



**MEETING OF THE  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**28 APRIL 2022  
VIRTUAL  
10:00**

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

**20 April 2022**

**TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

**CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

**NOTICE IS HEREBY GIVEN** that the **Municipal Planning Tribunal (MPT)** will go into session **VIRTUALLY** on **Thursday, 28 April 2022 at 10:00** to consider the attached agenda.

**H JANSER (MS)**  
**CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

**Distribution:**

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Secretariat

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

28 April 2022

**I N D E X**

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

|            |  |          |
|------------|--|----------|
| <b>4.1</b> | <b>ERF 365, 52 SCHNEIDER STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF J BOTHMA</b> | <b>1</b> |
|------------|--|----------|

- 1. OPENING**
  
- 2. APPLICATIONS FOR LEAVE OF ABSENCE**
  
- 3. CONFIRMATION OF MINUTES**
- 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 31 March 2022**
  
- 4. ITEMS FOR CONSIDERATION**
- 4.1 ERF 365, 52 SCHNEIDER STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF J BOTHMA**

Report attached

**4.1****ERF 365, 52 SCHNEIDER STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLANACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF J BOTHMA****365 GFK (3725/2021)****SW van der Merwe****4 April 2022****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received 19 August 2021 from Messrs PlanActive Town- and Regional Planners on behalf of J Bothma in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 365, Franskraal for the following:

- ❖ removal in terms of Section 16(2)(f) of the By-Law of restrictive title condition C.20(d) contained in Title Deed T39629/2013;
- ❖ departure in terms of Section 16(2)(b) of the By-Law for the relaxation of the street building line from 4m to 2,2m to accommodate the existing covered stoep (first floor) and ground floor store;
- ❖ departure in terms of Section 16(2)(b) of the By-law for the relaxation of the street building line from 4m to 2,2m to accommodate a proposed covered stoep and ground floor bedrooms and living room additions;
- ❖ departure in terms of Section 16(2)(b) of the By-law for the relaxation of the south-eastern lateral building line from 2m to 0,86 to accommodate the existing braai room as well as the proposed replacement roof;
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law to accommodate the existing building.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the application is attached as Annexure B and the Site Development Plan is attached as Annexure C. Title Deed T39629/2013 is attached as Annexure D.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The property is situated on the corner of Schneider- and Nortje Streets and measures 683m<sup>2</sup> in extent. The property is zoned for Residential Zone 1 purposes and developed with a part two storey dwelling and detached double garage accessed from Schneider Street.

The current owner bought the property during 2013 with amongst others a covered stoep on ground and first floor, storeroom, braai room and staircase encroaching the zoning scheme and title deed building lines, which additions has not been in accordance with the previous approved plans. The encroachments are visible on the 4 March 2005 approved plans for a double garage.

The application addresses the historic encroachment of the existing structures (i.e. covered stoep, store room and braai room, existing stairs) as well as a proposed first floor covered stoep and increased roof height of the braai room.

#### 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- Approved building plan for double garage, dated 4 March 2005 indicates that the covered stoep, braai room and store existed at the time.
- The plan indicates the encroachment of the braai room over the 2m lateral building line.
- Motivation for admin penalty:
  - current owner bought the property in 2013 with the unauthorised additions already existing;
  - it is understood that the above additions were done by a previous property owner;
  - the current owner is rectifying the encroachments by means of an application, and
  - the current owner did not previously contravene the By-law.
- The encroachment of the title deed building line amounts to 21,35m<sup>2</sup>.
- Deviations from the title deed and zoning scheme building lines are mostly to accommodate as built structures with some use changes.
- Proposed braai room will be added to slightly accommodate new additions and a new 15 degree pitched roof. The position and footprint of the braai room that encroach the building line remain unchanged.
- The window in the lateral elevation of the braai room exists.
- The existing of a row of trees on the common boundary will ensure low impact on the privacy of the neighbours.
- Impact of the braai room and alterations are minimal.
- The development does not detract from the character of the area or property values.
- The development due to the wide road reserve does not impact upon views.
- No adverse impact on traffic and services.
- There is no heritage or environmental aspects that will negatively impact the application.
- The proposal is compatible with the character of the area.
- The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.
- The proposal is consistent with the spatial planning strategies for the area

#### 5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising                               |     | Date published  | Closing date for comments |
|--|-----|-----------------|---------------------------|
| Local Newspaper                                      | Yes | 01 October 2021 | 29 October 2021           |
| Gazette  | Yes | 08 October 2021 | 05 November 2021          |
| Notices ( <i>possibly affected property owners</i> ) | Yes | 01 October 2021 | 05 November 2021          |
| Notices ( <i>persons mentioned in title deed</i> )   | Yes | N/A             | N/A                       |

|  |                               |                 |                  |
|--|-------------------------------|-----------------|------------------|
| Ward councillor  | Yes                           | 05 October 2021 | 05 November 2021 |
| Total comments   | <b>One (1) late objection</b> |                 |                  |
| Total letters of support   | <b>NONE</b>                   |                 |                  |
| Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?   |                               |                 | <b>Yes</b>       |
| Was the application processed correctly?   |                               |                 | <b>Yes</b>       |
| Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?  |                               |                 | <b>Yes</b>       |
| In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies? |                               |                 | <b>Yes</b>       |

#### 6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

| Name                 | Date received | Summary of comments   |
|----------------------|---------------|---|
| Waste Management     | 05/10/2021    | No objection.   |
| Building Department  | 06/10/2021    | No objection. The window in the 1 <sup>st</sup> storey braaikamer must comply with safety distance in terms of Part T of SANS 10400.  |
| Fire Services        | 11/10/2021    | No objection subject to compliance with the provision of SANS-A: 2016, 10400-T:2020 and the By-Law relating to community fire safety. |
| Engineering Services | 26/10/2021    | Annexure G.   |
| District Health      | 09/11/2021    | No objection.   |

#### 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) late objection was received from RP & L Moore, the owner of Erf 366, Franskraal. Object to the planned braai and living room on the south-eastern portion of the property since it is the only portion of the objectors property with privacy.

#### 8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The applicants' state that the objection submitted is late and thereby does not comply with the requirements of Section 52 of the By-law. The objector should not be afforded a right of appeal and should only be advised of the outcome of the application.

The objector did not indicate how the existing structures and proposed alterations will impact upon their property (indicates facts / circumstances which explains the objection, demonstrate the undesirable affect the application will have or indicate how aspects of the application is inconsistent with policy) and merely states that they object based on privacy.

The applicant's comment is summarised as follows:

- ❖ Although small alterations to the braai room are proposed, the alterations along with Addition no. 1 comply with the applicable building lines. The position and footprint of the braai room that currently encroach the south-eastern lateral building line will remain unchanged. The existing encroachment was not done by the current owner (our client) but by the previous owner.
- ❖ The portion of the braai room that encroaches the applicable south-eastern lateral building line is positioned 7,9m from the Nortje Street erf boundary and at least 14,4m from the edge of the tar of the road. The views down Nortje Street will therefore remain unobstructed.
- ❖ Nortje Street is a wide street (15,74m). The width of the street lowers the impact the small portion of the altered braai room might have on the surrounding property owners' views.
- ❖ The portion of the renovated braai room that encroaches the relevant lateral building lines is already fitted with a window on the south-eastern erf boundary (see As Built drawings). It is submitted that the impact of the minor alterations to the braai room on the neighbours will therefore be minimal. In addition, the row of trees situated on the common erf boundary with Erf 366 as well as the position of the respective dwellings on Erven 365 and 366, Franskraal in relation to each other (the dwelling on Erf 366 is positioned further south-east away from the dwelling on Erf 365 Franskraal) further mitigates the impact of the As Built (to be renovated) braai room. The alterations of the braai room on the south-eastern erf boundary will therefore have a low impact on the privacy of the neighbours.
- ❖ The height of the renovated braai room with the chimney and dwelling complies with the 8m height restriction of the Land Use Scheme (2020).

## 9. MUNICIPAL ASSESSMENT OF COMMENTS

The applicant's comment is noted and agreed with. The objection does not comply with Section 52 of the By-law and therefore the objection should be dismissed based on it being late and not setting out facts / circumstances which explains the objection, demonstrate the undesirable affect the application will have or indicate how aspects of the application is inconsistent with policy.

All relevant departments provided positive comments.

## 10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

### 10.1 Background

N/A

**10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The application can be motivated in terms of the principles in the following manner:

**Spatial Justice**

The proposed development will not further perpetuate historic spatial imbalances as it is situated on an erf as per the establishment of Franskraal Township. Similar applications have been supported previously, thus the approval will not be spatially biased.

**Spatial sustainability**

The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The redeveloped property will be compatible with the character of the area and do not negatively impact upon rights of adjoining property owners.

**Efficiency**

The proposed development intends to make optimal use of space on the property, thereby optimising existing resources, infrastructure and sustainable development and continues the existing suburban development typology.

**Spatial Resilience**

The development of the property will be in synchrony with the relevant spatial planning policies that adhere to the principle of spatial sustainability in terms of the Spatial Development Framework and the Overstrand Municipal Growth Management Strategy.

**Good administration**

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and a public participation process had been followed.

**10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)**

Same as 10.2 above.

**10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies**

The application is consistent with the SDF and OMGMS.

**10.5 (In)consistency with guidelines prepared by the Provincial Minister**

N/a

**10.6 Impact on Municipal engineering services**

All services exist. The proposed additions will not have a significant impact upon existing services and is supported by the Engineering Services Department.

### 10.7 Outcomes of investigations/applications i.t.o. other legislation

The application does not trigger the provisions of NEMA or Section 38 of the National Heritage Resources Act.

### 10.8 Existing and proposed zoning comparisons and considerations

The encroachment of the 4m street and 2m lateral building line in terms of the Overstrand Land Use Scheme are being addressed via a departure application.

## 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Title Deed T39629/2013 applicable to Erf 365, Franskraal contain the following restrictive condition being proposed for removal:

*“C.20(d) geen gebou of struktuur of enige gedeelte daarvan behalwe grensmure en heinings mag binne 4,72 meter van die straatlyn wat 'n grens van hierdie erf vorm, opgerig word nie, ook nie binne 3,15m meter van die agtergrens of 1,57 meter 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 word mits sodanige buitegebou nie 'n hoogte van 3,15 meter 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 applicant motivates that the title deed conditions were inserted in 1935 due in response to the development trends/pressures at the time. Current development trends together with constraints of the subject property necessitate the removal of restrictive title conditions. In view of the above being stated the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

#### ***The financial or other value of the rights:***

The removal will increase the use rights of the property in that it will permit legalisation of the as built structure and well as proposed additions. There is no financial value to holder of the rights (municipality).

#### ***The personal benefits which accrue to the holder of rights in terms of the restrictive condition:***

There is no personal benefit for the holder of the rights.

#### ***The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:***

The personal benefit would be that the removal will facilitate the legalisation of the as built house as well as upgrade of the property in accordance with the provisions of the Overstrand Municipal Land Use Planning Amendment By-law and Land Use Scheme, thus increased property value.

***The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:***

The social benefit of the restrictive conditions remaining in place is that the character of Nortje Street will remain unchanged, thus the impact upon privacy, noise, street scape etc will be marginally lower.

The less restrictive lateral title deed building line favours the property owner, but not necessarily adjoining properties, whilst retention of the 4,72m street building line will not benefit the applicant or adjoining property owners since the structures already encroach the street building line and no complaints have been received.

Removal of the restrictive condition will enable legalisation of the existing encroachments including future development of the property in accordance with the scheme regulations with reference to building lines.

***Will the removal, suspension or amendment completely remove all rights enjoyed by the beneficiary or only some of those rights:***

Application is only made for removal of some restrictive conditions, namely condition C.20(d) pertaining to title deed building lines.

Given the above the opinion is further held that the proposal is sufficiently evaluated in terms of Section 39 (5) of LUPA, 2014 (Act 3 of 2014).

