



OVERSTRAND MUNISIPALITEIT
ERF 575, 40 FLYING DUTCHMAN WAY,
FISHERHAVEN: AANSOEK OM
OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDES:
PLANACTIVE TOWN & REGIONAL
PLANNERS NAMENS MR WILLIAMS, A
WILLIAMS EN Z MAGMOED

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoek van toepassing op Erf 575, Fisherhaven (die eiendom), naamlik:

Opheffing van Beperkende Titelaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes E.4.(b), en E.4.(c). soos vervat in Titelakte T23302/2022 van die eiendom om 'n tweede wooneenheid te akkommodeer, sowel as addisionele dekking toe te laat

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **21 Oktober 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H Olivier** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word om hul kommentare te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. **108/2022**



OVERSTRAND MUNICIPALITY
ERF 575, 40 FLYING DUTCHMAN WAY,
FISHERHAVEN: APPLICATION FOR
REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS: PLANACTIVE TOWN &
REGIONAL PLANNERS ON BEHALF OF MR
WILLIAMS, A WILLIAMS AND Z MAGMOED

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), of the following applications applicable to Erf 575, Fisherhaven (the property), namely:

Removal of Restrictive Title Deed Conditions

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions E.4.(b) and E.4.(c) as contained in Title Deed T23302/2022 of the property to accommodate a second dwelling, and to allow additional coverage.

Details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **21 October 2022**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Olivier** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comments.

Municipal Manager, Overstrand Municipality, P.O. Box 20, **HERMANUS**, 7200

Municipal Notice No. 108/2022



UMASIPALA WASE-OVERSTRAND
ISIZA ESINGU-ERF 575, 40 FLYING DUTCHMAN
WAY, FISHERHAVEN: ISICELO SOKUSHENXISWA
KWEMIBA YEEMKO EZIYIMIQOBO KWITAYITILE
YOBUNINI: NGABAKWAPLANACTIVE TOWN &
REGIONAL PLANNERS EGAMENI LIKA MNU.
WILLIAMS, A WILLIAMS NO Z MAGMOED

Kukhutshwe isaziso esimayela nemiba yeSolotya lama47 nelama48 elisisiHlomelo soMthethwana kaMasipala ngeziCwangciso zokuSetyenziswa koMhlaba kaMasipala waseOverstrand ku2020 (uMthethwana), saziso eso simayela nesicelo ezisebenza kwisiza esinguErf 575, Fisherhaven Bay (umhlaba/indiu), esicacisa oku:

