



OVERSTRAND MUNISIPALITEIT
ERF 349, HOOFWEG 10, SANDBAAI: AANSOEK
OM OPHEFFING VAN 'N BEPERKENDE
TITELAKTEVOORWAARDE, AFWYKING EN
BEPALING VAN 'N ADMINISTRATIEWE BOETE:
PLAN ACTIVE (nms CB & JA VAN WYK)

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoeke van toepassing op Erf 349, Sandbaai (die eiendom), naamlik:

Opheffing van Beperkende Titelaktevoorwaarde
 Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaarde B.2.(d) soos vervat in Titelakte T5251/2018 van die eiendom, om die bestaande bedekte stoep op grondvlak en die bestaande balkon op die eerste verdieping, welke strukture die straatboulyn oorskry, te akkommodeer.

Afwyking
 Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die:
 - straatboulyn te verslap vanaf 4m na ±1.975m om die bestaande bedekte stoep op grondvlak en die bestaande balkon op die eerste verdieping, te akkommodeer; en die
 - noordelike syboulyn te verslap vanaf 2m na ±0.82m om die bestaande pergola te akkommodeer.

Bepaling van 'n Administratiewe Boete
 Aansoek ingevolge die bepalings van Artikel 90 van die Verordening vir die bepaling van 'n administratiewe boete.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 and 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) bereik voor of op **Vrydag, 28 Oktober 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, asook die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H Boshoff** 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. 109/2022

OVERSTRAND MUNICIPALITY
ERF 349, 10 MAIN ROAD, SANDBAAI:
APPLICATION FOR REMOVAL OF A RESTRICTIVE
TITLE DEED CONDITION, DEPARTURE AND
DETERMINATION OF AN ADMINISTRATIVE
PENALTY: PLAN ACTIVE (obo CB & JA VAN WYK)

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 349, Sandbaai (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 condition B.2.(d) as contained in Title Deed T5251/2018 of the property to accommodate the existing covered porch at ground floor level and the existing balcony at first floor level, which structures encroach the street building line.

Departure
 Application in terms of Section 16(2)(b) of the By-Law to:
 - relax the street building line from 4m to ±1.975m to accommodate the existing covered porch at ground floor level and the existing balcony at first floor level; and to
 - relax the northern lateral building line from 2m to ±0.82m to accommodate the existing pergola.

Determination of an Administrative Penalty
 Application in terms of the provisions of Section 90 of the By-Law for the determination of an administrative penalty.

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) alida@overstrand.gov.za) on or before **Friday, 28 October 2022**, quoting your name, address and contact details, interest in the application, as well as the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Boshoff** 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. 109/2022

UMASIPALA WASEOVERSTRAND
ISIZA ESINGUERF 349, 10 MAIN ROAD, SANDBAAI:
ISICELO SOKUSHENXISWA KWEEMKO EZIYIMIQOBO
KWITAYITILE YOBUNINI, ULWAHLULO NENGGIKELELO
YEPENALTHI YOBHALISO: NGABAKWAPLAN ACTIVE
(egameni lika CB & JA VAN WYK)

Kukhutshwe isaziso esimayela neSoloty lama-47 nelama-48 nguMasipala waseOverstrand elingoMthethwana Ongezicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana) sicelo eso sithi, kufunyenwe isicelo esiphathelene nemiba esebenza kwisiza esinguErf 349, Sandbaai (umhlaba/indlu), Hermanus, esaziwa ngolu hlobo:

Ukushenxiswa kweemko Ezivimeko kwitayitile Zobunini
 Isicelo sisebenza ngokwemiba yeSoloty le16(2)(f) loMthethwana ongokushenxiswa kweemko eziyimiqobo kwitayitile yobunini B.2.(d) njengoko ziqulethwe kwitayitile Yobunini eyaziwa ngeTitle Deed T5251/2018 yomhlaba/yendlu ukulungiselela ipotshi esele ikhona ekumgangatho ongaphantsi nebhalikhoni esele ikhona kumgangatho wokuqala nesakhiwo esingena kwisitrato nomgca wesakhiwo.

Ulwahlulo
 Isicelo esisebenzayo sisebenza ngokwemiba yeSoloty le16(2)(b) loMthethwana:
 - ukunyenisa umgca wesakhiwo omelene nesitrato ukusuka kwiimitha ezi-4m ukuya kwiimitha ezi±1.975m ukulungiselela ipotshi esele ikhona kumgangatho ongaphantsi kunye nebhalikhoni esele ikhona kumgangatho wokuqala; kunye noku
 - nyenisa umgca omelene nomgca wesakhiwo kwicala esilsemantla nelimelene nesakhiwo ukusuka kwiimitha ezi2m ukuya kwiimitha ezi±0.82m ukulungiselela indawo evalekileyo nesele ikhona ekuhlalwa kuyo xa ubhraya okanye usoja inyama.

Inqikelelo YePenalithi Yobhaliso
 Kusebenza imiba yezibonelelo zeeSoloty lama90 loMthethwana ohambelana nobhaliso lwemidliwo/lweepenalithi.

