



**OVERSTRAND MUNISIPALITEIT**  
**ERF 214, JAN VAN RIEBEEKSINGEL 129,**  
**SANDBAAI: AANSOEK OM OPHEFFING VAN**  
**BEPERKENDE TITELAKTEVOORWAARDES,**  
**AFWYKING EN BEPALING VAN 'N**  
**ADMINISTRATIEWE BOETE: PLAN ACTIVE (nms**  
**PD DE KOCK & WD SIMPSON)**

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 214, Sandbaai (die eiendom), naamlik:

**Opheffing van Beperkende Titelaktevoorwaardes**

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes B.2(a), B.2(c) en B.2(d) soos vervat in Titelakte T44974/2016 van die eiendom ten einde 'n tweede wooneenheid op die eiendom te akkommodeer en dit as 'n selfsorgeenheid aan te wend, asook die straatboulyn-oorskryding te akkommodeer.

**Afwyking**

Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die:

- oostelike syboullyn te verslap vanaf 2m na  $\pm 1.876m$  om die woning en tweede wooneenheid te akkommodeer;
- westelike syboullyn te verslap vanaf 2m na  $\pm 0.963m$  om die buitegebou te akkommodeer; en die
- agterboullyn te verslap vanaf 2m na  $\pm 0.957m$  om die buitegebou te akkommodeer.

**Bepaling van 'n Administratiewe Boete**

Aansoek ingevolge die bepalings van Artikel 90 van die Verordening vir die bepaling van 'n administratiewe boete vir die onwettige oorskryding van die boulyne soos hierbo genoem, asook die onwettige tweede wooneenheid.

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) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) bereik voor of op **8 Julie 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H 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. 57/2022

**OVERSTRAND MUNICIPALITY**  
**ERF 214, 129 JAN VAN RIEBEEK CRESCENT,**  
**SANDBAAI: APPLICATION FOR REMOVAL OF**  
**RESTRICTIVE TITLE DEED CONDITIONS,**  
**DEPARTURE AND DETERMINATION OF AN**  
**ADMINISTRATIVE PENALTY: PLAN ACTIVE (obo**  
**PD DE KOCK & WD SIMPSON)**

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 214, 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 conditions B.2(a), B.2(c) and B.2(d) as contained in Title Deed T44974/2016 of the property to accommodate a second dwelling unit on the property and to utilize it as a self-catering unit, as well as to accommodate the street building line encroachment.

**Departure**

Application in terms of Section 16(2)(b) of the By-Law to:

- relax the eastern lateral building line from 2m to  $\pm 1.876m$  to accommodate the dwelling unit and second dwelling unit;
- relax the western lateral building line from 2m to  $\pm 0.963m$  to accommodate the outbuilding; and to
- relax the rear building line from 2m to  $\pm 0.957m$  to accommodate the outbuilding.

**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 for the illegal encroachment of the building lines mentioned above, as well as the illegal second dwelling unit.

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](mailto:alida@overstrand.gov.za)) on or before **8 July 2022**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H 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. 57/2022

**UMASIPALA WASOVERSTRAND**  
**ISIZA ESINGUERF 214, 129 JAN VAN RIEBEEK**  
**CRESCENT, SANDBAAI: ISICELO SOKUSHENXISWA**  
**KWEMIIQOBO NENGOIKELELO**  
**YOLAWULO:NGABAKWA PLAN ACTIVE (egameni**  
**PD DE KOCK & WD SIMPSON)**

Kukhutshwe isaziso esingemiba yeSoloty lama47 nelama48 likaMasipala lesiHlomelo soMthethwana esiNgoziCwangciso Zokusetyenziswa koMhlaba kaMasipala waseOverstrand ku2020 (OMthethwana), ezi zicelo zilandelayo zisebenzisa kwizicelo ezisebenza kwisiza esinguErf 214, Sandbaai (umhlaba/isiza), ezazuwa:

**Ukushenxiswa iimeko zwiYiqobo yeTayitile Yobunini**

isicelo ngokwemiba yeSoloty le16(2)(f)loMthethwana ngokushenxiswa kweemeko eziiyiqobo kwiitayitile zobunini ezaziwa ngokuba ngeTitle Deed enguB.2(a), B.2(c) nebizwa uTitle Deed B.2(d) njengoko kuqulethwe kwitayitile yobunini nguTitle Deed T44974/2016 lomhlaba ukulungiselela iyunithi eyindawo yokuhlala kulo mhlaba uze usetyenziselwe iyunithi yokuphekela, kwakunye nokulungiselela umgca wesakhiwo ongenael elungqamekweni ngokungekho mthethweni.