Ukushenxiswa kweeMeko eziyiMiqobo miqobo yeTayitile yoBunini

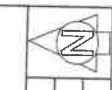
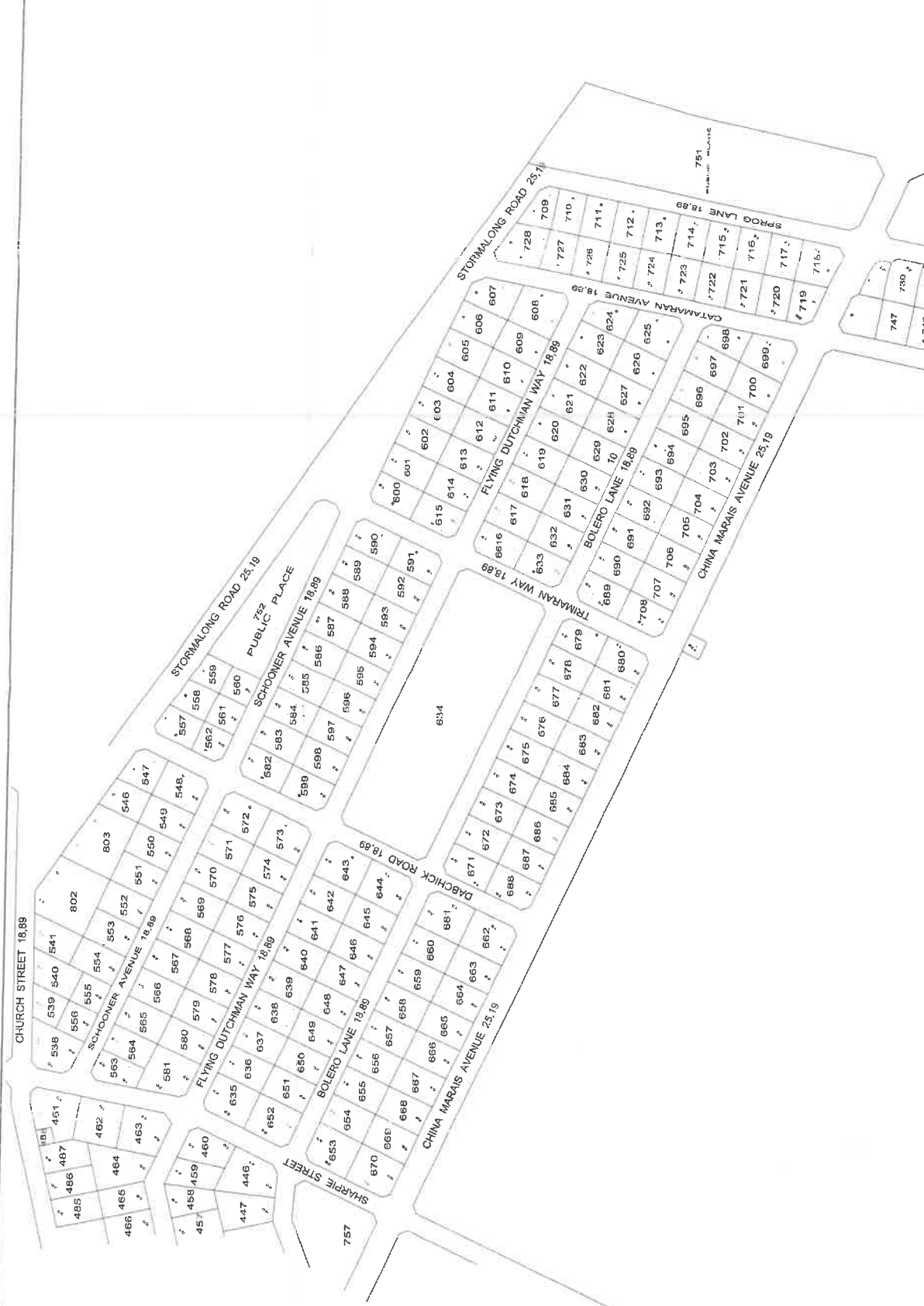
Ezisebenza ngokwemiba yeSolotya le16(2)(f)Umthethwana ongokushenxiswa kwemiba yeemeko eziyimiqobo uE.4.(b) no-E.4.(c) njengoko ziqulethwe kwitayitile Yobunini eyaziwa ngeTitle Deed T23302/2022 yomhlaba olungiselela indawo yesibini yokuhlala, nokuvumela ukongezelela nokulungiselela iindawo ekumele zifakelwe.

Iinkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Lezicwangciso ngeDolophu kwa16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo mazingeniswe kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / e) loretta@overstrand.gov.za ngaphambi okanye ngomhla **we-21 ku-Okthobha 2022**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa ku**Mcwangcisi Omkhulu weDolophu, Mnu. H. Olivier** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe leZicwangciso zeDolophu apho igosa likaMasipala liza kumnceda ukungenisa izimvo zakhe ngokusemthethweni.

Umlawuli kaMasipala, Overstrand Masipala, P.O. Box 20, **HERMANUS**, 7200

Isaziso sikaMasipala esinguNombolo 108/2022



Scale: NTS
 Drawing Nr: 575.fisherhaven.dwg
 Date: MAY 2022

Plan Description:
LOCALITY MAP

Property Description:
**ERF 575
 FISHERHAVEN**

All distances approximate
 and subject to survey.
COPY RIGHT RESERVED

PIA Active
 Stads- en Streeksbeplanners
 Town & Regional Planners

**PROPOSED REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS**

ERF 575 FISHERHAVEN

**DIVISION: CALEDON
OVERSTRAND MUNICIPALITY**

1. BACKGROUND

Mr. M.R. Williams, Mrs. A. Williams, and Mrs. Z. Magmoed the owners of Erf 575 Fisherhaven, have instructed the company Plan Active to apply for the removal of restrictive Title Deed conditions of Erf 575 Fisherhaven.

The owners intend to erect a new main dwelling and a second dwelling on the subject property. The building plans for the main dwelling have already been submitted at the building control office. The subject property is currently vacant. The Title Deed prescribes a **permissible coverage of 30%** for the subject property and that the subject property shall be used for the purpose of erecting thereon one dwelling only. The intention is to address the applicable Title Deed Restrictions in the Title Deed by applying for the removal of these restrictions.

