

4.4

ERF 1619, 9 CAESAR ROAD, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: WRAP ON BEHALF OF SERFIE SERFONTEIN TRUST

1619 KPRB (3908/2021)

H van der Stoep
2 November 2021

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 15 December 2020 from WRAP on behalf of Serfie Serfontein Trust on Erf 1619, Pringle Bay for the following:

- ❖ **Removal of Restrictive Title Conditions** in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with reference to Clauses B.6.(a), B.6.(b), B.6.(b)(i) and B.6.(b)(ii) of Title Deed T123280/97 to permit the proposed application.

The restrictive title deed conditions read as follows:

“B. SUBJECT FURTHER to the following conditions contained in the Deed of Transfer No. T.46848/1981 imposed by the Administrator when approving the establishment of Pringle Bay Township Extension No. 3 in terms of Ordinance 33 of 1934, namely:-

6.(a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the Scheme subject to the conditions and restrictions stipulated in the scheme.

(b) No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority -

(i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height, measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for a distance of 12m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the street abutting the erf.

(ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above

prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 to relax the southwestern lateral building line from 2m to 0,02m to accommodate a portion of the existing dwelling.

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. The Title Deed is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf is located in Pringle Bay, in a residential area with the average erf size of approximately 600m². The structures on the erf are transgressing the buildings lines with 14m² as well as the boundary with Erf 1620.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

INTENT

The owner of the property appointed a contactor to build the dwelling according to approved building plans of which no transgression was indicated on the plans. Due to building work of the adjacent erf (Erf 1620), the transgression was noted. The applicant appointed a Land Surveyor, and it was found that the boundary fence (a little wall) transgresses the boundary, and the existing dwelling transgresses the lateral building line.

The adjacent owner, Erf 1620, was approached to establish the possibility to acquire the portion of land on which the transgression took place. The latter refused and therefore the application.

The fence was incorrectly misaligned with the cadastral boundaries, which was incorrectly used to inform the construction of the building. A partial demolition will be financially unfeasible since the structure will have to be rebuilt and reconstructed. The impact will also destroy the architectural integrity of the existing building as all the walls of the building currently intersect in a rectangular form.

The structure on the erf is in harmony with the built from of Pringle Bay and the proposed second dwelling will be designed in the same manner.

THE PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

- ✚ **Condition B.6.(a)**

Rationale for the removal:

The applicant envisages establishing a second dwelling of 120m² on the erf and this condition needs to be removed. The condition which limits one dwelling was inserted in 1981 in an area when the prevailing urban development model was low density urban sprawl which was coupled with low growth rate.


Rapid population growth is exacerbated by urbanisation, places pressure on residential units to be unlocked within the urban edge. To avoid the rapid establishment of greenfield developments which are characterised by urban sprawl and negative implications thereof such as habitat fragmentation, pollution and increased infrastructure costs, the second dwelling is therefore more instrumental in contributing unlocking additional accommodation. All current spatial planning policies promote contextually appropriate densification and the proposed second dwelling is in harmony with the current policy prescripts.

 **Condition B.6.(b)**

Rationale for the removal:

A portion of the existing building is located 0,02m from the southwestern lateral building line. The encroachment of the 1,5m condition restriction needs to be removed to accommodate the accidental encroachment.

The partial demolition of the portion of the dwelling located over the building line would destroy the architectural integrity of the building and therefore adversely impact on the suburban character of Pringle Bay. There is sufficient space to access the erf should it be required, since none of the lateral or rear building lines on the north-eastern side of the building is affected.

 **Conditions B.6.(b) (i) & B.6.(b)(ii)**

Rationale for the removal:

The Land Use Scheme provides prescripts which pertain to the location of motor vehicles on properties which are zoned SR1 which makes the title deed conditions superfluous. The status quo is characterised by property owners establishing second dwellings as south in this application which increase the amount of space which is used on properties which invalidates the need for long driveways for garages along boundary lines. The Land Use Scheme has prescripts in place which makes the retention of the title deed condition unnecessary.

Herewith are the relevant considerations assessed in conjunction with this proposal:

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

This restrictive condition is unlikely to have a beneficial financial or other value for the property owners in Pringle Bay due to the following reasons:

Title Deed condition B.6.(a) was intended to prevent Pringle Bay from having second dwellings as that was seen to have the potential of altering the single residential look and feel of the neighbourhood. The proposed second dwelling is located at the rear

of the erf and will not be visible from the street. The Land Use Scheme allow a second dwelling as a primary right and removing the condition does not constitute a departure from land use rights enjoyed by every owner of the township.