**Ukwahlulwahlulwa**

Isecelo ngokwemiba yeSoloty le16(2)(b) loMthethwana:

- ukunyeniswa komgca wokwakha nongqamnw nesakhiwo kwicala lasemphuma ukusuka kwiimitha ukusuka kwiimitha ezi2m ukuya kwimitha  $\pm 1.876m$  ukulungiselela iyunithi yokuhlala neyunithi ndawo eyindlu yokuhlala kwiyunithi yesibini;
- ukunyeniswa umgca omelene nomgca wesakhiwo kwicala lasentshona ukusuka kwimitha ezi2m ukuya kwimitha ezi $\pm 0.963m$  ukulungiselela ukwakh angaphandle kunye noku
- kunyeniswa komgca omelene nesakhiwo ukusuka kwiimitha ezi2m ukuya ku $\pm 0.957m$  ukulungiselela umphandle wesakhiwo.

**Inkqikelelo yolawulo lwepenalithi**

Isicelo singemiba ngokwezibonelelo zeSoloty lama90 loMthethwana ngokwengqikelelo yobhaliso nolawulo lwepenalithi-(yomdliwo) ngokudla umhlaba nokungenelela ngokungekho mthethweni kwimigca yokwakha echazwe ngenntla, njengokwakha ngokungekho mthethweni njengeyunithi yesibini echazwe yiyunithi echazwe ngenntla..

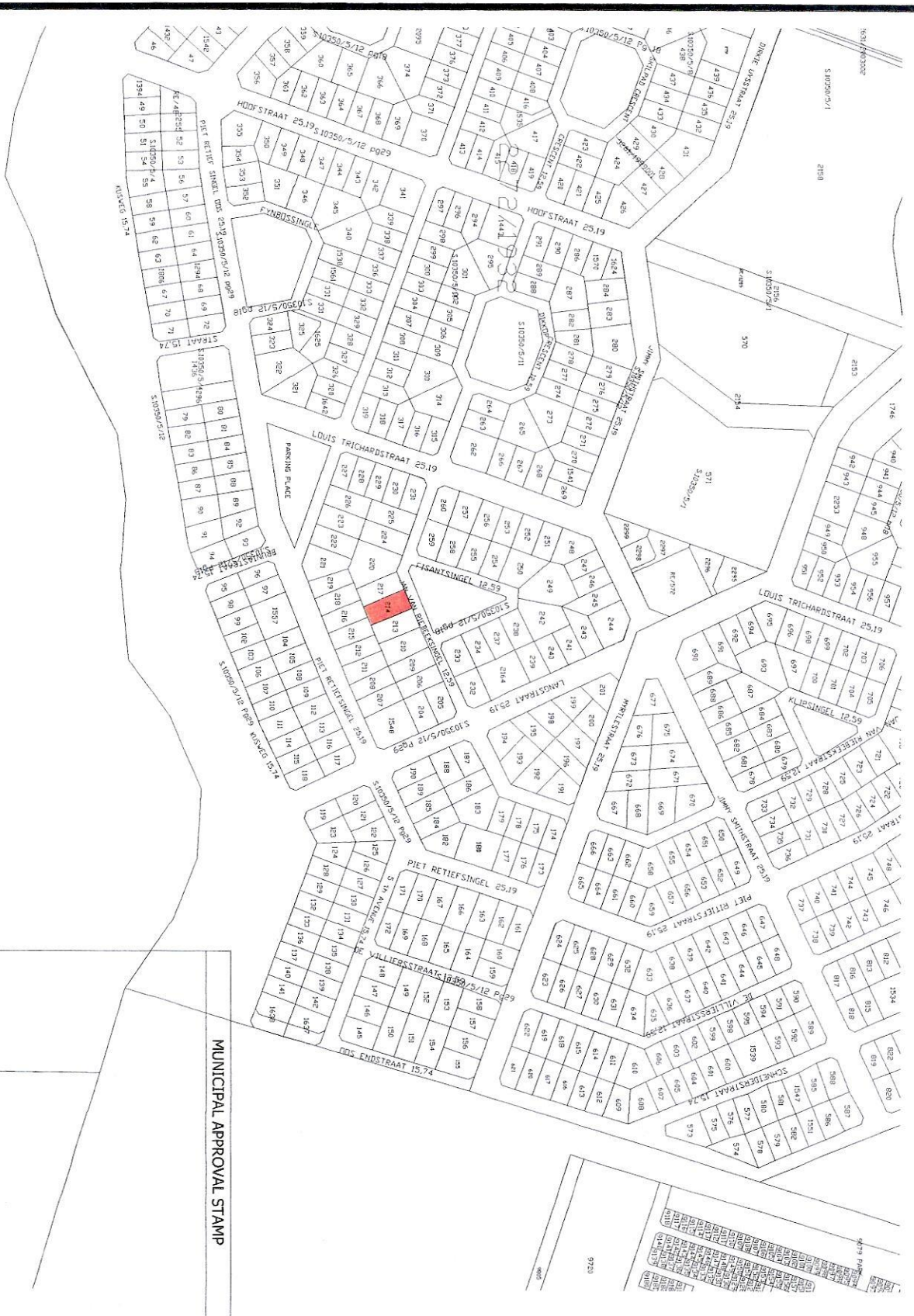
linkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlole kwiintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Lezicwangciso ngeDolophu kwa16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhalweyo mazingeniswe kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngaphambi okanye ngomhla wama8 kuJulayi 2022, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa kuMchwangciso Omkhulu weDolophu, Mnu. H. Boshoff kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe leZicwangciso zeDolophu apho igosa likaMasipala liza kumnceda ukungenisa izimvo zakhe ngokusemthethweni.