Erf 575 Fisherhaven is 1 487m² in extent and is held by Title Deed Number T23302/2022.

The detail of the proposed removal of the Title Deed restrictions can be described as follows:

- **Page 4, paragraph (4)(b):** *“it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.”*

In terms of the Zoning Scheme Regulations for the Overstrand Municipal Area, a second dwelling is a primary land use right for erven with a Residential Zone 1 zoning and should comply with **Chapter 16, Section 16.10.20** of the **Overstrand Municipal Land Use Scheme Regulations, 2020** and reads as follow:

Second dwelling unit

16.10.20 The following additional development parameters apply to a second dwelling unit:

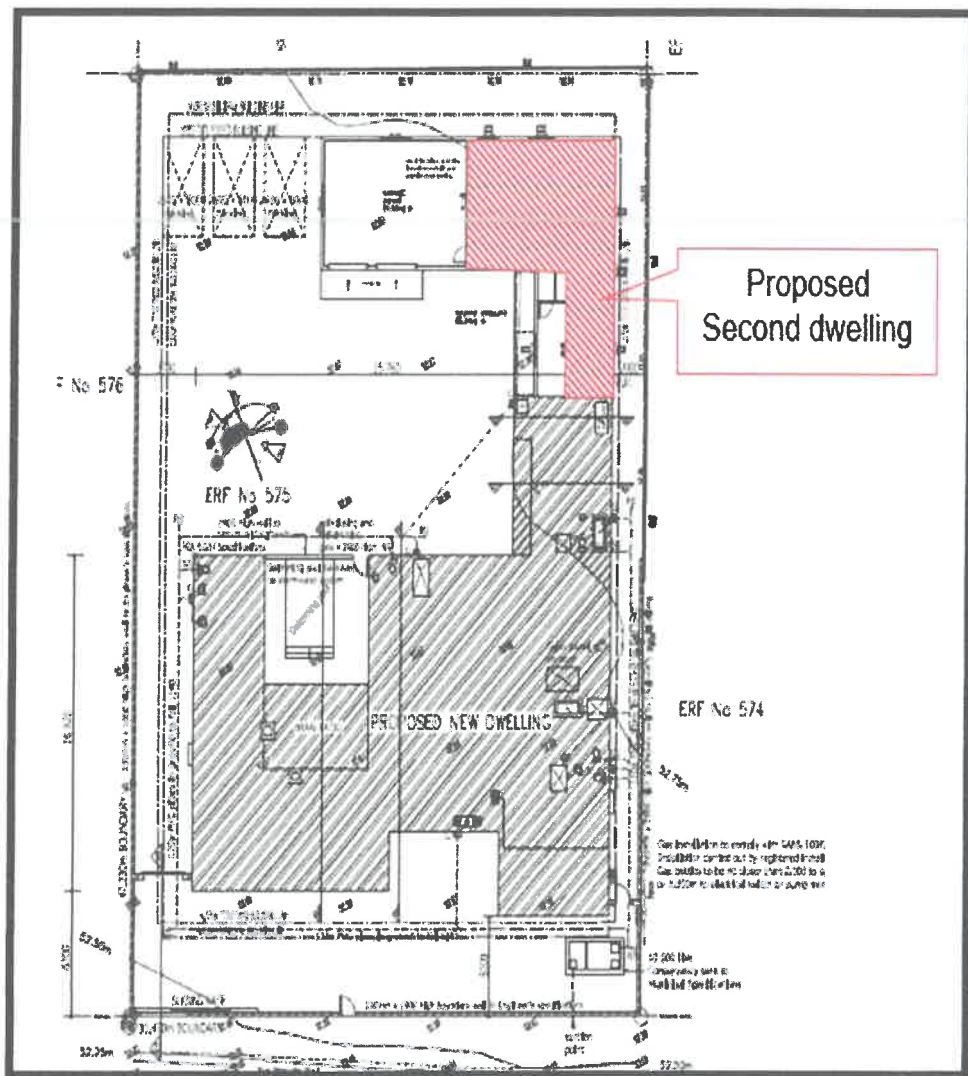
- a) The total floor area (footprint) of the second dwelling unit shall not exceed 120 m²;
- b) A second dwelling unit may be contained within the same building as a primary dwelling unit and may be either on the ground or first floor;
- c) A second dwelling unit may not be separately alienated in terms of the Sectional Title Act;
- d) Parking must be provided on the property as per Chapter 17, Section 17.1.3, to the satisfaction of the Municipality, and
- e) A second dwelling must be located within the applicable building lines.

