



**OVERSTRAND MUNISIPALITEIT**  
**ERF 3221, LAGOONRYLAAN 16,**  
**ONRUSRIVIER: AANSOEK OM OPHEFFING**  
**VAN BEPERKENDE**  
**TITELAKTEVOORWAARDE, AFWYKING EN**  
**BEPALING VAN 'N ADMINISTRATIEWE**  
**BOETE: INTERACTIVE STADS- EN**  
**STREEKBEPLANNING NAMENS PH VAN**  
**NIEKERK**

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 3221, Onrusrivier (die eiendom), naamlik:

**Opheffing van Beperkende Titellaktevoorwaarde**

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titellaktevoorwaarde E.7 soos vervat in Titellakte T3925/2014 van die eiendom om die bestaande woonhuis en strukture te akkommodeer.

**Afwyking**

Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die noordelike syboullyn te verslap vanaf 2m na  $\pm 1,3m$  om die bestaande woonhuis op die eiendom te akkommodeer.

**Bepaling van 'n Administratiewe Boete**

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die ongemagtige boulynoorskreidings soos bo uiteengesit.

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

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) bereik voor of op **17 Maart 2023**, 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.

DGI O'Neill, Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, HERMANUS, 7200

**Munisipale Kennisgewing Nr. 29/2023**

**OVERSTRAND MUNICIPALITY**  
**ERF 3221, 16 LAGOON DRIVE, ONRUS RIVER:**  
**APPLICATION FOR REMOVAL OF**  
**RESTRICTIVE TITLE DEED CONDITION,**  
**DEPARTURE AND DETERMINATION OF AN**  
**ADMINISTRATIVE PENALTY: INTERACTIVE**  
**TOWN & REGIONAL PLANNING ON BEHALF**  
**OF PH VAN NIEKERK**

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 application applicable to Erf 3221, Onrus River (the property), namely:

**Removal of Restrictive Title Deed Condition**

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition E.7 as contained in Title Deed T3925/2014 of the property to accommodate the existing dwelling and structures.

**Departure**

Application in terms of Section 16(2)(b) of the By-Law to relax the northern lateral building line from 2m to  $\pm 1,3m$  to accommodate the existing dwelling on the property.

**Determination of an Administrative Penalty**

Application in terms of Section 16(2)(q) of the By-Law for the unauthorized building line encroachments as stipulated above.

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](mailto:loretta@overstrand.gov.za)) on or before **17 March 2023**, 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.

DGI O'Neill, Municipal Manager, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

**Municipal Notice No. 29/2023**

**UMASIPALA WASE-OVERSTRAND**  
**ISIZA 3221, 16 LAGOON DRIVE, ONRUS**  
**RIVER: ISICELO SOKUSUSWA**  
**KWEMIQATHANGO ENEZITHINTELO**  
**KWITAYITILE, UKUNYENYISWA**  
**NOKUGQITYWA KWESOHLWAYO: ABAKWA-**  
**INTERACTIVE TOWN & REGIONAL PLANNING**  
**EGAMENI LIKA-PH VAN NIEKERK**

Kukhutshwa isaziso ngokumayela neCandelo 47 neCandelo 48 loMthetho Otshintshiweyo woMasipala waseOverstrand ongokuSetyenziswa Nokucetywa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala), ukuba kufunyenwe ezi sicelo zilandelayo esimayela neSiza 3221, Onrus River (ipropathi), ukuba:

**Ukususwa Komqathango Onezithintelo Kwitayitile**

Isicelo ngokumayela neCandelo 16(2)(f) loMthetho kaMasipala ukuze kususwe umqathango onesithintelo kwitayitile E.7 njengoko uqulethwe kwiTayitile T3925/2014 yepropathi ukulungiselela indawo yokuhlala ekhoyo nezakhiwo.

**Ukunyenyiswa**

Isicelo ngokumayela neCandelo 16(2)(b) loMthetho kaMasipala ukuze kunyenyiswe umgca wesakhiwo ongakwicala elisemntla ukuska ku-2m ukuya ku  $\pm 1,3m$  ukulungiselela indawo yokuhlala ekhoyo kwipropathi.

**Ukugqitywa Kwesohlwayo**

Isicelo ngokumayela neCandelo 16(2)(q) loMthetho kaMasipala ngenxa yokudlula ngaphandle kwemvume kumgca wokwakha njengoko kuchaziwe ngasentla.

linkcukacha ezimayela nesi sindululo ziyafumaneka ukuze zihlolwe phakathi evekini phakathi ko 08:00 no 16:30 kwiSebe: Town Planning at 16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo mazingeniswe kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ingadlulanga i-**17 uMatshi 2023**, ubhale igama lakho, idilesi yakho kunye neenkukacha zoqhagamshelwano, umdla wakho kwisicelo nezizathu zokubhala izimvo zakho. Imibuzo ngefowuni ingabhekiswa ku**Mcebi Dolophu, Mnu. H Olivier** ku 028-313 8900. UMasipala angangavumi ukwamkela amagqabaza okuhlomla afunyenwe emva komhla wokuvula. Nabani na ongakwazi kufunda okanye ukubhala angatyelela iSebe lokuCeba Idolophu apho igosa lakwamasipala liya kumnceda afake amagqabaza akhe okuhlomla.

DGI O'Neill, uMphathi kaMasipala, uMasipala wase-Overstrand, P.O. Box 20, HERMANUS, 7200

**Isaziso Sikamasipala No. 29/2023**



## 1. Introduction

### a. Brief

Refer to **Annexure B** for the Power of Attorney.

Interactive Town and Regional Planning was appointed by the owner of the property Petrus Hendrik Van Niekerk to prepare and submit an application for building line departures, the removal of a restrictive title deed condition on Erf 3221, Onrusrivier and the determination of an administrative penalty in terms of the relevant legislation.