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

Inothi kaMasipala Nomb. 57/2022

locality plan  
scale N.T.S



MUNICIPAL APPROVAL STAMP

REV NO.	DATE	DESCRIPTION
00	14-09-2021	ISSUE

**VARIATIONS:**

ALL DIMENSIONS AND LOCATIONS ARE TO CHECK ALL DIMENSIONS AND LOCATIONS ON THE BUILDING PERMIT APPLICATION. THE DRAWING IS THE PROPERTY OF THE ARCHITECT AND THE CLIENT. THE ARCHITECT'S LIABILITY IS LIMITED TO THE DESIGN AND CONSTRUCTION OF THE BUILDING AND THE CLIENT'S LIABILITY IS LIMITED TO THE CONSTRUCTION OF THE BUILDING.

**DRAWING STAGE:**

COUNCIL SUBMISSION  
DEPARTURE APPLICATION  
SETBACK PROPOSAL  
TENDER DRAWING  
WORKING DRAWING

**SITE RESTRICTIONS:**

STREET BUILDING LINE 4.000m  
RATERAL BUILDING LINE 2.000m  
REAR BUILDING LINE 2.000m  
HEIGHT RESTRICTION 6.000m  
TITLE DEED BUILDING LINES (see drawing) 1.100m

**ZONE APPLICABLE:**

SINGLE RESIDENTIAL (GR1)  
TOWN HOUSING - ZONE 1 (GR1)  
TOWN HOUSING - ZONE 2 (GR2)  
FLATS - ZONE 3 (GR3 and GR4)  
LESS FORMAL DEVELOPMENT (LFD)

**PROJECT NAME:**  
ALTERATIONS AND ADDITIONS  
MR PD DE KOCK & MR WD SIMPSON  
ERF 214  
129 JAN VAN RIEBEEK CRESENT  
SANDBAAN  
7200

**DWG TITLE:**  
LOCALITY PLAN

**DATE:**  
28-10-2021

**DRAWN BY:**  
D SWART

**CHECKED BY:**  
D SWART

**DRAWING SCALE:**  
AS SHOWN

**DRAWING NO.:**  
1 0391/A3/02

**REV NO.:**  
0

**SMART SOLUTION ARCHITECTURE**

228 BLOEMHOF  
1170 SANDHOUT  
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**PROPOSED DETERMINATION OF AN  
ADMINISTRATIVE PENALTY, REMOVAL  
OF RESTRICTIVE TITLE DEED  
CONDITIONS AND DEPARTURES**

**ERF 214 SANDBAAI**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owners of Erf 214 Sandbaai, Mr. P. D. de Kock and Mr. W. D. Simson, have instructed the company Plan Active to apply for the determination of an administrative penalty, removal of restrictive Title Deed conditions to make provision for a second dwelling unit and a departure from the lateral and rear building lines applicable to Erf 214 Sandbaai.

The owners intend to create a second dwelling unit on the ground floor by means of minor alterations and to address minor building line encroachments. There are also Title Deed restrictions that need to be removed for the proposed application to be approved.

Erf 214 Sandbaai is 902m<sup>2</sup> in extent and is held by Title Deed Number T44974/2016.

05 APR 2022

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the lateral and rear building lines.
- 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 214 Sandbaai is located at 129 Jan van Riebeek Crescent, Sandbaai and is 902m<sup>2</sup> in extent. Please refer to the enclosed locality plan.

### **3.2 ZONING**

Erf 214 Sandbaai is zoned Residential Zone 1 and it is utilized as such. The surrounding properties are zoned for single residential purposes, public roads and public open spaces.

### 3.3 LAND USE

Erf 214 Sandbaai is used for residential purposes. A double storey dwelling, and outbuilding are established on the site. Access to Erf 214 Sandbaai is obtained from Jan van Riebeek Crescent, Sandbaai.

Land uses that surround Erf 214 Sandbaai are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 214 Sandbaai is situated within a predominantly single residential area.

### 3.4 PROPOSAL

The following are proposed:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed lateral and rear building lines.
- 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 owners of the subject property is to create a second dwelling on the ground floor by means of making minor alterations to the existing dwelling. The proposed second dwelling unit is  $\pm 77.5\text{m}^2$  in extent and consists of the following:

- Open plan lounge, dining and kitchen area;
- 1 Bedroom and en-suite bathroom;
- 1 Bedroom.

The double garage will also be changed to a double garage with storage that encroaches the rear building line. The existing dwelling also encroaches the eastern building line, that can be defined as a minor encroachment. The building line encroachments will be dealt with in detail under section 3.4.2 below.