The proposed second dwelling consists of the following internal uses:

- Open plan kitchen/living room;
- 3 Bedrooms;
- Bathroom.

The proposed second dwelling does not exceed the maximum allowable footprint of 120m² as described in the Zoning Scheme Regulations. The second dwelling has a proposed footprint of 85m² and it is situated in the north-eastern corner of the subject property as seen below and does not encroach any building lines. The

proposed second dwelling complies with the requirements for a second dwelling as set out in **Chapter 16, Section 16.10.20** of the **Overstrand Municipal Land Use Scheme Regulations, 2020** and does not have any impact on surrounding property owners.



- **Page 4, paragraph (4)(c):** *“Not more than 30% of the area thereof shall be built upon.”*

With the main dwelling and second dwelling proposed, the 30% coverage will be exceeded as stipulated in the mentioned Title Deed, however the new proposed

coverage ($\pm 44\%$) will still be in accordance with the Scheme Regulations which stipulates 50% coverage allowable for erven with a Residential Zone 1, zoning.

The details of the proposal with reference to the coverage are summarised below:

AREAS	
MAIN DWELLING	427,68 m ²
COVERAGE	28,76 %
SECOND DWELLING	85,04 m ²
COVERED STOEP	13,17 m ²
GARAGE	59,65 m ²
TOTAL	585,54 m ²
ERF	1487,00 m ²
COVERAGE	39,38 %

The proposal will not have any impact on the surrounding property values or the existing residential character. The proposal allows an opportunity for the space on the subject property to be used optimally and the proposed development still complies with the Zoning Scheme Regulations as no departures from the land use restrictions are proposed.

It is clear that the restrictions in the Title Deed are more restrictive than the development rules in the Zoning Scheme Regulations. By removing the Title Deed Restrictions, the owners will be able to develop the property per the development rules as stipulated in the Zoning Scheme Regulations for properties with a Residential Zone 1 zoning. It is important to note that no departures are applied for in terms of the land use restrictions prescribed in the Zoning Scheme Regulations.

According to **Chapter 4 Section 35(4)** of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 and **Section 39(5)** of the Land Use Planning Act, 2014, when the Municipality considers the removal, suspension or amendment of a restrictive condition the municipality must consider the following:

- The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person as the owner of a dominant tenement.

The removal of the Title Deed restrictions will allow the property to be developed according to existing policies. The removal will also provide an opportunity for the owners to develop a second dwelling and utilise the space on the subject property optimally. This will increase the market value of the area and attract investment opportunities. Future owners will also be able to develop the subject property according to the primary uses and land use restrictions as set out in the **Zoning Scheme Regulations of the Overstrand Municipal Area**.

- **The personal benefit which accrue to the holder of rights in terms of the restrictive conditions.**

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed conditions to be removed is concerned. None of the existing owners within the township will gain anything personally by having the restrictions removed, which prevents the subject property to be utilised according to the development rules with reference to the permissible coverage and primary land use rights as stipulated in the Zoning Scheme Regulations. The proposal will have a positive impact on the existing built form in the area. Such change is supported in the future planning documents of the area (**Overstrand Growth Management Strategy**). Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020**. The proposed removal of the restrictive Title Deed conditions will increase the market value of the property as well as the area as the Title Deed restrictions are more restrictive than the land use restrictions prescribed in the Scheme Regulations. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

- **The personal benefit which will accrue to the persons seeking the removal of the restrictive conditions if it is removed.**

The property owners will benefit from the removal of the mentioned Title Deed restrictions as it will create an opportunity to construct a main dwelling with a

second dwelling on the subject property with a coverage of more than 30%. An opportunity is also created to construct a second dwelling which can be used by a second single family.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions remaining in place.**

Should the conditions remain in place, the status quo will remain. If the type of conditions to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit. The retention of the restrictions will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations' requirements.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions**

It can be argued that the possible social benefit of removing the restrictive Title Deed conditions and consequently allowing for a main and second dwelling on the subject property will be positive. Removing the conditions will enable the better utilization of the property in terms of modern city development.

