



## **MUNISIPALITEIT OVERSTRAND**

**ERF 224, SEA VIEW RYLAAN 107,**

**FRANSKRAALSTRAND: AANSOEK OM OPHEFFING VAN BEPERKENDE TITELAKTEVOORWAARDE, AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD -EN STREEKSBEPLANNERS NAMENS VM SWART**

Kennis word hiermee gegee Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening), van die volgende aansoeke van toepassing op Erf 224, Franskraal naamlik:

### **Opheffing van beperkende titelaktevoorwaarde**

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van voorwaarde 20(d), soos vervat in Titelakte Nr: T33632/1990 om die bestaande ontwikkeling te akkommodeer.

**Afwyking** ingevolge Artikel 16(2)(b) van die Verordening, vir die volgende:

- verslapping van die agterboulyn vanaf 2m na 0.681m om die bestaande onderdak onthaal- en braaiarea te akkommodeer;
- verslapping van die lateraleboulyn vanaf 2m na 1.635m om die bestaande onderdak onthaal- en braaiarea te akkommodeer;
- verslapping van die laterale- en agterboulyn vanaf 2m na 0m om die bestaande motorafdak te akkommodeer.

### **Bepaling van 'n administratiewe boete**

Bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening om die ongemagtigde bouwerk op die eiendom te wettig

Besonderhede aangaande die voorstel lê ter insae gedurende weeke tussende 08:00 and 16:30 by die Departement Stadsbeplanning te Patersonstraat 16, Hermanus en Gansbaai Biblioteek, Hoofweg, Gansbaai. Enige kommentare moet skriftelik ingedien word ingevolge die bepalinge van Artikels 51 en 52 van die Verordening en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za) bereik voor of op **25 Augustus 2023**, met u naam, adres en kontak besonderhede, belang in die aansoek en redes vir kommentaar. Telefoniese navrae kan gerig word aan die Senior Stadsbeplanner, **Mr SW van der Merwe** 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 ten einde hul kommentaar te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, HERMANUS, 7200  
**Munisipale Kennisgewing Nr. 112/2023**



## **OVERSTRAND MUNICIPALITY**

**ERF 224, 107 SEA VIEW DRIVE,**

**FRANSKRAALSTRAND: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF VM SWART**

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 224, Franskraal 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 20(d), as contained in Title Deed No: T33632/1990 to accommodate the existing development.

**Departure** in terms of Section 16(2)(b) of the By-Law, for the following:

- relaxation of the rear building line from 2m to 0.681m to accommodate the existing covered entertainment- and braai area;
- relaxation of the lateral building line from 2m to 1.635m to accommodate the existing covered entertainment- and braai area;
- relaxation of the lateral- and rear building line from 2m to 0m to accommodate the existing carport.

### **Determination of an administrative penalty**

Determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law, in order to legalize unauthorized building work on the property.

Details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department Town Planning at 16 Paterson Street, Hermanus and Gansbaai Library, Main Road, Gansbaai. Any written comments must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-law and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za) on or before **25 August 2023**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Mr SW van der Merwe** 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 comment.

Municipal Manager, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200  
**Municipal Notice No. 112/2023**



## **UMASIPALA WASE-OVERSTRAND**

**ISIZA ESINGUERF 224, 107 SEA VIEW DRIVE,**

**FRANSKRAALSTRAND: ISICELO SOKUSHENXISWA KWEEMKO EZIYIMIQOBO KWIITAYITILE ZOBUNINI, ULWAHLULO NENGQIKELELO YOMDLIWO/PHENALTHI YOBHALISO: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS EGAMENI LIKA VM SWART**

Isiziso esi sikhutshwe ngokwemiba yeSoloty lama-47 nelama-48 oMthethwana kaMasipala waseOverstrand OngeziCwangciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (UMthethwana), ngezicelo ezisebenziseka kwiSiza esinguErf 224, Franskraal ezaziwa:

### **Ukushenxiswa Kweemeko EziyiMiqobo**

Isiceo esimayela nemiba yeSoloty le16(2)(f) loMthethwana, ngokushenxiswa kweemeko eziyimiqobo kwiitayitile zobunini20(d), njengokozi qulethwe kwiTayitile Yobunini enguNomb: T33632/1990 ukulungiselela uphuhliso oseluhubeka.

**Ulwahlulo ngokwemiba** yeSoloty le16(2)(b) loMthethwana, ukwenza oku kulandelayo:

- ukunyenyesa umgca wesakhiwo osecaleni ukusuka kwiimitha ezi-2m ukuya 0.681m ukulungiselela indawo evalekileyo yokuzonwabisa esele ikhona-nendawo yokubhraya/ukoja inyama;
- ukunyenyesa imigca emelene nomgca wesakhiwo ukusuka kwiimitha ezi-2m ukuya kwimitha ezi-1.635m ukulungiselela indawo evalekileyo yokuzonwabisa nesele ikhona-nendawo yobhraya/ukoja inyama;
- ukunyenyesa umgca omelene nesakhiwo-nosecaleni kwisakhiwo ukusuka kwiimitha ezi-2m ukuya kwi-0m ukulungiselela indawo yokuhlala imoto/ikhapoti.