The proposed primary dwelling is a double storey structure that is  $\pm 189.48\text{m}^2$  in extent and consists of the following:

**Ground Floor**

- An entrance foyer;
- Open plan living room and kitchen;
- 2 bedrooms with en-suite bathrooms;
- 1 Ground floor bedroom;
- TV Room;
- Single Garage;
- Patio;

**First Floor:**

- 2 bathrooms;
- 2 Bedrooms;
- 1 Bedroom with en-suite bathroom on the first floor;
- Covered balcony;
- Kitchenette;
- Living room;
- Kids play room;
- Study

The above mentioned second dwelling and primary dwelling are both primary rights, but the land use is restricted to a single dwelling only. The Title Deed also contains a restriction with reference to the street building line that is more restrictive than the prescribed street building line in terms of the Overstrand Municipality Zoning Scheme.

**3.4.1. Proposed Removal of Title Deed restrictions**

The enclosed Title Deed, T44974/2016 contains the following restrictions that must be addressed:

- **Page 3, paragraph (2)(a): “That the above erf or erven be used for residential purpose only”**
- **Page 3, paragraph (2)(c): “That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon”**
- **Page 4, paragraph (C)(d): “that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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”**

Addressing all the above mentioned Title Deed restrictions is due to the following reasons:

- A second dwelling unit is proposed within the existing building on ground floor. When required, the owners also intend making the second dwelling available as a short term rental, self-catering unit. The Title Deed restricts the land use to residential purposes only that does not include a self-catering unit. We are therefore applying to have the following Title Deed restriction removed. **“Page 3, paragraph (2)(a): “That the above erf or erven be used for residential purpose only”**
- As mentioned above, a second dwelling unit is proposed on ground floor. Erf 214 Sandbaai is limited to a single dwelling only in terms of the Title Deed. The restriction read as follows: **“Page 3, paragraph (2)(c): “That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon.”** We are therefore applying for the removal of this restrictive Title Deed condition to make provision for the proposed second dwelling unit.
- The covered entrance to the primary dwelling was constructed 4.367m from Jan van Riebeeck Avenue. The Title Deed contains a street building line restriction that is 4.72m, subsequently the street building line as prescribed in the Title Deed is encroached by 0.353m, but it does not encroach the 4m

building line prescribed in the Overstrand Municipality Zoning Scheme. We are therefore applying to have the following Title Deed restriction removed: "Page 4, paragraph (C)(a): "that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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."

In terms of **Chapter 4, Section 35(4)** of the Overstrand Municipality's 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 these Title Deed restrictions will allow the property to be developed as proposed in terms of the primary land use rights, as defined in terms the Overstrand Municipality Zoning Scheme. The primary right referred to is a second dwelling unit to also be used for the purposes of a self-catering, when the need arises. The removal of the restrictive Title Deed conditions will also make provision for the existing, as built covered entrance that is located 4.367m from Jan van Riebeeck Avenue. This will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning Scheme Regulations of the Overstrand Municipal Area.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed conditions to be removed are concerned. None of the existing owners within the township gain anything personally by having the

restrictions removed, which prevents the property to be developed to its full potential. The proposal will have an extremely low impact on the existing built form and land use in the area, however, such changes have been supported in the area. Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of restrictive Title Deed conditions will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

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

The property owners will benefit from the removal of the mentioned Title Deed restrictions as it will expand the development rights available on the subject property in terms of the primary land uses defined in the Overstrand Municipal Zoning Scheme Regulations and it will also address an existing structure that encroaches the prescribed Title Deed street building line by 0.353m and the use of a portion of the existing dwelling as a second dwelling unit to also be used as a self-catering unit.

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

The particular township has already changed with previous approved applications consisting of departures, consent uses, removal of restrictive Title Deed conditions or a combination of the last mentioned, within the township. If the conditions remain in place, the status quo will remain. If the type of conditions to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of these restrictions will add another layer to be enforced by the

Overstrand Municipality, in addition to the current Zoning Scheme Regulations requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed conditions and consequently allowing for an additional dwelling to also be used as a self-catering unit including the mentioned departures will be positive. Appropriate densification should be encouraged in all areas. Removing the conditions will enable the better utilization of the property in terms of modern city development, contribute to the prevention of urban sprawl and align with various policies which require a more efficient use of land and appropriate densification of land and will allow additional residents and potential future amenities/facilities (self-catering units etc) within the area.

Furthermore, the removal of these Title Deed conditions is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development 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 restrictions 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 restrictive Title Deed restrictions will not deprive any person

in the subject area of Sandbaai as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restrictions, additional people will be deprived from housing opportunities. It will also deprive the current owners from utilizing the subject property to its full potential.

The application for the removal of the applicable Title Deed restrictions 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 restrictions will therefore be in the interest of the landowners and the general public. In relation to the above, the benefit of removing the Title Deed restrictions outweighs the benefits of keeping the restrictions in place.

The reasons to have the abovementioned Title Deed restrictions 2(a), 2(c) & 2(d) removed are mainly to give the owners the opportunity to utilise the property for the purposes of a second dwelling to also be used as a self-catering unit and to accommodate a portion of the covered entrance within the prescribed street building line defined in the Title Deed.

