

## 4.3

**ERF 454, 21 ANDRIES PRETORIUS STREET, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND THE DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE ON BEHALF OF RF SANTANA**

454 HSB

H van der Stoep  
2 August 2021

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application was received on 20 October 2020 from Messrs Plan Active on behalf of RF Santana applicable to Erf 454, Sandbaai for the following:

- ❖ Removal, in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law), of restrictive title deed conditions C.(a), C.(c) and C.(d) as contained in Title Deed T55849/2018 to accommodate the existing second dwelling unit, as well as to be in line with the primary rights and development rules as contained in the relevant Zoning Scheme Regulations.

The restrictive conditions read as follows:

“C.(a) *That the above erf or erven be used for residential purposes only.*

(c) *That not more than one dwelling together with the necessary outbuildings and accessories be erected on any of the above erven be built upon.*

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

- ❖ Departure in terms of Section 16(2)(b) of the By-Law for the following:
  - the relaxation of the rear building line from 2m to ±1m to accommodate the existing wendy type garden shed;
  - the relaxation of the rear building line from 2m to ±0,970m to accommodate a portion of the existing second dwelling unit;
  - the relaxation of the southern lateral building line from 2m to ±0,940m to accommodate a portion of the existing second dwelling unit;
  - the relaxation of the northern lateral building line from 2m to ±1,230m to accommodate a portion of the existing braai room; and
  - the relaxation of the northern lateral building line from 2m to ±1m to accommodate a portion of an existing pizza oven; and
- ❖ Determination of an Administrative Penalty in terms of Section 16(2)(q) of the By-Law for an illegal land use and structures that encroach the relevant building lines without the necessary municipal approvals.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while

the proposed Site Development Plan is attached as Annexure C. Title Deed T55849/2018 is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

Erf 454, Sandbaai is zoned for Residential Zone 1: Single Residential purposes and measures 832m<sup>2</sup>. The property is developed with a dwelling unit, an illegal second dwelling unit (previously staff quarters), garden shed, swimming pool and a pizza oven. A braai room attached to the main dwelling and all the aforesaid structures encroach building lines.

During August 2018 a similar application was submitted, but during a site inspection it was found that the particulars and information provided in the application was false and misleading. The application was closed and the then landowner had to submit a new application. The property however changed ownership during December 2018 and the new landowner submitted the application under discussion.

The purpose of the application is to legalize the irregularities and to determine an administrative penalty.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

Only the main points of motivation are summarised as follows (the detailed report is attached as Annexure C):

- ❖ The property is situated in a predominantly residential area.
- ❖ With the encroachment of the second dwelling unit a southern lateral building line of  $\pm 0,94\text{m}$  is still achieved.
- ❖ The total lengths of the lateral building lines and the rear building line encroachments are  $\pm 8,89\text{m}$  and  $\pm 3,61\text{m}$ .
- ❖ The second dwelling does not have any openings facing the southern lateral boundary and being a single storey does not have any impact on the privacy on adjoining properties. It does not have a negative impact on the character of the area.
- ❖ The braai room was illegally constructed and is situated  $\pm 1,23\text{m}$  from the northern lateral boundary. It is also a single storey structure and therefore does not have a negative impact on the adjacent property. The length of the braai room is  $\pm 6,016\text{m}$  and the portion that encroaches the building line is  $\pm 4,63\text{m}^2$  in extent.
- ❖ The pizza oven will encroach the building line by 1m and will not have any impact on the adjacent property.
- ❖ The garden shed is a single storey structure and encroaches the rear building line with 1m. The total length is 5m and the extent of the encroachment is  $\pm 5\text{m}$ .
- ❖ The reason for having all the relevant restrictive title deed conditions removed is due to the high costs involved for applications to remove restrictive conditions and for this reason it was decided to have the restrictions removed that is more restrictive than the land use restrictions set out in the Zoning Scheme.
- ❖ In terms of the Municipality's By-Law and LUPA, when the Municipality considers the removal of a restrictive condition, the Municipality must consider the following:

**The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person as the owner of a dominant tenement.** The removal of these restrictions will allow the property to be developed according to future plans and policies that will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the uses as set out in the Zoning Scheme.

- ❖ **The personal benefit which accrues to the holder of rights of the restrictive conditions.** The personal benefit accumulated to the owners of the township is insignificant regarding the conditions to be removed as none of the owners will gain anything personally. The restrictions prevent the property from being developed to its full potential. The proposal will have an impact on the built form in the area, but such changes have been supported in the area. Surrounding property owners are still protected by the town planning legislation. The removal will increase the market value of the property and the area that leads to social and economic benefits.
- ❖ **The personal benefit which will accrue to the person seeking the removal if it is removed.** The property owner will benefit from the removal as it will expand the development rights on the property and legalise the use of existing structures.
- ❖ **The social benefit of the restrictive conditions remaining in place.** It is doubtful if the retention of the conditions would have a significant social benefit. It will add another layer of enforcement by the Municipality in addition to the requirements of the Scheme Regulations.
- ❖ **The social benefit of the removal of the restrictive conditions.** It can be argued that the social benefit would be positive. Densification should be encouraged in all areas. Removing the conditions will enable the better usage of the property in terms of modern city development, prevent urban sprawl, align with policies for the more efficient use and densification of land, allow for additional resident and potential future amenities (guesthouses, etc.) within the area.
- ❖ **Whether the removal, suspension or amendment of the restrictive conditions will completely remove all the rights enjoyed by the beneficiary or only some of the rights.** It will not remove the rights completely since the Municipal By-Law provides a level of control in which the property is used and developed. By denying the removal additional people will be denied from housing opportunities. It will also deprive the owner from utilizing the property to its full potential. The removal of the restrictions will be in the interest of the public. The benefit of removing the conditions outweighs the benefits of keeping it in place.
- ❖ The reason to have conditions D.(a) and D.(c) removed is mainly to give the owner the opportunity to use the property to its fullest potential in terms of the primary rights of the Zoning Scheme.
- ❖ No new accesses are proposed.
- ❖ No additional services are required.
- ❖ The zoning status of the property will be retained.
- ❖ The proposal is consistent with the planning principles of SPLUMA and LUPA.

#### **Motivation for Determination of an Administrative Penalty**

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

The property was purchased during 2018 with the unauthorised building work already in place. The current landowner intends to rectify the unauthorised

building work inherited by the previous landowner who did not fulfil its part of the agreement with the sale of the property to provide approved building plans for the structures. The total extent of the unauthorised building works is  $\pm 20,25\text{m}^2$ . After the previous landowner failed to rectify the defaults the current owner took it upon himself to rectify the situation and is willing to give his full co-operation to the Municipality to rectify the situation. The position of the structures is unobtrusive in nature and do not impact negatively on surrounding properties since no complaints were received from surrounding properties over the years.

b) The conduct of the person involved in the contravention

The previous owner constructed the structures without any approvals. When the property was purchased by the current owner during 2018 there was an agreement that the previous owner would provide approved building plans.

c) Whether the unlawful conduct was stopped

The current owner is in the process to rectify the contraventions.

d) A report by a qualified surveyor in matters of unauthorised building/construction

If the Municipality finds it necessary that a penalty be enforced for unauthorised works done by the previous owner, a report will be submitted for the unauthorised works. The current owner has already spent a considerable amount to rectify the inherited situation and does not want to spend unnecessary capital.

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

The current landowner has never contravened any planning law.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	27 January 2021	5 March 2021
Gazette	Yes	29 January 2021	5 March 2021
Notices	Yes	27 January 2021	5 March 2021
Ward councillor	Yes	27 January 2021	5 March 2021
Total comments	<b>NONE</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 (if no, elaborate below):			<b>Yes</b>

Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes
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#### 6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Department	27/01/2021	Building Control has no objection. The building plan application must comply with all applicable legislation. The shed must comply with safety distances i.t.o. Part T.
Fire Department	26/01/2021	No objection subject to compliance with the provisions of SANS 10400-A 2016, SANS-T 2020 and the By-Law Relating to Community Fire Safety.
Engineering Services	04/02/2021	Attached as Annexure E.
Telkom	02/02/2021	Attached as Annexure F.

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

One (1) objection was received from the owners of Erf 456, Sandbaai diagonally behind the application property. The owners complained about the smoke from the flue of the "proposed" pizza oven blowing into their bedroom. After discussions with the landowner the flue was raised that subsequently lead thereto that the objectors formally withdrew their objection.