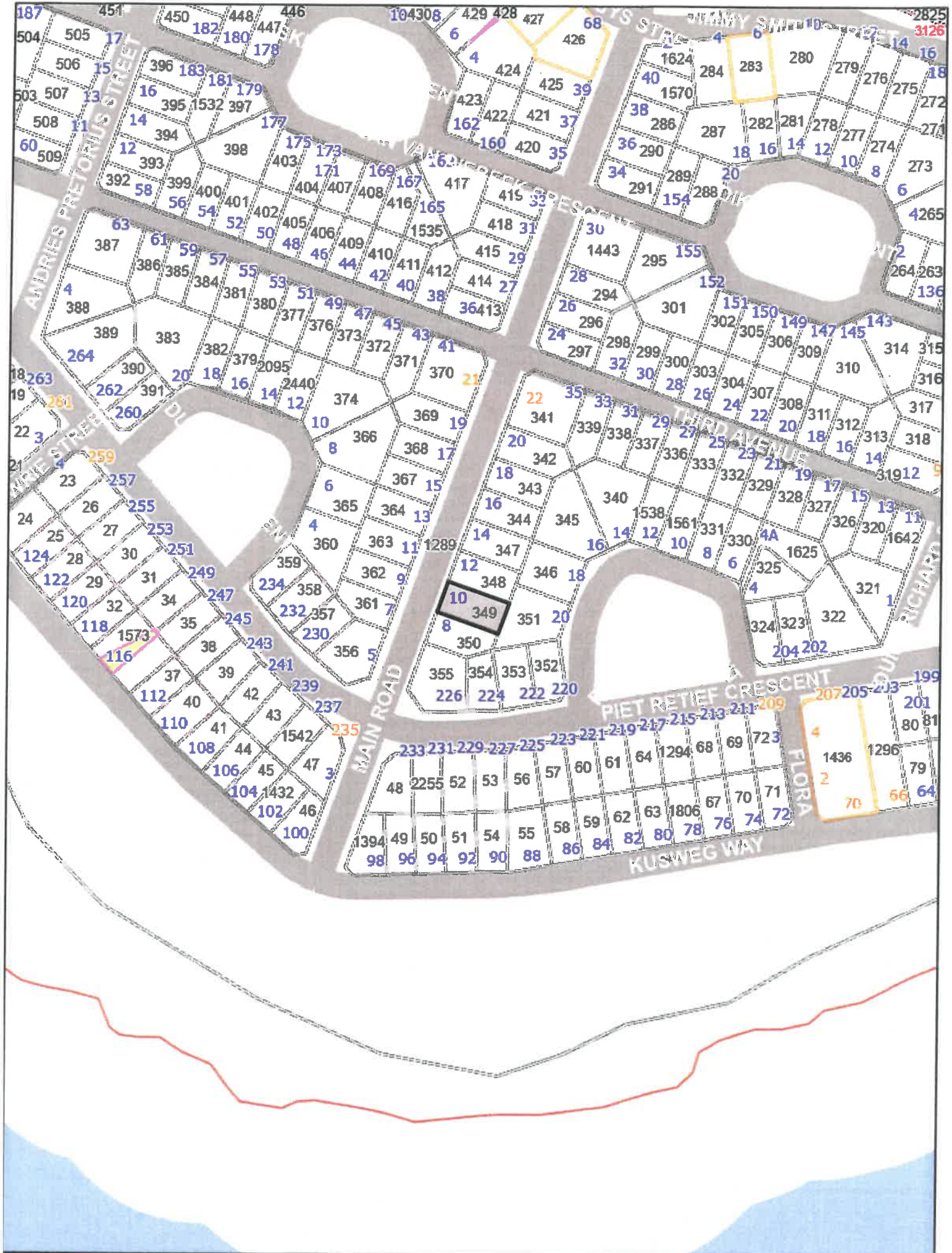
Imiba emayela nesi siphakamiso iyafumaneka ukuze ihlolwe kwiintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Lezicwangciso ngeDolophu kwa16 Paterson Street, Hermanus

Iinkcukacha ezipheleleyo mayela nezi zindululo ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukusukela kwixesha eliphakathi kwentsimbi ye08:00 neye16:30 kwiSebe: lezicwangciso zeDolophu, 16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo zingangeniswa kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 (e) alida@overstrand.gov.za), ngomhla okanye ngaphambi komhla wama-28 EyeDwarha 2022, uchaze igama lakho, idilesi yakho neenkukacha zakho, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingathunyelwa kuMwangcisi weDolophu, Mnu. H Boshoff kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuqala. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe lezicwangciso ngeDolophu apho igosa likamasipala liza kumnceda ukufaka izimvo zakhe ngokusemthethweni

Umlawuli kaMasipala, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

Inothisi kaMasipala Nomb. 109/2022



**PROPOSED DETERMINATION OF AN ADMINISTRATIVE
PENALTY, DEPARTURE & REMOVAL OF A
RESTRICTIVE TITLE DEED CONDITION**

ERF 349 SANDBAAI

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by C.B. & J.A. van Wyk, the owners of erf 349 Sandbaai, to apply for the administrative penalty, departure and removal of a title deed condition of the subject property.