The covered entrance to the existing dwelling is located 4.367m from the street boundary. In terms of the Title Deed a 4.72m building line applies and it is therefore required that the Title Deed restriction 2(d) be removed.

#### **3.4.2. Proposed Departures**

The existing dwelling and outbuilding encroach the zoning scheme building lines that can be summarised as follow:

##### **The existing dwelling and proposed second dwelling:**

- Relaxation of the eastern lateral building line from 2m to  $\pm 1.876$ m.

##### **The existing outbuilding:**

- Relaxation of the **rear** building line from 2m to 0.957m to accommodate an outbuilding.
- Relaxation of the western **lateral** building line from 2m to 0.963m to accommodate an outbuilding.

The Overstrand Scheme Regulations stipulate that a 4m street building line and a 2m lateral building line apply to Residential Zone 1: Single Residential erven larger than 400m<sup>2</sup> in extent.

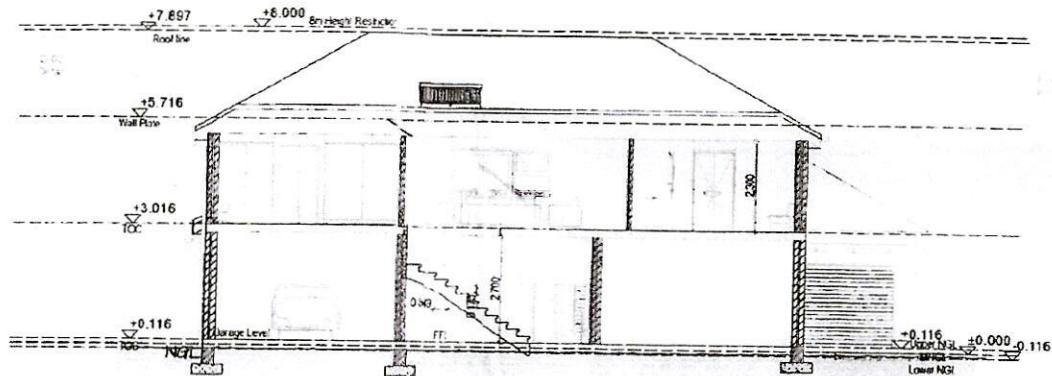
The existing double storey dwelling has partially been constructed within the eastern lateral building line. The building line encroachment is minimal and encroaches the building line by  $\pm 12.4$ cm. Please refer to the enclosed site, ground and first storey layout.

The existing and proposed uses of the existing dwelling that encroaches the eastern lateral building line are a single garage, tv room and bedroom. The existing and proposed uses of the second dwelling unit, encroaching the eastern building line, consist of 2 bedrooms with en-suite bathrooms and an open plan living / dining room and kitchen. The first-floor uses of the existing dwelling that encroaches the eastern lateral building line consist of a bedroom with an en-suite bathroom, kids playroom, bathroom and bedroom. The impact of the  $\pm 12.4$ cm building encroachment of both the ground floor and first floor is minor and will not have a negative impact on the adjacent landowner of Erf 213 Sandbaai.

Internal changes are proposed for the outbuilding in order to create a double garage, small workshop and a storeroom. The existing outbuilding encroaches the rear building line and the western lateral building line. The outbuilding is located  $\pm 0.957$  from the rear boundary and  $\pm 0.949$ m from the western lateral boundary. We are therefore applying for a building line relaxation from the rear and western lateral building line from 2m to  $\pm 0.957$ m and  $\pm 0.949$ m respectively. Being an existing outbuilding of which only internal changes are proposed, the changes to the outbuilding will not impact negatively on the adjoining erven. The outbuilding will also continue to be used as such. Please refer to the enclosed site and roof plan layout and sections.

## Motivation report

We would like to bring to your attention that the existing dwelling is  $\pm 27\text{cm}$  over the height restriction. The building plan that was approved in 2016 of which we have enclosed a copy indicates the height restriction calculated from the finish floor level to the top of the roof, instead of from the base level to the top of the roof. Please refer to the abstract below from the 2016 building plan, for easy reference:



The dwelling has been constructed as per the above approved section but when the height restriction is calculated in terms of the Overstrand Municipality Zoning Scheme it now exceeds the height restriction by  $\pm 0.270\text{m}$ . This matter was discussed with Mr. H. Boshoff at the Overstrand Municipality, and it was agreed that due to the fact that the building plan has been approved showing the height calculated from finished floor level to the top of the roof that an application is not required to address the dwelling's minor height encroachment.

The proposed building line departures will not have a negative impact on the neighbouring properties or the character of the greater Sandbaai area. With the mentioned encroachments, a building line is still maintained and the existing dwelling and outbuilding are not situated right up to the relevant eastern, southern and western boundary lines. Please refer to the enclosed building plans for the detail of the above mentioned structures.

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

When Erf 214 Sandbaai was purchased only the foundations of the dwelling and the outbuilding located in the southern corner of the erf were constructed. The current owners arranged for a site visit with the Building Inspector for the inspection of the foundations and outbuilding and thereafter they completed the construction of the dwelling as per the approved building plans (2004). Revised building plans were submitted and approved in 2016. According to the 2 sets of approved plans the existing covered entrance to the dwelling does not encroach the prescribed street building line in terms of the Title Deed.