## **12. THE DESIRABILITY OF THE PROPOSAL**

The application property is situated on the corner of Nortje- and Schneider Streets. The street- and lateral building line encroachments of the existing dwelling is already evident on the approved building plans for the existing double garage dated 4 March 2005. The dwelling had been constructed at an angle across the width of the property and is situated 2.2m from the street boundary with Nortje Street and 0,86m from the south-eastern lateral property boundary. The existing encroachments of the title deed building line amounts to 21,35m<sup>2</sup> and the proposed encroachments will add a further 16,82m<sup>2</sup>. Nortje Street has a 16m road reserve, whilst the road surface set back 6,4m from the street boundary with the application property.

### **Removal of restrictive title conditions**

The application for removal of the restrictive title conditions pertaining to building lines will facilitate the development in accordance with the provisions of the By-law and Land Use Scheme and enable condonation of the historic street- and lateral building line encroachments and not considered to adversely affect the amenity of the surrounding area or vested rights of adjoining property owners.

The owners of Erf 366, Franskraal adjoining the application property bought the property in 1999. The encroachments existed for years (from before 2005) without any complaint history or objections from adjoining property owners, including the owners of Erf 366, Franskraal. The late objection was only received following notification of the current application.

Existing departures (covered stoep, store and braai room)

The covered stoep and store is situated 2,2m from the street boundary of the property, whilst the corner of the braai room at the closest point is situated 0,86m from the western lateral property boundary as per the Google Streetview extract below.



Nortje Street has a 16m road reserve, whilst the distance between the edge of tar and the street boundary of the application property is 6,4m. The opinion is therefore held that the encroachment of the covered stoep and store below will not unacceptably detract from the character of the area, traffic flow or vested rights of adjoining property owners.

The closest corner of the existing braai room is situated 0,86m from the lateral property boundary. The braai room has an existing window in the lateral elevation which did not trigger any objection from adjoining property owners prior to the notification of the application. This window had presumably been constructed at the same time as the braai room addition.

The late objection objected to the proposed braai room additions based on privacy of Erf 366 and not the existing window per se. From the google street view extract mature tree screening on the objector's property provides privacy to the objectors' property. The objector also constructed a picket fence  $\pm 1,8$ m high on his property that is not evident on the street view, also providing privacy. It must also be noted that despite the area in question of the objectors' property is exposed to public views from Nortje Street.



Having had regard to the above, the opinion is held that the existing window in the braai room will not unacceptably impact the vested rights of the objectors' property since sufficient screening measures exist (landscaping and a fence) whilst the objectors outside entertainment area is completely exposed and visible from Nortje Street and adjoining properties.

Proposed departure (ground floor bedroom and living room additions, first floor balcony extension and raised braai room roof)

The enlargement of the ground floor bedrooms and living room is contained within the footprint of the existing building. The proposed first floor covered balcony extension up to 2,2m from the street boundary due to its limited scale and set back between the street boundary and edge of the tar is not considered have a significant impact on the street scene.

The proposed braai room additions will adhere to the lateral building line. The proposal also entails a replacement 15 degree pitched roof above the braai room that will raise the height of the roof. From the SDP it is evident that a small section of the lateral elevation above the braai room window will be raised. It is however not considered to have a significant impact on the adjoining property.

The proposed additions are designed to match the design and appearance of the existing house and considered in keeping with the character of the surrounding area. The proposal will not unacceptably detract from vested rights of adjoining properties.

Determination of Administrative Penalty

In terms of the By-law the applicant must provide the following in terms of Section 90(3) of the By-Law, namely:

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

The existing building encroachments are evident on 2005 building plans for the double garage. The current owner bought the property in 2013 unaware of the building line encroachments in existence for more than 16 years.

*(b) the conduct of the person (allegedly) involved in the contravention*

The property owner attempts to rectify the contravention with the application.

*(c) a report by a quantity surveyor in matters of unauthorised building/construction*

The applicant motivates that due to the small nature of the encroachments does a quantity surveyor will be appointed should an administrative penalty be payable.

*(d) whether the unlawful conduct was stopped and*

The owners are in process of rectifying the contravention via an application for determination of an administrative penalty, departure, and removal of restrictive title conditions.

*(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.*

The property owner did not previously contravene the By-law.

Having had regard to the motivation, the fact that the encroachments existed prior to 4 March 2005 and even before the property owner took ownership in 2013 the opinion is held that the owner cannot be held liable for the payment of an administrative penalty in respect of the historic unauthorised encroachments. It is therefore recommended that an administrative penalty in respect of Erf 365, Franskraal not be imposed.

### Conclusion

Having had regard to the evaluation above, the opinion is held that the application for removal of restrictive title conditions and departure is desirable and supported in accordance with the recommendation below. The current owner inherited the historic encroachments and therefore cannot be held liable for the payment of an administrative penalty.

### 13. RECOMMENDATION

1. that the late objection be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) received from Messrs PlanActive Town- and Regional Planners on behalf of J Bothma on Erf 365, Franskraal for the removal of restrictive title deed condition C.20(d) as contained in Title Deed T39629/2013, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law on Erf 365, Franskraal for the following:

- ❖ to relax the street building line from 4m to 2,2m to accommodate the existing covered stoep (first floor) and ground floor store;
- ❖ to relax the street building line from 4m to 2,2m to accommodate a proposed covered stoep and ground floor bedrooms and living room additions, and
- ❖ to relax the south-eastern lateral building line from 2m to 0,86 to accommodate the existing braai room as well as the proposed replacement roof;

**be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the applicant **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law applicable to Erf 365, Franskraal;
5. that the decisions in paragraphs 2. to 3. above be subject to the following conditions:
  - (a) that the development be implemented strictly in accordance with the Site Development Plan (attached as Annexure C);
  - (b) that the covered stoep may not be permanently enclosed;
  - (c) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department, be complied with at that stage
  - (d) that all the conditions in the Services Report (attached as Annexure G), be complied with.
  - (e) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
  - (f) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
5. that the applicant be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

#### 14. REASONS FOR RECOMMENDATION

##### Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners or the character of the area.
- ❖ The applicant bought the property unaware of the existing encroachments
- ❖ The proposal is considered in line with the Municipality's SDF.

- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

### 15. ANNEXURES

Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Site Development Plan  
Annexure D: Title Deed T39629/2013  
Annexure E: Late objection  
Annexure F: Comment on late objection  
Annexure G: Services Report

### SIGNATURES

#### AUTHOR

Name: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Annexe A



**PLA n** Stads- en Streetskeplanners  
**Active** Town & Regional Planners

Property Description:  
**ERF 365**  
**FRANSKRAAL**

Plan Description:  
**LOCALITY MAP**

Scale: NTS  
 Drawing No: 2018/08/01  
 Date: AUGUST 2017

All dimensions approximate and subject to survey.  
 COPYRIGHT RESERVED

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

**ERF 365 FRANSKRAAL**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Plan Active Town & Regional Planners has been appointed by Jacobus Bothma, the owner of erf 365 Franskraal, to apply for the administrative penalty, departure and removal of a title deed condition of the subject property.

Erf 365 Franskraal is 683m<sup>2</sup> in extent and is held by title deed no. T39629/2013.

There is an existing double storey dwelling with double garage situated on the subject property. Most of the As Built structures on the subject property were approved in the past. However, one of the previous owners (not the previous owner that sold to our client, but the owner before that) deviated from the approved building plan when the covered stoep, storeroom and braai room were constructed. Hence, the As Built dwelling was constructed as per the approved building plan but not the existing covered stoep and braai room. Our client (the existing property owner) bought the property with the covered stoep (on ground and first floor level), storeroom (on ground floor level), stairs and braai room already encroaching the relevant zoning scheme and title deed building lines.

The current property owner wants to proceed with additions to the existing dwelling. The new additions to the existing dwelling (additions no. 1 and 2 as indicated on the site plan) will be constructed in line with the land use planning parameters as well as

the parameters of the title deed conditions. Where applicable slight changes (alterations and additions) to the existing structures will be made to accommodate the redevelopment (addition no. 1 and 2) of the subject property. Addition no. 1 at the back of the braai room necessitates that the braai room structure itself will also be added to and altered to accommodate the new addition. In addition, the existing covered stoep and storeroom on ground floor level will also be altered (change in use) to accommodate the redevelopment of the dwelling. The owner also intends to apply for an extension of the existing covered stoep on first floor level – the latter will be the only new structure positioned within the title deed and land use scheme building lines.

Thus, this application intends to address the encroachments of the existing As Built structures with its proposed change in use where applicable (covered stoep, storeroom, stairs and renovated braai room) and the extension of the existing covered stoep on first floor level (new covered stoep / balcony for bedroom as part of addition no. 2 to the subject property).

To allow the property owner to add to the existing structures on the subject property, this application intends to address the following existing structures that encroach the Land Use Scheme regulations and title deed building lines:

- The existing covered stoep and storeroom (change of use on ground floor level to bedrooms and lounge extension) that encroach the 4,72m title deed and 4m Land Use Scheme street building lines;
- The existing stairs that encroach the 4,72m title deed street building line;
- The renovated braai room (position to remain unchanged) that encroaches the 1,57m title deed and 2m Land Use Scheme street building lines.

The application will also address the following new structures that encroach the Land Use Scheme regulations and title deed building lines:

- Extension of the existing covered stoep / new covered stoep on first floor level for the new bedroom as part of addition no. 2 development to the subject property. The new covered stoep will follow the same building line as the existing stoep and will therefore encroach both the 4m land use scheme and 4,72m title deed street building lines.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an **administrative penalty**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for **the departure (building lines)** of erf 365 Franskraal;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive title deed condition of erf 365 Franskraal.

## **3. NEED AND DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

Erf 365 Franskraal is situated on the corner of Nortje and Schneider Street (4 Nortje Street / 52 Schneider Street). Refer to the locality plan attached.

Erf 365 Franskraal is 683m<sup>2</sup> in extent and is held by title deed no. T39629/2013.

The subject property gently slopes in a north-eastern and north-western direction and is characterized by residential structures (double storey dwelling with double garage) and a garden area. The existing structures have a footprint of ±292,40m<sup>2</sup> (dwelling) and 47,6m<sup>2</sup> (double garage) in extent. The dwelling on the subject property has spectacular sea views to the south south-west.

### **3.2 ZONING**

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Erf 365 Franskraal has the following land use rights:

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| ERF NUMBER         | ZONING                                 |
|--------------------|--|
| Erf 365 Franskraal | Residential Zone 1: Single Residential |

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

### 3.3 LAND USE

There is an existing double storey dwelling with double garage and garden situated on erf 365 Franskraal. The subject property is therefore used for single residential living purposes.

The latest approved building plan at the municipality for the garage addition dated 4 March 2005 indicates that both the braai room, covered stoep and storeroom already existed in 2005 (copy attached). The building plan even indicates the encroachment of the braai room over the 2m south-eastern lateral building line. It is therefore evident that the existing structures that encroach the relevant lateral and street building lines already existed in 2005. Even though the encroachment of the braai room is evident on the building plan of 2005, it is understood that a deviation was never applied for. Hence, we include the latter in the application.

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

### 3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;

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2. The **departure** of erf 365 Franskraal in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
- Relax the street building line (Nortje Street) from 4m to 2,2m to accommodate the existing and extended / new covered stoep on first floor level and the proposed conversion of the covered stoep and storeroom on ground floor level (change of use from covered stoep to bedrooms and storeroom to lounge area);
  - relax the south-eastern lateral building line from 2m to 0,86m to accommodate the existing (to be renovated) braai room.
3. The **removal of a restrictive title deed condition** in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove condition C.20(d) on page 3 of title deed no. T39629/2013 to:
- Accommodate the existing covered stoep and extended / new covered stoep on first floor level and the proposed conversion of the covered stoep and storeroom on ground floor level (to bedrooms and lounge area) within the 4,72m title deed street building line (Nortje Street). The existing structure (extended bedrooms and lounge area on ground floor level and existing and extended / new covered stoep on first floor level) is positioned 2,2m from the Nortje Street erf boundary;
  - Accommodate the existing stairs within the 4,72m title deed street building line (Nortje Street). The stairs are positioned 4m from the Nortje Street erf boundary;
  - Accommodate the existing (to be renovated) braai room within the 1,57m south-eastern lateral title deed building line. The renovated braai room is positioned 0,88m from the south-eastern lateral erf boundary.