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

N/A

#### 9. MUNICIPAL ASSESSMENT OF COMMENTS

As above.

#### 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 is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

The application will not perpetuate spatial injustices.

Spatial sustainability

The application is located within the urban edge and thus will not lead to urban sprawl. No natural habitat is impacted upon and it will have no negative influence on the environment.

Efficiency

The application will optimize the use of the property in terms of municipal services and infrastructure.

Spatial resilience

The structures on the property will ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

Good administration

The application follows the required planning procedures and a good public participation process has 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 Point 10.2 above.

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

Inconsistent with the Zoning Scheme, but consistent with the Spatial Development Framework.

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

The application for removal of restrictions must also be considered in terms of the Western Cape Government: Provincial Support Document: Restrictive Conditions.

**10.6 Impact on Municipal engineering services**

The existing services are available and have been viewed positively by the Engineering Department.

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

N/A

**10.8 Existing and proposed zoning comparisons and considerations**

The application is in line with the Overstrand Spatial documents.

## 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

### The financial or other value of the rights

The Title Deed stipulates that the property may only be utilised for residential purposes and has a more restrictive street building line than the Zoning Scheme and does not allow for second dwelling units. The removal of the condition relating to one (1) dwelling only will have a beneficial financial impact for the landowner since it will be able to either rent out the second dwelling on a long-term basis. The value of the property will also increase since the landowner will obtain additional land use rights.

### The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal

The original holder of rights became null and void when the Municipality took over its functions. The Municipality will have no personal benefit with the removal of the restrictions.

### The social benefit of the restrictive condition remaining in place, and/or being removed/amended

Whether the restrictive conditions are removed from the Title Deed or not, it will have no social benefits.

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

It will only result in the landowner gaining an additional land use right and the Zoning Scheme parameters.

## 12. THE DESIRABILITY OF THE PROPOSAL

The property is burdened with land use restrictions in the Title Deed and the owner intends to have these restrictive conditions removed to accommodate an existing illegal one (1) bedroom second dwelling unit on the property, as well as to be in line with the applicable primary rights and development parameters, and more specifically the street building line as set out in the Zoning Scheme. These primary rights and parameters are more lenient than the restrictions in the Title Deed of the property.

The Building Control Department indicated that there is only one (1) building plan on record that indicates the structure as an existing garage that has been converted into a "maid's room". At some stage a kitchen was fitted in the quarters resulting that the structure qualifies as a second dwelling unit. The removal of the relevant restrictive condition C.(c) will not be detrimental to the medium density character of the immediate area or impact on the rights of surrounding property owners. This would further be in line with the Density Policies and would also be in line with the Residential Zoning I: Single Residential zoning status of the property. Although the structure encroaches the lateral building line, it should be noted that the structure has been used for habitable purposes for a mentionable time already without any complaints on record. Refer to the aerial attached as Annexure G.

Further, the structure is single storey, situated close to the south-western (rear) corner of the property, is mostly concealed from abutting properties by trees and bushes, and there are no openings in the wall of the structure that fronts the lateral boundary. It is therefore the opinion that the encroachment of the rear- and lateral building lines does not impact on the rights of adjacent property owners and that the removal of condition C.(c) and the encroachments can be supported.

The applicant's main points of motivation for the removal of restrictive conditions C.(a) and C.(d) are as follows:

- the removal of all relevant restrictive title deed conditions is due to the high costs involved for applications;
- the restrictions prevent the property from being developed to its full potential;
- the removal will allow the property to be developed according to future plans and policies that will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the uses as set out in the Zoning Scheme;
- by denying the removal additional people will be denied from housing opportunities;
- it will deprive the owner from utilizing the property to its full potential;
- the removal of the restrictions will be in the interest of the public; and
- the benefit of removing the conditions outweighs the benefits of keeping it in place.

Although the above is noted, it is also important to note that the Western Cape Government Support Document: Restrictive Conditions states that the rights of other beneficiaries of restrictive conditions should be carefully assessed and considered. Although the latter may not necessarily be applicable to this application, one cannot just ignore the lack of clear land use and development proposals by the applicant for the removal of these conditions thus making it impossible to evaluate the removal of these restrictions from a town planning perspective. The removal of these conditions should therefore not be supported.

Refer to aerial photo (attached as Annexure G). The garden shed is situated approximately in the middle of the rear side of the property over the rear building line. It is a non-habitable structure and is concealed from Erf 453 by trees and bushes. It is further concealed from Erf 451 by the second dwelling unit, as well as trees and bushes. It is also not visible from the street since it is concealed by the main dwelling unit on the property. It is the opinion that it does not impact on the rights of any adjoining property owners and the encroachment can therefore be supported. It may however only be used as a garden shed.

It is the opinion that the braai room that encroaches the 2m northern lateral building line with  $\pm 770\text{mm}$  has a low impact on the affected property owner of the adjacent Erf 455. See attached aerial photo (attached as Annexure G). The dwelling on Erf 455 is situated  $\pm 11\text{m}$  from the braai room. The braai room is single storey and only a section thereof is visible from the adjacent Erf 455 due to the existing boundary wall. The latter property owner did not object to the encroachment. The braai room further does not impact on the streetscape of the property since it is completely concealed from the street by trees and bushes. The opening (sliding door) fronting the boundary is also more than 1m from the boundary which is in line with planning legislation. The encroachment of the northern lateral building line can therefore be supported.

At the time when the application was submitted the uncovered pizza oven was not affixed yet (it is a precast pizza oven). It has in the meantime been affixed as per the layout plans submitted with the application. The initial objection was not only based on the smoke nuisance of the pizza oven, but the fact that it was affixed after the submission of the application. Nonetheless, the encroachment of the building line is not regarded significant enough to refuse the building line encroachment. The pizza oven is affixed on a concrete slab with a seater and counter that is less than 1m from the natural ground level. The total extent of the encroachment is less than 1m<sup>2</sup> and it is uncovered. The precast oven is neatly finished off and the flue was raised to prevent the unnecessary accumulation of smoke on surrounding properties. The encroachment can be supported.

#### Determination of an Administrative Penalty

It is very important to note that during August 2018 the previous owners submitted a similar application to condone the second dwelling unit and the illegal structures over the building lines. However, during a site inspection it was found that the particulars and information provided in the application was false and misleading. The application was closed and the then landowner had to submit a new application. The property however changed ownership during December 2018 and the new landowner submitted the application under discussion that is similar to the previous application. Except for the pizza oven that was affixed by the landowner after the application was submitted, the information in the application is factual. The pizza oven encroaches the lateral building line with less than a 1m<sup>2</sup> and it is thus the opinion that since it does not impact on adjacent property owners the landowner can be exempted of an administrative penalty. Due to the facts on record, it is evident that it is not the current landowner who is responsible for the irregularities on the property and the landowner can be exempted of an administrative penalty for the illegal structures and land use as set out in the application. The motivation of the applicant for the exemption of an administrative penalty is therefore supported.

Building plans however needs to be submitted to the Building Department for approval.

In view of the above, it is the opinion that the application under consideration for the removal of a restrictive title deed condition, the departures and the exemption of an administrative penalty holds sufficient merit not to be deemed undesirable from a town planning perspective.

### 13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the removal of the restrictive title deed condition C.(c) as contained in Title Deed No. T55849/2018 applicable to Erf 454, Sandbaai to accommodate a second dwelling unit on the property, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16.(2)(f) of the By-Law for the removal of conditions C.(a) and C.(d) as contained in Title Deed No. T55849/2018 applicable to Erf 454, Sandbaai, **not be approved** in terms of the provisions of Section 61 of the By-Law;

3. that the application in terms of Section 16(2)(b) of the By-Law for departure for the:
- relaxation of the rear building line from 2m to  $\pm 1$ m to accommodate the existing wendy type garden shed;
  - relaxation of the rear building line from 2m to  $\pm 0,970$ m to accommodate a portion of the existing second dwelling unit;
  - relaxation of the southern lateral building line from 2m to  $\pm 0,940$ m to accommodate a portion of the existing second dwelling unit;
  - relaxation of the northern lateral building line from 2m to  $\pm 1,230$ m to accommodate a portion of the existing braai room; and
  - the relaxation of the northern lateral building line from 2m to  $\pm 1$ m to accommodate a portion of an existing pizza oven;
- be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the applicant **be exempted** of an administrative penalty in terms of Section 90(4) of the By-Law for the above illegal building line encroachments as set out above that calculates  $\pm 21.25$ m<sup>2</sup>, as well as the illegal usage of the structure as a second dwelling unit.
5. that the above approvals in 1., 3. and 4. be subject to the following conditions:
- (a) that the encroachments be restricted to the dimensions as indicated on layout plans No. SAN-01-01 (plan 1 to 4) dated 22 June 2020 that was submitted with the application;
  - (b) that building plans be submitted to the Building Department for approval and that all conditions of the Building- and the Fire Department at that stage, be complied with;
  - (c) that the conditions of Engineering Services and Telkom, (respectively attached as Annexures E and F), be complied with;
  - (d) that this approval does not absolve the landowners from compliance with any other relevant legislation, and
  - (e) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with.
6. that the applicant be notified of its appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the decision in 1. above and the conditions in 3. above.