According to the current landowners the existing covered entrance was constructed up to the 4.72m street building line but with further inspection of the existing dwelling it came to light that there are encroachments that we have addressed in the sections above and that the covered entrance encroaches the 4.72 Title Deed building line by 0.353m, the encroachment is  $\pm 0.97\text{m}^2$  in extent.

With reference to Section 3.4.2 above we make mention of a number of building line encroachments and the encroachment of the height restriction. The Overstrand Municipality has requested in their letter dated 3 March 2022 that we only apply for the determination of an administrative penalty for the covered entrance that encroach the prescribed Title Deed building line. We will however be referring to the encroachment of building lines in this section of our report but only the encroachment of the covered entrance will be applicable to the determination of an administrative penalty.

The building line encroachments are minor unintentional encroachments that were caused by the former owner that set out the foundations for the dwelling that our clients completed. The intention of the current owners is to rectify these encroachments that were inherited from the previous owner of Erf 214 Sandbaai and to legalise the encroachments in order to have the building plans approved that accompany our application.

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 use. In terms of Chapter 9, 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 9, 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:

**3.4.3.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY**

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

A survey was conducted that Smart Solution Architecture used to compile the building plans that confirmed that the dwelling was not erected in the correct position as per the building plans approved in 2004 & 2016, and that the covered entrance encroaches the prescribed Title Deed street building line that is 4.72m by 0.353m. The minor building line encroachment was unknown to the current owners who intend to rectify the matter. All the encroachments mentioned in this application became clear with the as built survey done and the new plans drawn by Smart Solution Architecture. The encroachments can be seen as unintentional minor encroachments as previously mentioned, because only small portions of the dwelling encroach the prescribed building lines.

The extent of the unauthorised building work that encroaches the street building line defined in the Title Deed can be tabled as follows:

**Erf 214 Sandbaai**

Structure	Extent of unauthorised building work
Existing covered entrance transgressing the 4.72m Title Deed Building line	±0.97m <sup>2</sup>

The owners of the subject property intend to provide their full co-operation to the Overstrand Municipality to rectify the encroachments as it was always their responsibility to ensure that the buildings are constructed according to the building plans.

The position and nature of the minor building line encroachments are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners have been received.

**b) The conduct of the person involved in the contravention**

The current owners were unaware of the encroachments as mentioned earlier in this report. The owners only became aware of the extent of the encroachment after they employed Smart Solution Architecture and a survey was conducted.

**c) Whether the unlawful conduct was stopped**

The owners were unaware of the fact that the covered walkway encroaches the prescribed street building line as defined in the Title Deed and they are in the process of rectifying the contravention by applying for the determination of an administrative penalty and departures. The building works are already completed.

**d) 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 works, we will submit a report from a quantity surveyor with reference to the unauthorised building works. The reason being that if there is a chance that no penalty fee is imposed in this case and that the report from a quantity surveyor will be unnecessary at this stage.

**e) 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.

We appeal to the Overstrand Municipality to take into consideration the low impact the unintended building line encroachments has on the surrounding area. It should also be considered that **no** complaints from surrounding property owners have been made with regards to the encroachments. An as built survey determined that small portions of the existing dwelling encroach building lines prescribed in the Municipal Land Use Scheme Regulations and building lines prescribed in the Title Deed.

With the proposed application the owners intend to rectify the encroachments on the subject property and will also submit building plans in order to obtain the necessary approvals from the building control department as soon as the land use application has been concluded. We therefore respectfully request that a penalty fee **not** be imposed on the property owners for the reasons given above.

**3.5 ACCESS**

Vehicular and pedestrian access to Erf 214 Sandbaai is from Jan van Riebeeck Avenue, Sandbaai and will be retained. No new accesses are proposed with the proposed application. With reference to the existing dwelling and the proposed second dwelling 3 parking bays are required. A single garage exists that is accessed from Jan van Riebeeck Avenue on the eastern side of the property.

An existing double garage was constructed in the south western corner of Erf 214 Sandbaai of which the outbuilding is proposed to be changed to a double garage, workshop and storage area. The double garage is also access from Jan van Riebeeck Avenue via a driveway located adjacent to the western boundary of the site. Subsequently 3 parking bays are provided onsite by means of a single and double garage.

### **3.6 SERVICES**

All services on Erf 214 Sandbaai already exist that will be sufficient to also service the proposed additional dwelling unit to be used as a self-catering unit. No additional services are required for the proposed application to be approved.

### **3.7 TITLE DEED**

The Title Deed T44974/2016 has restrictions that need to be removed for the owners to utilise the subject property to its full potential.