### b. Background

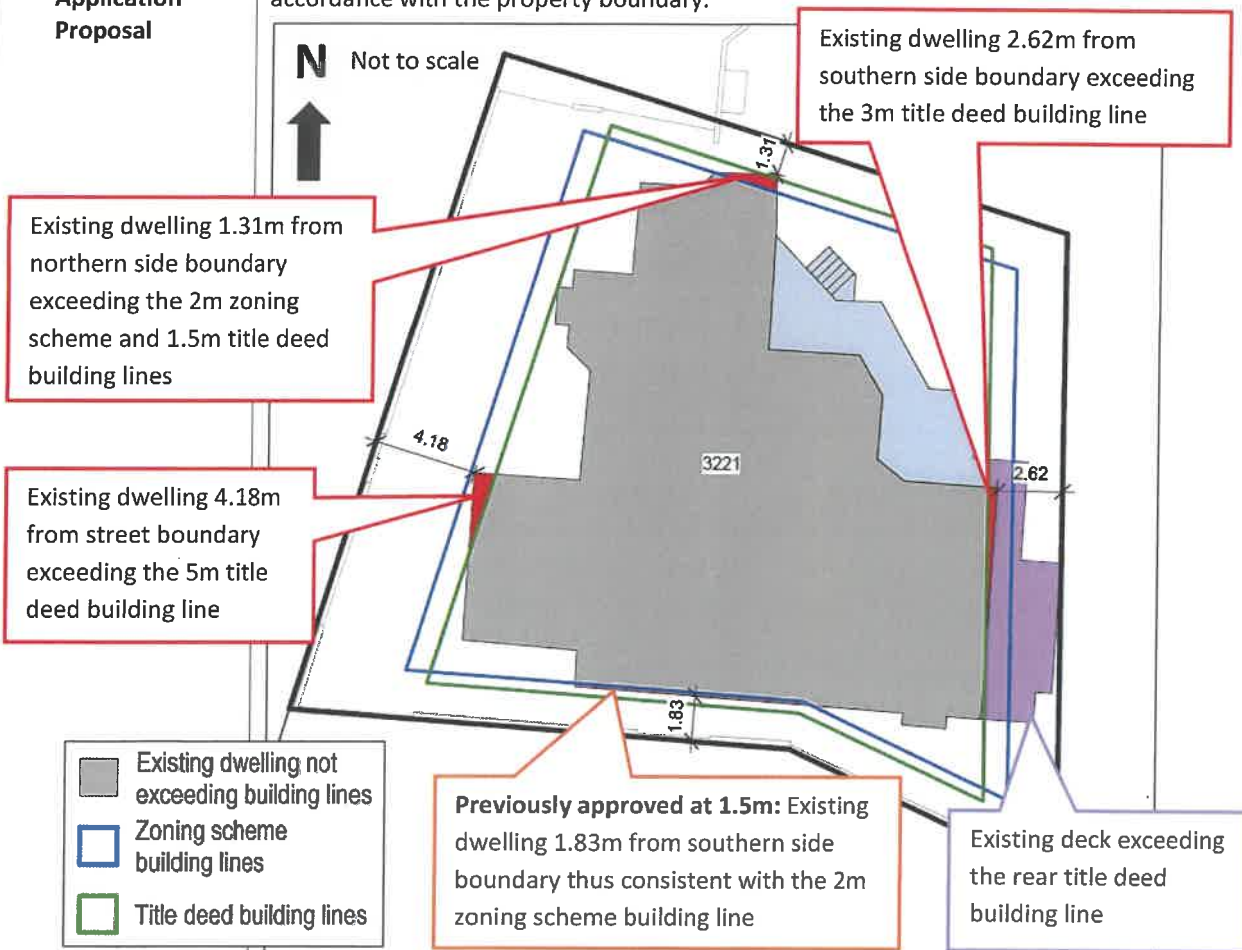
The property was purchased by the current property owners in 2014. In 2014 building plan approval for building amendments was obtained and accordingly constructed.

The building plan approval however did not include the enclosed stoep above the garage and also not the deck on the eastern side.

A survey of the property has been done in September 2022 revealing that the existing dwelling exceeds title deed and zoning scheme building lines and that the deck at the rear of the property exceeds the property boundary.

### c. Development Objective & Application Proposal

The **application objective** is to legalise the existing dwelling and a deck. In order to legalise the existing deck at the rear of the property, it is proposed to reduce the size of the deck in accordance with the property boundary.



**Figure 1: Application illustration**

Subsequently the **application proposal** is for:

- A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling. (Previous approval was for 1.5m)
- Removal of a restrictive title deed condition pertaining to building lines.
- The determination of an administrative penalty.

## 2. The Application

<p><b>a. Analysis: Title Deed</b></p>	<p>Title Deed T3925/2014 contains a restrictive title deed condition which reads as follows:</p> <p><i>“7. <u>NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –</u></i></p> <p>(i) <i>an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;</i></p> <p>(ii) <i>an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.”</i></p>
---------------------------------------	---

Application is therefore made for a removal of the above mentioned restrictive title deed conditions.