### **Inggikelelo nobhaliso lomdlwiwo/phenalithi**

Inggikelelo yobhaliso lomdlwiwo/lwepenalithi ngokwemiba yeSoloty le16(2)(q) loMthethwana ukuze kugunyaziswe ngokusemthethweni umsebenzi wokwakha okwesi sakhiwo. Iinkcukacha ezipheleleyo mayela nesi siphakamiso siyafumaneka ukzue zihlolwe kwiintsuku zaphakathi evekini kwixeha eliphakathi kwentsimbi ye-08:00 neye-16:30 kwiSebe LeziCwangciso ngeDolophu kwa 16 Paterson Street, Hermanus nase Gansbaai Library, Main Road, Gansbaai. Naziphi na izimvo ezibhaliweyo ngokwezibonelelo zeSoloty lam-a51 nelama-52 loMthethwana kaMasipala ochazwe ngentla zifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za) ngomhla okanye ngamphambi komhla wama **25 uAgasti 2023**, uchaze igama lakho, idilesi neenkukacha ofumanaeka kuzo, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa kuMchwangcisi oMkhulu weDolophu, uMnu SW van der Merwe kwa 028-313 8900. UMasipala angala ukwamkela izimvo ezifunyenwe emva komhla wokuvala. Nabani ongakwazi ukufunda nokubhala angahambela kwiSebe leziCwangciso zeDolophu apho likamasipala lizakuncedisa ukubhala izimvo zakho ngokusemthethweni.

Umlawuli kaMasipala, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200  
**Municipal Notice No. 112/2023**

**DETERMINATION OF AN  
ADMINISTRATIVE PENALTY,  
PROPOSED REMOVAL OF A  
RESTRICTIVE TITLE DEED CONDITION  
AND BUILDING LINE DEPARTURES**

**ERF 224 FRANSKRAAL**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owner of Erf 224 Franskraal, Ms. V. M. Swart, has instructed the company Plan Active to apply for the determination of an administrative penalty, proposed removal of a restrictive Title Deed condition and building line departures of Erf 224 Franskraal.

Alterations have been made to the original homestead and a carport has been erected on the subject property that encroaches the zoning scheme regulations' building lines as well as the prescribed Title Deed building line, without any land use or building plan approvals. The owner is now in the process of addressing the illegal encroachments by applying for the determination of an administrative penalty, proposed removal of a restrictive Title Deed condition and building line departures.

**2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the departure from the prescribed Zoning Scheme building lines;

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition;
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

### 3. DESIRABILITY

#### 3.1 PROPERTY DESCRIPTION

Erf 224 Franskraal is located at 107 Sea View Road, Franskraal and is 595m<sup>2</sup> in extent. Please refer to the enclosed locality plan. Erf 224 Franskraal is held by Title Deed Number T33632/1990.

#### 3.2 ZONING

Erf 224 Franskraal is zoned Residential Zone 1 and is utilised as such. The surrounding properties are also zoned for single residential purposes and public roads, as depicted by the abstract from the Zoning Map below.



### 3.3 LAND USE

Erf 224 Franskraal is used for single residential purposes. A double storey dwelling with a single garage and carport are established on the subject property.

Land uses that surround Erf 224 Franskraal are single storey dwellings, double storey dwellings, public roads, and nature reserve areas. It is therefore evident that Erf 224 Franskraal is situated within a predominantly residential area.

### 3.4 PROPOSAL

The following are proposed in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the departure from the prescribed Zoning Scheme building lines;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition;
- 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.

The intention of the owner of Erf 224 Franskraal is to legalise the existing unauthorised alterations made, that encroach the zoning scheme regulation building lines as well as the Title Deed building line. There is also a carport that was constructed on the subject property, in the north-eastern corner, that does not have any approvals.

The illegal alterations that need to be addressed are the existing covered **braai and entertainment area** in the north-western corner of the subject property and the existing carport situated in the north-eastern corner. The detail of the proposed applications is as follows:

### **3.4.1. Determination of an administrative penalty**

The owner of Erf 224 Franskraal, Ms. V. M. Swart, made additions and alterations to the existing structures situated on the property, without any land use or building plan approvals. The additions that were made encroach the rear and lateral scheme building lines and the rear Title Deed building line. The existing carport also encroaches the rear and lateral zoning scheme and Title Deed building lines. The following unauthorised building work was established on the subject property:

- **Existing Braai and entertainment area.**
- **Carport**

The intention of the property owner is to address the unauthorised building work and carport by applying for the determination of an administrative penalty, removal of a restrictive Title Deed condition and building line departures. The intention is to obtain building plan approval after the land use application has concluded.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**, an application is made for the determination of an administrative penalty for unauthorised land uses. In terms of **Chapter 10, Section 90(1)**, "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 10, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must to the satisfaction of the municipality, provide the following:

#### **3.4.1.1 CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY**

##### **The Nature, duration, gravity, and extent of the contravention**

The unauthorised building work was carried out by the owner approximately 5 years ago. The intention of the owner is to address the unauthorised building work in order

to obtain building plan approval for the alterations and carport that were erected without any land use or building plan approvals.