Furthermore, the removal of the Title Deed conditions is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

- **Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of the rights**

The removal of the restrictions will not remove the rights completely, as the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning 2020 and The Overstrand Municipal Land Use Scheme Regulations, 2020**

provide a certain level of control that will guide the manner in which the property will be both used and developed.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of a restrictive Title Deed conditions will not deprive any person in the subject area of Fisherhaven as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restrictions, the property owners will be deprived from utilising the subject property to its full potential and possible accommodation to a single family within the Fisherhaven township.

The removal of the Title Deed restrictions application is made in the prescribed manner as per the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. The proposed removal of the restrictions will therefore be in the interest of the general public. In relation to the above, the benefit of removing the Title Deed restrictions outweighs the benefits of keeping the restrictions in place.

3.5 ACCESS AND PARKING

The subject property is currently vacant. Vehicular and pedestrian access to Erf 575 Fisherhaven and the proposed dwellings will be from Flying Dutchman Way, Fisherhaven. The second dwelling is also proposed to be accessed via Flying Dutchman Way, via a carriage way between the boundary line and the main dwelling on the western side of the subject property that is 3.73m wide.

According to **Chapter 17** of the **Overstrand Municipal Land Use Scheme Regulations, 2020** a dwelling house requires two parking bays and the second dwelling, 1 additional parking bay. 3 parking bays are proposed on the subject property and a double garage.

3.6 SERVICES

Erf 575 Fisherhaven is situated in an already developed area where all services exist. The proposed removal of the restrictive Title Deed conditions will have minimal impact on the existing services. Any additional services required to the subject property will be done according to the specifications of the Overstrand Municipality.

3.7 TITLE DEED

Title Deed T23302/2022 has restrictions that must be removed in order for the owners to develop the proposed two dwellings with a coverage of more than 30% on the subject property.

The enclosed Title Deed, T23302/2022 contains the following Title Deed restrictions that have to be addressed:

- **Page 4, paragraph (4)(b):** *“it shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.”*
- **Page 4, paragraph (4)(c):** *“Not more than 30% of the area thereof shall be built upon.”*

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

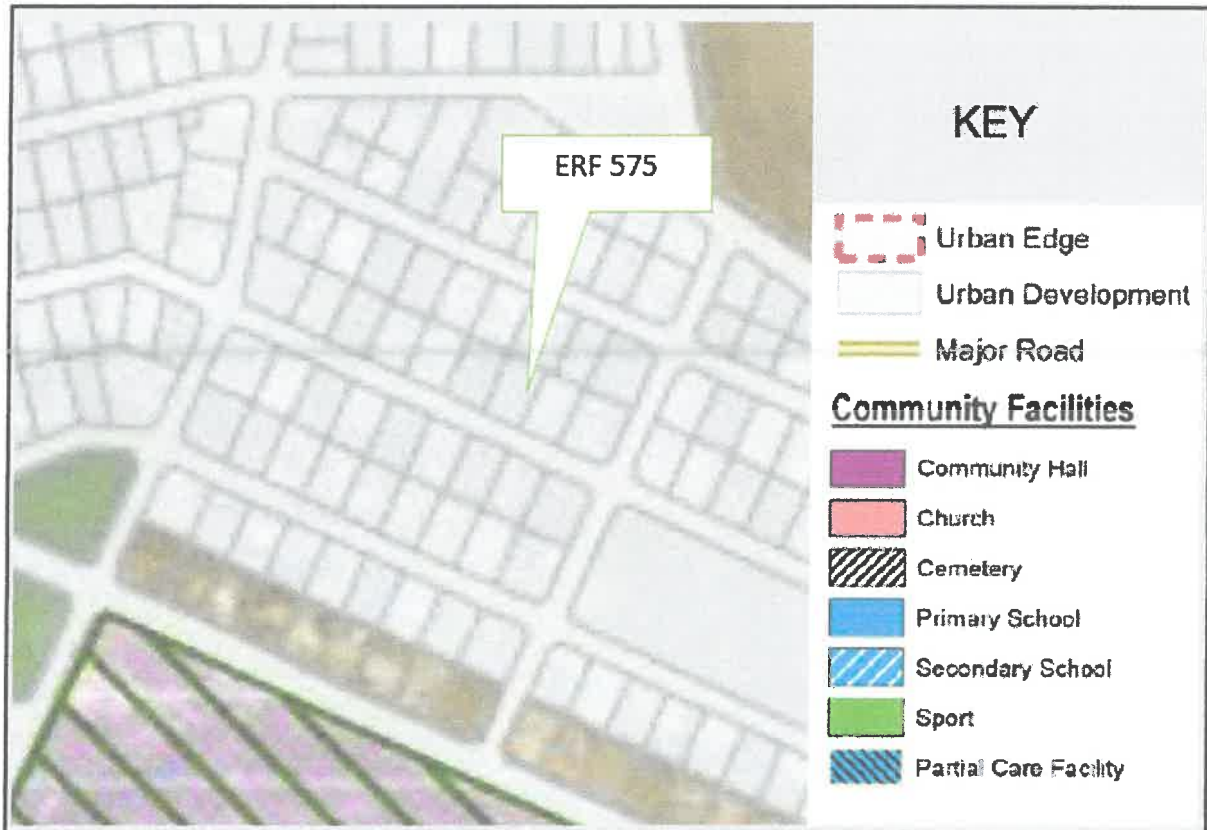
There is no bond registered against Erf 575 Fisherhaven.