<p><b>b. Analysis: Development Criteria:</b></p> <p>The development parameters for Erf 3221 Onrusrivier, Hermanus as per the Overstrand Zoning Scheme Regulations, 2015, read with the subject title deed are summarised as follows:</p>	Parameters		Existing Zoning Scheme Requirements:	As Built:	Comments
	Zoning		Residential Zone 1: Single Residential (SR1)	Residential Zone 1: Single Residential (SR1)	Consistent
	Primary Use		Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;	Dwelling house	Consistent
	Consent Uses		Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.	None	Consistent
	Coverage		50%	42%	Consistent
	Height		8m	±8.3m (Previously approved)	Consistent
	Building lines	Street	4m (5m in terms of title deed)	4m	<p><b>Consistent with the Zoning Scheme, exceeds 5m title deed thus application includes a removal of restrictive title deed conditions</b></p> <p><b>Exceeds both the zoning scheme and title deed building lines, application is made for a zoning scheme departure and removal of restrictive title deed conditions application</b></p> <p><b>The deck exceeds the title deed building line, thus an application is made for a</b></p>
		Side	2m (1.5m in terms of title deed)	<u>1.3m north for dwelling</u> 1.8m south for dwelling (Previously approved)	
		Rear	2m (3m in terms of title deed)	<u>0m for deck</u> 2m for dwelling	

					<b>removal of restrictive title deed conditions</b>
	<b>Parking</b>		Dwelling house: 2 bays	Dwelling house: 2 bays	Consistent
<b>c. Application:</b>  The application form is attached as <b>Annexure A.</b>	<p>Application is subsequently made in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, for:</p> <ul style="list-style-type: none"> <li>• A departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling in terms of Chapter IV, Section 16(2)(b).</li> <li>• Removal of a restrictive Title Deed Condition 7 from Title Deed T3925/2014 in terms of Chapter IV, Section 16(2)(f).</li> <li>• The determination of an administrative penalty in terms of Chapter IV, Section 16(q).</li> </ul>				



**b. Location:**

For the Locality Plans refer to Annexure F.

**Regional Context:**

Within the regional context, the application area is located within Onrusrivier residential suburb. Onrusrivier is located approximately 5km west of the Hermanus CBD.

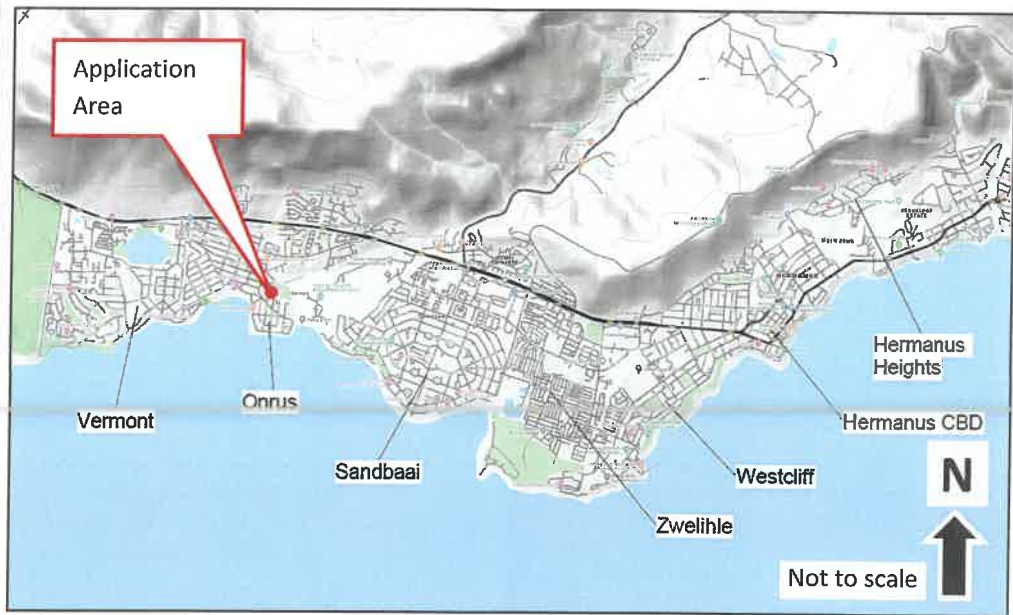


Figure 3: Locality Plan – Regional Context

**Local Context:**

Within the local context the application area consists of a residential erf within Onrusrivier that forms part of the larger Hermanus West area. The application area is located at number 16 Lagoon Drive.

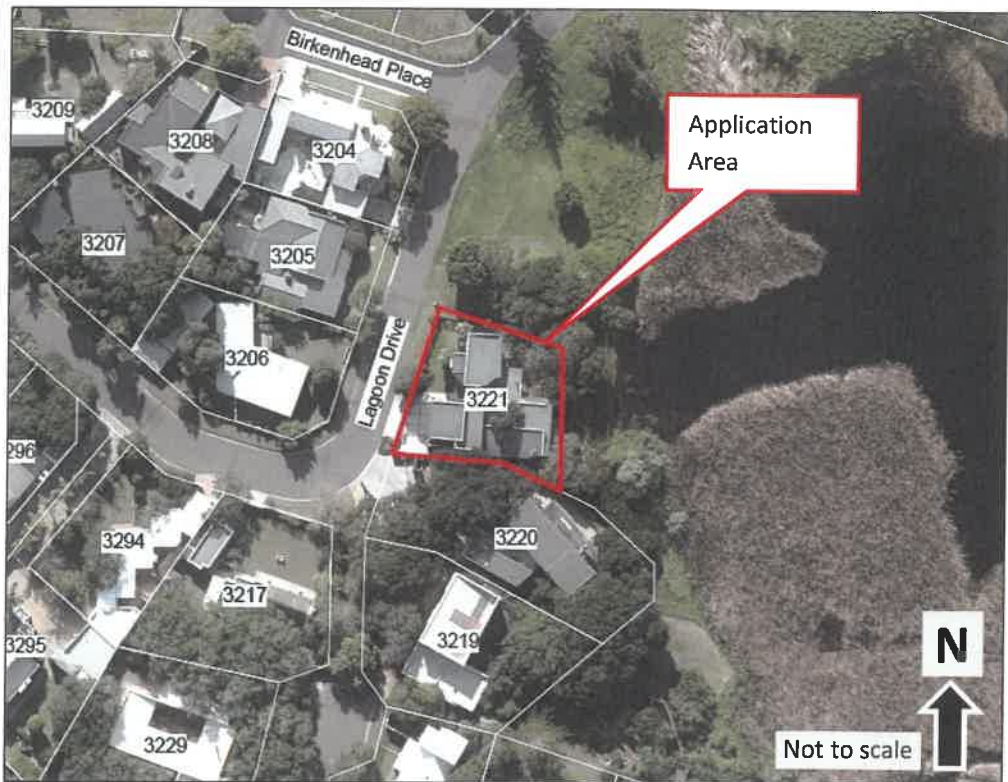


Figure 4: Locality Plan – Local Context

**c. Land Use:**

Refer to the Land Use Plan attached as **Annexure H.**

The application area accommodates a dwelling house on the property. The surrounding land-uses are single residential dwellings and open space. No change in land use is proposed. The application proposal is **consistent** with the land use of the area.



Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties

**d. Zoning:**

Refer to the Extract of Hermanus Zoning plan attached as **Annexure G.**

The application area, Erf 3221, Onrusvier is zoned Residential Zone 1: Single Residential. The surrounding erven are zoned Residential Zone 1: Single Residential as well as Open Space Zone 2: Public Open Space. No change in zoning is proposed. The application proposal is **consistent** with the zoning of the area.



Figure 6: Extract from the Overstrand Municipality: Online zoning viewer

**e. Spatial Planning Policy**

The following policy guidelines from the following relevant policy documents are applicable to the application area.

**i. Overstrand Municipal Spatial Development Framework, 2020**

In terms of the Overstrand Municipal Spatial Development Framework, the application area is within a Heritage Overlay Zone.

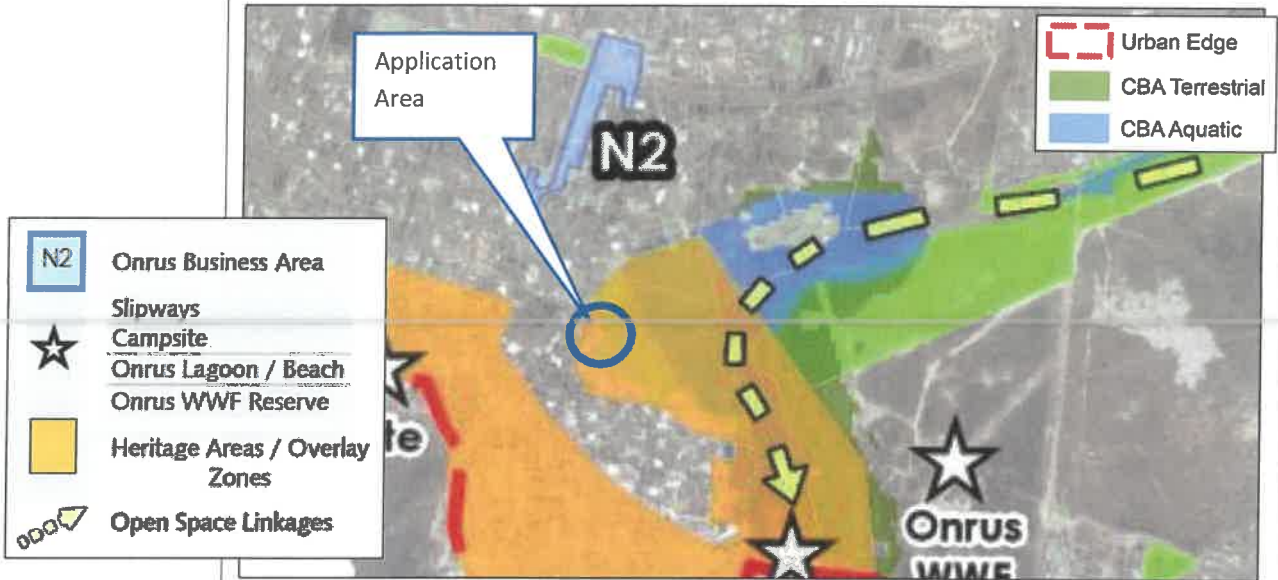


Figure 7: Overstrand Municipal Spatial Development Framework, 2020 extract

**ii. Overstrand Municipality Spatial Growth Management Strategy – 2010 (OMSGMS)**

In terms of the Overstrand Growth Management Strategy, the application area falls within a “No Densification” area as well as a Heritage Overlay Zone. No densification or building dwelling amendments are proposed.