#### 14. REASONS FOR RECOMMENDATION

##### Reasons for the approvals in 1. and 3. above

- ❖ The application has followed due procedure.
- ❖ No objections were received from the public.
- ❖ It is in line with policy documents.

- ❖ The second dwelling unit will be beneficial for optimization of the erf.
- ❖ Is not regarded as being undesirable from a town planning point of view.

Reasons for the non-approval in 2. above

- ❖ The lack of clear land use and development proposals by the applicant for the removal of these conditions, thus making it impossible to evaluate the removal of these restrictions from a town planning perspective.

Reasons for the decision in 4. above

- ❖ Due to the facts on record, it is evident that it is not the current landowner who is responsible for the irregularities on the property.
- ❖ The motivation of the applicant for the exemption of an administrative penalty is supported.

**15. ANNEXURES**

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Layout Plans
Annexure D:	Title Deed T55849/2018
Annexure E:	Services Report
Annexure F:	Comment: Telkom
Annexure G:	Extract from Overstrand GIS

**SIGNATURES**

**REGISTERED PLANNER:**

Name: **S VAN DER MERWE**

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

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

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

# Annexure A



Scale: **NTS**  
 Drawing Nr: efr 454sandl.drw  
 Date: SEPTEMBER 2020

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERF 454  
 SANDBAAI**

All distances approximate  
 and subject to survey.  
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**PIA<sup>n</sup>Active**  
 Stads- en Streeksbeplanners  
 Town & Regional Planners

**PROPOSED DETERMINATION OF AN  
ADMINISTRATIVE PENALTY, REMOVAL  
OF RESTRICTIVE TITLE DEED  
CONDITIONS AND DEPARTURES**

**ERF 454 SANDBAAI**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

## **MOTIVATION REPORT**

### **1. BACKGROUND**

The owner of Erf 454 Sandbaai, Mr. R. F. Santana, has instructed the company Plan Active to apply for the determination of an administrative penalty, removal of restrictive Title Deed conditions and building line departures of Erf 454 Sandbaai.

The owner intends to legalise the existing structures on the subject property as well as a proposed pizza oven within the prescribed rear and lateral building lines. In order to address the existing structures encroaching the building lines, an administrative penalty needs to be determined. There are also Title Deed restrictions that need to be removed in order for the proposed application to be approved.

Erf 454 Sandbaai is 832m<sup>2</sup> in extent and is held by Title Deed Number T55849/2018.

## **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)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.

## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

Erf 454 Sandbaai is located at 21 Andries Pretorius Street, Sandbaai and is 832m<sup>2</sup> in extent. Please refer to the enclosed locality plan.

### **3.2 ZONING**

Erf 454 Sandbaai is zoned Residential Zone 1 and is utilized as such. The surrounding properties are zoned for single residential purposes, public roads and public open spaces.

### **3.3 LAND USE**

Erf 454 Sandbaai is used for residential purposes. A dwelling, second dwelling, garden shed and swimming pool are established on the subject property. Access to Erf 454 Sandbaai is obtained from Andries Pretorius Street, Sandbaai.

Land uses that surround Erf 454 Sandbaai are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 454 Sandbaai is situated within a predominantly single residential area.

### **3.4 PROPOSAL**

The following are proposed 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)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of restrictive Title Deed conditions.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.

Erf 454 Sandbaai is 832m<sup>2</sup> in extent. The intention of the owner of the subject property is to legalise some of the existing structures on the subject property. The structures that need to be legalised also encroach the building lines. These structures are the existing braai room, second dwelling and garden shed. The position of the existing swimming pool will also be addressed as it is situated closer than 1m to the lateral erf boundary.

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

When the property was purchased in 2018, the unauthorised building work was already established on the subject property and was inherited by the new owner, Mr. R. Santana. As per a letter dated 6 February 2019 from the building department of the Overstrand Municipality there are no approved building plans for the following structures:

- A granny flat that was erected without building plans;



In terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of Chapter 9, Section 90(3), of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must to the satisfaction of the municipality, provide the following:

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

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

The existing owner purchased the property in 2018 with the unauthorised building work established on the subject property. With the purchase of the property, the current owner and previous owner had an agreement that approved building plans must be provided to the current owner. The previous owner of the subject property failed to provide any approved building plans for the existing structures.

The extent of the unauthorised building work(that encroaches building lines) are as follow:

Structure	Extent of unauthorised building work
Second dwelling	±9.42m <sup>2</sup>
Existing shed	±5m <sup>2</sup>
Braai room	±4.63m <sup>2</sup>
Swimming pool	±1.2m <sup>2</sup>
Total Extent of unauthorised building work	±20.25m

After the previous owner failed to provide and rectify the defaults on the subject property the current owner took it upon himself to rectify the unauthorised building work on the subject property. The owner of the subject property intends to provide his full co-operation to the Overstrand Municipality to rectify the illegal building works.

The position and nature of the unauthorised portion of the second dwelling, braai room, swimming pool and shed on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners have been received over the years. A building line departure and removal of Title Deed restrictions application are also submitted to rectify the defaults on the subject property.

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

The current unlawful land use is only due to the previous owner erecting structures without any approvals. When the property was purchased by the current owner in 2018 there was an agreement between the previous owner and the current owner to provide approved building plans. The current owner is now in the process of rectifying the unauthorised building work that is in contravention of the zoning scheme regulations.

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

The owner is in the process of rectifying the contravention by applying for the determination of an administration penalty, removal of restrictive Title Deed conditions and building line departures.

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

If the Overstrand Municipality finds it necessary that a administrative penalty fee needs to be enforced for the unauthorised building works, **erected by the previous owner**, we will submit a report from a quantity surveyor with reference to the unauthorised building work. The reason being is that the owner already has to spend a considerable amount to rectify the contraventions inherited and does not want to spend any unnecessary capital.

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

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

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. It should also be considered that no complaints from surrounding property owners have been received with regards to the illegal structures. The previous landowner did not hold up his part of the agreement to provide the current landowner with the approved building plans and therefor the current owner has taken it upon himself by following due process to legalise all the structures on the subject property.

As soon as the owner became aware that the previous owner was not going to provide building plans for the existing structures inherited the current owner started to liaise with the Overstrand Municipality to advise him on due process to rectify the contraventions. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

**3.4.2. Proposed Departures**

The existing second dwelling, garden shed, and braai room encroach the zoning scheme building lines.

The building line departures can be summarised as follow:

- Relaxation of the **rear** building line from 2m to 1m to accommodate the existing garden shed.
- Relaxation of the **rear** building line from 2m to 0.970m to accommodate a portion of the existing second dwelling.
- Relaxation of the **southern lateral** building line from 2m to 0.940m to accommodate a portion of the existing second dwelling.

- Relaxation of the **northern lateral** building line from 2m to 1.230m to accommodate a portion of the existing braai room.
- Relaxation of the **northern lateral** building line from 2m to 1m to accommodate a portion of the proposed pizza oven.

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

The **second dwelling** is situated on the southern side of the subject property. A building line of  $\pm 0.940\text{m}$  is still achieved from the southern lateral boundary and also  $\pm 0.970\text{m}$  from the rear boundary. The total length of the sides encroaching the lateral and rear building line is  $\pm 8.89\text{m}$  and  $3.51\text{m}$  in extent. The areas that encroach the lateral and rear building lines are  $\pm 9.42\text{m}^2$  and  $3.61\text{m}^2$  in extent. The second dwelling does not have any windows or doors facing the mentioned southern lateral boundary and the rear boundary, and being a single storey structure it therefore does not have any impact on the privacy of the adjoining neighbouring properties. The second dwelling does not have a negative impact on the character of the area.

