of first refusal in my favour and in favour of my successor(s)-in-title referred to herein shall not apply to any sale or transfer which qualifies as a permitted transfer in accordance with the provisions of Annexure "Z" hereto.

6. Onshelf, as the registered owner of Erf 2228 Hermanus, must bind itself in writing to all the terms and conditions of this consent, as must you personally in your capacity as sole or majority shareholder in the company. Furthermore, by your signature hereto the company and you personally will undertake to procure compliance with all the terms and conditions of this consent by the company and its successor(s)-in-title.

Kindly indicate your and your company's acceptance of the above terms and conditions by signing and dating the endorsement at the foot of the duplicate copy of this letter, and return it to me.

Yours sincerely,

J J M VAN ZYL

12 December 2002

I, John James Christopher ('Jan') Newman, in my personal capacity and in my capacity as the duly authorised representative of Onshelf Property Eighty Seven (Pty) Ltd (No 1999/01718/07) do hereby accept all the terms and conditions set out above and agree to be bound by them.

Date:.....

.....

J.J.C NEWMAN
In my personal capacity and for Onshelf Property Eighty Seven (Pty) Ltd, duly authorised thereto.