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

There is an existing double storey dwelling with a double garage situated on the subject property. Most of the As Built structures on the subject property were approved in the past. However, the previous owners deviated from the approved

building plan when the covered stoep and braai room were constructed. Hence, the As Built dwelling was constructed as per the approved building plan but not the existing covered stoep, storeroom, stairs and braai room.

The current property owner wants to proceed with additions to the existing dwelling. The new additions to the existing dwelling (additions no. 1 and 2 as indicated on the site plan) will be constructed in line with the land use planning parameters as well as the parameters of the title deed conditions. Where applicable slight changes (alterations and additions) to the existing structures will be made. Addition no. 1 at the back of the braai room necessitates that the braai room structure itself will also be added to and altered to accommodate the new addition. In addition, the existing covered stoep and storeroom on ground floor level will also be altered (change in use) to accommodate the redevelopment of the dwelling. The owner also intends to apply for an extension of the existing covered stoep on first floor level – the latter will be the only new structure positioned within the title deed and land use scheme building lines.

Thus, this application intends to address the encroachments of the existing As Built structures with its proposed change in use where applicable (covered stoep, storeroom, stairs and renovated braai room) and the extension of the existing covered stoep on first floor level (new covered stoep / balcony for bedroom as part of addition no. 2 to the subject property).

Here follows the detail of the proposed application for consideration:

#### **3.4.1 Rectification of contravention**

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

As the application is for the rectification of a contravention of the By-Law (due to the existing As Built covered stoep, storeroom, stairs and a portion of the braai room not being permitted by the current zoning scheme regulations), an application is

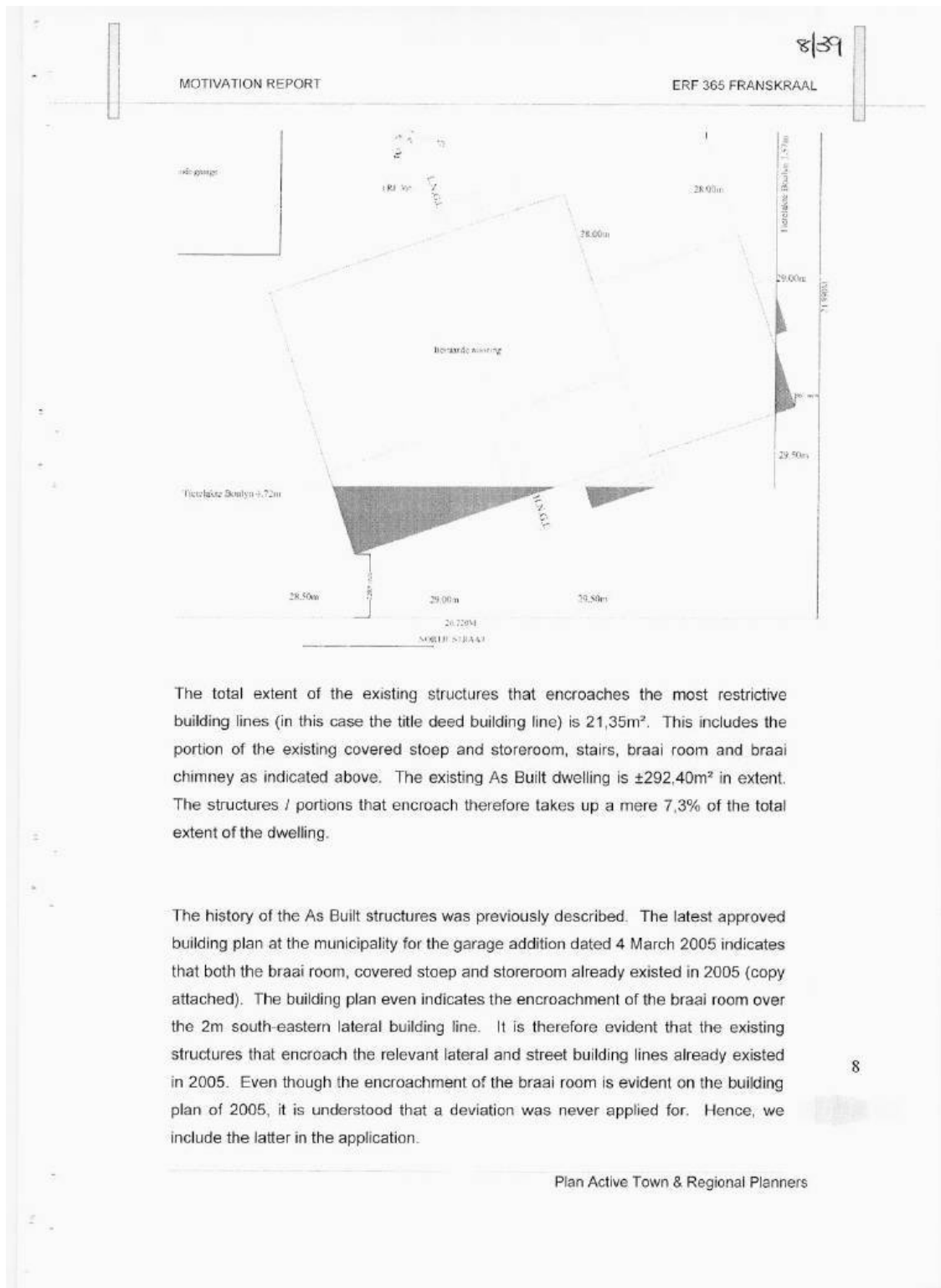
submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

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

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

Our client bought the subject property in 2013 with all existing structures As Built. Refer to a copy of the As Built plan attached. No alterations or additions were done to the covered stoep, storeroom, stairs and braai room since our client bought the property in 2013. It is understood that the encroachments of the As Built structures were also not the previous owner's work, but the owner before him. It is therefore evident that the existing As Built structures have been on the property for a long period of time.

The As Built plan indicates the existing encroachments in red below:



At present the As Built covered stoep and storeroom are not habitable areas. The owner intends to alter these structures to include the covered stoep on ground floor level as part of the existing bedrooms and to incorporate the existing storeroom into the existing lounge area. The use of the braai room will remain unchanged. Small alterations are proposed to the braai room.

There is an existing window in the braai room facing the neighbour to the south-east. The impact on the neighbouring properties will therefore be kept to a minimum since no new structures are proposed on common boundaries with the neighbours. The slope of the subject property also mitigates the impact that the As Built structures might have.

The position and nature of the As Built en-suite bedroom and laundry room on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. A building line departure application to accommodate the As Built structures is included in this application.

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

The As Built structures were constructed by previous owners of the property. The current owner was unaware that the As Built structures were never previously approved. He bought the property in 2013. The copy of the latest approved building plan (2005) indicates the stoep and braai room footprint, but not at the exact same position as it currently stands. As a result, the As Built structures that encroach the relevant scheme and title deed building lines have been on the property for at least 16 years.

- **Whether the unlawful conduct was stopped**

The current owner was unaware that the As Built structures described above were never previously approved. The owner now attempts to rectify the contravention by

submitting the administration penalty application and subsequent departure and removal of restrictive title deed conditions application in order to legalise the As Built structures on the subject property and to allow him to redevelop the subject property.

- **A report by a quantity surveyor in matters of unauthorised building / construction**

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, we will submit a report from a quantity surveyor with reference to the unauthorised building work. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.

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

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

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built covered stoep, storeroom, stairs and braai room have had and will continue to have on the surrounding area. In addition, the proposed alterations and additions to the existing As Built structures will not negatively impact on the neighbouring properties since the footprint of the structures will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built covered stoep, storeroom, stairs and braai room. The owner was unaware of the fact that the structures were illegally constructed over the relevant title deed and land use scheme's building lines. He only became aware of the latter once redevelopment of the subject property was considered.

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

#### **3.4.2 Departure (building line relaxations)**

##### **1. Existing covered stoep and storeroom (change in use) and stairs**

The existing covered stoep was indicated on the previous building plans, but when development took place on the site the construction of the stoep deviated from the approved building plans. It is proposed to keep the existing covered stoep and storeroom's footprint. The use of the covered stoep and storeroom on ground floor level will however change with the redevelopment of / renovations to the dwelling. The covered stoep on ground floor level will be incorporated into the two existing bedrooms (i.e. to become an extension of the existing bedrooms). In addition, the existing storeroom on ground floor level will also be incorporated into the existing lounge area (i.e. extended lounge area). Hence the existing covered stoep and storeroom on ground floor level will be a change of use of the existing structure that encroaches the scheme and title deed street building lines. The covered stoep and storeroom was however constructed within the 4,72m title deed street building line as well as the 4m Land Use Scheme's building line.

An application is submitted for a departure to:

- Relax the street building line (Nortje Street) from 4m to 2,2m to accommodate the existing covered stoep on first floor level and the change of use of the existing stoep (from covered stoep to bedrooms) and storeroom (from storeroom to lounge area) on ground floor level.

The following should be noted when considering the covered stoep application:

- The stoep has existed for a few years. The existing portion of the covered stoep will remain on first floor level. On ground floor level the existing covered stoep area will be incorporated into the two existing bedrooms. The existing storeroom on ground floor level will be incorporated into the existing lounge area.

- Only slight additions and alterations will be made to the covered stoep on ground floor level to allow for the extension / enlargement of the two bedrooms and lounge area.
- The visual impact of the proposed alterations to the covered stoep and storeroom on ground floor level will be minimal (see As Built vs proposed site development plan elevation below).
- The existing stoep is positioned  $\pm 9,5\text{m}$  from the edge of the tar road, thus keeping the views down the street unobstructed and the impact low.
- The As Built stoep and store room (with its proposed new uses where applicable) are an integral part of the design of the dwelling thus to demolish a portion thereof to make the structures compliant to the building lines, will diminish the aesthetic value of the dwelling.

The images below indicate the proposed changes to the covered stoep and storeroom on ground floor level, and shows that the portion of the existing covered stoep on first floor level will remain:

1. South-west elevation of the As Built covered stoep and storeroom on ground floor level and covered stoep on first floor level



2. South-west elevation of the proposed site development plan / changes to the existing covered stoep and storeroom on ground floor level. The portion of the existing covered stoep on first floor level will remain unchanged.



The existing staircase at the front of the dwelling (facing Nortje Street) was approved with the previous building plan. Since an application for the relaxation of the title deed condition is submitted, we include the staircase since the latter does not encroach the Land Use Scheme's building line but only the title deed street building line. The removal of the restrictive title deed condition is addressed in Section 3.14 of the report to allow the owner to keep the existing staircase at its current position.

It is also proposed to remove condition C.20(d) on page 3 of title deed no. T39629/2013 to allow the owner to keep the existing stairs, covered stoep on first floor level and to convert the existing covered stoep and storeroom on ground floor level as an extension of the existing bedrooms and lounge area.

## **2. New extended covered stoep / balcony for new bedroom addition**

The property owner intends to add two new additions to his dwelling:

- Addition 1 of  $\pm 59,78\text{m}^2$
- Addition 2 of  $\pm 151,16\text{m}^2$

Both the new additions will be within the land use restrictions of SR1 zoned properties as well as the title deed restrictions. However, the property owner wishes to extend the existing stoep / balcony on first floor level to allow the proposed

bedroom on Nortje Street side (as part of the addition 2 section of the development) to have a balcony. The existing stoep / balcony is already positioned on the 2,2m street building line. The extended covered stoep / balcony will follow the same street building line. An application is therefore submitted for a building line relaxation from 4m to 2,2m to accommodate the extended covered stoep / new covered stoep for the new bedroom as part of the addition no. 2 to the subject property. The new extension to the covered stoep that will encroach the street building line (this was measured from the stricter building line, i.e. the title deed street building line) will be  $\pm 16,82\text{m}^2$  in extent.