Erf 349 Sandbaai is 773m² in extent and is held by title deed no. T5251/2018.

There is an existing double storey dwelling with wendy house situated on the subject property. Most of the As Built structures on the subject property were approved in the past. Refer to a copy of the approved building plan dated 11 July 2016. The previous owner however deviated from the approved building plan during the construction of the dwelling. Our clients bought the subject property in 2018 and it recently came to their attention that the As Built structures were not constructed in line with the approved building plan. At the time of sale to our clients in 2018 the main attraction of the property was the position of the balcony and the magnificent views from the balcony. It now seems that the patio (ground floor level), the balcony (first floor level) situated on Main Road and the pergola on the northern erf boundary encroach both the Land Use Scheme building lines. The balcony and patio also encroach the title deed street building line.

The current property owners want to legalize all existing As Built structures. No new additions or alterations are proposed.

Thus, this application intends to address the encroachments of the existing As Built structures (covered patio, balcony and pergola).

This application will address the following existing structures that encroach the Land Use Scheme regulations and title deed building lines:

- The existing covered patio (ground floor level) that encroaches the 4,72m title deed street building line and 4m Land Use Scheme street building line;
- The existing balcony (first floor level) that encroaches the 4,72m title deed and 4m Land Use Scheme street building line;
- The existing pergola that encroaches the 2m Land Use Scheme northern lateral building line.

2. APPLICATION DETAILS

Application is made in terms of:

- 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**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **departure (building lines)** of erf 349 Sandbaai;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **removal of a restrictive title deed condition** of erf 349 Sandbaai.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 349 Sandbaai is situated at 10 Main Road, Sandbaai. Refer to the locality plan attached. Erf 349 Sandbaai is 773m² in extent and is held by title deed no. T5251/2018.

The subject property gently slopes in an easterly direction and is characterized by residential structures (double storey dwelling with wendy house) and a garden area. The existing dwelling has a footprint (ground floor level) of ±145,656m² in extent. The total floor area on first floor level is ±116,082m². The dwelling on the subject property has spectacular sea views to the south and south-west.

3.2 ZONING

Erf 349 Sandbaai has the following land use rights:

ERF NUMBER	ZONING
Erf 349 Sandbaai	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

3.3 LAND USE

There is an existing double storey dwelling with wendy house and garden situated on erf 349 Sandbaai. The subject property is therefore used for single residential living purposes.

A copy of the latest approved building plan dated 11 July 2016 is attached.

Land uses that surround the subject property are single residential dwellings, public open spaces and public roads.

3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 349 Sandbaai to accommodate the existing covered patio, balcony, pergola and wendy house in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
2. The **departure** of erf 349 Sandbaai in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
 - relax the street building line (Main Street) from 4m to 1,975m to accommodate the existing covered patio on ground floor level and balcony on first floor level;
 - relax the northern lateral building line from 2m to 0,82m to accommodate the existing pergola;
3. The **removal of a restrictive title deed condition** of erf 349 Sandbaai in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove condition B.2 (d) on page 3 of title deed no. T5251/2018 to:
 - Accommodate the existing stoep / deck on ground floor level and the As Built balcony on first floor level that encroach the 4,72m title deed street building line (Main Road).

The potential of the subject property is discussed in detail in *Section 3.5 Potential of the property*.

There is an existing double storey dwelling with wendy house situated on the subject property. Most of the As Built structures on the subject property were approved in the past. The approved building plan indicates the same dwelling layout / shape with patio and balcony. However, the previous owner deviated from the approved

building plan when the dwelling with patio and balcony was constructed. There is also an existing pergola, that encroaches the northern lateral building line, that was constructed by the previous property owner. The current property owners bought the subject property with the existing structures As Built and want to address the unlawful structures and the uses thereof.

Thus, this application will address the encroachments of the existing As Built structures (covered patio, balcony, pergola) and to address the unlawful structures (covered patio, balcony, pergola and wendy house).

Here follows the detail of the proposed application for consideration:

3.4.1 Rectification of contravention

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), 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.

As the application is for the rectification of a contravention of the By-Law (As Built patio, balcony, pergola and wendy house), an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The nature, duration, gravity and extent of the contravention**

Our clients bought the subject property in 2018 with all existing structures As Built. Refer to a copy of the topographical survey plan compiled by the land surveyors dated January 2022 attached. No alterations or additions were made to the existing

structures since our clients bought the property in 2018. It is understood that the encroachments of the As Built structures were the previous owner's work (the previous owner owned the property from 2004 until 2018). The latest building plan for the subject property was approved on 11 July 2016. It is therefore assumed that the As Built structures were constructed between July 2016 (after building plan approval) and October 2017 (the latter being the purchase date; registration into the new owners' name was on 13 February 2018). It is therefore evident that the existing As Built structures have been on the property for $\pm 4-5$ years.

The existing covered patio and balcony facing the Atlantic Ocean to the south and south-west was the major drawing / selling point of the subject property when our clients bought the property in 2018. It is therefore of utmost importance to our clients that the structures be retained.