3.8 FORWARD PLANNING

Overstrand Municipal Spatial Development Framework (2020).

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for urban development purposes. The residential zoning of

the subject property will be retained after the removal of the restrictive Title Deed conditions application has been concluded.



Overstrand Growth Management Strategy (2010)

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 1 which represents the Fisherhaven Village. Incremental densification of 20% of even through further subdivision is proposed in terms of this proposal.

With reference to the *Overstrand Growth Management Strategy (2010)*, the proposal will not have any impact on the proposed density for the area. Therefore, the proposed removal of the restrictive Title Deed conditions can be supported.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 575 Fisherhaven is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed removal of restrictive Title Deed conditions will not have a negative impact on the heritage value of the subject property or the greater area of Fisherhaven.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of the Title Deed restrictions does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 PLANNING PRINCIPLES

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

Spatial Justice: The proposed removal of the Title Deed restrictions is in line with the current land use tendencies in the vicinity, within the Fisherhaven area. The proposed

removal of restrictive Title Deed conditions will create an opportunity for the owners to develop the subject property according to the land use restrictions imposed by the zoning scheme regulations.

Spatial Sustainability: The proposed removal of the Title Deed restrictions is in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Fisherhaven. The proposal does not have any impact on the residential character for this specific area of Fisherhaven.

Efficiency: The proposed application for the removal of the restrictive Title Deed conditions will promote the optimisation of the use of space within a developed residential area.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of 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 Amended By-law on Municipal Land Use Planning, 2020.

4. RECOMMENDATION

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

- The proposed removal of the restrictive Title Deed conditions in order to permit a main dwelling and second dwelling falls within the existing land use tendencies in the area;
- The proposal will not have a negative impact on the residential character of the area;
- The proposal will not have a negative impact on the existing services;
- The proposal is in accordance with the land use restrictions as stipulated in the Scheme Regulations for the Overstrand Municipality;
- The proposed removal of restrictive Title Deed conditions will not have a negative impact on the land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of restrictive Title Deed conditions of Erf 575 Fisherhaven.