The extent of the unauthorised building work is as follows:

Structure	Extent of unauthorised building work
Existing Braai	±34.5m <sup>2</sup>
Carport	±23.68 m <sup>2</sup>
<b>Total Extent of unauthorised building work</b>	<b>±58.18m<sup>2</sup></b>



The property owner intends to provide her full co-operation to the Overstrand Municipality to address the unauthorised building work and illegal carport situated on the subject property. With the determination of an administrative penalty application, an application for the removal of a restrictive Title Deed condition and building line departures is submitted simultaneously to address the building line encroachments situated on the subject property. The existing additions and carport are also in contravention with the Title Deed restriction that refers to building lines.

The position and nature of the unauthorised additions and carport are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from the surrounding property owners has been received. Applications for the building line departures and a removal of the Title Deed restriction are also submitted to address the unauthorised building work and illegal carport situated on the subject property.

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

The unauthorised building work was erected by the property owner of Erf 224 Franskraal. The alterations that were made to the existing structures encroach the rear Title Deed Building line of 3.15m and the lateral and rear Scheme Building line of 2 meters. A braai and entertainment area were added on the subject property. A carport that was erected on the lateral and rear boundary lines encroaches the aforementioned Scheme and Title Deed building lines. The owner is now in the process of addressing the unauthorised building work and illegal carport that are in contravention with the zoning scheme regulations and the restrictive Title Deed condition.

**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 and illegal carport, a report from a quantity surveyor can be submitted as per request from the Overstrand Municipality, with reference to the unauthorised building work and carport. The reason being is that the owner has already spent a considerable amount to rectify the contraventions and does not want to spend any unnecessary fees.

**Whether the unlawful conduct was stopped**

The owner is in the process of addressing the contraventions by applying for the determination of an administration penalty, removal of a restrictive Title Deed condition and building line departures. The building work is already completed.

**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 landowner, the owner has never previously contravened this By-Law or any other previous planning law except for the current contraventions.

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work and carport have on the surrounding area. It should also

be considered that no complaints from surrounding property owners has been received with regards to the unauthorised building work and carport.

It is also important to note that the Overstrand Zoning Scheme Regulations, the remaining restrictive Title Deed conditions and the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020 will still be used to guide future development on the subject property. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

### **3.4.2. Proposed Removal of Title Deed restrictions**

The enclosed Title Deed, T33632/1990 contains the following Title Deed restriction that must be addressed:

- **Page 4&5 paragraph 20(d)** *“geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings mag binne 15 voet van die straatlyn wat 'n grens van hierdie erf vorm opgerig word nie, ook nie binne 10 voet van die agtergrens of 5 voet van die sygrens van 'n aangrensende erf nie, met dien verstande dat 'n buitegebou met die toestemming van die plaaslike owerheid op die voorgeskrewe ruimte langs die agtergrens opgerig mag word mits sodanige buite gebou nie 'n hoogte van 10 voet te bowe gaan nie, watter hoogte gemeet moet word van die vloer tot die ankerplaat en mits geen gedeelte daarvan vir bewoningsdoeleindes deur mense aangewend word nie”.*

The reason for addressing the above-mentioned Title Deed restriction, **Page 4&5 paragraph 20(d)** is because the restriction contains a 4.72m (15 feet) street building line, a 3.15m (10 feet) rear building line and a 1.57m (5 feet) common building line. The existing additions that were erected by the owner encroach the aforementioned rear building line as stipulated in the applicable Title Deed. The exiting carport also encroaches the rear and lateral Title Deed building lines.

If the mentioned Title Deed restriction is **not** removed, the additions that were made to the original homestead and carport, cannot be legalised and subsequently building plans cannot be approved as the structures encroach the common and rear Title Deed building lines.

4 *allow future development on the subject property*

The conveyancer's certificate compiled by **Mr. H. L. Van Zyl from Van Zyl Kruger Attorneys** dated **25 May 2023** also confirmed that the aforementioned restriction needs to be removed from the said Title Deed in order for the building line encroachments to be approved.

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

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

The removal of the Title Deed restriction will allow the existing additions and carport to be approved. The alterations that were made to the existing dwelling encroach the rear Title Deed building line and the existing carport encroaches the rear and lateral Title Deed building lines. The addition that was made is a covered braai and entertainment area which are interleading with the dwelling.