The existing covered patio is $\pm 22,172\text{m}^2$ in extent. The existing balcony is $\pm 22,172\text{m}^2$ in extent. The zoning scheme regulations allow a patio to be positioned within the street building line, subject to the structure not being higher than 1m above the existing ground level. However, the As Built patio is considered a *covered* patio since it is covered by the balcony directly above at the same position. The As Built covered patio and balcony encroach the relevant street building line and a departure application is submitted simultaneously to address the building line encroachments.

The As Built pergola is $5,420\text{m}^2$ in extent.

The existing wendy house is $\pm 17,5\text{m}^2$ in extent and will be retained since the subject property has no other outbuildings to store garden implements and general property maintenance items. The wendy house will however be moved outside the building line to ensure that the structure no longer encroaches the relevant lateral and rear building lines.

The As Built plan indicates the existing encroachments below:

The total extent of the existing structures that encroaches the relevant building lines is as follows:

	Land use scheme building line encroachment
Patio no. 1	$\pm 16\text{m}^2$ (72% of the covered patio encroaches the street)

	building line)
Balcony	±15,956m ² (71,97% of balcony encroaches the street building line)
Pergola	±4,250m ² (78,41% of the pergola encroaches the street building line)
Wendy house	N/a – to be repositioned on site to no longer encroach the relevant building lines.

The existing As Built dwelling's floor area is ±261,738m² in extent. The structures / portions that encroach the land use scheme building lines therefore takes up a mere ±7,72% of the total extent of the dwelling.

At present the As Built pergola is not a habitable area but is considered a space of the dwelling used for relaxing and entertaining. The wendy house is used for storage purposes. Both the As Built covered patio and balcony are considered habitable spaces.

The position and nature of the As Built patio, balcony, pergola and wendy house are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. A building line departure application to accommodate the As Built structures is included in this application.

- **The conduct of the person involved in the contravention**

The As Built structures were constructed by the previous owner of the property. The current owners were unaware that the As Built structures weren't previously approved. They bought the property in 2018. The copy of the latest approved building plan (2016) indicates the patio and balcony, but not in the exact same position as it currently stands. The approved building plan does not indicate a pergola. The existing wendy house will be retained and moved outside the building lines. The current owners (our client) have never contravened the land use planning By-law in the past. They addressed the matter related to the unlawful structures as

soon as they were made aware of the fact and appointed the relevant consultants (architects and town planners) to assist them to obtain the necessary approvals.

- **Whether the unlawful conduct was stopped**

The current owners were unaware that the As Built structures described above were never previously approved. The owners now attempt to rectify the contravention by submitting the administration penalty application and subsequent departure and removal of restrictive title deed conditions application in order to legalise the As Built structures on the subject property.

- **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 / building contractor 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.

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

To the best knowledge of the applicant and as confirmed by the landowners, they have never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built patio, balcony, pergola and wendy house have had and will continue to have on the surrounding area (as further motivated in the building line and removal of title deed conditions application below). The As Built structures have a minimal

impact on the neighbouring properties since the footprint of the structures will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures. The owners were unaware of the fact that the structures were illegally constructed over the relevant title deed and land use scheme's building lines.

The owners never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictions application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

3.4.2 Departure (building line relaxations)

3.4.2.1 Existing covered patio, balcony and pergola

The existing covered patio and balcony were indicated on the latest approved building plan, but when development took place the construction of the dwelling and balcony deviated from the approved building plans. During the construction the position of the covered patio and balcony shifted over the street building line. An unlawful pergola was also constructed by the previous owner on the northern erf boundary and encroaches the Land Use Scheme's northern lateral building line.

It is proposed to retain the As Built covered patio, balcony and pergola. The existing covered patio and balcony facing the Atlantic Ocean to the south and south-west were the major drawing / selling point of the subject property when our clients bought the property in 2018. It is therefore of the utmost importance to our clients that the structures be retained.

The As Built covered patio and balcony were constructed within the 4,72m title deed street building line as well as the 4m Land Use Scheme street building line. The As Built pergola was constructed within the 2m northern lateral Land Use Scheme building line.

An application is submitted for a departure to:

- Relax the street building line (Main Road) from 4m to 1,975m to accommodate the existing As Built covered patio on ground floor level and balcony on first floor level;
- Relax the northern lateral building line from 2m to 0,82m to accommodate the existing pergola.

The existing covered patio is $\pm 22,172\text{m}^2$ in extent. As previously mentioned, $\pm 16\text{m}^2$ ($\pm 72\%$) of the existing covered patio encroaches the street building line. The covered patio is adjacent to the existing living room and serves as an extended area meant for relaxing and socializing.

The balcony is $\pm 22,172\text{m}^2$ in extent. As previously mentioned, $\pm 15,956\text{m}^2$ ($\pm 71,97\%$) of the balcony encroaches the street building line. The balcony is adjacent to the existing lounge and dining area and serves as an extended area meant for relaxing and socializing.

The pergola is $5,420\text{m}^2$ in extent. As previously mentioned, $\pm 4,250\text{m}^2$ ($\pm 78,41\%$) of the pergola encroaches the street building line. The pergola is considered an extension of the patio and creates additional privacy and shade on the patio area (patio no. 2).