The **braai room** was also constructed without obtaining building plan approval from the Overstrand Municipality. The existing braai room is located  $\pm 1.23\text{m}$  from the northern lateral boundary. The braai room is also a single storey structure and therefore it does not have a negative impact on the neighbouring property. The length of the existing braai room that encroaches the northern lateral building line is  $\pm 60.16\text{m}$  in extent and the portion of the braai room that encroaches the building line is  $\pm 4.63\text{m}^2$ .

The proposed **pizza oven** will encroach the building line by 1m. The proposed pizza oven will not have any impact on the neighbouring property. The proposal will not have any impact on the existing character or property values in the existing residential area.

The **existing shed** is used as a garden shed and is a single storey structure. The garden shed encroaches the rear building line by 1m and the total length of the garden

shed is 5m and therefore the portion of the garden shed that encroaches the rear building line is  $\pm 5\text{m}^2$  in extent. The existing garden shed does not have a negative impact on the adjoining property.

According to **Chapter 16, Section 16.1.1(a)(viii) of the Overstrand Municipality Land Use Scheme, 2020, swimming pools, if closer than 1,0 m from the erf boundary, an engineering certificate is required.** The existing swimming pool is located  $\pm 0.8\text{m}$  from the northern lateral boundary. **An engineering certificate will be provided as per the above-mentioned Section.**



The proposed building line departures will not have a negative impact on the neighbouring properties or the character of the greater Sandbaai area. With the mentioned encroachments, a building line still exists and are the existing structures not situated on the mentioned boundary lines. Please refer to the enclosed as built building plans for the detail of the above-mentioned structures.

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

The enclosed Title Deed, T55849/2018 contains the following Title Deed restrictions that must be addressed:

- **Page 4, paragraph (C)(a): “That the above erf or erven be used for residential purpose only”**
- **Page 4, paragraph (C)(c): “That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven be built upon”**
- **Page 4, paragraph (C)(d): “that no building shall be erected on the above erf or erven within 4.72 metres of the boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon”**

The reason for addressing all the above-mentioned Title Deed restrictions simultaneously is due to the high cost involved to submit applications to have restrictions removed. It was therefore decided that not only the applicable Title Deed restrictions be removed but all the restrictions that are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme Regulations under a Residential Zone 1 zoning.

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

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

The removal of these Title Deed restrictions will allow the property to be developed according to future plans and policies. This will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning Scheme Regulations of the Overstrand Municipal Area.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed conditions to be removed are concerned. None of the existing owners within the township gain anything personally by having the restrictions removed, which prevents the property to be developed to its full potential. The proposal will have an impact on the existing built form in the area however such changes have been supported in the area. Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of restrictive Title Deed conditions will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

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

The property owner will benefit from the removal of the mentioned Title Deed restrictions as it will expand the development rights available on the subject property in terms of the Overstrand Municipal Zoning Scheme Regulations and it will also legalise existing structures and the use thereof.

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

The particular township has already changed with approved departures within the township. If the conditions remain in place, the status quo will remain. If the type of conditions to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of these restrictions will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations requirements.

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

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

Furthermore, the removal of these Title Deed conditions is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

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

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

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of restrictive Title Deed restrictions will not deprive any person in the subject area of Sandbaai as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of Title Deed restrictions, additional people will be deprived from housing opportunities. It will also deprive the current owner from utilizing the subject property to its full potential.

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

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

The reason to have the above mentioned Title Deed restrictions D(a) & (c) removed is mainly to give the owner the opportunity to utilise the property to its fullest potential in terms of the primary land use rights and development rules under the current zoning of Residential Zone 1. The primary rights and development rules referred to are as follow:

**RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)**

***Use of the property***

**6.1.1 *The following use restrictions apply to property in this zone:***

- a) ***Primary uses are crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.***

With the removal of the above-mentioned restrictions, the owner of the subject property can exercise his primary land use rights as the Title Deed restrictions are stricter than the development rules set out in Overstrand Zoning Scheme Regulations, 2020.

The Title Deed restriction, paragraph C(d) above prescribes a 4.72m street building line.

According to Chapter 16, Sections 16.1.1 and 16.1.2 of the Zoning Scheme Regulations for the Overstrand Municipality the following additional development rules apply with regard to encroachment of street building lines:

***Encroachment of the street building line***

- d) ***Upon an application, the Municipality will also take the following principles into account:***

- (i) *if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a street;*
- (ii) *if, in its opinion, there are special circumstances, motivated to its satisfaction by the property owner, such as the topography of the site;*
- (iii) *all other buildings and outbuildings are to comply with the street building line applicable within the zone concerned; and*
- (iv) *in the case of a garage or carport, 16.1.2 will apply.*

### **Garages and carports within street building lines**

#### **16.1.2**

a) Upon an application, the Municipality will also take the following principles into account:

- (i) The Municipality may permit the construction of a garage over a street building line if, in the Municipality's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit or for other reasons provided.
- (ii) The height of such garage from the natural ground level to the top of the structure does not exceed 4,5 m.
- (iii) The front elevation of the garage may not be closer than 5,0 m to the road kerb or surface.

b) The Municipality may permit the construction of a carport over the street building line, provided that:

- (i) the width of such carport shall not exceed 6,5 m;
- (ii) the roof of the carport shall be supported by a metal or timber post or brick, concrete or masonry pillars;
- (iii) the carport shall not be enclosed on any side, except by:
  - a boundary fence or wall;
  - a wall which forms the external wall of a building; or
  - a security or automated gate.

the height of such carport, measured from the natural ground level to the highest point of the structure over the building line, may not exceed 3,0 m on

**the street boundary, but the height may increase at a 40 degree angle away from such boundary (roof).**

If the mentioned Title Deed restriction is not removed the owner of the subject property will not be able to utilize the subject property to its fullest potential as set out in Chapter 16, Sections 16.1.1 and 16.1.2 of the Zoning Scheme Regulations.

The building line restriction in Title Deed T55849/2018 is more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme. In terms of the Zoning Scheme certain structures may be constructed within the street, lateral and rear building lines prescribed in Chapter 16, Sections 16.1.1 and 16.1.2 of the said Zoning Scheme listed above. If the restriction in the Title Deed is not removed the property owner will not have the opportunity to make use of the structures situated in the building lines.

Please take note that the proposed removal of the restrictive Title Deed conditions are mainly because they are more restrictive than the land use restrictions under the current zoning of the property that is Residential Zone 1.

### **3.5 ACCESS**

Vehicular and pedestrian access to Erf 454 Sandbaai is from Andries Pretorius Street, Sandbaai and will be retained. No new accesses are proposed with the proposed application.

### **3.6 SERVICES**

All services on Erf 454 Sandbaai already exists. No additional services are required in order for the proposed application to be approved.

### 3.7 TITLE DEED

The Title Deed T55849/2018 has restrictions that need to be removed in order for the owners to utilise the subject property to its fullest potential.

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

- *Page 4, paragraph (C)(a): "That the above erf or erven be used for residential purpose only"*
- *Page 4, paragraph (C)(c): "That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven be built upon"*
- *Page 4, paragraph (C)(d): "that no building shall be erected on the above erf or erven within 4.72 metres of the boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon"*

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.3 above.

There is a bond registered against Erf 454 Sandbaai.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Spatial Development Framework (2020).**

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



### Overstrand Growth Management Strategy

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

The proposed application for determination of an administration penalty, removal of restrictive Title Deed conditions and departure application have been concluded. is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy.

It is therefore our opinion that the proposed removal of the restrictive Title Deed conditions can be supported and that the proposal is also in line with the current land use trends for the area. We therefore respectfully request that a penalty fee not be imposed.

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

#### **3.9.1 HERITAGE VALUE**

Erf 454 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

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

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

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

### **3.10 PLANNING PRINCIPLES**

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

**Spatial Justice:** The proposed determination of an administrative penalty removal of restrictive Title Deed conditions and departures will be in line with the current land use tendencies. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribed in the Title Deed.