ERF No 563

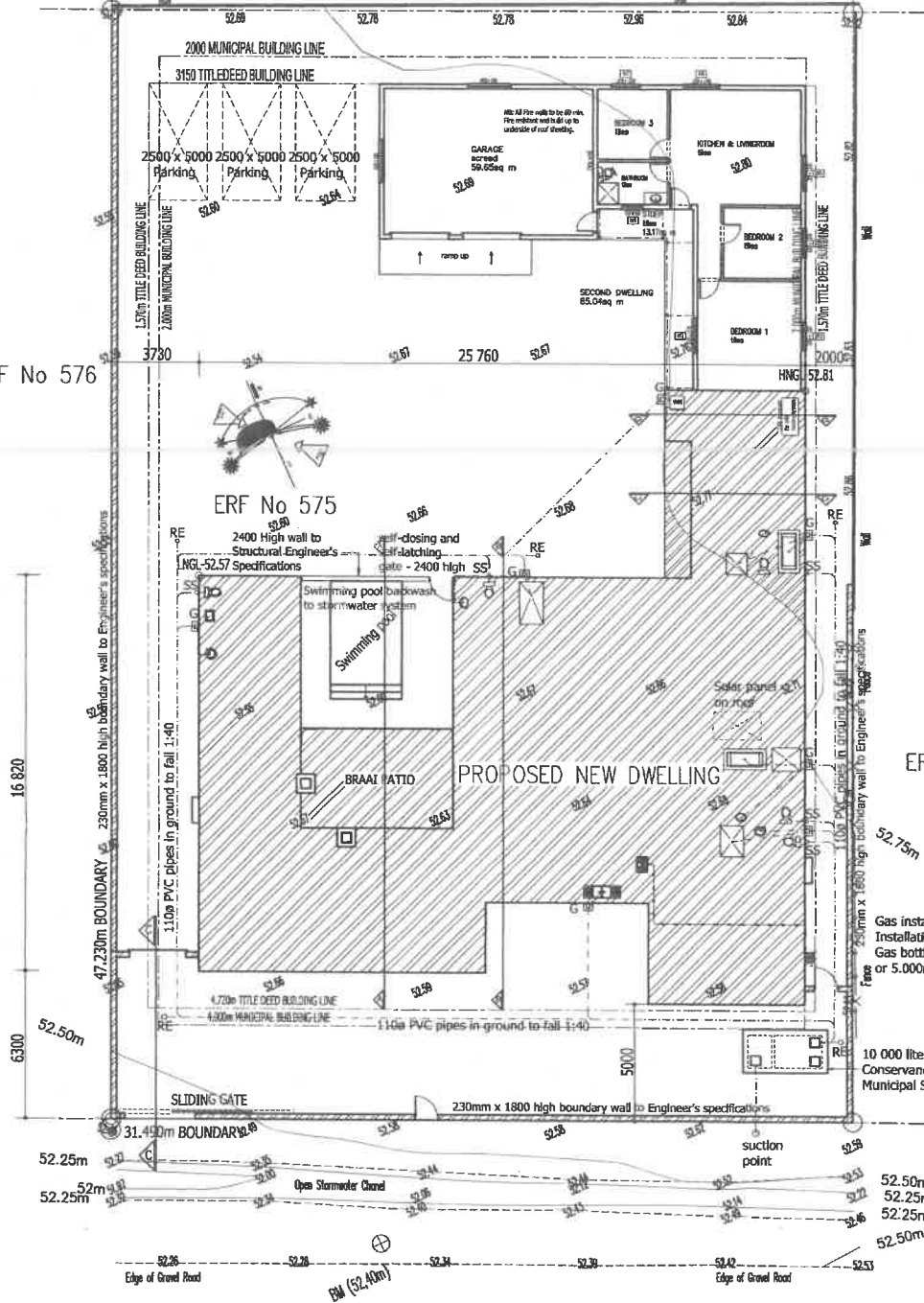
ERF No 564

ERF No 565

ERF No 576

ERF No 575

ERF No 574



40 FLYING DUTCHMAN WAY

Site Plan - 1:200

Gas installation to comply with SANS 10087-1:2013.
 Installation carried out by registered installer.
 Gas bottles to be no closer than 2.000 to open drain
 or 5.000m to electrical switch or pump motor.

10 000 liter
 Conservancy tank to
 Municipal Specifications

PROJECT
NEW DWELLING ON ERF 575 40 FLYING DUTCHMAN WAY FISHERHAVEN
CLIENT
M.R. WILLIAMS, A. WILLIAMS & Z. MAGMOED

DRAWING	
SITE PLAN DRAWINGS COUNCIL SUBMISSION	
SCALE	DRAWN
1:100	CPG
CHECKED	DATE
CPG	22 June 2022
DRAWING NO.	
575P15(2022-05)01/A3-REV B	

AREAS	
MAIN DWELLING	427.68 m ²
COVERAGE	28.76 %
SECOND DWELLING	85.04 m ²
COVERED STOEP	13.17 m ²
GARAGE	59.65 m ²
TOTAL	585.54 m ²
ERF	1487.00 m ²
COVERAGE	39.38 %

C. Geldenhuys
CRAG ARCHITECTURAL DESIGN

P.O. BOX 517
 CALEDON
 7230

C.GELDENHUYS - 082 836 8631
 SACAP - PAD : 20718