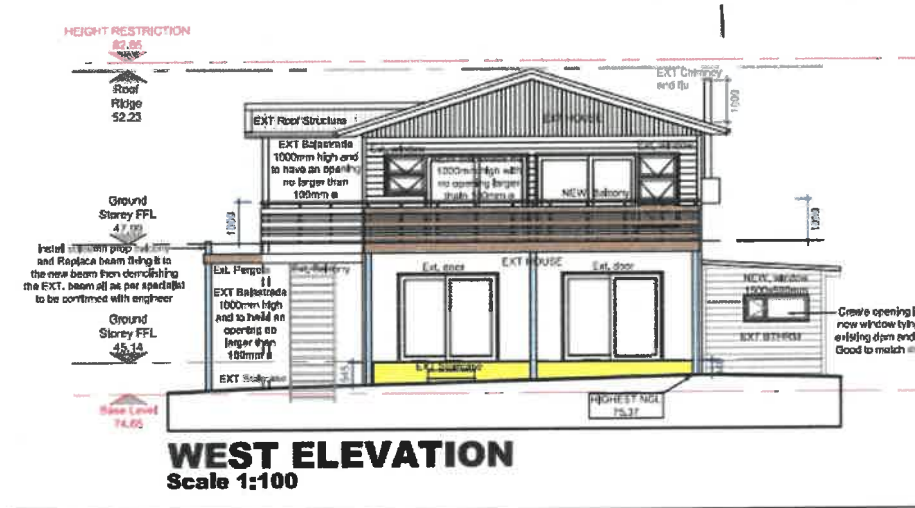
The following should be noted when considering the balcony and pergola:

- The covered patio, balcony and pergola have existed for a few years without any complaints from neighbours.
- The current property owners made no additions or alterations to the As Built covered patio, balcony and pergola.
- The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling. Main Road is an exceptionally wide road (25,19m) with wide road reserves on both sides of the tarred road. The existing patio and balcony is positioned $\pm 10,8\text{m}$ from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The As Built covered patio, balcony and pergola are an integral part of the design of the dwelling thus to demolish the structure to make it compliant to the street building line, will diminish the aesthetic value and property value of the dwelling.

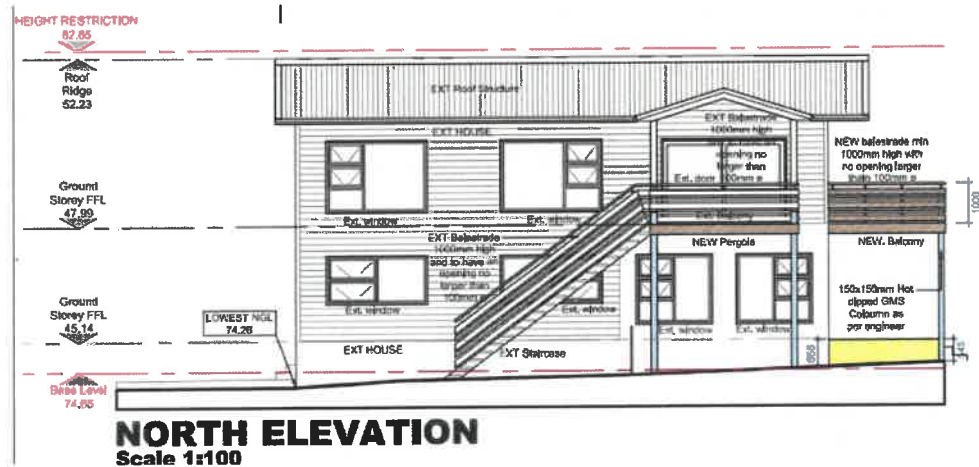
Refer to the site development plan attached for the site plan, ground floor and first floor layout.

The elevations below indicate the As Built structures that must be addressed:

1. West elevation (view of the patio, balcony and pergola from Main Road)



2. North elevation (pergola, patio and balcony as seen from erf 348 Sandbaai)



3. South elevation (covered patio and balcony as seen from erf 350 Sandbaai)

(d) That no building shall be erected on the above erf or erven within 4,72 meters of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."

The removal of the restrictive title deed condition application is addressed in Section 3.14.

The proposed application does not have any impact on the character or property values of the surrounding properties.

The existing structures on the subject property do not create an infringement to any passing traffic or public activity due the position of the As Built structures on site in relation to the existing structures on the neighbouring properties and the wide road reserve of Main Road.

It is submitted that the massing and height of the existing structures are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 349 Sandbaai will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all As Built structures complies with the permissible height requirements for SR1 zoned properties. All buildings and uses thereof that encroach the applicable building lines as indicated on the site development plan already exist and the application addresses existing structures that encroach the building lines. Consequently, the proposed departure and removal of a restrictive title deed condition will not have a greater visual impact on the surrounding properties. The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures did not exist.