The proposed removal of the restrictive Title Deed condition will grant the owner the opportunity to obtain approved building plans and an occupation certificate. This developed property increases the market value of the area and attracts investment opportunities as the existing structures were aesthetically designed and developed and are of high quality. Future owners will also be able to purchase a property with approved building plans and an occupancy certificate in place.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township gain anything personally by having the restriction removed, which prevents the property to be developed to its full potential and according to the development rules as set out in the zoning scheme regulations. The proposal will have an impact on the existing built form in the area, however such changes have been supported in the area.

+ obtain approved plans for future development -8

Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipality** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of the restrictive Title Deed condition will increase the market value of the property.

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

The property owner will benefit from the removal of the mentioned Title Deed restriction as the existing alterations and carport can be legalised after the proposed applications are concluded. The removal of the restrictive Title Deed condition will also grant the owner an opportunity to obtain approved building plans and an occupation certificate which will increase the market value of the subject property.

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

The particular township has already changed with approved departures within the township and the removal of restrictive Title Deed conditions. If the type of condition to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit. The retention of the restriction will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations' requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for the mentioned building line departures will be positive. Removing the condition will enable building plan approval after the land use application is concluded.

Furthermore, the removal of the Title Deed condition is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification

of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

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

The removal of the restriction will not remove the rights completely, as the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to **Section 47** of the **Spatial Planning Land Use Management Act, 2013**, the removal of the restrictive Title Deed restriction will not deprive any person in the subject area of Franskraal as contemplated in **Section 25** of the **Constitution of the Republic of South Africa**. By denying the removal of Title Deed restriction, will also deprive the current owner from legally utilizing the subject property to its full potential.

The application for the removal of a Title Deed restriction is made in the prescribed manner as per the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**.

The proposed removal of the Title Deed restriction will therefore be in the interest of the property owner in order to obtain approved building plans and subsequently an occupation certificate. It is important to note that such proposals have been approved in the past within the township.

#### **3.4.3. Proposed Building line Departures**

The existing carport and braai/entertainment area encroach the zoning scheme building lines.

The building line departures can be summarised as follow:

- Relaxation of the rear building line from **2m** to **0.681m** to accommodate the existing covered entertainment area.
- Relaxation of the lateral building line from **2m** to **1.635m** accommodate the existing entertainment and braai area.
- Relaxation of the lateral building line from **2m** to **0m** accommodate the existing carport.
- Relaxation of the rear building line from **2m** to **0m** accommodate the existing carport.

The Overstrand Scheme Regulations stipulate that a **4m street building line** and a **2m lateral building line** apply to **Residential Zone 1: Single Residential** properties larger than **400m<sup>2</sup>** in extent as seen in the tables below:

Net erf area	Street building line
Less than 150 m <sup>2</sup>	1,0 m
Less than 400 m <sup>2</sup>	2,0 m
400 m <sup>2</sup> and greater	4,0 m

Net erf area	Side and rear building lines
Less than 150 m <sup>2</sup>	At least 1,0 m one side and 0 m on the other side. Rear = 1,0 m.
Up to 400 m <sup>2</sup>	1,0 m
Greater than 400 m <sup>2</sup>	2,0 m

The **covered braai and entertainment area** were constructed without obtaining any land use or building plan approvals from the Overstrand Municipality. The existing covered entertainment and braai areas are situated **±0.681m** from the rear boundary line and is **±1.635m** from the western lateral boundary line. The existing braai and entertainment area do not have any negative impact on the neighbouring properties. There are no windows at the rear side of the structure which helps to block sound that might be generated from the entertainment area.

The **carport** is situated in the north-eastern corner of the subject property and is accessed via Sea View Drive. The carport is **±23.68m<sup>2</sup>** in extent and is included with the calculation of coverage for the subject property. The existing carport does not have

any impact on the neighbouring properties and is used for the housing of a single motor vehicle.

The proposed building line departures for the existing entertainment/braai area and carport do not have a negative impact on the neighbouring property as no complaints were received. A building line of  $\pm 0.68\text{m}$  and  $\pm 1.635\text{m}$  will still be accommodated at the rear and the lateral boundaries, respectively for the braai and entertainment room which is used as habitable space.

### **3.5 ACCESS AND PARKING**

Vehicular and pedestrian access to the subject property is from Sea View Drive and will be retained. A single garage and carport are situated on the subject property for the housing of motor vehicles on site.

### **3.6 SERVICES**

All services on Erf 224 Franskraal already exist. No additional services are required in order for the proposed applications to be approved. If additional services need to be provided it will be done according to the specifications of the Overstrand Municipality.

### **3.7 TITLE DEED**

As previously mentioned, Title Deed no. T33632/1990 has a restrictive Title Deed condition that needs to be removed in order for this application to be approved. For detail pertaining to the removal of the restrictive Title Deed condition application refer to **Section 3.4.2** of this report.

Please refer to the conveyancer's certificate compiled by **Mr. H. L. Van Zyl of Van Zyl Kruger Attorneys** dated **25 May 2023**.

There is **no** bond registered against the subject property.