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

**Efficiency:** The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribed in the Title Deed.

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

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

#### 4. **RECOMMENDATION**

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

- The illegal structures were erected by the previous owner of the subject property. The current owner is in the process of legalising all illegal structures as the previous owner failed to uphold the agreement between the two parties to provide the current owner with approved building plans;
- The proposed removal of restrictive Title Deed conditions and building line departures will not have a negative impact on the current character and land values of the surrounding erven.
- The proposed removal of restrictive Title deed conditions and departures of Erf 454 Sandbaai fall within the existing land use tendencies in the area;
- No additional services is needed for the proposed application to be approved;
- The proposed removal of restrictive Title Deed conditions and departures will not have a negative impact on the current character and land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).
- We request that a penalty fee not be imposed.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the dismissal of an administrative penalty, the removal of the restrictive Title Deed conditions and the building line departures of Erf 454 Sandbaai.

see sheet 4 for construction notes

**Areas:**

Erf: 832m<sup>2</sup>  
 Main Dwelling 150m<sup>2</sup>, incl 22m<sup>2</sup> Addition  
 2nd Dwelling (Previously Garage): 31m<sup>2</sup>  
 New Shed: 19m<sup>2</sup>  
 Cover: 197m<sup>2</sup> = 23.6%

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**For.Site**  
 design + consult

office contact: Joel Coller  
 joelcoller@gmail.com  
 076 112 1811

Project: House Santana  
 Alterations to Existing  
 Departure Application

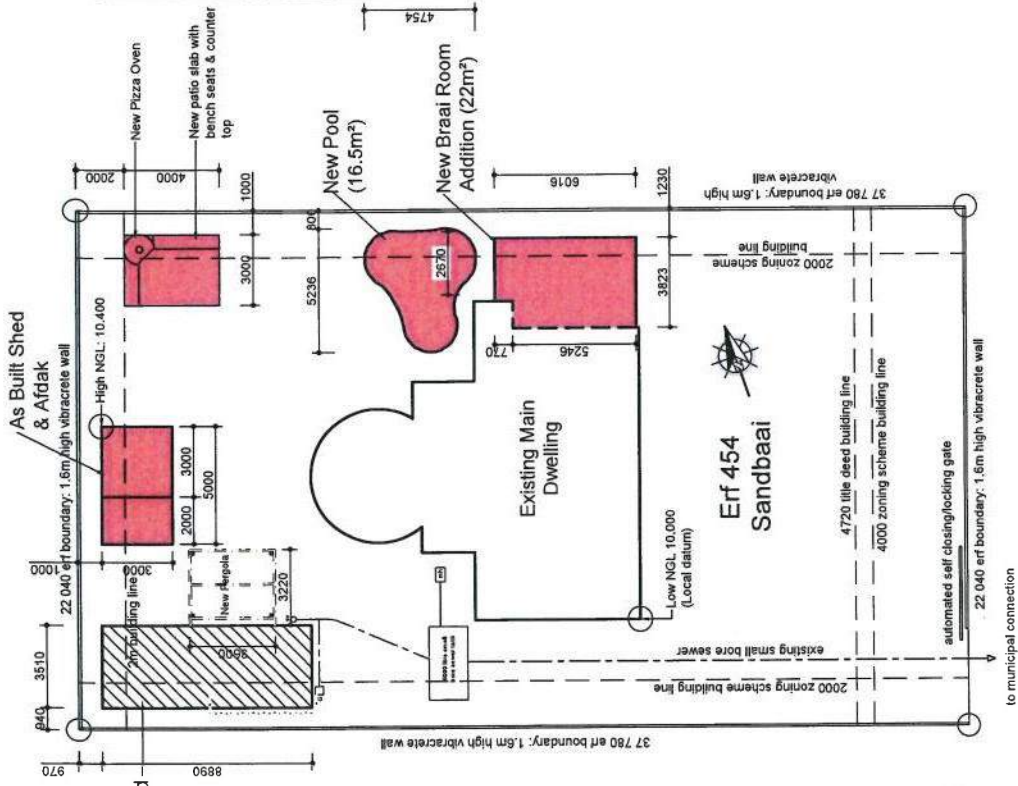
Address: 21 Andries Pretorius  
 Erf 454  
 Sandbaai

Date: 22 June 2020  
 Drawing No: SAN-01-01 (plan 1 of 4)  
 File Name: Santana  
 Revision: C

Professional: T Dillon (SACAP no.: D0231)

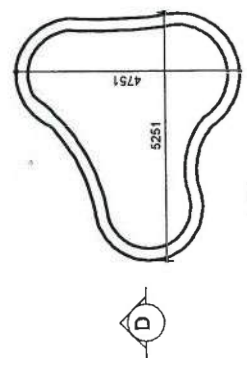
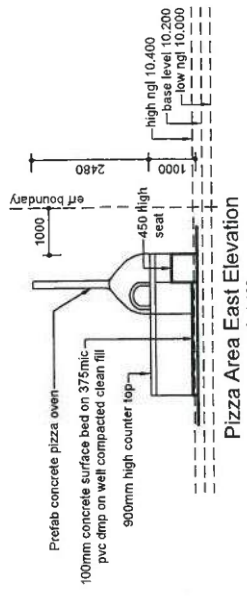
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Sign:



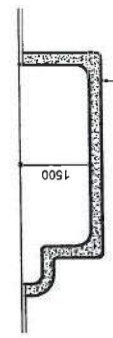
Site Plan  
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Garage converted to 2nd Dwelling (Cottage)

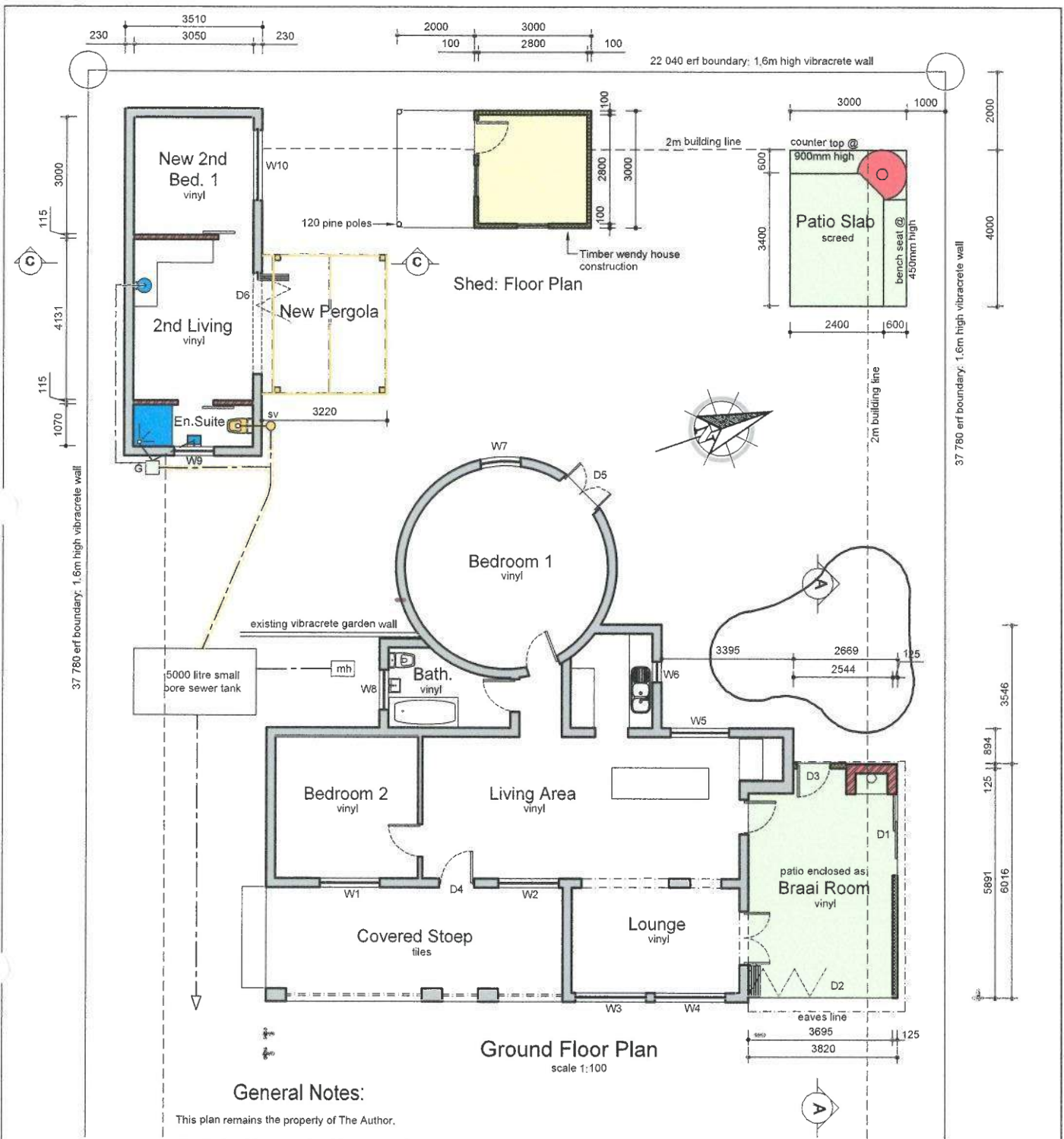


Pool Plan  
 scale 1:100

Pool:  
 Backwash & Overflow to stormwater system  
 Pool safety to comply with SANS 10400 Part D.  
 Erf is fully enclosed by boundary walls with self-closing stormwater gate.  
 Closest main to boundary wall to be checked by engineer.