It is submitted that the existing covered stoep is already constructed up to the 2,2m street building line. Hence the views from the properties situated west and north-west of erf 365 Franskraal will not be obstructed more than it is already obstructed. Nortje Street is a wide street (15,74m). The width of the street lowers the impact the extended covered stoep might have on the surrounding property owners' views.

The portion of the new extended covered stoep that encroaches the applicable street building line is positioned only 2,2m from the Nortje Street erf boundary, but at least 9,5m from the edge of the tar of the road. The views down Nortje street will therefore remain unobstructed.

It is also proposed to remove condition C.20(d) on page 3 of title deed no. T39629/2013 to allow the owner to extend the existing covered stoep on the same building plan as the As Built covered stoep.

### **3. Existing (to be added to and altered) braai room and chimney**

The existing braai room was indicated on the previous building plans, but when development took place on the site the construction of the braai room with chimney deviated from the approved building plans. The existing braai room does not encroach the street building lines applicable to the subject property. It does however encroach the Land Use Scheme's south-eastern lateral building line as well as the title deed lateral building line. In addition, to accommodate new addition no. 1 the structure of the braai room will be changed. The renovated structure will have slightly higher walls with a 15° pitch roof as indicated on the elevation pictures below (grey indicates the existing structures and red indicates the new additions):

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1. South-west elevation of the existing braai room.



2. South-west elevation of the renovated braai room.



Aansig  
100

3. South-east elevation of the existing braai room.



Suidboos Aansig  
Skalaal 1 - 100

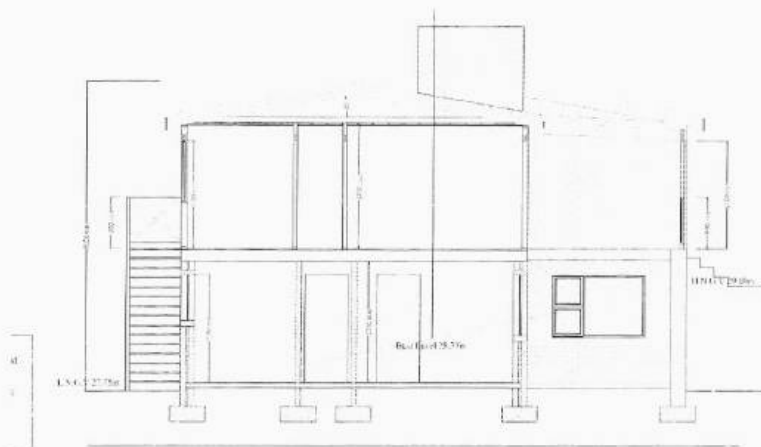
4. South-east elevation of the renovated braai room. Addition no. 1 is also depicted on the picture – take note that this addition complies with all relevant land use and title deed parameters.

8.0m Hoogte beperking \_\_\_\_\_

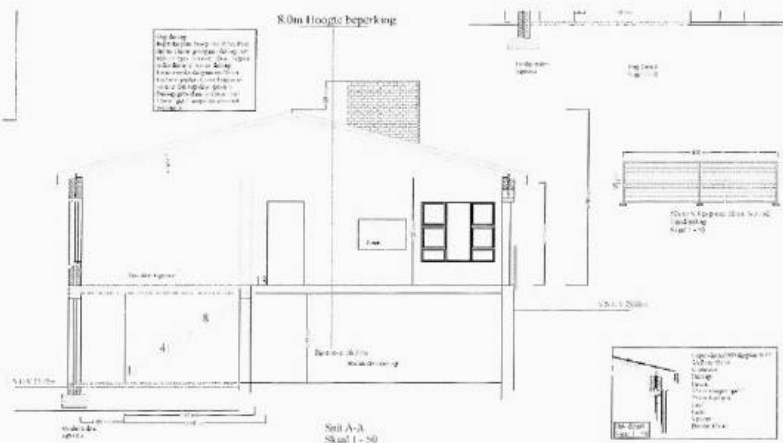


Suidboos Aansig  
Skalaal 1 - 100

- 5. Section of the As Built house indicating the current height of the dwelling (6,026m to top of roof).



- 6. Section A of the renovated dwelling. The 8m height restriction applicable from the base level is indicated on the below section.



An application is therefore submitted for a departure to relax the south-eastern lateral building line from 2m to 0,86m to accommodate the existing braai room with chimney.

From the above the following should be noted:

- Although small alterations to the braai room are proposed, the alterations along with Addition no. 1 complies with the applicable building lines. The position and footprint of the braai room that currently encroach the south-eastern lateral building line will remain unchanged.
- The portion of the braai room that encroaches the applicable south-eastern lateral building line is positioned 7,9m from the Nortje Street erf boundary and at least 14,4m from the edge of the tar of the road. The views down Nortje street will therefore remain unobstructed.
- Nortje Street is a wide street (15,74m). The width of the street lowers the impact the small portion of the altered braai room might have on the surrounding property owners' views.
- The portion of the renovated braai room that encroaches the relevant lateral building lines is already fitted with a window on the south-eastern erf boundary (see As Built drawings). It is submitted that the impact of the minor alterations to the braai room on the neighbours will therefore be minimal. In addition, the row of trees situated on the common erf boundary with erf 366 as well as the position of the respective dwellings on erven 365 and 366 Franskraal in relation to each other (the dwelling on erf 366 is positioned further south-east away from the dwelling on erf 365 Franskraal) further mitigates the impact of the As Built (to be renovated) braai room. The alterations of the braai room on the south-eastern erf boundary will therefore have a low impact on the privacy of the neighbours.
- The height of the renovated braai room with the chimney and dwelling as a whole complies with the 8m height restriction of the Land Use Scheme (2020).

Our client wanted to add a new deck in front of the braai room (Nortje Street side). However, the owner of the neighbouring erf 366 Franskraal was not willing to consent to the proposed deck. Hence our client removed the proposed deck from the building plan. Therefore, the departure and removal of restrictions application is to address the As Built footprint of the braai room only as far as the common boundary with erf

366 Franskraal is concerned.

It is also proposed to remove condition C.20(d) on page 3 of title deed no. T39629/2013 to allow the owner to keep the existing braai room with chimney in its current position.

#### **4. General**

To accommodate the above mentioned existing and new structures the following condition must be removed:

Title deed no. T39629/2013, page 3, paragraph C.20(d) that reads as follow:

*"C. Onderhewig aan die volgende addisionele voorwaardes genoem in Transportakte Nr. T2552/1951 opgelê deur die Administrateur van die Kaapprovinsie by goedkeuring van die stigting van die Dorp kragtens die bepalings van Ordonnansie Nr. 33 van 1934, ten aansien van Franskraaldorp, naamlik:*

*20. Hierdie erf is onderhewig aan die volgende voorwaardes met dien verstande dat indien die Administrateur na oorleg met die Dorpekommissie en die plaaslike owerheid dit raadsaam ag dat die beperking in enige sodanige voorwaarde te eniger tyd **opgeskort of versag** behoort te word, hy die nodige opskorting of versagting kan goedkeur onderworpe aan sodanige voorwaardes as wat hy ople-*

*d) Geen gebou of struktuur of enige gedeelte daarvan behalwe grensmure en heinings mag binne 4,72 meter van die straatlyn wat 'n grens van hierdie erf vorm, opgerig word nie, ook nie binne 3,15 meter van die agtergrens of 1,57 meter 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 word mits sodanige buitegebou nie 'n hoogte van 3,15 meter 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 removal of the restrictive title deed condition application is addressed in Section 3.14.

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

The existing structures on the subject property do not create an infringement to any passing traffic or public activity due to the slope of the subject property and surrounding properties, the duration and position of the As Built structures on site, the wide road reserve of Nortje Street, etc.

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

The zoning of erf 365 Franskraal will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). All buildings and uses thereof that encroach the applicable building lines (except for the new extension to the covered stoep on first floor level) as indicated on the site development plan already exist and the application addresses mostly existing structures that encroach the building lines. The largest extent of the new additions (additions no. 1 and 2) will comply with the relevant land use and title deed development parameters. Consequently, the proposed departure and removal of restrictive title deed conditions will not have a greater visual impact on the surrounding properties. The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures did not exist.

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

## Oppervlakte

Bestaande woning 292,40 = vkm

Bestaande Garage = 47,6 vkm

Aanbouing 1= 59,78 vkm

Aanbouing 2 = 151,16 vkm

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 Totaal = 550,94 vkm

## Dekking:

Erf 683 vkm

Woning 299,74 vkm

Aanbouing

Dekking 43,88 %

The total coverage of 43,88% does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

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

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

The proposed departure and removal of a restrictive title deed condition of erf 365 Franskraal is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

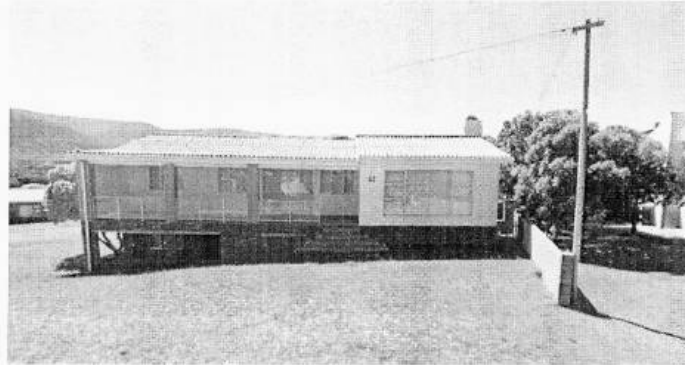
### 3.5 THE POTENTIAL OF THE PROPERTY

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, guest house and home occupation uses). The proposed departure and removal of restrictive title deed condition will not hinder any possible future land use applications on erf 365 Franskraal.

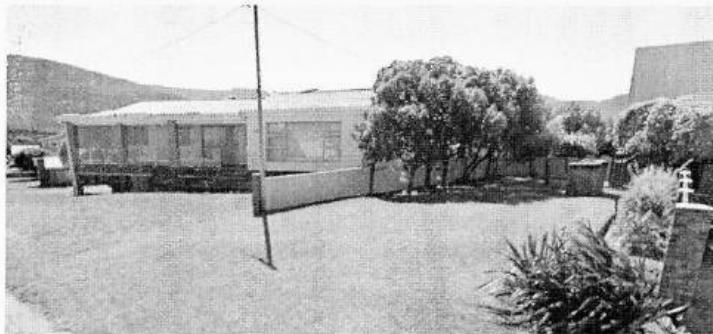
The subject property has the potential and allows for the deviations being applied for since the As Built structures have been on the subject properties for a long period of time without any complaints from neighbours. The extension of the covered stoep / new covered stoep on first floor level will be positioned on the same street building line than the existing covered stoep to keep the impact on the neighbouring properties to a minimum. In addition, it is only a small section of the existing braai room and braai chimney that encroaches the south-eastern lateral building line. The footprint of the encroachment will not be enlarged. Due to the topography of the site the renovated dwelling will meet the maximum of 8m height requirement for SR1 zoned properties as depicted on the Section plans.

There is also a row of trees situated on the neighbouring property, next to the common boundary with erf 366 Franskraal, that restricts any views of properties at the back more than the renovated braai room and braai chimney impacts the views. The dwelling on erf 366 Franskraal is positioned further south-east on the subject property with views directed away from erf 365 Franskraal (i.e. in a south south-western and southern direction). Refer to the images below:

1. Dwelling situated on erf 365 Franskraal



2. Dwelling situated on erf 365 Franskraal with the row of trees on the common boundary with erf 366 Franskraal as indicated in the picture below. In addition, the dwelling on erf 366 Franskraal is not situated near the common boundary with erf 365 Franskraal as shown in both the pictures below. It is also important to note that the new additions to the south-eastern side of the dwelling (addition 1) will not encroach the applicable title deed or land use scheme building lines. The impact on the neighbouring erf 366 Franskraal will therefore remain unchanged.