### 3.8 FORWARD PLANNING

The Overstrand Spatial Development Framework (2020) earmarks the area where Erf 224 Franskraal is situated, for urban development purposes. Refer to the Spatial Development Framework (2020) abstract below. The zoning and land use of the subject property will remain unchanged (Residential Zone I: Single Residential for single residential use).



#### Overstrand Growth Management Strategy

With reference to the **Overstrand Growth Management Strategy** the subject property falls within Planning Unit 5 that consists mainly of the current built-up area of Kleinbaai / Franskraal.

Incremental development through subdivision to allow a second dwelling unit is proposed for an assumed 20% of the area/dwelling in this planning unit.

From the above it is evident that the proposed departures and removal of a restrictive Title Deed condition do not have any impact on the proposed densification for the

Franskraal area as the applications do not entail the subdivision of the subject property nor does it propose a second dwelling.

### **3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.9.1 HERITAGE VALUE**

Erf 224 Franskraal is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

Erf 224 Franskraal is located in an area classified as the coastal strip as seen in the abstract below from the Overstrand Municipal GIS System. The proposed building line departures and removal of a restrictive Title Deed condition do not have any impact on the aforementioned area.

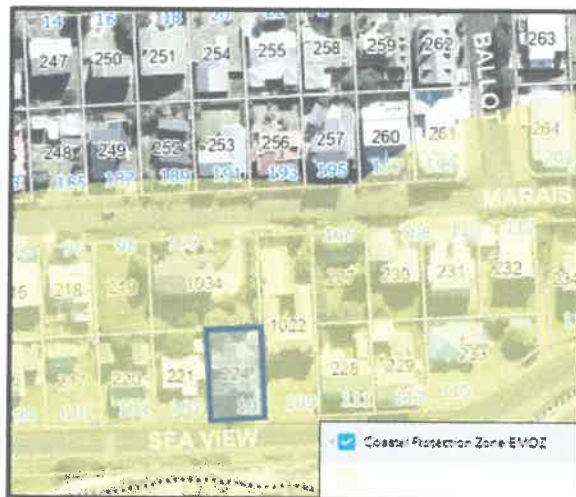


In light of the above mentioned it is evident that the proposed removal of a restrictive Title Deed condition and building line departures will not have a negative impact on the heritage value of the subject property or the greater area of Franskraal.

### 3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of a restrictive Title Deed condition and building line departures 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 situated in the coastal protection zone in terms of the Environmental Management Overlay Zone. The proposed application will not have any impact in the activities listed in the aforementioned areas as specified in the **Environmental Management Overlay Zoning Regulations 2020 (EMOZ)**.



### 3.10 PLANNING PRINCIPLES

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

**Spatial Justice:** It is motivated that the proposed removal of a restrictive Title Deed condition and building line departures are compatible with the character of the area and do not impact negatively on the rights of the surrounding landowners.

**Spatial sustainability:** The removal of a restrictive Title Deed condition and building line departures are in line with the current character of the established residential area. Similar applications have been approved in the past. The proposal will have no impact on the conservation worthy areas of Franskraal. Spatially the land use will be in line with the residential character of the area.

**Efficiency** refers to the need to create settlements that optimise the use of space, energy, infrastructure, resources, and land. Inherent in this statement is the need to promote densification and urban (as opposed to suburban) development typologies. This also has to do with the way the settlement itself is designed and functions, which should reduce the need to travel long distances to access services, facilities, and opportunities. Efficiency also refers to decision making procedures which are designed to minimise negative financial, social, economic, or environmental impacts. In addition, efficiency refers to the need for development application procedures that are efficient and streamlined. In our opinion the principle of efficiency is not applicable to this application.