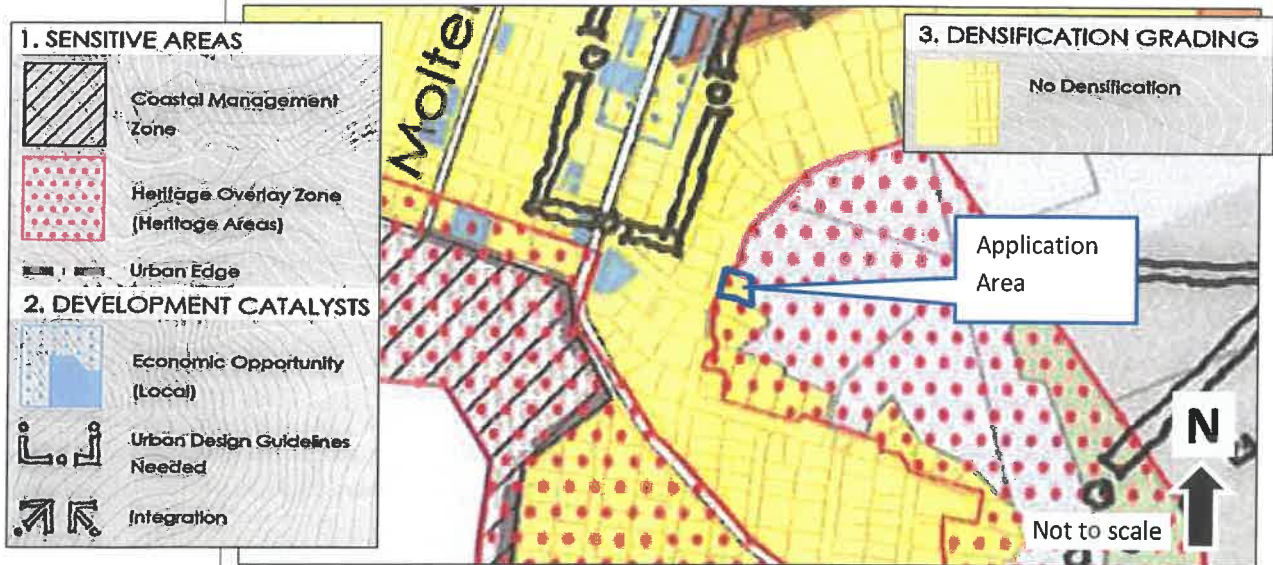


Figure 8: Extract from the Overstrand Municipality: Growth Management Strategy

**Conclusion:**

The application is for the legalisation of existing structures and does not impact land use or spatial planning and therefore proposal is fully **consistent** with the requirements of the spatial development policies of the Overstrand Municipality.

**iii. Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020**

The property owner purchased the property in 2014 and since then enclosed a stoep on the first floor which exceeds the title deed street building line and added a deck which exceeds the rear title deed building line. The northern and eastern parts of the dwelling that exceeds building lines were approved but exceeded building lines unknowingly and was only realised once a survey of the property has been done. Thus the determination of an administrative penalty is applicable.

***“90. Application for administrative penalty***

*(1) A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.*

*(2) A person making an application contemplated in Subsection (1) must –*

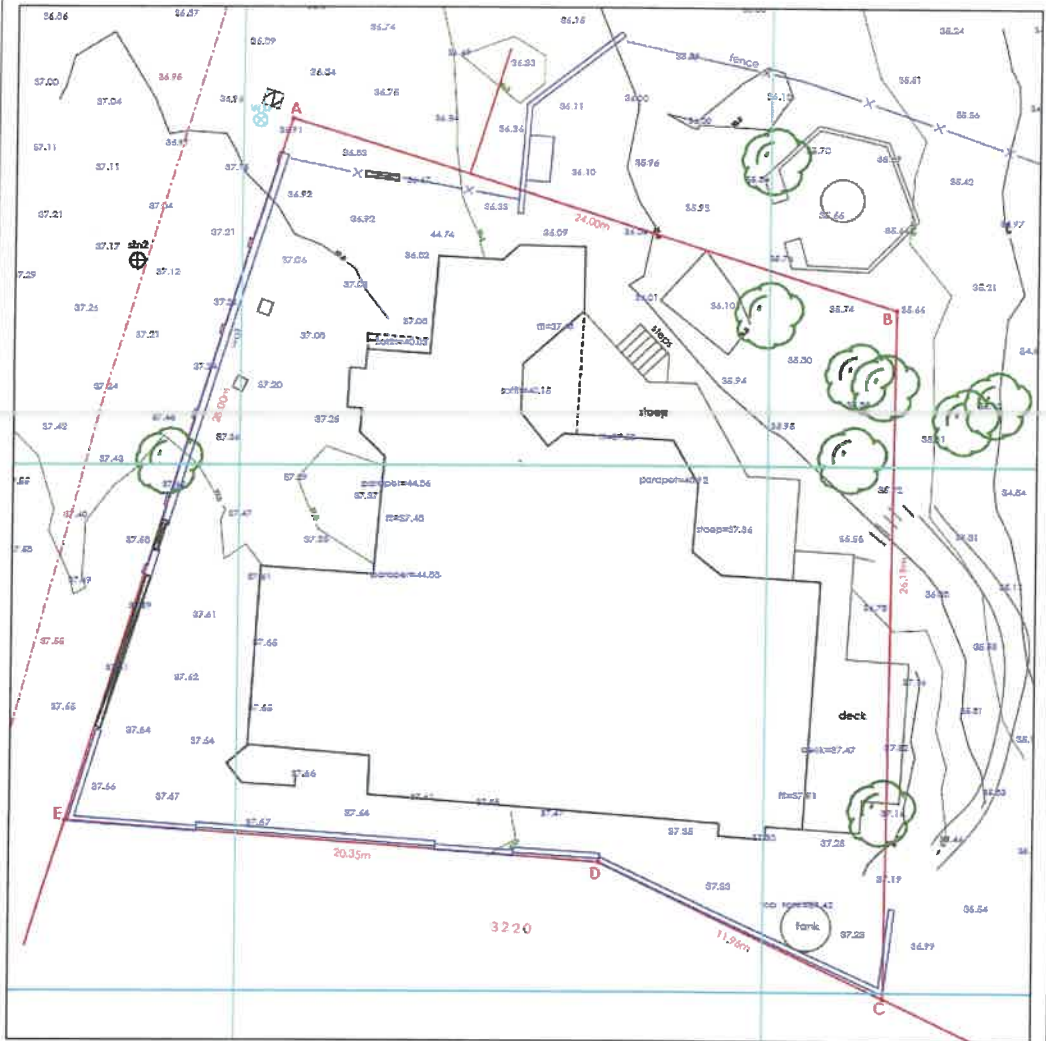
- (a) submit an application;*
- (b) pay the prescribed fee;*
- (c) provide the information contemplated in Subsections (3); and*
- (d) comply with the duties of an applicant in Section 84.*

*(3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-*

- (a) the nature, duration, gravity and extent of the contravention;*
- (b) the conduct of the person (allegedly) involved in the contravention;*
- (c) a report by a quantity surveyor in matters of unauthorised building/construction;*
- (d) whether the unlawful conduct was stopped; and*
- (e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.”*



A survey of the property has been done in September 2022 showing that the existing dwelling exceeds title deed and zoning scheme building lines and that the deck at the rear of the property exceeds the property boundary.