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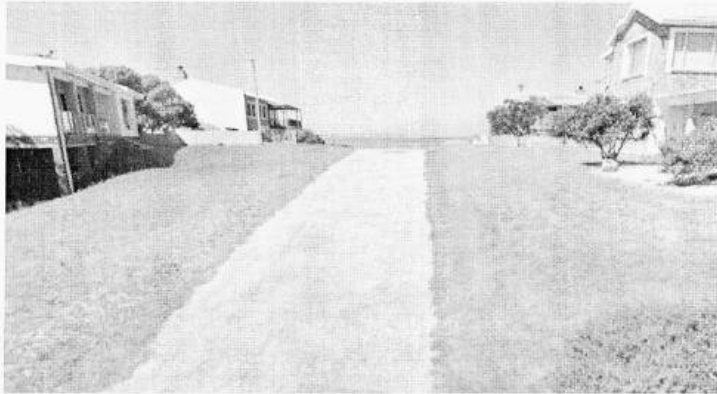


3. Position of dwelling and double garage as well as the slope of the subject property as seen from the corner of Nortje and Schneider Streets.



4. Nortje Street only serves four properties. It is important to note that the road reserve of Nortje Street is exceptionally wide (15,74m) for a street that merely serves four erven. The existence of the wide road reserve therefore supports a favourable consideration of the existing and proposed encroachments. Refer to the noting sheet, general plan for Franskraal (sheet 3) and the image below:

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In addition, the scale of the surrounding built environment, the low impact on the streetscape (except for the small alterations to the braai room and extended stoep on first floor level, the larger new additions no. 1 and 2 will not encroach the title deed or Land Use Scheme's building lines), the slope of the subject property, the slope of the erven to the south, south-east and south-west (slopes towards the ocean) etc. are also factors that have to be considered when contemplating the potential of the property to accommodate the departures and title deed relaxation being applied for. The following factors confirm the potential of the property to accommodate the proposed lateral building line deviations:

- good quality materials were used when the existing structures were built, and the quality will not be compromised with the new additions and alterations to the subject property;
- the architectural style of the additions and alterations matches the architectural style of the existing approved main dwelling and double garage;
- the dwelling appears to be a single storey dwelling due to the height above natural ground level on Nortje Street's side. This will remain unchanged, except for a slightly higher structure wall to accommodate the new additions and the 15° pitch roof.
- The largest extent of new additions no. 1 and 2 to the existing dwelling will not encroach the title deed or Land Use Scheme (2020) building lines.

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- The existing stairs do not encroach the 4m Land Use Scheme street building line, but only the 4,72m title deed street building line.
- The As Built braai room (that encroaches both the Land Use Scheme and title deed south-eastern lateral building lines) has been in existence for a few years, with no complaints from neighbours. Merely raising the walls and adding a 15° pitch roof will not have a much greater impact than the current braai room has on the neighbouring erf 366 Franskraal. The footprint and position that encroaches the south-eastern lateral building line remains unchanged.
- The use of the existing braai room is for recreational purposes and it will remain unchanged for the purposes of the application.
- The additions and alterations will add value to the subject property as well as the area.
- The slope of the subject property favours the As Built structures and the renovations and additions proposed since the height of the existing structures and new additions is in line with the land use parameters of the Land Use Scheme (2020).
- The width of Nortje Street (15,74m), the position of the structures from the edge of the tar road and the fact that the largest extent of the two new additions to the dwelling will not encroach any land use or title deed development parameters, confirm that the view towards the ocean will remain unobstructed.

### **3.6 ECONOMIC IMPACT**

The proposed departure and removal of a restrictive title deed condition are to accommodate existing structures (some altered such as the braai room) and uses thereof. Only one new addition (extended covered stoep on first floor level) will encroach the relevant title deed and land use scheme street building lines. The proposed departure and removal of restrictive title deed conditions will allow the owner to legalise the existing structures while also redeveloping the subject property and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the existing covered stoep, storeroom, stairs and braai room (to be renovated and added to as addressed in Section 3.4) will save our clients the cost of demolishing the structures and allow them to proceed with the additions and renovations to the subject property. The proposed building line deviations and removal of the subsequent restrictive title deed building line condition will have a low but positive impact on the local economy.

### **3.7 SOCIAL IMPACT**

The proposed departure and removal of restrictive title deed conditions will have no impact on the social status quo of the area. The building line deviations and removal of restrictive title deed conditions will however allow the owner to keep the existing As Built structures while simultaneously adding to / redeveloping the structures on the subject property.

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

### **3.8 COMPATIBILITY WITH SURROUNDING LAND USES**

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

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 365 Franskraal (and the respective uses thereof) will merge well with the scale of the surrounding dwellings in the immediate area.

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

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

### **3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES**

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

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

### **3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY**

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

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

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Most departures are on the Nortje Street side and thus will have a minimal impact on surrounding and adjacent properties. The south-eastern lateral building line

deviation is to accommodate the existing (renovated) braai room only on the exact same footprint with no new windows or decks that face erf 366 Franskraal on the common erf boundary. It is submitted that the impact on the privacy and property value of erf 366 Franskraal will therefore be minimal.

### **3.11 IMPACT ON HERITAGE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. Consequently, the proposed application for the departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 365 Franskraal is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme Heritage Overlay Zone (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010). It is also not demarcated as part of a Heritage Protective Overlay Zone (2020) for the area.

The subject property is not older than 60 years. The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed departure and removal of the title deed condition will not have a negative impact on the heritage value of the Franskraal or Greater Gansbaai area.

### **3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

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

### **3.13 TRAFFIC IMPACT, PARKING AND ACCESS**

Access to erf 365 Franskraal will remain unchanged and will be from Schneider Street (access to the double garages). Erf 365 Franskraal is however a corner property and thus two access points can be allowed to the premises. No new access points are proposed. Refer to the site development plan.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house. There is an existing double garage on erf 365 Franskraal that serves the dwelling on the subject property – refer to the site plans. Another double garage will be added to the subject property as depicted on the ground floor layout plan for erf 365 Franskraal. The dwelling house on erf 365 Franskraal therefore complies with the minimum parking requirements for SR1 zoned properties.

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

### **3.14 TITLE DEED**

Title Deed no. T39629/2013 has a restrictive title deed condition that needs to be removed for this application for the departure of the prescribed building lines to be approved. The conveyancer's certificate compiled by H.L. van Zyl of Van Zyl Kruger Attorneys will follow. Application is therefore made for the removal of a restrictive title deed condition.

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It is proposed to remove the following restrictive title deed condition registered in by the Administrator (now the Overstrand Municipality) to accommodate the proposed departure of erf 365 Franskraal:

**Title deed no. T39629/2013, page 3, paragraph C.20(d):**

"C. Onderhewig aan die volgende addisionele voorwaardes genoem in Transportakte Nr. T2552/1951 opgelê deur die Administrateur van die Kaapprovinsie by goedkeuring van die stigting van die Dorp kragtens die bepalings van Ordonnansie Nr. 33 van 1934, ten aansien van Franskraaldorp, naamlik:

20. Hierdie erf is onderhewig aan die volgende voorwaardes met dien verstande dat indien die Administrateur na oorleg met die Dorpekommissie en die plaaslike owerheid dit raadsaam ag dat die beperking in enige sodanige voorwaarde te eniger tyd opgeskort of versag behoort te word, hy die nodige opskorting of versagting kan goedkeur onderworpe aan sodanige voorwaardes as wat hy oplê-

- e) Geen gebou of struktuur of enige gedeelte daarvan behalwe grensmure en heinings mag binne 4,72 meter van die straatlyn wat 'n grens van hierdie erf vorm, opgerig word nie, ook nie binne 3,15 meter van die agtergrens of 1,57 meter 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 word mits sodanige buitegebou nie 'n hoogte van 3,15 meter 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 lateral building line restrictions in Title Deed no. T39629/2013 are less restrictive than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme (2020). However, the lateral building line relaxation being applied for (for the altered braai room) is the same as the current south-eastern lateral building line for the existing braai room.

The street building line restrictions in Title Deed no. T39629/2013 are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme (2020). All structures except for the existing covered stoep (ground and first floor level), storeroom and extension to the existing covered stoep meet the 4m Land

Use Scheme street building line. It is therefore submitted that the 4m scheme street building line still protects the privacy and views of surrounding erven.

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

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

The removal of the restrictive conditions intends to increase the use rights of the property to permit an existing approved dwelling that was positioned over the street and lateral building line by the previous property owner during construction on the subject property. The value of the rights is vested in the owner of the property. The properties in whose favour the conditions are registered do not enjoy any financial or other value. The removal of these conditions will consequently have no impact on the favoured properties. Property owners not seeking that the title deed building line restrictions should be in line with the zoning scheme regulations' restrictions will favour the restrictive title deed conditions since the conditions impede the development of a residential property in line with the zoning scheme. The existing As Built development (and its encroachments) as well as the new encroachment (extension to the existing covered stoep on first floor level) is not an unusually large-scale form of development that encroaches the building lines. The street building line condition are more restrictive than the zoning scheme regulations' building lines. And where scheme building lines are encroached, it is mostly to address the existing structures (with new uses where applicable, renovations where applicable and extensions where applicable).

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

The conditions were imposed by the Administrator for the benefit of the surrounding township. The only personal benefit to the holder is that the property is more restricted in terms of developing any structures on the subject property.

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

The removal of the restrictive title deed condition will bring about personal benefits to the new landowner since it will allow him to legalise the existing structures to proceed with additions and renovations to the subject property that will in turn benefit the value and resale of their property in future. To remove the stricter street building line will also afford the property owner the opportunity to add to the existing dwelling in future within the relevant land use restrictions and not be prohibited by stricter title deed conditions.

The 4,72m street building line as stipulated in the title deed has a negative impact on the developable area of the land since the property abuts two streets and to demolish the existing structures to adhere to this street building line is not feasible. The existing property owner will be able to enjoy the personal benefits of the existing structures instead of partially demolishing the structures. The latter will have a great financial burden on the existing property owner. To remove the title deed's lateral building line restriction will allow the property owner to adhere to the less restrictive common erf boundary building line of the zoning scheme regulations (2m), instead of being bound by the more restrictive title deed building line (1,57m) for any future additions or redevelopment of the property. It will also allow the owner to keep the existing braai room (to be renovated; footprint to remain unchanged) at its current position.

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

The social benefit if the title deed conditions were to remain unchanged and enforced on the existing As Built structure would be that the character of Nortje Road will remain unchanged. If the condition remains unchanged, the owner must adhere to the title deed's stricter street building line. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's street building line are more restrictive than the scheme regulations' street building line. The less restrictive lateral title deed building line favours the property owner, but not necessarily the adjacent properties. To keep the 4,72m title deed street building line will have no benefit to neither the property owner nor the

adjacent properties since the existing structures already encroach the street building line and no complaints have been received from the immediate property owners over the years.

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

The removal of the restrictive title deed condition will allow the scheme regulations' building lines to set the rules for future development on the subject property. The social benefit will therefore only be to the property owner of erf 365 Franskraal since it will allow him to keep the existing As Built structures that encroach onto the street and lateral building lines on the subject property, allow for the new extension to the covered stoep and allow future additions to be constructed in line with the zoning scheme regulations' building lines only.

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

The removal of the restrictive conditions will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the existing structures within the scheme regulations' building lines with departures where applicable. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area.

It should also be noted that four surrounding property owners gave their consent for the proposed departure when our client initially considered the title deed relaxation instead of the removal of the title deed conditions. Only one property owner (erf 366 Franskraal) did not respond to our attempts to obtain his consent. The main issue for the property owner of erf 366 Franskraal was the impact that the new deck at the braai room will have on his privacy. The new deck was omitted and hence no new additions / encroachments are proposed on the common boundary with erf 366 Franskraal.

There is no bond registered against erf 365 Franskraal.

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

### **3.15 FORWARD PLANNING AND LAND USE DOCUMENTS**

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 365 Franskraal is situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) attached. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of the title deed condition on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 365 Franskraal forms part of Planning Unit no. 5. This planning unit stipulates an increase in density from 8,1du/ha to 9,7du/ha. No additional portions or second dwelling units are proposed with this application. The status quo of the area (low density residential) will remain unchanged. The land use application for the subject property therefore falls within the existing planning for the Franskraal area.