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

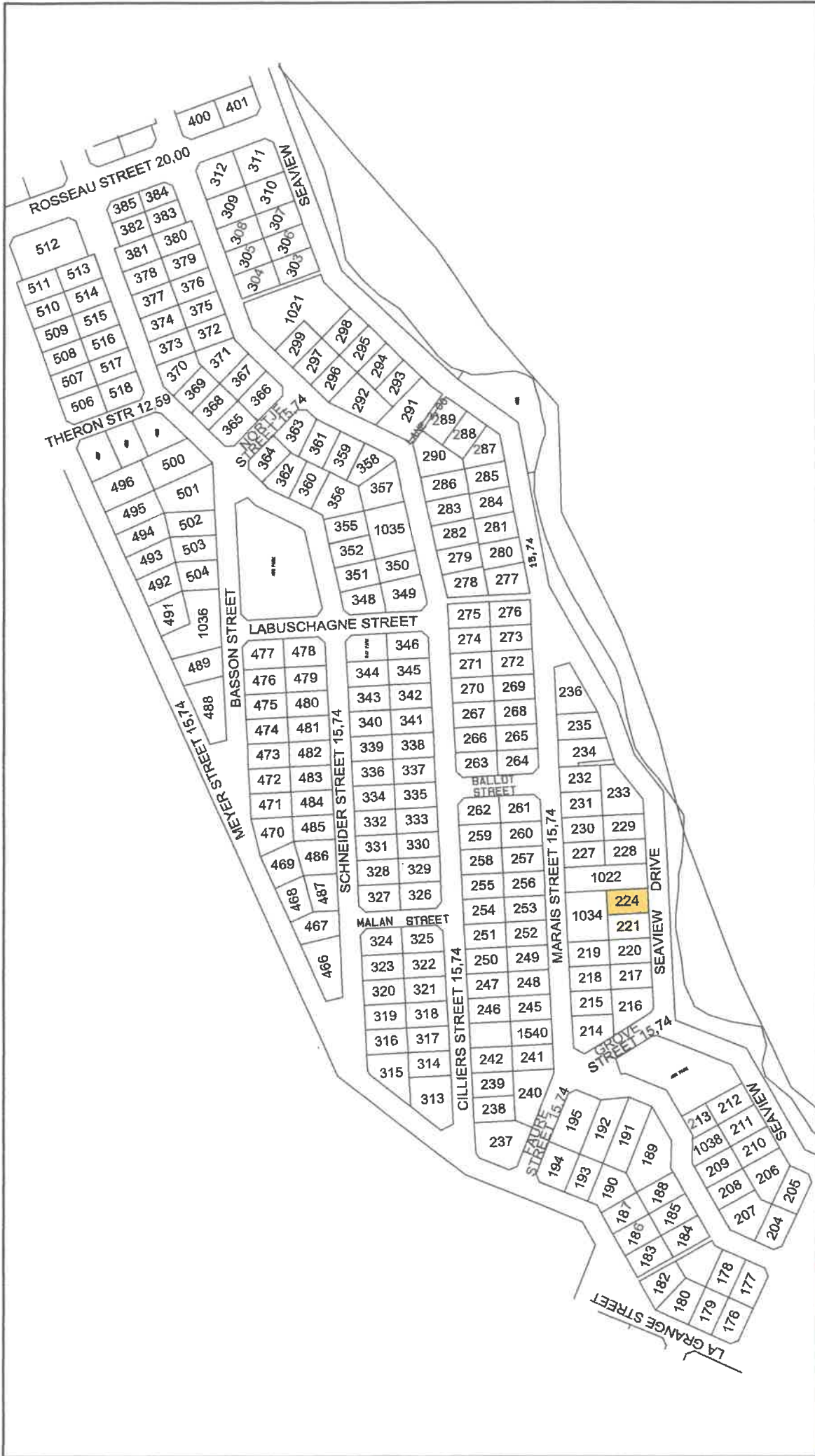
**Good administration:** Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

#### 4. **RECOMMENDATION**

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

- The structures were erected by the owner of the subject property and the owner is in the process of legalising the structures in order to obtain as-built building plan approval from the Overstrand Municipality;
- The proposed removal of a restrictive Title Deed condition and building line departures will not have a negative impact on the current residential character and land values of the surrounding erven;
- The proposed removal of a restrictive Title Deed condition and building line departures of Erf 224 Franskraal fall within the existing land use tendencies in the area;
- No additional services are needed for the proposed application to be approved;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).
- We request that a penalty fee **not** be imposed.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the **dismissal** of an administrative penalty and the approval for the removal of a restrictive Title Deed condition and building line departures applicable to Erf 224 Franskraal.



Scale: **NTS**  
 Drawing Nr: erf 224 franskraal.dwg  
 Date: JUNE 2023

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERF 224  
 FRANSKRAAL**

All distances approximate  
 and subject to survey.  
 COPY RIGHT RESERVED

**PIA<sup>n</sup>Active**  
 Stads- en Streeksbeplanners  
 Town & Regional Planners

Erf 1022

31.45m

1761 mm  
1.57m Boulyn



Conservancy tenk  
LNGV 0.00m

Skema boulyn 2.0m

Motor oprit geen obstruksie

Skema boulyn 4.0m

Erf 224

Balkon

Balkon

Skema boulyn 2.0m  
1.57m Boulyn

Skema boulyn 2.0m

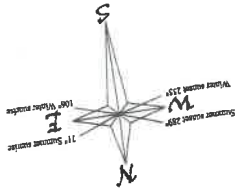
3.15m Boulyn

681 mm

1635 mm

18.89m

107 Sea view drive  
Franskrastal



Erf 221

## Erf plan Skaal 1 - 100

**NOTA:**  
Alle regulasies van plaaslike owerheid moet sigekem word.  
Alle veranderinge moet in ooreenstemming met alle munisipale regulasie en skema's wees.  
Maats geniet voorkeur en moet gekontroleer word voor bouwerk begin.  
Alle bouwerk tussen bou grans.  
Alle afwykings moet met tekenaar gekommunikeer word.  
Alle bouwerk streng volgens NHREC en SARS voorskrifte, geniet voorkeur.  
Terreinplan en alle bys op terrein.  
Terein moet skoon gehou word gedurende bouwerk.  
Water en elektrisiteitsaansluiting moet gedoen word voor bouwerk mag begin.