**Figure 11: Site Survey**

The property owners are also leasing a part of municipal land for garden purposes. This does not form part of the application.

**b. Proposal**

The application objective is to legalise the existing dwelling and the deck. In order to legalise the existing deck at the rear of the property, it is proposed to reduce the deck to conform with the property boundary.



Figure 12: Application illustration



Dwelling 1.3m from northern side boundary exceeding the 2m zoning scheme building line and 1.5m title deed building line



Dwelling exceeding the 3m rear title deed building line

Deck exceeding the 3m title deed building line



Enclosed stoep exceeding the 5m title deed street building line



Figure 13: Photos of the application area

**Departure to relax the northern side zoning scheme building line from 2m to 1.3m**

The dwelling was originally approved 1.5m from the northern side boundary and was erroneously built 1.3m from the property boundary. When the property was purchased in 2014, it already exceeded the northern side zoning scheme building line. The only change that exceeded the northern side building line since it was purchased in 2014 was the replacement of existing windows with new windows which was included in the building plan approval of 2014. Such change requires an application for a building line departure.

The dwelling was approved at 1.5m from the northern side boundary and built at 1.31m. Only a small portion of the northern side building line is exceeded by a corner of the dwelling which is an additional 0.19m or 0.06m<sup>2</sup>.

Enough space is also still available for services and access on the northern part of the application area.

The property north of the application area is a public park. As a result, the existing dwelling exceeding the northern side building line does not have an impact on private property owners.

Subsequently, the portion of the existing dwelling that exceeds the northern side building line does not have a negative effect on privacy, light, safety, services or character of the area. It is therefore recommended that the departure to relax the northern side zoning scheme building line from 2m to 1.3m to allow for the existing dwelling be approved.

**Removal of a restrictive title deed condition**

Title Deed T3925/2014 contains a restrictive title deed condition which reads as follows:

*"7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –*

- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;*
- (ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."*

The subsections of the dwelling exceed the street, side and rear title deed building lines and the deck exceeds the rear title deed building line.

- The existing dwelling is 4.18m from the street boundary and the street title deed building line is 5m. The existing dwelling therefore exceeds the title deed street building line by 0.82m.
- The existing dwelling is 1.31m from the northern side boundary and the title deed side building line is 1.5m. The existing dwelling therefore exceeds the title deed side building line by 0.19m.
- The existing dwelling is 2.62m from the rear boundary and the rear title deed building line is 3m. The existing dwelling therefore exceeds the rear title deed building line by 0.38m.
- The existing deck is proposed to be reduced in size up to the property boundary and will therefore exceed the title deed rear building line by 3m.

A removal of Clause 7 from Title Deed T3925/2014 is therefore required to accommodate the existing dwelling and deck.

The title deed building lines on the rear and street boundaries are more restrictive than the zoning scheme building lines and the existing dwelling does not exceed the zoning scheme rear or street building lines. The existing dwelling is therefore in line with the street and rear municipal building line standards and will not have a negative impact on the character of the area, privacy, views, safety or services.

The existing dwelling exceeds the title deed northern side building line by 0.19m and is a corner of a building with a coverage of 0.06m<sup>2</sup>. The part of the building exceeding the northern title deed building line is relatively small and will not have a notable impact on the character of the area, privacy, views, safety or services.

The deck exceeding the rear title deed building line is on the ground floor, is less than 1m from the natural ground level and does not have a roof, pillars or a balustrade. The deck will be decreased in size in order to not exceed the property boundary. The deck will therefore not have an additional impact on privacy, views, character of the area, access, or safety services compared to the existing ground level.

The removal of the restrictive title deed condition is required in order to accommodate the existing dwelling and deck and the removal of Clause 7 from Title Deed T3925/2014, will not have a negative impact on the character of the area, privacy, views, safety or services. It is therefore recommended that the removal of the restrictive title deed condition be approved.

#### **Determination of Administrative Penalty**

The following information with regards to the administrative penalty is provided as required according to Chapter X, Section 90(3):

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

The nature, duration, gravity and extent of the contravention has been described in detail in this motivation report and includes the following contraventions;

The property owner purchased the property in 2014 and since then enclosed a stoep on the first floor which exceeds the title deed street building line and added a deck which exceeds the rear title deed building line. The northern and eastern parts of the dwelling that exceeds building lines were approved but exceeded building lines unknowingly and was only realised once a survey of the property has been done.

The portion of the enclosed stoep above the garage exceeding the title deed street building line exceeds the title deed building line by 0.82m is 2.75m<sup>2</sup>. The existing covered stoep was enclosed by replacing the wooden balustrade by a masonry half wall and adding shutters. The stoep shutters can open completely and the stoep is still used as a stoep. The stoep was enclosed in 2014. The stoep does not exceed zoning scheme building lines.

The deck exceeding the title deed building line is proposed to be reduced to not exceed the property boundary. The portion of the deck exceeding the 3m title deed building line is 22.29m<sup>2</sup>. The deck was built in 2014. The deck is allowed in terms of the zoning scheme. By the removal of the restrictive title deed Condition 7, the reduced deck size will be compliant in terms of the Zoning Scheme.

The dwelling was approved at 1.5m from the northern side boundary, but erroneously by the previous owners at 1.31m from the property boundary, thus exceeding the approval by 0.19m. The area exceeding the northern side zoning scheme building line is only a corner of the dwelling and is 0.06m<sup>2</sup>. This was only realised once a survey was done in September 2022.

The dwelling was approved at 3m from the rear boundary and erroneously built at 2.62m from the rear boundary in 2014, thus exceeding the approval by 0.38m. The area exceeding approval is 2.76m<sup>2</sup>. This was only realised once a survey was done in September 2022.