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

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

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

### 3.16 PLANNING PRINCIPLES

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

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1950.

The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Franskraal Township. The proposed application is in character with the existing area (Franskraal) where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

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

Factors such as the good quality materials used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the low impact on the streetscape, the width of the road reserve of Nortje Street, the position

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of the dwellings on erven 365 and 366 Franskraal respectively, the existence of the structures on the subject property for the past few years, etc. allow for the consideration and approval of the proposed deviations and removal of restrictive title deed conditions without having an adverse impact on the spatial sustainability of the area. The proposed additions and alterations are to an improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

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

Efficiency: The subject property is easily accessible and conveniently located close to Gansbaai and major routes. The massing and height of the redeveloped property will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built additions, new and renovated structures with the proposed uses thereof to the subject property since it is compatible with the existing built environment and the way the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing and proposed structures and its proposed uses by approving the proposed departure of erf 365 Franskraal instead of demolishing the structures and impact on the whole look and feel of the subject property.

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

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

#### 4. RECOMMENDATION

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

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and primary land use of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations building lines are to accommodate mostly the As Built structures with new uses where applicable. The braai room will be added to and altered slightly to accommodate the new additions and new 15° pitch roof, but the structure's position from the south-eastern erf boundary will remain unchanged. The extension to the covered stoep on first floor level will be on the same street building line than the existing covered stoep.
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

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MOTIVATION REPORT

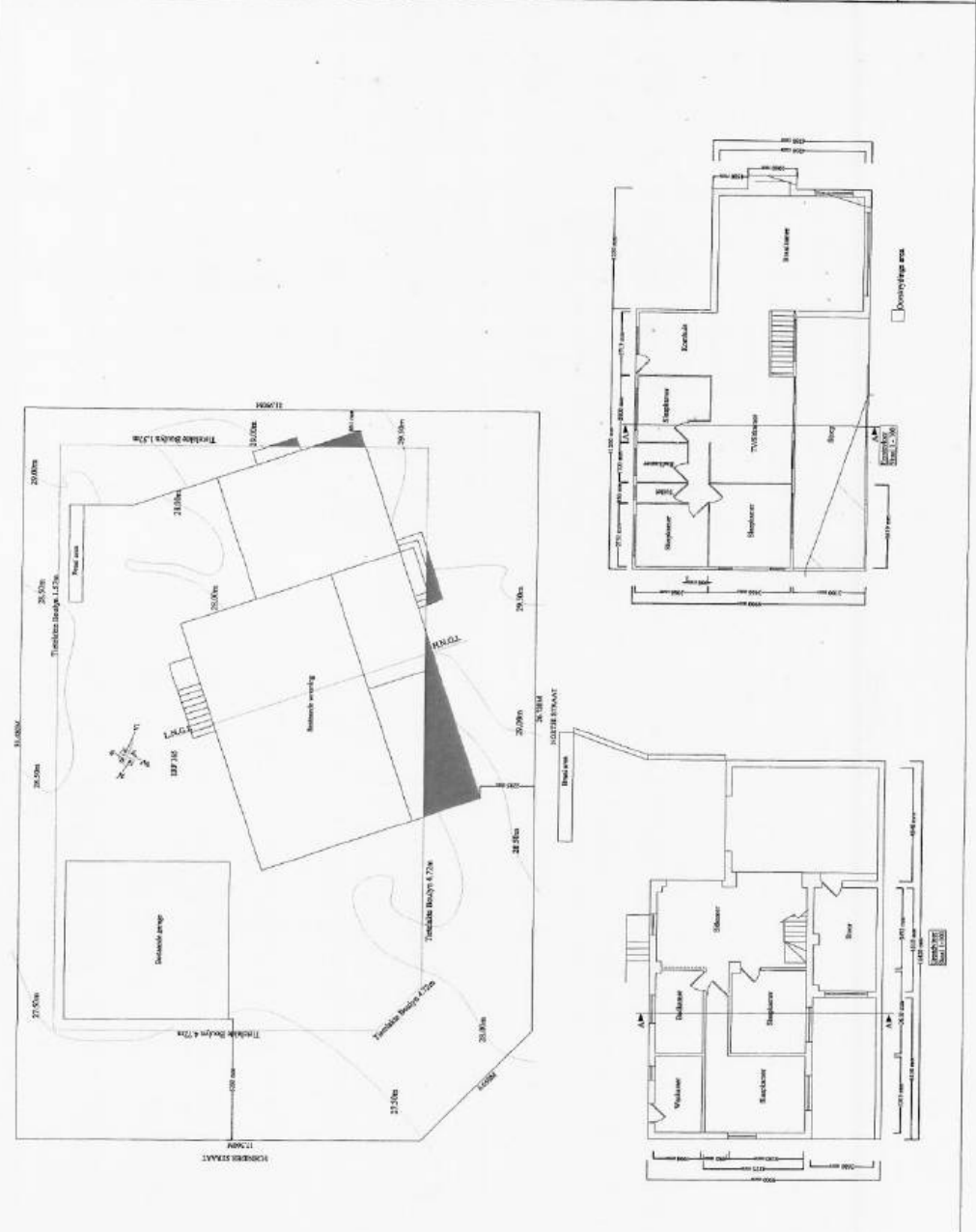
ERF 365 FRANSKRAAL

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

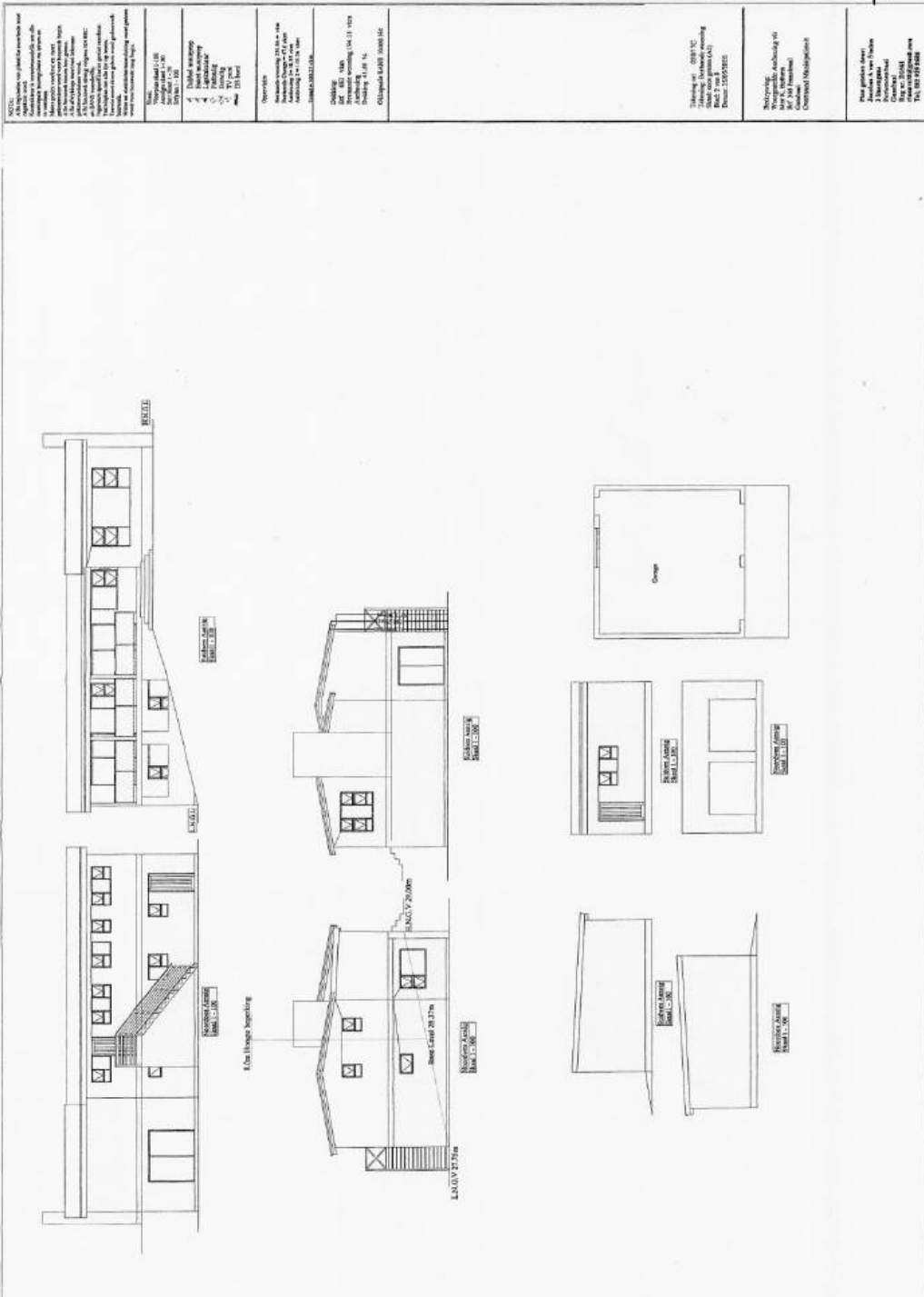
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Annexure C/7

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 5. **Project Status:** [Blank]  
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 8. **Project Budget:** [Blank]  
 9. **Project Manager:** [Blank]  
 10. **Project Engineer:** [Blank]  
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- 1. Grundriss
- 2. Schnitt
- 3. Außenansicht
- 4. Innenansicht
- 5. Detail
- 6. Maßstab