Title Deed condition B.6.(b) pertaining to building lines was inserted to ensure that the property is accessible in case of emergencies. The distance of 2,3m is available between the adjacent dwelling and the applicants dwelling which allows for sufficient space if so needed.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

There are no personal benefits which accrue to the holder of these restrictive title deed conditions, since the applicant is restricted to exercise all the primary rights allocated to SR1 erven.

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

The owner/applicant will enable the legalisation of the existing building and allow a second dwelling.

The social benefit of the restrictive condition remaining in place.

There is no social benefit if the restrictive conditions remain in place since the zoning remains in place.

The social benefit of the removal of the restrictive condition.

The removal of the condition will have a positive social benefit since a second dwelling can be constructed and further encourage the applicant to make improvements to the benefit of the area.

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

The rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.

SERVICES:

- Access will be obtained from Caesar Road.
- Sewage will be dealt with by means of a conservancy tank.
- Water and electricity are provided and is available from the Overstrand Municipality.

FORWARD PLANNING:

 Spatial Planning and Land Use Management Act (SPLUMA)

Public Interest

The approval will enable a second dwelling that will contribute to the value of the property.

Opportunity costs

The dwelling that transgresses is in existence and will not be an added visual impact or imposition.

Respective rights and obligations of all those affected

The legalisation of the existing over the building lines and the construction of the second dwelling will not result in discomfort of the surrounding properties due to the following reasons:

- ❖ The primary and second dwelling is in harmony with the residential land use fabric of the surroundings.
- ❖ The primary dwelling exists, and neighbours have become accustomed thereto and is not projected to unlock additional land use rights which may negatively influence the surrounding properties.
- ❖ The proposed second dwelling is in harmony with the primary land use rights which is enjoyed by other property owners with the same zoning.

PROVINCIAL SPATIAL DEVELOPMENT FRAMEWORK (PSDF)

The PSDF promotes the preservation of the unique local built form and typologies. The partial demolition of a portion of the existing building which encroaches the lateral building line will create an oddly shaped building which will result in the deviation of the prescripts of the PSDF.

The PSDF promotes progressive housing improvements and incremental development through private finance. The construction of a second dwelling will constitute incremental housing improvements through private financing.

The PSDF promotes the containment of settlement footprints which incrementally transition into higher density neighbourhood. This proposal will contribute to the containment of settlement footprint in develop the erf within its development parameters and thus reduce possible extension of the urban footprint.

SPATIAL DEVELOPMENT FRAMEWORK (2020)

The SDF highlights that the quality and attraction of the built environment is enhanced as result of a commitment on prioritising aesthetics. The rational of the proposal is for the applicant to legalise the existing location of the building and improve the aesthetics on the property by constructing a second dwelling which contributes towards creating an attractive built environment.

The policy cites that foreign and unsympathetic buildings should be discouraged. The existing primary dwelling is sympathetic to the character of the existing settlement and so will the second dwelling be and therefore can be regarded as being in harmony with the local sense of place.

The subject property is designated as urban development in the SDF, and the land use rights which are sought are in harmony with the land use designation.

OVERSTRAND GROWTH MANAGEMENT STRATEGY (2010)

The policy acknowledges that low densities are expensive and inefficient and that certain economic activities can only be attained once densities reach a certain threshold. The proposed densification instruments are subdivision and second dwellings of which the application is consistent with regard second dwellings. The proposed second dwelling is located the rear of the erf and will not alter the character of the site when viewed from the site.

PLANNING PRINCIPLES:

Spatial Justice:	The construction of the second dwelling will create employment opportunities which will primarily benefit the historically marginalised and will contribute towards upward socio-economic mobility.
Spatial Sustainability:	Spatial sustainability refers to land use management systems which will result in communities which are viable. Viability in the context of land use planning means a regulatory and policy framework which enables property owners to continually improve the aesthetics of the properties to make it more liveable and the proposal is in harmony with the principle.
Efficiency:	The application entails the optimal of the use of the space on the property while conforming to the residential character of the surroundings.
Spatial Resilience:	The application is in line with the PSDF and SDF principles of resilience.
Good Administration:	The process and a public participation process as prescribed by the Municipality will be followed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	Yes	5 March 2021	9 April 2021
Local newspaper	Yes	4 March 2021	9 April 2021
Registered notices	Yes	2 March 2021	9 April 2021
Ward councillor	Yes	3 March 2021	9 April 2021
Total comments	ONE (1)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 47 - 50 of the By-Law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
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

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

Name	Date received	Summary of comments
Building Control	08/03/2021	No objection. All buildings to comply with NBR and all other applicable law.
Fire Department	11/03/2021	Not in order, subject to compliance with the provisions of SANS 10400-A: 2016, 10400-T:2020 and the By-law relating to Community Fire Safety. (Safety distances (T4.2)).
Engineering Services	29/04/2021	See Annexure G.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

One (1) letter of objection was forthcoming the public participation process. (See Annexure E.)