The Title Deed restrictions that we are applying for to have removed are:

- **Page 3, paragraph (2)(a): "That the above erf or erven be used for residential purpose only"**
- **Page 3, paragraph (2)(c): "That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven and that not more than one-half of the area of any one of the above erven be built upon"**
- **Page 4, paragraph (C)(d): "that no building shall be erected on the above erf or erven within 15 feet (4.72 metres) of the boundary line 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"**

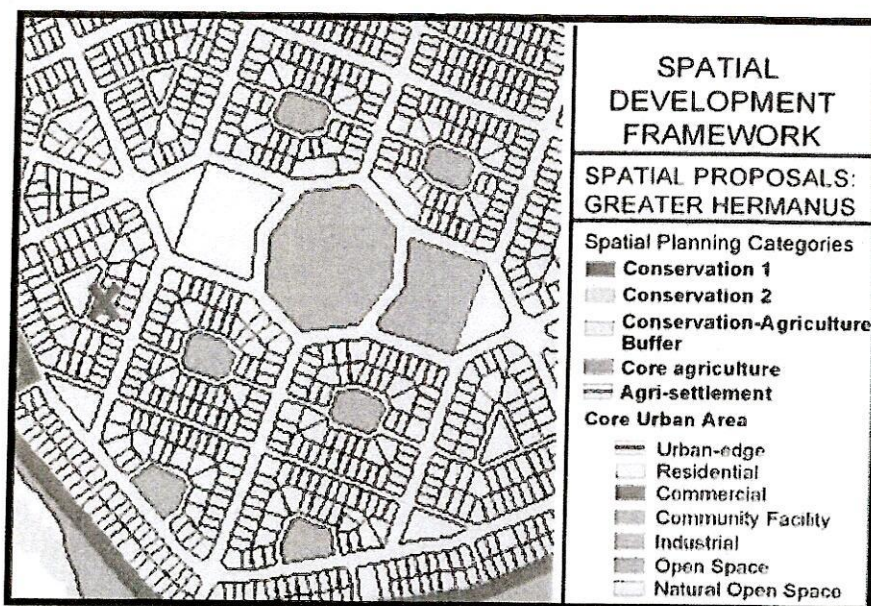
The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

There is no bond registered against Erf 214 Sandbaai. The bond was cancelled on the 21 February 2019 as per the endorsement on the mentioned Title Deed.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Wide Spatial Development Framework (2006).**

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject property will be retained after the removal of the restrictive Title Deed conditions and departure application have been concluded.



#### **Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 that consists mainly of Sandbaai' s single residential erven. No densification of this planning unit is proposed.

The proposed application for the removal of restrictive Title Deed conditions and departures is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy.

It is therefore our opinion that the proposed removal of the restrictive Title Deed conditions can be supported, and that the proposal is also in line with the current land use trends for the area.

### **Overstrand Municipality Spatial Development Framework (May 2020)**

In terms of the Overstrand Municipality Spatial Development Framework (May 2020) the subject property and surrounding erven are indicated as Urban Development Area. The proposed removal of restrictive Title Deed conditions and departures in order to accommodate a second dwelling unit to also be used as a self-catering unit and to address existing building line encroachments, due to internal changes to these structures, are in line with key policies directing future management and development.

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

#### **3.9.1 HERITAGE VALUE**

Erf 214 Sandbaai 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.

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

#### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

### 3.10 PLANNING PRINCIPLES

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

**Spatial Justice:** The proposed removal of restrictive Title Deed conditions and departures are in line with the current land use tendencies. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. The owners of Erf 214 Sandbaai want to make alterations to the existing dwelling and outbuilding to accommodate a second dwelling unit to also be used as a self-catering unit and to address building line encroachments. It is therefore proposed that the restrictions in terms of the Title Deed be removed and to depart from the building line restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1.

**Spatial sustainability:** The proposed removal of restrictive Title Deed conditions and departures are in line with the current character of the established residential area. The proposed applications will have no impact on the conservation worthy areas of Sandbaai. Spatially the land use will be in line with the residential character of the area.

**Efficiency:** The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. The proposed second dwelling unit to also be used as a self-catering unit and the street building line encroachment contradict the Title Deed restrictions and are the main reasons why these restrictions must be removed.

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience

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

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

#### 4. **RECOMMENDATION**

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

- The proposed removal of restrictive Title Deed conditions, building line departures and the determination of an administrative penalty will not have a negative impact on the current character and land values of the surrounding erven.
- All the buildings exist and the proposed second dwelling unit to also be used as a self-catering unit will be accommodated by means of internal alterations to the dwelling. The building line restrictions applicable to the existing dwelling, proposed second dwelling and outbuilding are a result of the dwelling not being set out correctly by the former owner and proposed internal changes to the existing dwelling.

- The proposed removal of restrictive Title deed conditions, departures and the determination of an administrative penalty of Erf 214 Sandbaai fall within the existing land use tendencies in the area;
- No additional services are required 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).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of the restrictive Title Deed conditions, the building line departures and the determination of administrative penalty of Erf 214 Sandbaai.