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 Auftraggeber: ...  
 Standort: ...  
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Zeichnung Nr. ...  
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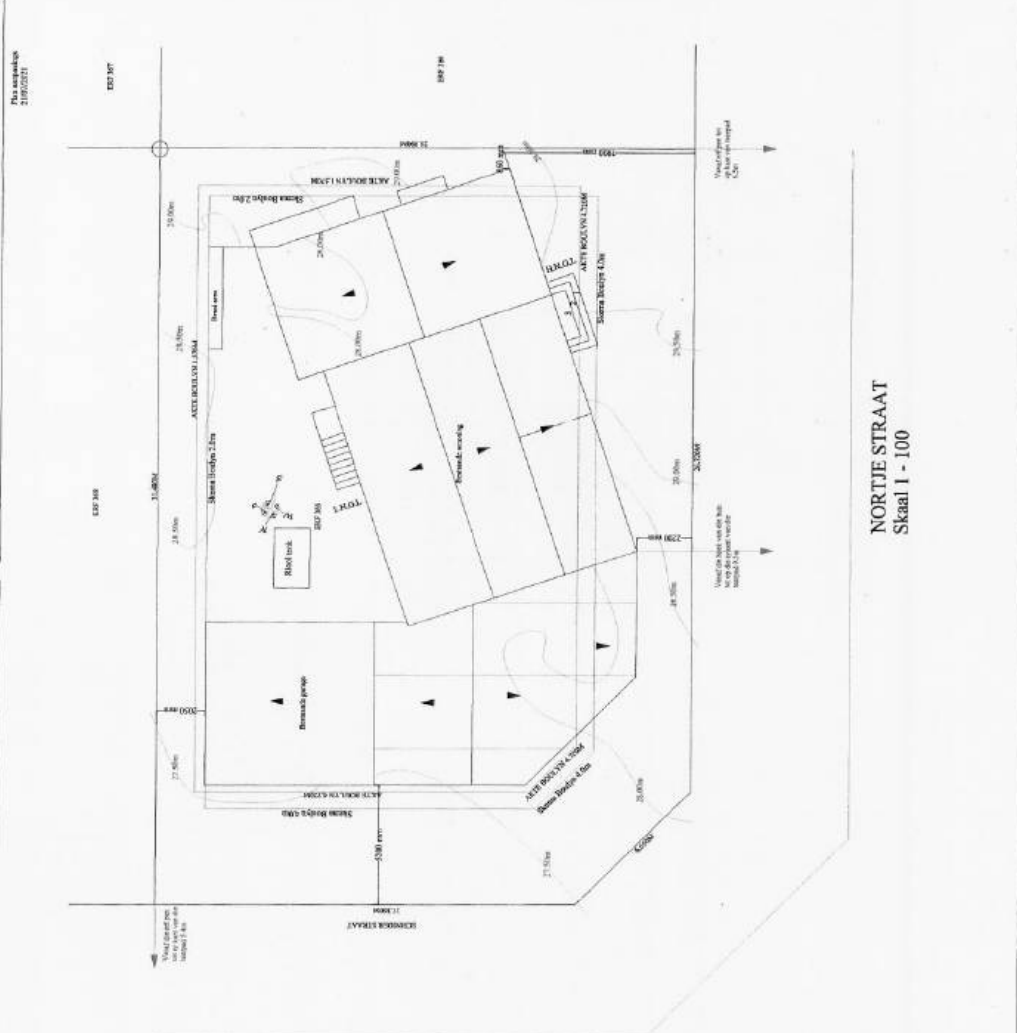
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| <p>ACTA</p> <p>Deze tekening is vervaardigd overeenkomstig de wet van 12 juli 1978 (S. 31) betreffende de wetgeving betreffende de Vlaamse Reguleerder voor de Media (Vlaamse Reguleerder voor de Media - VRM) en de wet van 12 juli 1978 (S. 31) betreffende de wetgeving betreffende de Vlaamse Reguleerder voor de Media (Vlaamse Reguleerder voor de Media - VRM).</p> <p>De Vlaamse Reguleerder voor de Media (VRM) heeft de bevoegdheid verleend om deze tekening te maken.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> | <p>De Vlaamse Reguleerder voor de Media (VRM) heeft de bevoegdheid verleend om deze tekening te maken.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> | <p>De Vlaamse Reguleerder voor de Media (VRM) heeft de bevoegdheid verleend om deze tekening te maken.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> <p>De Vlaamse Reguleerder voor de Media (VRM) aanvaardt de aansprakelijkheid voor de inhoud van deze tekening.</p> |
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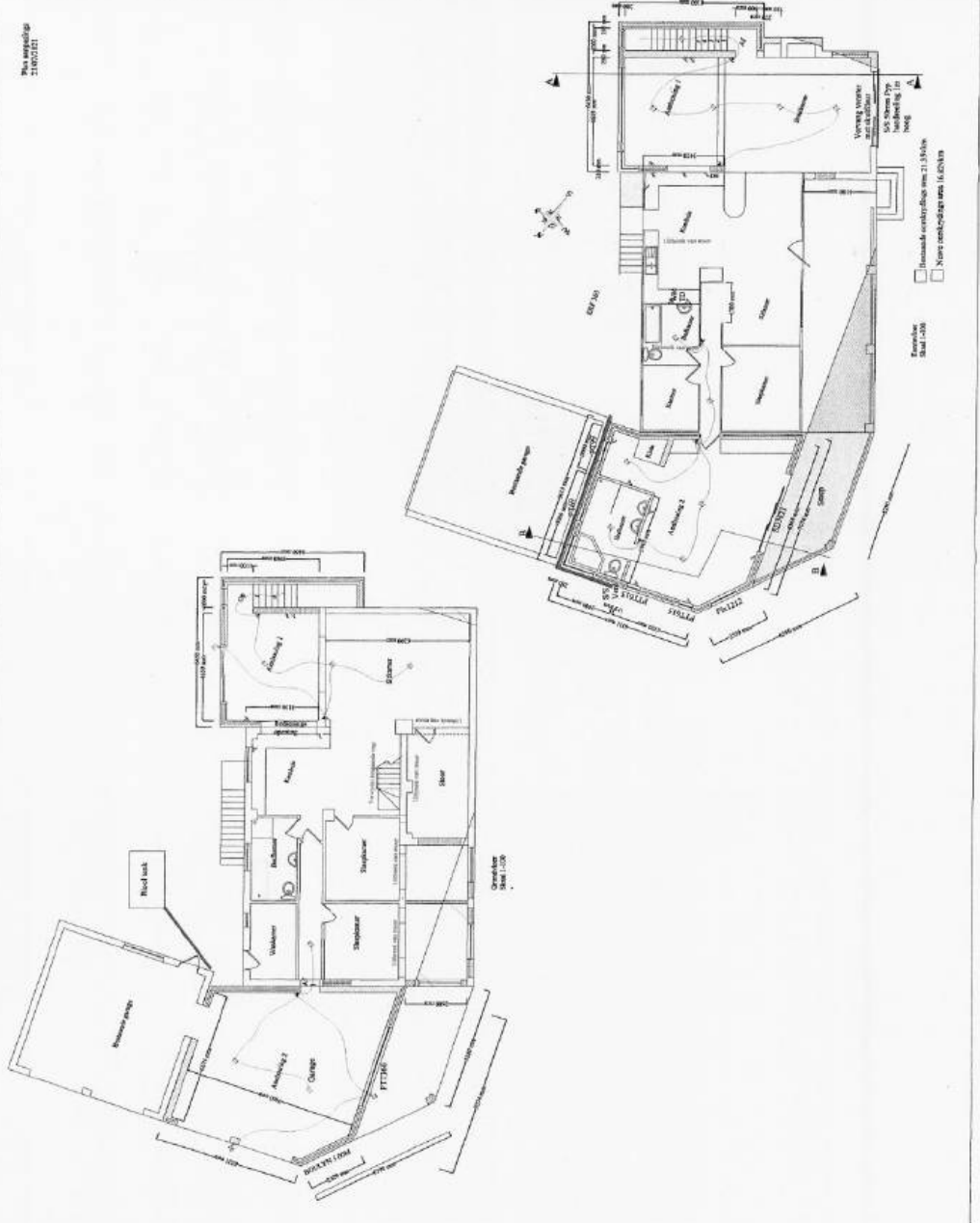


Schnider straat

NORTJE STRAAT  
Skaal 1 - 100

Plan van de vloer  
21072121

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| <p>100%<br/>Aanpak van de vloer is volledig overeenkomstig met de eisen van de NEN-EN 12526-1:2002. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> | <p>De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> | <p>De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> | <p>De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> | <p>De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> | <p>De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte. De vloer is geschikt voor het gebruik als vloer voor een kantoorruimte.</p> |
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 Nieuw aanbouwwerk met 1:100  
 Bestand: 21072121  
 Datum: 21-11-2007

Project: 21072121  
 Tussentijdse tekening nr. 1  
 Schaal: 1:100  
 Datum: 21-11-2007

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10076  
 Alle tekeningen van dit ontwerp worden  
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 10 tekeningen. Indien er meer tekeningen  
 nodig zijn, wordt hiervoor een aparte  
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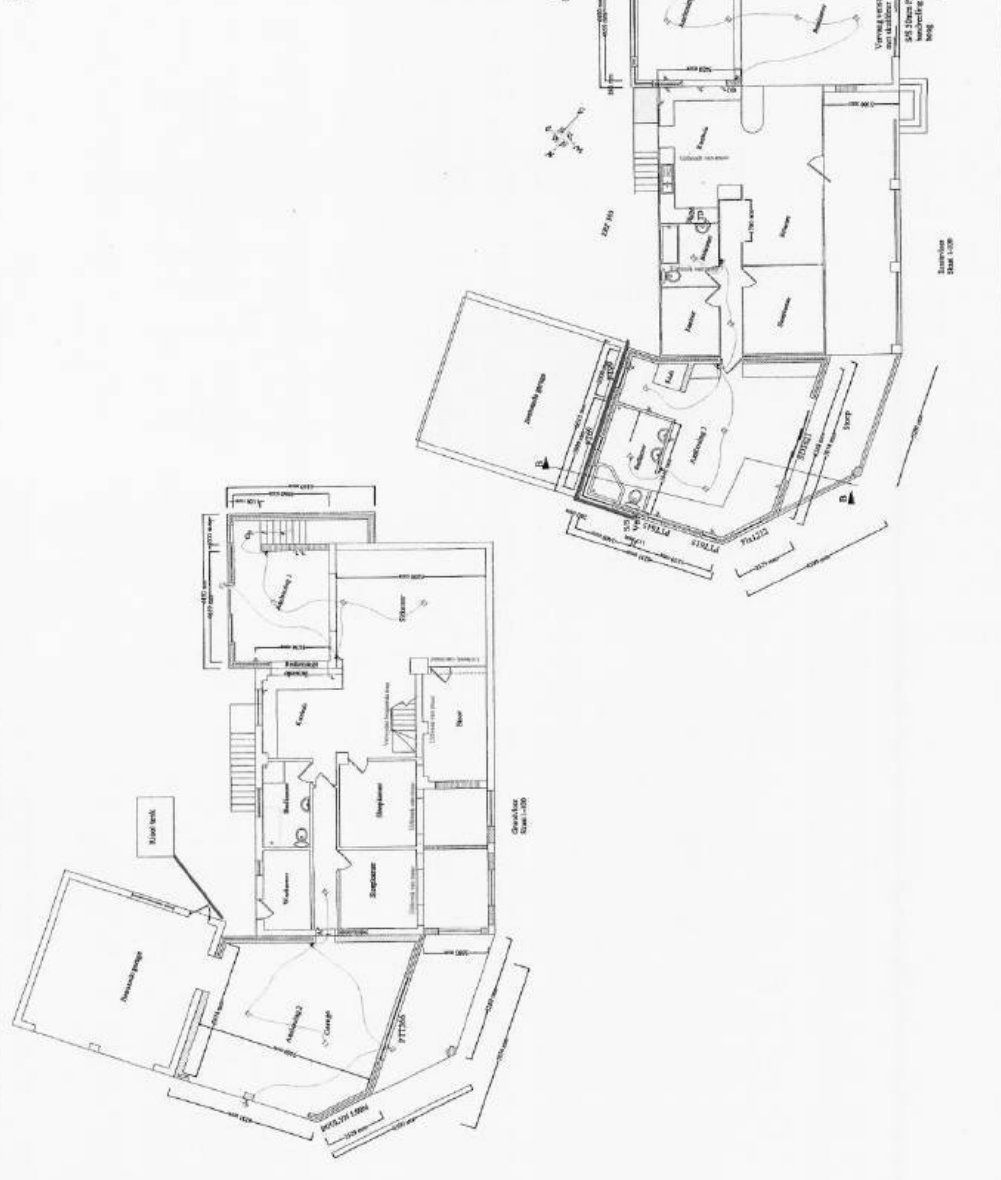
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Plan van de begane grond  
 20/01/2021



Annexure D.14

800215372-9101

107

REDDERING & OOSTHUIZEN  
AKTEKANTOOR BUS 107

Opgestel deur my

TRANSPORTBESORGER  
GERHARDUS CORNELIS OOSTHUIZEN

|                         |  |                 |           |
|-------------------------|--|-----------------|-----------|
| Purchase price/Value    |  | R. 1 500 000,00 | R. 900,00 |
| Mortgage capital Amount |  | R. ....         | R. ....   |
| Reason for exemption    |  | Exempt L.L.O.   |           |

|                   |                        |
|-------------------|------------------------|
| VERBIND MORTGAGED |                        |
| VR FOR R          | 855 709,00             |
| B                 | 000022099/2013         |
| 30-08-13          | REGISTRATEUR/REGISTRAR |

DATA / CAPTURE  
19 AUG 2013  
#120420MBAHOLLUBUQ

T000039029/2013

TRANSPORTAKTE

HIERBY WORD BEKEND GEMAAK DAT

DOMINIQUE WOLHÖTER

GERHARDUS CORNELIS OOSTHUIZEN

DOMINIQUE WOLHÖTER

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

HANNES JURGENS MEYER  
Identiteitsnommer 4903155073084  
Getroud buite gemeenskap van goed

geteken te SOMERSET WES op 23 JUNIE 2013

DATA / VERIFY  
26 AUG 2013  
VAN WYK JENNY

- 2 -

En genoemde Komparant het verklaar dat sy prinsipaal, op 22 April 2013, waarlik en wettiglik verkoop by Privaat ooreenkoms, en dat hy, in sy voorgenoemde hoedanigheid hierby sedeer en transporteer aan en ten gunste van

**JACOBUS BOTHMA**  
 Identiteitsnommer 6709185151081  
 Getroud buite gemeenskap van goed

sy Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes,

ERF 365 FRANSKRAALSTRAND IN DIE OVERSTRAND MUNISIPALITEIT,  
 AFDELING CALEDON, PROVINSIE WESKAAP

GROOT 683 (SES HONDERD DRIE EN TAGTIG) Vierkante Meter

CORSPRONKLIK OORGEDRA kragtens Transportakte Nr. T2552/1951 met Kaart Nr. 1996/51 wat daarop betrekking het en gehou kragtens Transportakte Nr. T36308/99

A. ONDERHEWIG aan die voorwaardes waarna verwys word in Transportakte Nr. T5544/1941.

B. GEREGTIG op die voordeel van die Serwituut waarna verwys word in die aantekening gedateer 18 Augustus 1951, op die genoemde Sertifikaat van Dorpsittel, gedateer 18 Augustus 1951, Nr. 14397 as volg:

"Kragtens Notariele Akte van Serwituut Nr. 478/1951 gedateer 3.3.1951 is die eiendom hierin beskrywe geregtig op sekere serwituut met betrekking tot waterregte, waterleiding, opgaardamme en suiweringswerke gelee op die eiendomme gehou onder Transport Nr. 5546 gedateer 13 Junie 1941, en soos aangedui op Serwituutkaart Nr. 3241/50 aan gesegde Notariele Akte geheg, tesame met sekere meegaande regte en onderhewig aan sekere voorwaardes soos meer breedvoerig sal blyk uit gesegde Akte en Kaart, 'n kopie waarvan hieraan geheg is.