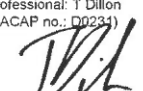
Pool Section D-D  
 scale 1:100



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see sheet 4 for construction notes

	Project: <b>House Santana</b> Alterations to Existing Departure Application	Date: 22 June 2020 Drawing No: SAN-01-01 (plan 2 of 4) File Name: Santana Revision: B	
	office contact: Joel Coller joelcoller@gmail.com 076 112 1811	Address: <b>21 Andries Pretorius</b> Erf 454, Sanbaai	Professional: T Dillon (SACAP no.: D0234) 



2nd: West Elevation scale 1:100  
 2nd: East Elevation scale 1:100  
 2nd: North Elevation scale 1:100

**GENERAL NOTES:**  
 FOUNDATIONS:  
 To be taken to safe load bearing ground, and to structural engineer's design & spec following a geotechnical investigation. No footings to project beyond site boundary.  
 WALLS:  
 270: 110/50/110 Brick cavity wall construction wall ties to be built in accordance with SANS 10400. A minimum of 3 ties per m<sup>2</sup>. All in accordance with SANS 10400. Weepholes to be provided to all external walls.  
 All openings in walls or wall supports up to 2700mm to have prestressed pc lintels over and 4 course brickwork & brickforce over or as per engineer, arger openings as per engineer.  
 150: Timber walls clad in fibre cement & filled by timber frame specialist all 150mm timber frame walls clad in 12mm nutec fibre cement board all as per sans-10082. gr5 sap studs & noqs max 400c/c, insulated with 130mm isotherm = 1 r value. Timber lintels over all openings as per engineer.

**GLAZING:**  
 See specs on fenestration calcs. All glazing to comply with requirements of SANS 10137 & SANS 10400 part N - Access doors and side lights, windows lower than 500mm from floor, windows lower than 1800mm above pitch line of stairs and shop fronts to be safety glass and clearly indicated as such on glass at eye level.  
**CEILINGS:**  
 Ceilings as per energy calculations  
**TIMBER:**  
 All construction timber is to be lamitilh pressure treated grade 5 sa pine wrapped in pvc membrane when enters masonry work.  
**ROOFS:**  
 As per sections & layouts. Rafter to adhere to table 5 part L of SANS 10400.  
 Rafter tied down min 600mm into brick walls with 30x1.2 galv hoop iron straps at each rafter. tiled roofs to have under batten 'coverland under-lie membrane'  
**RAINWATER GOODS:**  
 Aluminium seamless gutters and pvc downpipes.  
**DRAINAGE:**  
 Under building to be encased in concrete as per rule pp24 of sans 10400.

**GENERAL:**  
 Figure dimensions are to be used in preference to scaling off this drawing.  
 All dimensions, levels and areas are to be checked and verified before any work commences. The height of plinths, depth of excavations and number of sleeps are to be finally determined by the building contractor on site to engineer's approval.  
 No part of building work is to encroach onto neighbouring properties & is to be carried out in strict accordance of the local authorities.

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 All work to be carried out in accordance with SANS 10400



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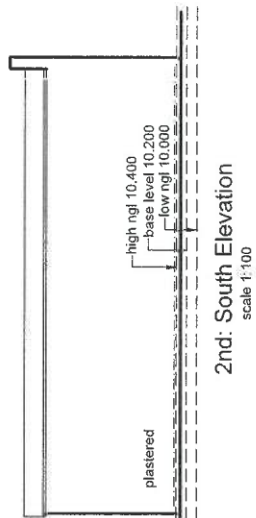
Project: House Santana  
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 Departure Application

Address: 21 Andries Pretorius  
 Erf 454  
 Sanbaai

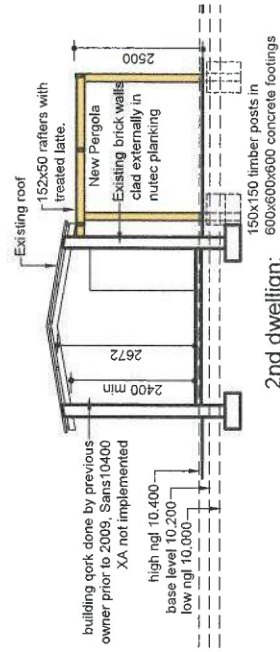
Date: 22 June 2020  
 Drawing No: SAN-01-01 (plan 4 of 4)  
 File Name: Santana  
 Revision: B

Professional: T Dillon (SACAP no.: D0231)

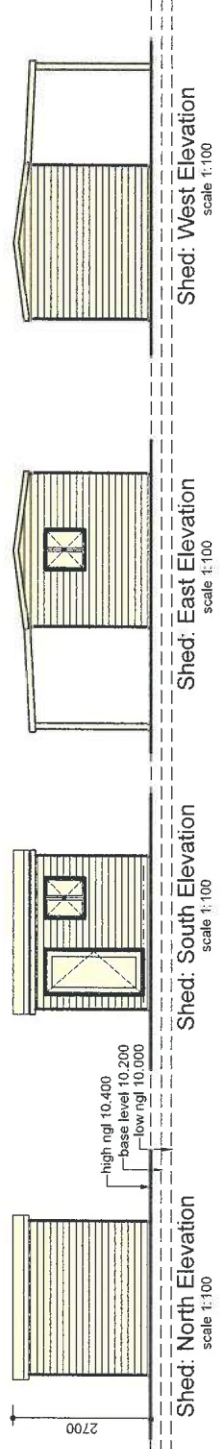
Client: [Signature]



2nd: South Elevation scale 1:100

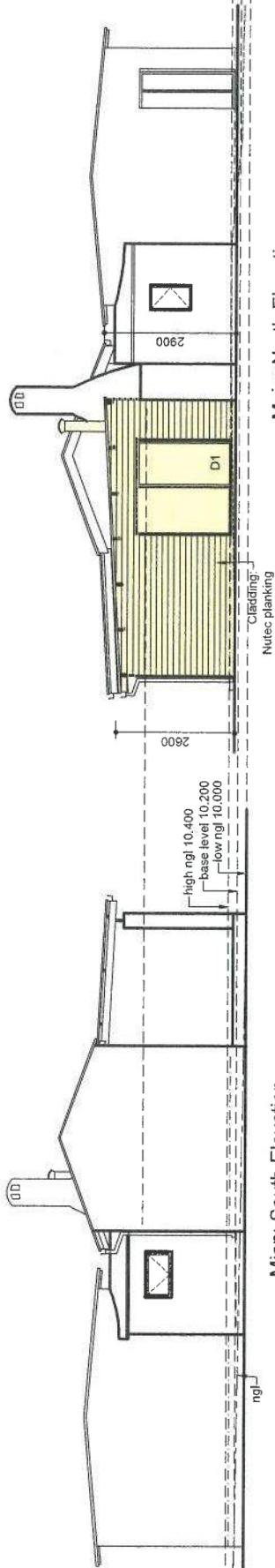


2nd dwelling: Section C-C scale 1:100



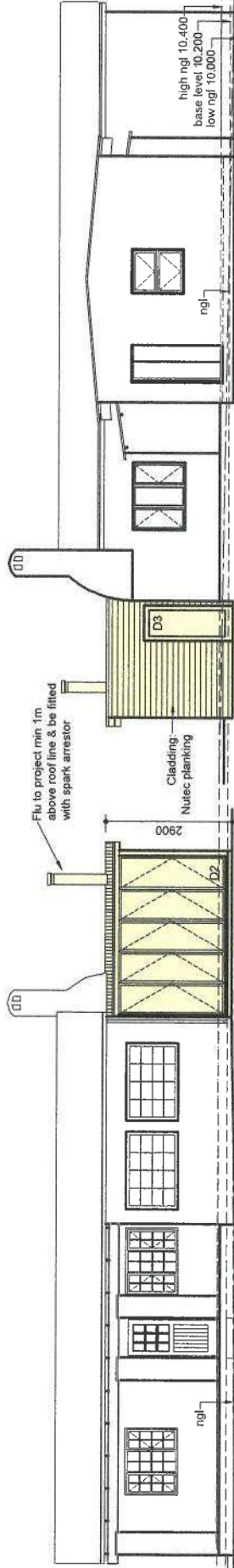
Shed: North Elevation scale 1:100  
 Shed: South Elevation scale 1:100  
 Shed: East Elevation scale 1:100  
 Shed: West Elevation scale 1:100

8m height restriction



Main: South Elevation  
scale 1:100

Main: North Elevation  
scale 1:100



Main: East Elevation  
scale 1:100

Main: West Elevation  
scale 1:100

This plan remains the property of The Author.