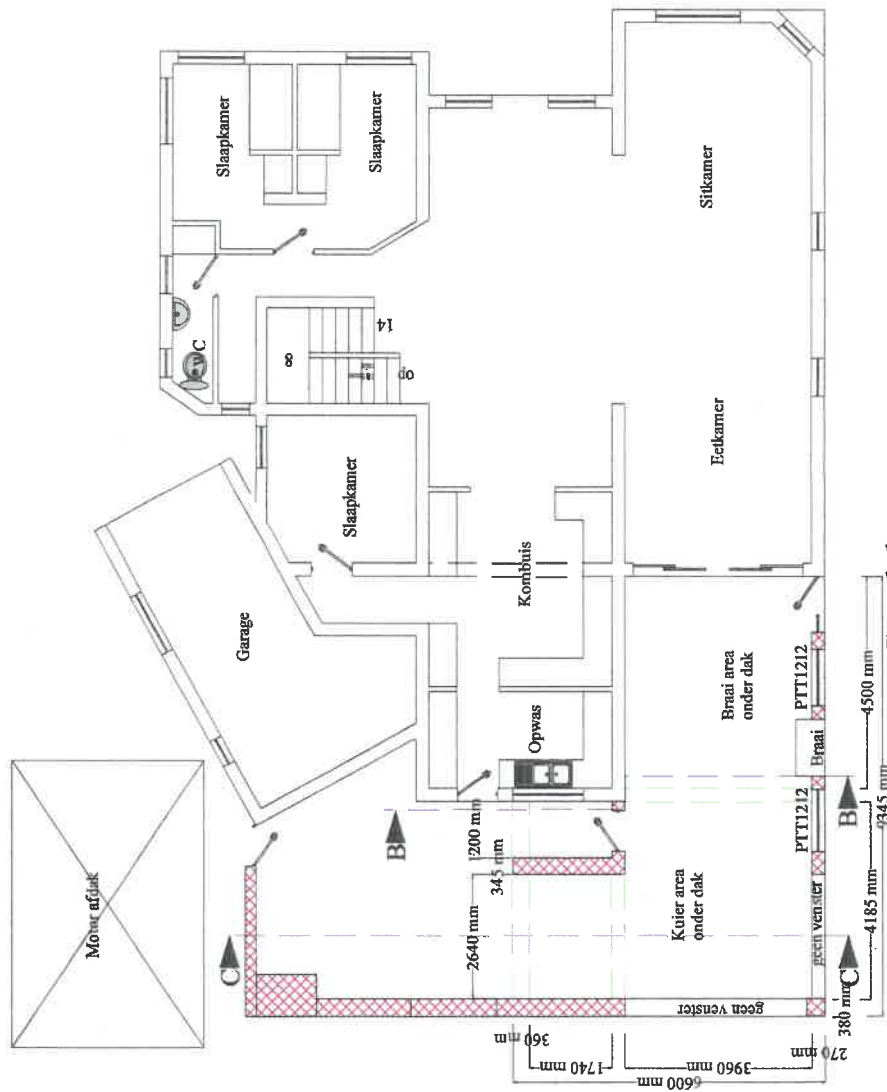
Grondvloer 199.48vkm  
Eerste vloer 154.66vkm  
Balkonne 20.06vkm  
Aanbouwing 62vkm  
Motor afdak 23.68 vkm  
Totaal 459.88 vkm  
Erf 595 vkm  
Voetprint 284.40vkm  
Dekking 47.79%

Tekening nr: 0244/17  
Tekening: Erf plan  
Skaal: 1-100 (A3)  
Blad: 1 van 7  
Datum: 22/02/2023

**Beskrywing:**  
**Voorgestelde aanbouwing vir VM Swart Erf 224**  
**107 Sea view Drive Franskrastal**  
**Overstrand Munisipaliteit**

Plan geteken deur:  
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PROFESIONALE ARCHITECTURALE DRAAIERSTELSEL  
**JACOBUS ADRIAAN VAN STADEN**  
1228 796 (082) 929 8688



**Grondvloer**  
**Skaal 1 - 100**

**NOTA:**  
Alle regulasies van plaaslike owerhede moet uitgelees word.  
Kontakleer is verantwoordelik om alle munisipale benodigdhede na te sien en te verskaf.  
Maats getuig voorkeur en moet gekontroleer word voor bouwerk begin.  
Alle bouwerk tussen bou grasse.  
Alle afwykings moet met tekenaar gekommunikeer word.  
Alle bouwerk streng volgens NHBRC en SANS voorstande.  
Ingenieurs spesifiseer alle gemaak voorkeur.  
Terraia met skoon geton word gekluisde bouwerk.  
Water en elektrisiteitsaansluiting moet gedoen word voor bouwerk mag begin.