The area schedule and coverage for the subject property are as follows:

AREA CALCULATIONS:	
GROUND STOREY AREA -	
House Area G-Storey-	119.413m ²
Wendy House-	17.459m ²
Covered parking-	8.784m ²
Sub-Total-	145.656m²
FIRST STOREY AREA -	
Balcony 2 Covered	8.784m ²
House Area 1st Storey	107.298m ²
Sub-total	116.082m²
TOTAL AREA UNDERCOVER:	261.738m²
ERF -	773m²
OPEN	
NEW Pergola Open-	5.420m ²
New Patio Open-	22.172m ²
NEW Balcony Open-	22.172m ²
TOTAL OPEN AREA:	49.764m²

COVERAGE CALCULATIONS:	
House Area G-Storey-	119.413m ²
Wendy House-	17.459m ²
Covered Parking-	8.784m ²
Total Coverage:	145.656m²
ERF -	773m²
Coverage -	18.842%

The total coverage of 18,84% does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed building line deviations and removal of a restrictive title deed condition, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure and removal of a restrictive title deed condition of erf 349 Sandbaai are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.5 THE POTENTIAL OF THE PROPERTY

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to

be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, second dwelling, guest house and home occupation uses). The proposed departure and removal of a restrictive title deed condition will not hinder any possible future land use applications on erf 349 Sandbaai.

The subject property has the potential and allows for the deviations being applied for since the As Built structures have been on the subject properties for a considerable period without any complaints from neighbours. All existing structures meet the maximum of 8m height requirement for SR1 zoned properties as depicted on the Section plans.

The following should be noted when considering the potential of the site:

- The visual impact will be kept to a minimum since the structures have been on the property for a few years now and no new additions / alterations are proposed.
- The visual impact of the existing covered patio and balcony is considered minimal and merely an extension of the dwelling. Main Road is an exceptionally wide road (25,19m) with wide road reserves on both sides of the tarred road. The existing covered patio and balcony is positioned $\pm 10,8\text{m}$ from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the building line deviations, all other land use parameters are met.
- The As Built covered patio, balcony and pergola are an integral part of the design of the dwelling thus to demolish the structures to make it compliant with the street building line, will diminish the aesthetic value and property value of the dwelling.

The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and the removal of title deed conditions. The following factors confirm the potential of the property to accommodate the proposed lateral building line deviations:

- good quality materials were used when the existing structures were built;
- the architectural style of the As Built structures matches the architectural style of the existing approved main dwelling;
- the height of the As Built and approved structures will remain unchanged;
- The As Built covered patio and balcony (that encroaches both the Land Use Scheme and title deed street building lines) and pergola (that encroaches the Land Use Scheme northern lateral building line) have been in existence for a few years, with no complaints from neighbours. No alterations or additions to these structures are proposed;
- The As Built structures add value to the subject property;
- The width of Main Road (25,19m) and the position of the structures from the edge of the tar road confirm that the view towards the ocean will remain unobstructed.

3.6 ECONOMIC IMPACT

The proposed departures and removal of a restrictive title deed condition are to accommodate existing structures and uses thereof. The proposed departures and removal of a restrictive title deed condition will allow the owners to legalise the existing structures and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the existing covered patio, balcony and pergola will save our clients the cost of demolishing these structures. The proposed building line deviations and removal of the subsequent restrictive title deed building line conditions will have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departures and removal of a restrictive title deed condition will have no impact on the social status quo of the area. The building line deviations and removal of a restrictive title deed condition will however allow the owners to keep the existing As Built structures on the subject property.

No negative impact on the social wellbeing of the surrounding community is anticipated. It is submitted that the existing developed property is compatible with the character of the area and does not impact negatively on the rights of anyone else.

3.8 COMPATIBILITY WITH SURROUNDING LAND USES

The subject property is situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 349 Sandbaai (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures that encroach the street and northern lateral building lines will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will primarily remain for residential purposes (dwelling with outbuildings).

There is no impact on the streetscape as discussed in detail in Sections 3.4 and 3.5 of this report.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

All services on the subject property already exist. The As Built structures will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed departure and removal of a restrictive title deed condition will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of one family will continue to occupy the subject property.

Since the proposed departures and removal of a restrictive title deed condition are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

The building line deviations are on the Main Road and northern boundary side. The width of Main Road minimizes the impact the As Built covered patio and balcony have on the views of surrounding properties. The proposal will therefore have a minimal impact on surrounding and adjacent properties.

3.11 IMPACT ON HERITAGE

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for the departures and removal of restrictive title deed conditions does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 349 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme Heritage Overlay Zone (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010). It is also not demarcated as part of a Heritage Protective Overlay Zone (2020) for the area.

The dwelling on the subject property is not older than 60 years. 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 departures and removal of a restrictive title deed condition will not have a negative impact on the heritage value of the Sandbaai or Greater Hermanus area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departures and removal of a title deed condition do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Overlay Zone (2020).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 349 Sandbaai will remain unchanged and will be from Main Road. Refer to the access points as indicated on the site development plan. No new access points are proposed.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house. There are no garages present on the subject property. However, there is ample space available on the property where two cars can park – refer to the site development plan. The dwelling house on erf 349 Sandbaai therefore complies with the minimum parking requirements for SR1 zoned properties.

The subject property will still be used primarily for single residential purposes and therefore the impact on the traffic flow in the area will remain unchanged.