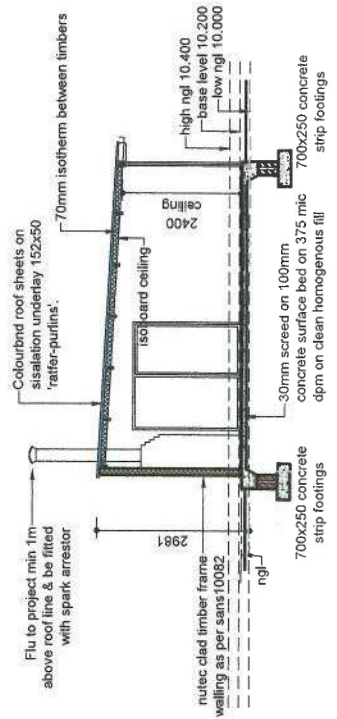
This plan is not to be reproduced in any way without written consent of it's author

These plans are for council approval purposes only. All dimensions to be checked on site before commencement of work

Do not scale this plan, use written dimensions

All work to be carried out in accordance with SANS 10400

see sheet 4 for construction notes



Section A-A  
scale 1:100



office contact: Joel Coller  
joelcoller@gmail.com  
076 112 1811

Project: House Santana  
Alterations to Existing  
Departure Application  
Address: 21 Andries Pretorius  
Erf 454, Sanbaai

Date: 22 June 2020  
Drawing No: SAN-01-01 (plan 3 of 4)  
File Name: Santana  
Revision: B

Professional: T Dillon  
(SACAP no.: D0231)

Client:

Sign

222

Price/Value		R 700 000,00		R 1098,00	
Miltons Matsemela Inc Shop 7A, The Sanctuary Corner of R44 (Broadway Blvd) & De Beers Ave Somerset West					

Prepared by me

*[Signature]*  
 CONVEYANCER  
 IZAK STEPHANUS VENTER  
 LISA MOORE

VIA FOR R	R 700 000,00
900026884 / 2018	<i>[Signature]</i>
2018 - 11 - 30	4

T 000055849 / 2018

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

TIFFANY PAMELA RADEMEYER

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney granted to him/her by

MATTHEW GRAEME CLEMENT  
 Identity Number 730605 5092 08 8  
 and  
 CATHERINE MARY CLEMENT  
 Identity Number 731210 0199 08 4  
 Married in community of property to each other

DATA / VERIFY  
 04 DEC 2018  
 NOLINDO MTYAMISA

which said Power of Attorney was signed at HERMANUS on 6 August 2018

DATA / CAPTURE  
 04 DEC 2018  
 MARLYN BARLOW

And the appearer declared that his/her said principal had, on 23 July 2018, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**ROBERTO FELIX SANTANA**  
 Identity Number 711120 5263 08 8  
 Married out of community of property

his Heirs, Executors, Administrators or Assigns, in full and free property

ERF 454 SANDBAAI  
 IN THE OVERSTRAND MUNICIPALITY  
 DIVISION CALEDON  
 PROVINCE WESTERN CAPE

IN EXTENT: 832 (EIGHT HUNDRED AND THIRTY TWO) Square metres

**FIRST TRANSFERRED** by Deed of Transfer No. T14150/1945 with Diagram No. 4023/1945 relating thereto and held by Deed of Transfer Number T64592/2011.

A. ....

B. **SUBJECT FURTHER** to the following special conditions contained in the said Deed of Transfer No. T14150/1945, imposed by and in favour of Sandbaai Seaside Estate Company Proprietary Limited as owner of the remainder of Lot Number 3 of the farm Onrust Rivier held by Deed of Transfer No. T11466/1929 as the owner of Lots in the said Township already transferred or to be transferred subject to similar conditions, namely:-

- "(a) Die Maatskappy behou vir homself en sy opvolgers in regte die alleenreg tot alle hotelle en dranklisensies, en die Transportnemer/s of sy/hulle opvolgers in regte sal die reg hê om enige hotel op te rig of om enige dranklisensie te besit, sonder om eers die skriftelike toestemming van die Direkteure van die Maatskappy of sy opvolgers in regte, te verkry.
- (b) Die Maatskappy en sy opvolgers sal nie geregtig wees om die grond liggend tussen die erwe verkoop as seefronterwe en die see, in erwe te verdeel en/of te verkoop nie.

- (c) Dat geen gebou opgerig sal word op die hierbokeskrywe eiendom voordat die planne van sulke geboue nie voorgelê is aan en goedgekeur is deur die Direkteur van die gesegde Maatskappy of opvolgers in regte.
- (d) Die Transportnemer(s) of sy/hulle opvolgers in regte van die hierbokeskrywe eiendom sal die reg hê om enige stroom water wat oor die eiendom loop, af te keer langs enige van die lane of strate soos aangewys op die Algemene Plan van die dorp.
- (e) Die Maatskappy behou vir homself en sy opvolgers in regte die vrye en onbelemmerde oorgang van elektriese, telegraaf- of telefoonlyne, te enige tyd hierna oor en op enige gedeelte van die hierbokeskrywe eiendom, met die verdere reg om hulle aan enige gebou van watter aard ook al te laat vassit, nie minder dan 3.05 meter van die grond af, met reg van toegang tot sulke lyne vir die doel om hulle te verwyder of in orde te hou.
- (f) Die Maatskappy behou die reg vir homself om sy opvolgers in regte, om te enige tyd hierna pype te lê en in orde te hou onder enige gedeelte van die hierbokeskrywe grond of op enige ander plek, en ten alle tye reg van toegang te hê na sulke pype, vir verwydering in orde hou of uitbreiding daarvan of vir enige ander doel en om alles te laat doen as nodig mag blyk vir die gerief van die inwoners van die dorpsgebied in verband met die verskaffing van water aan hulle.
- (g) .....
- (h) Die Maatskappy behou vir homself die alleenreg tot alle water wat ontstaan of vloei oor die eiendom van die Maatskappy. Daar sal egter van hierdie voorbehoud uitgesluit word enige water verkry deur 'n eienaar van die hierbokeskrywe grond deur middel van putte of boorgate op sulke grond gegrawe of geboor."
- C. **SUBJECT FURTHER** to the following special conditions contained in the said Deed of Transfer No. T14150/1945, imposed by the Administrator when approving the establishment of the Township, namely:-

- (a) That the above erf or erven be used for residential purpose only.
- (b) That the above erf or erven be not subdivided.
- (c) That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven be built upon.
- (d) That no building shall be erected on the above erf or erven within 4,72 metres of the boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon.



WHEREFORE the said Appearer, renouncing all rights and title which the said

**MATTHEW GRAEME CLEMENT and CATHERINE MARY CLEMENT,  
Married as aforesaid**

heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**ROBERTO FELIX SANTANA, Married as aforesaid**

his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R1 700 000,00 (ONE MILLION SEVEN HUNDRED THOUSAND RAND) .

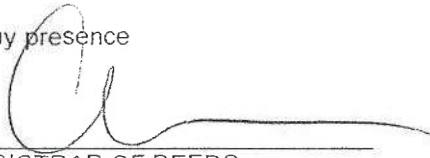
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

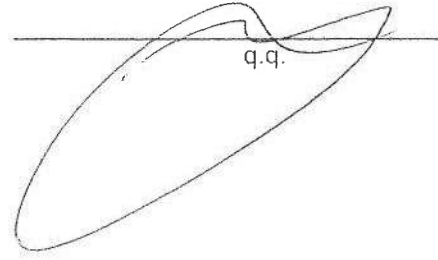
THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on

30 November 2018

J

In my presence

  
REGISTRAR OF DEEDS

  
q.q.