The objection and response thereon will be grouped as per issue raised. The applicant's response to the objection is attached as Annexure F.

Objection 1 – Y Ruster

- ❖ *No documentation has been had been given to me.*
- ❖ *No discussion has been initiated by the applicant.*
- ❖ *The 2 windows facing the boundary line is an invasion of our privacy.*
- ❖ *The garden wall is built on my property. The wall could be more than a meter from the boundary line.*
- ❖ *The roof is well over the boundary line.*
- ❖ *Corner of the building and its foundations are over the boundary line. A lot more than 20mm.*

Applicant's response

The application was distributed via registered post to the following address: Erf 1620, Y Ruster, P O Box 498, Pringle Bay 7196, Tracking no. PA 475929515ZA.

Once the owner of Erf 1619 became aware of the encroachment, they immediately discussed options regarding the rectification process. Some of the discussions entailed the offering of purchasing a portion of the objector's property to rectify the situation. The offer was declined.

The wall was built with the construction of the house approximately 10 years ago. The objector however requested that the wall be retained as they are intending on building a structure flush with the wall and utilising parts thereof.

It is acknowledged that the windows are facing the boundary line. The windows facing the boundary are both from enclosed patios, which is used occasionally and are not predominantly liveable areas.

This is a valid objection and should be rectified and set back to the boundary line.

The corner of the building is 20mm from the boundary line as indicated by the Land Surveyor that was appointed by the applicant. To establish whether the foundations are over the boundary line, it will have to be dug open. It is acknowledged that the foundations may be partially located over the boundary line, but it has no fundamental impact on the objector as it has been under the ground for the past 10years.

Town Planner's response

The application was distributed to the objector as indicated by the Applicant's Response above.

It seems that the owner and the objector did have a discussion to rectify the boundary through an alignment process but was dismissed by the objector as a possibility to rectify the situation.

The incorrect position of the wall on the objector's property in effect is an asset on the property irrespective who has built it. If the objector intends in keeping the structure, the status quo remains, however should the objector not want the wall, the applicant is responsible for the demolition and removal of all rubble.

The windows at 0,02m from the boundary line does have an impact on the privacy of the objector even though it is part of the enclosed patio and rarely used. It is still an intrusion on the privacy of the objector.

The roof overhang over the boundary line must be removed and is acknowledged by the applicant.

The Land Surveyor indicated that the corner of the building is located 0,02m from the boundary and is not in dispute. The fact that the foundations of the building may transgress the boundary line is problematic, since buildings, inclusive of the foundations are not allowed over boundary lines. Irrespective if the foundation has been built 10 years ago, it is not built on the applicant's property and thus should either removed.

Objection 2 : DL Erispe (on behalf of Y Ruster)

- There is financial gain by the applicant.
- The application for the relaxation of the departing By-law is jeopardised.
- The documentation was not available at the Betty's Bay Library.

Applicant's response

- There has not been any financial gain to the applicant. The comment is too vague to address properly.
- Noted, but have no recollection of what is being referred to.
- The application was submitted to the Betty's Bay Library by the Administration.

Town Planner's response

The first two points is too vague to comment on. The application was available at the Betty's Bay library since it was forwarded by the Administration.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments.

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

N/A

Spatial Sustainability

The application is within the urban edge and will not impact on agricultural land or environmental areas. The application is in line with the promoting of compaction and infill urban environments. However, the transgression does have an impact on the sustainability of the Objector in terms of the viability of Erf 1620. The aspects of privacy, sunlight, value and flow of air for liveable erf is jeopardised by the dwelling of 0,02m from the boundary.

Efficiency

The landowner wants to use the property to its full potential and make optimal use of municipal services available to the erf that in return contribute economic well-being. Again, the impact of the transgression over the building line and still request a second dwelling of 120sq are not taking the efficiency of the objector's property into consideration.

Spatial Resilience

The application is in line with local policies which promote optimal use of an erf to limit urban sprawl. All structures will comply with the National Building regulations and SANS, thus promoting energy efficiency. The aspect of Resilience is promoting energy efficiency and guard against shocks, but with the building so close to the objector's structures, the objector is not safeguarded against the threat of a double story building collapsing. The resilience of Erf 1620 is under threat.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

N/A

10.6 Impact on Municipal Engineering Services

Existing services will be used.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The Overstrand Municipality Zoning Scheme Regulations is applicable to this area and the zoning will remain in place.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

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

The Municipality does not enjoy any value or financial benefits as the "Administrator" in terms of the Restrictive conditions.