C. ONDERHEWIG aan die volgende addisionele voorwaardes genoem in Transportakte Nr. T2552/1951 opgelê deur die Administrateur van die Kaaprovinsie by die goedkeuring van die stigting van die Dorp kragtens die bepaling van Ordonnansie Nr. 33 van 1934, ten aansien van FRANSKRAALDORP, naamlik:

\*17. Enige woorde en uitdrukkings wat in die volgende voorwaardes gebesig word het dieselfde betekenis as wat daaraan geheg word by die regulasies afgekondig by kennisgewing van die Provinsiale Administrasie Nr. 401 van 17 Oktober 1935 en in die memorandum wat genoemde regulasies vergesel het.

18. Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding toe te laat dat rioolvuil en dreinerings insluitende reënwater van enige ander erf of erwe oor hierdie erf gevoer word indien dit deur die plaaslike owerheid nodig geag word en wel op die wyse en ligging wat van tyd tot tyd redelikerwys vereis word. Dit sal die reg op toegang te alle redelike tye tot die eiendom insluit met die doel om riole, mangate, vore, waterleidings en ander werke behorende daartoe te bou, onderhou verander, verwyder of te inspekteer.

GhartConvey 14.5.12.6

- 3 -

19. Die eienaar van hierdie erf is verplig om sonder betaling van vergoeding die materiaal te ontvang of enige uitgraving op die erf toe te laat wat nodig mag wees om die gebruik van die volle wydte van die straat toe te laat en 'n veilige en behoorlike skuinste aan sy wal te voorsien weens verskil tussen die hoogtes van die straat soos finaal aangele en die erf tensy hy verkies om steunmure te bou tot bevrediging van die plaaslike owerheid en binne 'n tydperk wat genoemde owerheid bepaal.
20. Hierdie erf is onderhewig aan die volgende voorwaardes met dien verstande dat indien die Administratuer na oortog met die Dorpekommissie en die plaaslike owerheid dit raadsaam ag dat die beperking in enige sodanige voorwaarde te eniger tyd opgeskort of versag behoort te word, hy die nodige opskorting of versagting kan goekeur onderworpe aan sodanige voorwaardes as wat hy ople-
- (a) dit mag nie onderverdeel word nie;
  - (b) dit mag alleen gebruik word vir doel om een woning tesame met die buitegeboue wat gewoonlik in verband daarmee gebruik word daarop op te rig;
  - (c) op nie meer as helfte van die oppervlakte daarvan mag gebou word nie;
  - (d) geen gebou of struktuur of enige gedeelte daarvan behalwe grensmure en heinings mag binne 4,72 meter van die straatlyn wat 'n grens van hierdie erf vorm, opgerig word nie, ook nie binne 3,15 meter van die agtergrens of 1,57 meter 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 word mits sodanige buitegebou nie 'n hoogte van 3,15 meter 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."
- D. ONDERHEWIG VERDER aan die voorwaardes genoem in Transportakte Nr. T2552/1951 wat Franskraalstrand (Eiendom) Beperk, die eienaar van die Dorp opgelê het met die goedkeuring van die genoemde Administrateur, opgelê het vir die voordeel van sigself as eienaar van die resterende erwe in die Dorp en wedersydse voordeel van al die eienaars van erwe daarin, naamlik:
1. -----
  2. Dat geen gebou op hierdie erf opgerig word nie alvorens die plan deur die eienaars goedgekeur is.




GhöstConvey 14.5.12.6

- 4 -

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

**HANNES JURGENS MEYER , Getroud 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

**JACOBUS BOTHMA , Getroud 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 **R1 500 000,00 (Een Mijoen Vyf Honderd Duisend Rand)** beloop.

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

ALDUS GEDOEN EN VERLY op die Kantoor van die REGISTRATEUR VAN AKTES te Kaapstad op 13 Augustus 2013

q.q.

In my teenwoordigheid

  
REGISTRATEUR VAN AKTES

**A Conradie**

**From:** Roy Moore | RPM Drilling <roy@rpmdrilling.co.za>  
**Sent:** Tuesday, 09 November 2021 14:37  
**To:** A Conradie  
**Cc:** admin@rpmdrilling.co.za  
**Subject:** 365 GFK



TP. A. Ahearne  
(S. ud n. Moore)

Middag Alida,

Ons (RP & L Moore) het eers verlede week kennisgewing van posstuk ontvang. Mnr J Bothma het al kontak gemaak oor die beplande aanbouing en ek en my vrou is teen dit. Mnr Bothma beplan om aan die Suid-Oostelike gedeelte van sy eiendom op te gaan met braai en leefarea. Die probleem is egter dit is ons enigste gedeelte waar daar privaatheid is op ons eiendom.

My direkte kontak nr is 0825681163.

Groete  
P&L Moore

|                  |           |
|------------------|-----------|
| FILE NO:         | 21 865    |
|                  | Kranbrook |
| SCAN NO:         | GFK 365   |
| COLLABORATOR NO. | 1603412   |

12 NOV 2021

TP

Annexure F1/3



6 Magnolia St / Str  
PO Box / Posbus 296  
HERMANUS  
7200  
Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email: [planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)  
Website: [www.planactive.co.za](http://www.planactive.co.za)

Our reference: PA20033/ML  
Your reference: 365 GFK

28 MARCH 2022

**THE MUNICIPAL MANAGER  
OVERSTRAND MUNICIPALITY  
P.O. BOX 20  
HERMANUS  
7200**

**FOR ATTENTION: MR SCHALK VAN DER MERWE**

Sir

**ERF 365 FRANSKRAAL: DETERMINATION OF AN ADMINISTRATIVE PENALTY, PROPOSED DEPARTURE & REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION**

- **J. BOTHMA**

Your email dated 23 March 2022 with the late objection from R.P. & L. Moore dated 9 November 2021 attached thereto, refers.

The Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, Chapter 5, Section 52 (2) stipulates the following:

*Any objection, comment or representation received as a result of a public notice process must be in writing and addressed to the person mentioned in the notice within the time period stated in the notice and in the manner set out in this Section.*

Section 52(5) stipulates the following:

*The Municipality may refuse to accept an objection, comment or representation received after the closing date.*

From an administrative point of view the objection is considered a late objection and should be dealt with accordingly. The objector in this case does not receive an appeal right and is merely provided a copy of the decision letter once the application is finalized. We trust that the municipality will deal with the objection in line with the requirements of the Bylaw.

Nonetheless, we wish to address R.P. & L. Moore's objection as follows:

The objector does not give detail as to how the existing structures and proposed additions and alterations will impact on their property. It is therefore submitted that the objection does not meet the criteria of Section 52(4) of the By-law (for the consideration of an objection) that reads as follows:

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active  
Reg. No. 2006/030921/07  
Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPJ  
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

The reasons for any objection, comment or representation must be set out in sufficient detail in order to -

- (a) indicate the facts and circumstances which explains the objection, comment or representation;
- (b) demonstrate the undesirable effect which the application will have on the area;
- (c) demonstrate any aspect of the application which is not considered consistent with applicable policy.

The objector merely stipulates that he is against the proposed application (additions and alterations on the south-eastern erf boundary specifically) since it will impact on their privacy.

The objector refers to impact of the the existing (to be added to and altered) braai room and chimney on their property. We would like to emphasize the following pertaining to this specific alteration and addition (as stipulated in our motivation report):

- Although small alterations to the braai room are proposed, the alterations along with Addition no. 1 complies with the applicable building lines. The position and footprint of the braai room that currently encroach the south-eastern lateral building line will remain unchanged. The existing encroachment was not done by the current owner (our client) but by the previous owner.
- The portion of the braai room that encroaches the applicable south-eastern lateral building line is positioned 7,9m from the Nortje Street erf boundary and at least 14,4m from the edge of the tar of the road. The views down Nortje street will therefore remain unobstructed.
- Nortje Street is a wide street (15,74m). The width of the street lowers the impact the small portion of the altered braai room might have on the surrounding property owners' views.
- The portion of the renovated braai room that encroaches the relevant lateral building lines is already fitted with a window on the south-eastern erf boundary (see As Built drawings). It is submitted that the impact of the minor alterations to the braai room on the neighbours will therefore be minimal. In addition, the row of trees situated on the common erf boundary with erf 366 as well as the position of the respective dwellings on erven 365 and 366 Franskraal in relation to each other (the dwelling on erf 366 is positioned further south-east away from the dwelling on erf 365 Franskraal) further mitigates the impact of the As Built (to be renovated) braai room. The alterations of the braai room on the south-eastern erf boundary will therefore have a low impact on the privacy of the neighbours.
- The height of the renovated braai room with the chimney and dwelling complies with the 8m height restriction of the Land Use Scheme (2020).

Our client wanted to add a new deck in front of the braai room (Nortje Street side). However, the owners of the neighbouring erf 366 Franskraal (R.P. & L. Moore) were not willing to consent to the proposed deck. Hence our client removed the proposed deck from the building plan. Therefore, the departure and removal of restrictions application is to address the As Built footprint of the braai room and chimney with alterations and additions as proposed as far as the common boundary with erf 366 Franskraal is concerned.

Our company, the architect as well as our client have negotiated with the objector in the past to attempt to meet their concerns (hence the removal of the proposed deck on their common erf boundary). Due consideration should be given to the As Built structures and the fact that Addition no. 1 will be done in line with the relevant land use parameters. The objector's concern where our client's proposal will be within the development rights, must be dismissed. And for the additions and alterations to the braai room and chimney where it already encroaches the relevant building line, the impact is considered minimal as explained above and as indicated on the existing versus proposed plans in our report.

We trust that you find the above in order and that you will now be able to finalize the application.

Yours faithfully



M. LERM Pr. Pln. (A/158/2009)  
PLAN ACTIVE

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR: REMOVAL OF RESTRICTIVE TITLE DEED  
CONDITIONS, DEPARTURE & DETERMINATION OF AN  
ADMINISTRATIVE PENALTY: ERF 365, FRANSKRAAL**

|                   |   |          |
|-------------------|---|----------|
| Electricity       | : | In order |
| Water             | : | In order |
| Sewer             | : | In order |
| Stormwater        | : | In order |
| Roads and traffic | : | In order |

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing, standard electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. that any additional and / or extended vehicle entrances will be for the developer's account;
5. that stormwater be allowed to discharge through Erf 365, Franskraal, unobstructed;
6. that no on-street parking be allowed.

  
**DENNIS HENDRIKS**  
 SENIOR MANAGER:  
 ENGINEERING SERVICES

26/10/2021  
 DATE