LM

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

Stormwater (SW) : In Order  
Electricity : In Order  
Water : In Order  
Sewer : In Order  
Roads and traffic : In Order

**Conditions:**

2. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
3. that only the existing 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 owner's cost;
4. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
5. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
6. that any additional and / or extended vehicle entrances will be for the owner's account;
7. that stormwater be allowed to discharge through Erf 454, Sandbaai, unobstructed;
8. that no on-street parking be allowed.

*p.p. D. Hendriks*  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

*04/02/2021*  
**DATE**



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

Stefan Geldenhuys  
Tel: 021 414 5546  
Email: StefanG@openserve.co.za  
Our Ref : WWIP\_WONR0300\_21  
Your Ref : 454 HSB

02 February 2021

**Attention : S Muller**  
**Overstrand Municipality**  
**Hermanus**

PLANT AFFECTED : COPPER

**Wayleave application : REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE, ERF 454, 21 ANDRIES PRETORIUS STREET, SANDBAAI**

With reference to your letter received 27 January 2021

**Important cables and other infrastructure are affected, please contact our representative Melt Van**  
As 021 852 1717 / 081 363 7873 / Meltva@openserve.co.za **48 hours prior to**  
**commencement of construction work.**

I hereby inform you that OpenServe approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, OpenServe infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

- 8 FEB 2021

61 Oak Avenue, Highveld, TechnoPark, Centurion0157,  
Private Bag X881, Pretoria, Gauteng, 0001

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

**Should OpenServe infrastructure be damaged while work is undertaken, kindly contact our representative immediately.**

All OpenServe rights remain reserved.

Yours faithfully



---

For Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region

PLANT AFFECTED : COPPER

This wayleave, Reference Number WWIP\_WONR0300\_21 is valid for 12 months from date hereof and is subject to the following conditions:

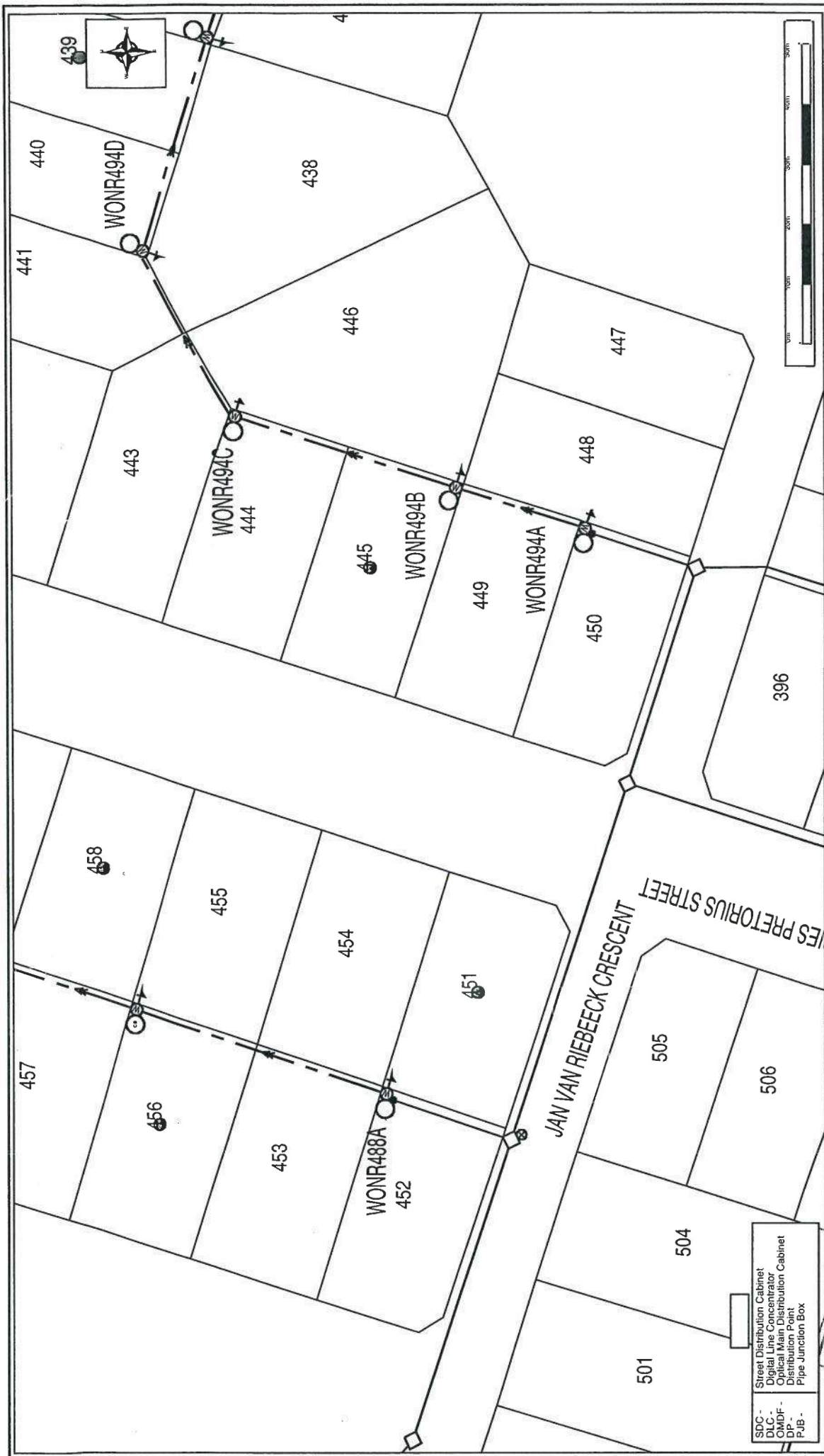
1. No mechanical plant or vibrator type compactors may be used within three meters of any Openserve Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Meit Van As at Telephone No 081 363 7873 must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration, should the of the work, upon which the actual location of Openserve Plant will be applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Openserve immediately, should the applicant locate any Openserve Plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof.

Date: 2021-02-02

By: S Geldenhuys  
For Regional General Manager  
Western Cape

Legend	Green
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC )	
5. Jointing Pit / AJB	
6. Jointing Pillar ( PJ )	
7. Pipe Junction Box ( B/S )	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable ( A/C )	





SDC - Street Distribution Cabinet  
 DLC - Digital Line Concentrator  
 OMDF - Optical Main Distribution Cabinet  
 DP - Distribution Point  
 PJB - Pipe Junction Box

Region	Onrusivier	TELKOM
Exchange area		REGIONAL EXECUTIVE
Drawn By		
Checked By		Date 02/02/2021
Approved		Project No. 454 HSB
Details	Copper services affected	
Drawing No.	WWIP_WONR0300_21	
Scale	1:859	Page Size A4
		Sheet No of

Legend		Existing Indoor DP	Existing Underground Route
<input checked="" type="checkbox"/>	Existing Manhole	<input checked="" type="checkbox"/>	Existing Underground Route
<input checked="" type="checkbox"/>	Planned Manhole	<input checked="" type="checkbox"/>	Planned Underground Route
<input checked="" type="checkbox"/>	To Be Abandoned Manhole	<input checked="" type="checkbox"/>	To Be Abandoned Underground Route
<input checked="" type="checkbox"/>	Existing Joining Pit	<input checked="" type="checkbox"/>	Existing Overhead Route
<input checked="" type="checkbox"/>	Planned Joining Pit	<input checked="" type="checkbox"/>	Planned Overhead Route
<input checked="" type="checkbox"/>	To Be Abandoned Joining Pit	<input checked="" type="checkbox"/>	To Be Recovered Overhead Route
<input checked="" type="checkbox"/>	Existing PJB	<input checked="" type="checkbox"/>	Existing Mini OMDF
<input checked="" type="checkbox"/>	Planned PJB	<input checked="" type="checkbox"/>	Planned Mini OMDF
<input checked="" type="checkbox"/>	To Be Abandoned PJB	<input checked="" type="checkbox"/>	Existing Strut and Stay

# Annexure G

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Date: 2024/08/05

Erf 454, Sandbaai: Aerial