PROFESSIONAL ARCHITECTURAL DRAUGHTSPERSON  
**JACOBUS ADRIAN VAN STADEN**  
12-01 111 614-0400/0401/0402/0403/0404/0405/0406/0407/0408/0409/0410/0411/0412/0413/0414/0415/0416/0417/0418/0419/0420/0421/0422/0423/0424/0425/0426/0427/0428/0429/0430/0431/0432/0433/0434/0435/0436/0437/0438/0439/0440/0441/0442/0443/0444/0445/0446/0447/0448/0449/0450/0451/0452/0453/0454/0455/0456/0457/0458/0459/0460/0461/0462/0463/0464/0465/0466/0467/0468/0469/0470/0471/0472/0473/0474/0475/0476/0477/0478/0479/0480/0481/0482/0483/0484/0485/0486/0487/0488/0489/0490/0491/0492/0493/0494/0495/0496/0497/0498/0499/0500/0501/0502/0503/0504/0505/0506/0507/0508/0509/0510/0511/0512/0513/0514/0515/0516/0517/0518/0519/0520/0521/0522/0523/0524/0525/0526/0527/0528/0529/0530/0531/0532/0533/0534/0535/0536/0537/0538/0539/0540/0541/0542/0543/0544/0545/0546/0547/0548/0549/0550/0551/0552/0553/0554/0555/0556/0557/0558/0559/0560/0561/0562/0563/0564/0565/0566/0567/0568/0569/0570/0571/0572/0573/0574/0575/0576/0577/0578/0579/0580/0581/0582/0583/0584/0585/0586/0587/0588/0589/0590/0591/0592/0593/0594/0595/0596/0597/0598/0599/0600/0601/0602/0603/0604/0605/0606/0607/0608/0609/0610/0611/0612/0613/0614/0615/0616/0617/0618/0619/0620/0621/0622/0623/0624/0625/0626/0627/0628/0629/0630/0631/0632/0633/0634/0635/0636/0637/0638/0639/0640/0641/0642/0643/0644/0645/0646/0647/0648/0649/0650/0651/0652/0653/0654/0655/0656/0657/0658/0659/0660/0661/0662/0663/0664/0665/0666/0667/0668/0669/0670/0671/0672/0673/0674/0675/0676/0677/0678/0679/0680/0681/0682/0683/0684/0685/0686/0687/0688/0689/0690/0691/0692/0693/0694/0695/0696/0697/0698/0699/0700/0701/0702/0703/0704/0705/0706/0707/0708/0709/0710/0711/0712/0713/0714/0715/0716/0717/0718/0719/0720/0721/0722/0723/0724/0725/0726/0727/0728/0729/0730/0731/0732/0733/0734/0735/0736/0737/0738/0739/0740/0741/0742/0743/0744/0745/0746/0747/0748/0749/0750/0751/0752/0753/0754/0755/0756/0757/0758/0759/0760/0761/0762/0763/0764/0765/0766/0767/0768/0769/0770/0771/0772/0773/0774/0775/0776/0777/0778/0779/0780/0781/0782/0783/0784/0785/0786/0787/0788/0789/0790/0791/0792/0793/0794/0795/0796/0797/0798/0799/0800/0801/0802/0803/0804/0805/0806/0807/0808/0809/0810/0811/0812/0813/0814/0815/0816/0817/0818/0819/0820/0821/0822/0823/0824/0825/0826/0827/0828/0829/0830/0831/0832/0833/0834/0835/0836/0837/0838/0839/0840/0841/0842/0843/0844/0845/0846/0847/0848/0849/0850/0851/0852/0853/0854/0855/0856/0857/0858/0859/0860/0861/0862/0863/0864/0865/0866/0867/0868/0869/0870/0871/0872/0873/0874/0875/0876/0877/0878/0879/0880/0881/0882/0883/0884/0885/0886/0887/0888/0889/0890/0891/0892/0893/0894/0895/0896/0897/0898/0899/0900/0901/0902/0903/0904/0905/0906/0907/0908/0909/0910/0911/0912/0913/0914/0915/0916/0917/0918/0919/0920/0921/0922/0923/0924/0925/0926/0927/0928/0929/0930/0931/0932/0933/0934/0935/0936/0937/0938/0939/0940/0941/0942/0943/0944/0945/0946/0947/0948/0949/0950/0951/0952/0953/0954/0955/0956/0957/0958/0959/0960/0961/0962/0963/0964/0965/0966/0967/0968/0969/0970/0971/0972/0973/0974/0975/0976/0977/0978/0979/0980/0981/0982/0983/0984/0985/0986/0987/0988/0989/0990/0991/0992/0993/0994/0995/0996/0997/0998/0999/1000

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**Beskrywing:**  
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**Overstrand Munisipaliteit**

Tekening nr: 0244/17  
Tekening: Grondvloer plan  
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Blad: 2 van 7  
Datum: 22/02/2023