3.14 TITLE DEED

Title Deed no. T5251/2018 has a restrictive title deed condition that needs to be removed for this application for the departures of the prescribed building lines to be approved. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl of Van Zyl Kruger Attorneys dated 9 June 2022 attached.

Application is made for the removal of a restrictive title deed condition to remove condition B.2 (d) on page 3 of title deed no. T5251/2018 to:

- Accommodate the existing covered patio on ground floor level and the As Built balcony on first floor level within the 4,72m title deed street building line (Main Road).

It is proposed to remove the following restrictive title deed condition registered by the Administrator (now the Overstrand Municipality) to accommodate the proposed departure of erf 349 Sandbaai:

Title deed no. T5251/2018, page 3, paragraph B.2.(d) that reads as follow:

“B. Onderhewig aan die volgende spesiale voorwaardes vervat in Transportakte Nr 15283 gedateer 7 Desember 1943, naamlik:

2. *Wat deur die Administrateur opgelê is:*

(d) That no building shall be erected on the above erf or erven within 4,72 meters of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."

The street building line restriction / condition 2.(d) in Title Deed no. T5251/2018 is more restrictive than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme (2020).

Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition":

- ***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 vest in the person as the owner of a dominant tenement***

The removal of the restrictive condition intends to increase the use rights of the property to permit an existing As Built balcony and covered patio that were constructed by the previous property owner. The value of the rights is vested in the owners of the property. The title deed is not clear in whose favour the conditions were imposed, it merely states that the conditions were imposed by the Administrator; no other properties are however mentioned and the reference that the conditions were imposed by the Administrator implies that the condition is also in favour of the Administrator. The removal of this condition will consequently have no impact on the value rights of immediate properties.

Property owners not seeking that the title deed building line restrictions should be in line with the zoning scheme regulations' restrictions will favour the restrictive title deed conditions since the conditions impede the development of a residential property in line with the zoning scheme. The existing As Built development (and its encroachments) is not an unusually large-scale form of development that encroaches the building lines. The street building line condition is more restrictive than the zoning scheme regulations' building lines. And where scheme building lines are encroached, it is to address the existing structures.

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

The conditions were imposed by the Administrator for the benefit of the Administrator. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property. The Administrator is now the Overstrand Municipality, who governs land use applications in line with the existing Land Use Scheme Regulations and relevant spatial planning policies. To keep the title deed conditions will therefore have no personal benefit to the Administrator / Overstrand Municipality.

- ***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if they are removed***

The removal of the restrictive title deed condition will bring about personal benefits to the current landowners since it will allow them to legalise the existing structures that will in turn benefit the value and resale of their property in future. To remove the stricter street building line will also afford the property owners the opportunity to add to and alter the existing dwelling in future (in any) within the relevant land use restrictions and not be prohibited by stricter title deed conditions. The 4,72m street building line as stipulated in the title deed has a negative impact on the developable area of the land since it shrinks it with 15m² (20,47m x 0,72m).

All other conditions that are compatible with the zoning scheme regulations will remain unchanged.

The existing property owners will be able to enjoy the personal benefits of the existing structures instead of demolishing the structures. The latter will have a great financial burden on the existing property owners. To remove the title deed's street building line restriction will allow the property owners to keep the existing structures on the 1,975m street building line, and adhere to the less restrictive street building line of the zoning scheme regulations (4m) for any future development on the subject property, instead of being bound by the

more restrictive title deed building line (4,72m) for any future additions or redevelopment of the property.

- ***The social benefit of the restrictive conditions remaining in place in its existing form***

The social benefit if the title deed conditions were to remain unchanged and enforced on the existing As Built structure would be that the character of Main Road will remain unchanged. If the condition remains unchanged, the owner must adhere to the title deed's stricter street building line. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's street building line is more restrictive than the scheme regulations' street building line.

To keep the 4,72m title deed street building line will have no benefit to neither the property owners nor the adjacent properties since the existing structures (approved dwelling and As Built patio and balcony) already encroach the street building line and no complaints have been received from the immediate property owners over the years.

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

The removal of the restrictive title deed condition will allow the scheme regulations' building lines to set the rules for future development on the subject property. The social benefit will therefore only be to the property owners of erf 349 Sandbaai since it will allow them to keep the existing As Built structures that encroach onto the street building line on the subject property and allow future additions to be constructed in line with the zoning scheme regulations' building lines only.