05 APR 2022



MUNICIPAL REQUIREMENTS AND THOSE OF OTHER AUTHORITIES ARE TO BE CHECKED AND ALL DIMENSIONS AND LEVELS ON THE BUILDING PLANS TO BE CHECKED AND CORRECTED BEFORE COMMENCING WORK. DIMENSIONS ON LARGE SCALE DETAILS IN THESE SMALL SCALE DRAWINGS, THE DESIGN ON THIS DRAWING IS THE PROPERTY OF AND COPYRIGHT THEREOF IS RESERVED BY THEM.

REV. NO.	DATE	DESCRIPTION
00	20-10-2021	ISSUE

**DRAWING STAGE:**  
 COUNCIL SUBMISSION  
 DEPARTURE APPLICATION  
 SKETCH PROPOSAL  
 TENDER DRAWING  
 WORKING DRAWING

**SITE RESTRICTIONS:**  
 STREET BUILDING LINE 4.000m  
 LATERAL BUILDING LINE 5.000m  
 REAR BUILDING LINE 3.000m  
 HEIGHT RESTRICTION 8.000m  
 TITLE DEED BUILDING LINES (see drawings) [X]

**ZONE APPLICABLE:**  
 SINGLE RESIDENTIAL (GR1)  
 TOWN HOUSING - ZONE 1 (GR1)  
 TOWN HOUSING - ZONE 2 (GR2)  
 FLATS - ZONE 3 (GR3 and GR4)  
 LESS FORMAL DEVELOPMENT (LFD)

**SMART SOLUTION ARCHITECTURE**  
 and architectural consultants  
 129 JAN VAN REEBEK CRESENT  
 SANDRAAI  
 7200

**PROJECT NAME:**  
 ALTERATIONS AND ADDITIONS  
 MR PD DE KOCK & MR WD SIMPSON  
 ERF 214  
 129 JAN VAN REEBEK CRESENT  
 SANDRAAI  
 7200

**DWG TITLE:**  
 PROPOSED DWELLING  
 UNITS DIAGRAMS

**DATE:**  
 28-10-2021

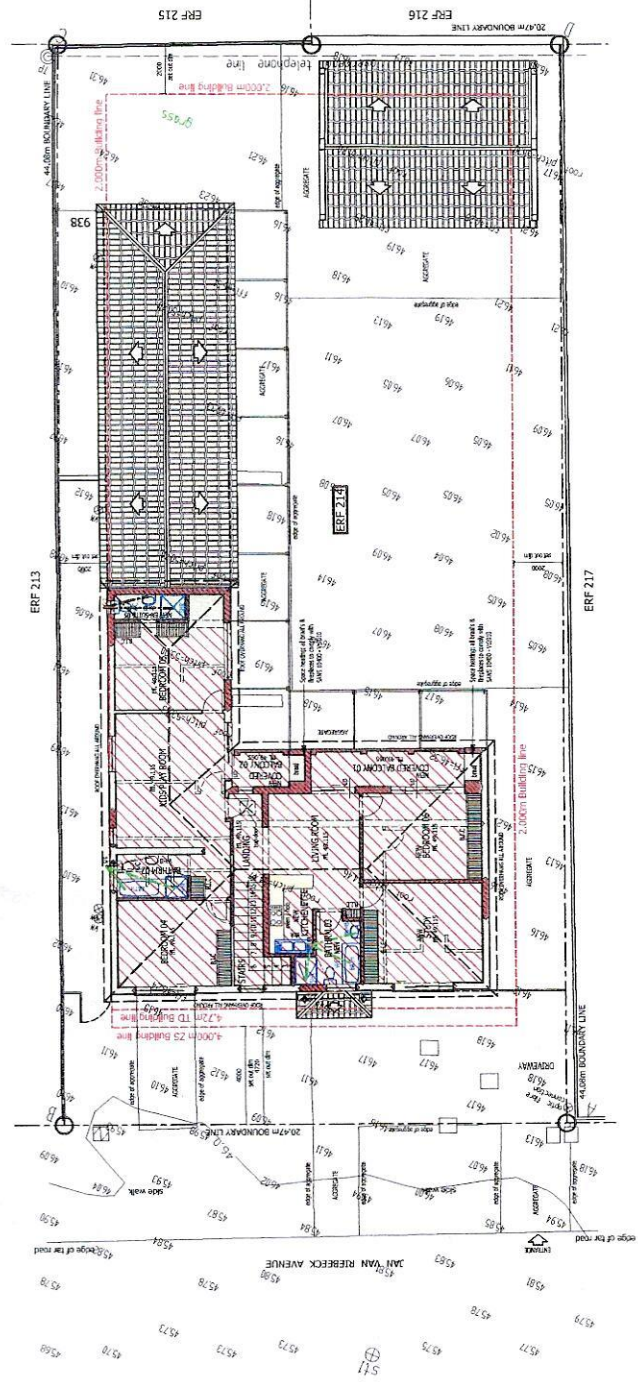
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**CHECKED BY:**  
 PSAT24749037

**DRAWING SCALE:**  
 AS SHOWN

**DRAWING NO.:**  
 10391/A3/07

**REV. NO.:**  
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site and first storey layout  
 scale 1:200

MUNICIPAL APPROVAL STAMP