	<p>(b) <u>The conduct of the person (allegedly) involved in the contravention</u> It is evident from this application that the applicant/owner is co-operative and willing to rectify the existing contravention and to follow the correct statutory procedure to apply to legally accommodate the existing structures.</p> <p>(c) <u>Report by a quantity surveyor in matters of unauthorised building/construction</u> Due to the nature and scale of the contravention, a report by a quantity surveyor is not considered applicable.</p> <p>(d) <u>Whether the unlawful conduct was stopped</u> Due to the nature of the contravention being building line transgressions not causing a material impact on the environment, the most practical, non-destructive and cost-efficient way to stop the unlawful conduct is by <u>legalising</u> the contraventions, for which the applicant/owner is in the process of applying through this application.</p> <p>(e) <u>Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law</u></p>
	<p>No, according to our knowledge, with the exception of the contraventions mentioned in this motivation, the applicant/owner has not previously contravened this By-Law or a previous planning law.</p> <p><b>c. Desirability</b></p> <ul style="list-style-type: none"> <li>• The existing dwelling does not have any negative impact on privacy, light or views of neighbouring properties.</li> <li>• The existing dwelling does not have any negative impact on services or safety.</li> <li>• The proposal for the deck is consistent with the zoning scheme and will not have any additional impact.</li> <li>• The proposal is consistent with the character of the area.</li> <li>• The proposal is only to accommodate the existing dwelling and deck.</li> </ul> <p><b>d. Planning Principles</b></p> <p>In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:</p> <p>1) <b>Spatial Justice</b> which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.</p> <p><b>Possible results of the development</b> The application is to accommodate an existing dwelling and deck which will not have an impact on redressing the past apartheid spatial development imbalances.</p> <p>The application proposal is <b>consistent with spatial justice</b>.</p> <p>2) <b>Spatial Sustainability</b> which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.</p> <p><b>Possible results of the development</b> The application is to accommodate an existing dwelling and deck on a single residential property and will therefore not have an impact on agricultural land or biodiversity rich areas.</p> <p>The application proposal can thus be deemed to be <b>spatially sustainable</b>.</p>

	<p>3) <b>Efficiency</b> which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.</p> <p><b>Possible results of the development</b></p> <p>The application is to accommodate an existing dwelling and deck and therefore does not influence how efficient a settlement is designed. Approval of this application is however the most efficient solution to the dwelling and deck exceeding the building lines.</p> <p>The application proposal is <b>consistent</b> with the <b>efficiency principle</b>.</p> <p><b>Spatial Resilience</b> which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.</p> <p><b>Possible results of the development</b></p> <p>The proposed development will not lead to any economical and/or environmental shocks as the application allows for the existing dwelling and deck.</p> <p>The application proposal is <b>consistent</b> with the principle of <b>spatial resilience</b>.</p>
	<p>4) <b>Good Administration</b> which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.</p> <p><b>Possible results of the development</b></p> <p>Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the relevant government tiers and the general public to participate in the eventual decision-making process.</p> <p>The application proposal is <b>consistent</b> with the principle of <b>good administration</b>.</p>

## 5. Conclusion

The application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities. It is therefore recommended that the application **be approved** in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, as follows:

- A departure to relax the northern side building line from 2m to 1.3m to allow for the existing dwelling in terms of Chapter IV, Section 16(2)(b).
- Removal of a restrictive title deed condition 7 of Title Deed T3925/2014 in terms of Chapter IV, Section 16(2)(f).
- The determination of an administrative penalty in terms of Chapter IV, Section 16(q).

CTN1265

BM PROKUREURS  
Kamer 203, 80 Strand Street,  
Kaapstad  
8001  
Tel: 021 421-2761  
Epos: info@bm-law.co.za

Opgestel deur my

TRANSPORTBESORGER  
FLORIS ALBERTUS HANEKOM

Ras eenderning		Office fee
Parties	Amount	
Parties price/Value	R 4 175 000,00	R 15000,00
Mortgage capital Amount	R .....	R .....
Stamp for completion	Receipt R. 2	

DATA / CAPTURE  
07 FEB 2014  
MATYATYAMBA NOLUVUJO

## TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT

**FLORIS ALBERTUS HANEKOM**

T 000003925 / 2014

voor my verskyn het, REGISTRATEUR VAN AKTES te Kaapstad, hy die genoemde komparant synde behoorlik daartoe gemagtig deur 'n Volmag aan hom verleen deur

**BERNARD BROM**  
Identiteitsnommer 4103105067084  
Getroud buite gemeenskap van goed

geteken te Stellenbosch op 2 Desember 2013

DATA / VERIFY  
10 FEB 2014  
VAN WYK JENNY

En genoemde Komparant het verklaar dat sy prinsipaal, op 13 Oktober 2013, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

**PETRUS HENDRIK VAN NIEKERK**  
**Identiteitsnommer 4807045083080**  
**Getroud buite gemeenskap van goed**

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, in volkome en vrye eiendom

ERF 3221 ONRUSTRIVIER  
IN DIE OVERSTRAND MUNISIPALITEIT  
AFDELING CALEDON  
PROVINSIE WESKAAP

GROOT 700 (SEWE HONDERD) Vierkante Meter

OORSPRONKLIK oorgedra kragtens Akte van Transport Nr T29867/80 met Algemene Plan TP 9092 wat daarop betrekking het en gehou kragtens Akte van Transport Nr T65769/2001

- A.** ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr T2395/1942.
- B.** ONDERHEWIG VERDER aan die volgende voorwaardes vervat in Transportakte Nr T4826/1939:

"Subject further to and entitled to the sole benefit (that is to say to the exclusion of such rights which John Robertson may have had in so far as his ownership of the remaining extent of the land held by him under Deed of Transfer No 53 dated 5<sup>th</sup> January 1918, is concerned) of the terms of the three Deeds of Servitude referred to in the three endorsements, all dated 29<sup>th</sup> April 1930, on the said Deed of Transfer No 53/1918 whereby the sole rights to the sale of liquor were reserved in favour of the land held by the said John Robertson under the said Deed of Transfer No 53/1918 and which endorsement reads as follows:

"BY Notarial Deed dated the 14<sup>th</sup> of March 1930, the sole rights to the sale of liquor has been granted in favour of the land held hereunder and this condition has been registered against the remainder of the land held under Grant dd 19 February 1904 (Caledon Quitrents Vol 10 No 18 as per Certificate of Remaining Extent dd 25 March 1930) as will more fully appear on reference to the copy annexed."