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

The removal of the restrictive condition will not remove all rights enjoyed by the beneficiaries, but only some rights and will instead expand the value of these rights to accommodate the existing structures with departures where applicable. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone

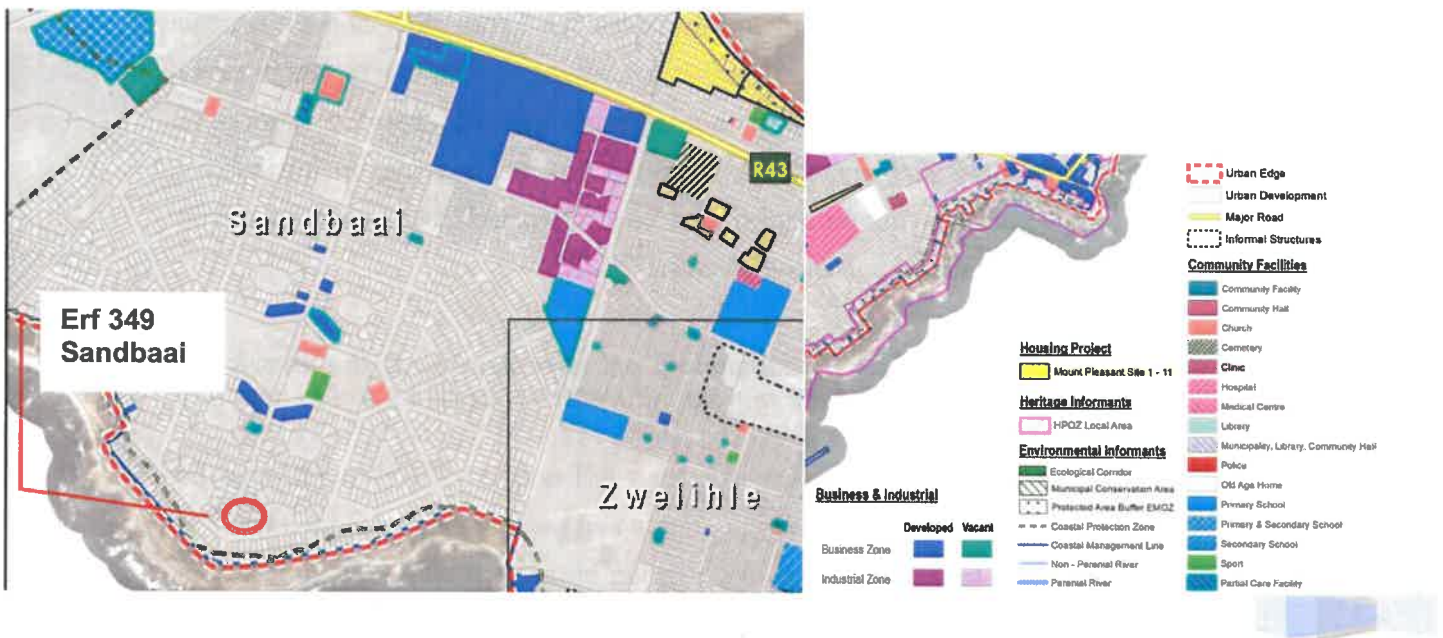
else or the character of the area. All other title deed conditions that are in line with the SR1 land use parameters will be retained.

There is a bond registered against erf 349 Sandbaai. The bondholder's consent dated 9 June 2022 is attached.

From the above as well as the motivation in Sections 3.4 and 3.5 of this report it is evident that the removal of the restrictive title deed conditions can be favourably considered.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 349 Sandbaai is situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) below. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of the title deed conditions on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).



The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 349 Sandbaai forms part of Planning Unit no. 7. This planning unit stipulates an increase in density from 7,8du/ha to 16,5du/ha. No additional portions or second dwelling units are proposed with this application. The status quo of the area (low density residential) will remain unchanged. The land use application for the subject property therefore falls within the existing planning for the Sandbaai / Hermanus West area.

The proposal will promote land development in a location that is sustainable. The proposed departure and removal of the title deed condition are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

The impact on the overall density of this part of Sandbaai will therefore be kept to a minimum since the proposed application still promotes a low-density residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

3.16 PLANNING PRINCIPLES

The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1932.

The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Sandbaai Township.

The proposed application is in character with the existing area (Sandbaai) where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

Spatial sustainability: The proposed departures and removal of a title deed condition will have no impact on the visual elements of the subject property and surroundings since all the structures that encroach the lateral and street building lines already exist. It is submitted that the proposed application is compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the building lines has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The As-Built unlawful structures merge well with the approved structures. The impact on the biophysical environment will also be kept to a minimum since the structures already exist.

Factors such as the good quality materials used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the low impact on the streetscape, the width of the road reserve of Main Road, the existence of the structures on the subject property for the past few years, etc. allow for the consideration and approval of the proposed deviations and removal of restrictive title deed conditions without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures to an improved erf within an established residential area will not impact on urban sprawl, or upon a sensitive environment.

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The property will be compatible with the character of the area and do not impact negatively on the rights of any adjacent property owner.

Efficiency: The subject property is easily accessible and conveniently located close to Hermanus and major routes. The massing and height of the property will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built additions with the proposed uses thereof to the subject property since it is

compatible with the existing built environment and the way the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing structures and its proposed uses by approving the proposed departure of erf 349 Sandbaai instead of demolishing the structures and as a result negatively impact on the whole look and feel of the subject property.

The proposed departures and removal of a restrictive title deed condition prove to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm 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 Amendment By-law on Municipal Land Use Planning, 2020.

4. RECOMMENDATION

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

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and primary land use of the subject property will remain unchanged;

- The deviations from the applicable scheme regulations building lines are to accommodate As Built structures only (As Built balcony, covered patio and pergola);
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.