"BY Notarial Deed dated 11<sup>th</sup> April 1930 the sole right to the sale of liquor has been reserved in favour of the land held hereunder and this condition has been registered against the land held under Transfer 10235 dated 14<sup>th</sup> October 1927, as will more fully appear on reference to the copy annexed hereto."

"BY Notarial Deed dated 11.4.1930 the sole right to the sale of liquor has been reserved in favour of the land held hereunder and this condition has been registered against the remainder of the land held under Trfr. 9286 dd. 25 Sept. 1925 (as per Cert.of remg. Ext. dd. 25 March 1930) as will more fully appear on reference to the copy annexed hereto."

- C. ONDERHEWIG EN GEREKTIG AAN die voordele van die voorwaardes vervat in Notariële Akte waarna verwys word in die endossement gedateer 2 Oktober 1940 in gesegde Transportakte Nr T4826/1939, welke endossement soos volg lees;

"BY Notarial Deed 301/1940 dated 30<sup>th</sup> August 1940, the owner for the time being of the properties conveyed by the Transfers Nos. 4597/23, 2692/25 and 53/1918 shall not sell any liquor on the properties conveyed by the said Deeds of Transfer without the consent of the owner for the time of the within ppty as will more fully appear on reference to the said Notarial Deed registered this day in the Servitude Register under No 301/1940."

- D. GEREKTIG aan die voordele van die serwitut waarna verwys word in gedeelte (b) van die endossement gedateer 26 November 1954, op die gesegde Transportakte Nr 2395/1942, wat soos volg lees:

"BY Notarial Deed No 767/54 dated 11<sup>th</sup> August 1954:

- (b) Erf 2703 Onrust River held hereunder is entitled to certain water rights from a certain pipeline running from Portion 81 (a portion of Portion 67) of the farm Onrust rivier and Rheeziqt, held under Deed of Transfer No 19601/54 dated this day, to the said property held hereunder, together with certain ancillary rights and subject to certain conditions as will more fully appear on reference to the said Notarial Deed."

E. ONDERHEWIG VERDER aan die volgende voorwaardes opgelê deur die Administrateur in terme van Ordonnansie Nr 33/1934 met die goedkeuring van die stigting van Onrust Rivier Dorp Uitbreiding Nr 3 en vervat in gesegde Transportakte Nr T29867/80, naamlik:

1. ANY words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Notice No 623 dated 14th August 1970.
2. IN the event of a Town Planning Scheme or any portion thereof applying or being made applicable to the erf, any provisions thereof which are more restrictive than any condition of the title applicable to this erf shall take precedence. Furthermore anything in these conditions shall be construed as overriding the provisions of Section 146 of Ordinance No 15 of 1952, as amended.
3. NO building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
4. THE owner of this erf shall, without compensation, be obliged to allow electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or even inside or outside this township to be conveyed across this erf, if deemed necessary by the local or any other statutory authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
5. THE owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
6. THIS erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purpose as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.

7. NO building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority –
  - (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for distance of 12 m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the streets abutting the erf;
  - (ii) an outbuilding in terms of subparagraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
8. ON consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth these conditions shall apply to the consolidated holding as if it was one erf.
9. IN the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf."

WESHALWE die komparant afstand doen van al die regte en titel wat

**BERNARD BROM , Getroude soos vermeld**

voorheen op genoemde eiendom gehad het, en gevolglik ook erken het dat hy geheel en al van die besit daarvan onthef en nie meer daartoe geregtig is nie en dat, kragtens hierdie akte, bogenoemde

**PETRUS HENDRIK VAN NIEKERK , Getroude soos vermeld**

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes, tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die regte van die Staat en ten slotte erken hy dat die verkoopprijs die bedrag van **R4 175 000,00 (Vier Miljoen Een Honderd Vyf en Sewentig Duisend Rand)** beloop.

TEN BEWYSE WAARVAN ek, genoemde Registrateur, tesame met die Komparant hierdie Akte onderteken en dit met die ampseël bekragtig het.

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te Kaapstad op 04 FEB 2014 2014

In my teenwoordigheid

REGISTRATEUR VAN AKTES

Name	Y	X	Z	Description
BM1	-16144.70	3697465.93	36.42	roofing screw in tree
BM2	-16155.99	3698922.27	37.11	roofing screw in tree

Y-16 1400.00

Y-16 1600.00

Y-16 1800.00

Y-16 200.00



Project		TOPOGRAPHIC SURVEY ERF 3221 ONRUSTRIEVER	
Client	P VAN NIEKERK		
Architect			
Notes			
Constants	Y	X	0.00
Height Datum	Systems WGS84		
Project No	Drawing No ON4221		
Scale	1:150		
Date	September 2022		

**M.A.**  
 NA CLARK (PLS 1072)  
 PROFESSIONAL LAND SURVEYOR

**geomatics africa**  
 100% SOUTH AFRICAN OWNED & OPERATED  
 21 GARDEN OF EDEN, HONEYDEW, 2001  
 TEL: 011-809-7313 FAX: 011-809-3329

X3 809 720.00

13 JAN 2023