The personal benefits which accrue to the holder of rights in terms of the restrictive condition.

There are no personal benefits for the Municipality.

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

The applicant will gain personal benefits with regard to the construction of a second dwelling and can generate additional income. The financial benefit relating to approving the existing dwelling, is that the Applicant does not need to have the possibility of demolishing a portion of the building which will a financial implication.

The social benefit of the restrictive condition remaining in place.

The status quo remains in place.

The social benefit of the removal of the restrictive condition.

That owner will be able to make use of the primary rights as per the Land Use Scheme.

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

The beneficiary is the Municipality and does not enjoy any rights to its own benefit.

12. THE DESIRABILITY OF THE PROPOSAL

The building plan of Erf 1619 has been approved in full compliance of the Title Deed and Scheme building lines. The house was built skew at an angle and not according to the building plan. Thus, resulting in the transgression of a portion of 14m² over the building line.

An important aspect that has not been fully addressed by the Planning Consultant is the fact that the foundations may transgress the boundary with Erf 1620. The latter is problematic, since the owner of Erf 1620 objected against the application and declined the offer to purchase the portion that transgress the building lines.

The Planning Consultant indicated that the foundations may transgress the boundary, however in order to verify this aspect, there will be a cost implication for the applicant. However, this aspect is extremely important, since should the transgression of the foundations be on the objector's property, the building, which includes the foundations, needs to be relocated within its own boundaries.

The roof overhang over the boundary is acknowledged by the applicant and that it would be rectified.

The building, which is located 0,02m from the southwestern lateral boundary is a double storey with habitable spaces consisting of bedroom, kitchen, lounge and balcony that has an impact on the privacy of Erf 1620. One should take into consideration that Erf 1620 is a corner erf and is restricted by Caesar Road and Zyta Road with the street building lines of 5m as stipulated in the Title Deed conditions. Thus, forcing the aforementioned to develop towards the lateral building lines. The transgression of the applicant's building of the lateral building lines of the 1,5m Title Deed and the 2m Land Use Scheme building line thus impedes the liveability and developability of Erf 1620.

Erf 1620 is now forced to develop taking the transgression into account to ensure privacy, air movement and sunlight. The benefit of the transgression is to the detriment of Erf 1620.

The application also did indicate a second dwelling of 120m² and although within the building lines, the existing dwelling needs to be addressed first as it may have an impact on the location of the second dwelling, if it is found that the foundations transgress the boundary.

The application for the relaxation of the lateral building line from 2m and 1,5m respectively to 0,02m is not recommended for approval.

The application for the removal of the restrictive title deed conditions deals with the restriction of one dwelling, however the Title Deed Condition B.6.(a) does make provision for any building with the approval of the local authority if located within a town planning scheme. The property is located within a town planning scheme and thus subject to the Land Use scheme. The proposed second dwelling is located within the prescribed Title and Land Use Scheme building lines. Therefore, the removal of the condition will not be to the detriment of the area or the surrounding erven.

Conditions B.6.(b) and B.(b)(i) and (ii) deals with the building lines. The conditions stipulate a 5m street building line, a 1,5m lateral building line and a 3m rear building line.

The 5m Title Deed building line along Caesar Road is excessive, especially taking into consideration that the road has a road reserve of 16m. The street building line of 4m as per the Overstrand Land Use Scheme, applicable in the whole of the Municipal area, was accepted by the communities during the development of the Scheme.

The Title Deed lateral building lines of 1,5m is less restrictive than the Land Use Scheme of 2m and thus would only be beneficial to the area if removed.

The Title Deed 3m rear building line is more restrictive than the Land Use Scheme which is 2m. However, the more restrictive lateral building lines of 2m make up the difference of the 1m lost at the rear but gained at the lateral building lines.

The difference of the building lines is 1m gained by the erf owner. One aspect that will be to the benefit of the owner is that the Land Use Scheme does make provision for garages to be built on the lateral and rear building lines with consent of the neighbour. The safety mechanism is that should it not been obtained that the owner must submit an application which is subject to a public participation process. The removal of the restrictive conditions also makes it possible for owners who intends to make use of climate change technology to do so without going through an additional removal of restrictions application process.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Amendment Municipal By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed Clauses B.6.(a), B.6.(b), B.6.(b)(i) and B.6.(b)(ii) of Title Deed T123280/97 applicable to Erf 1619 Pringle Bay, **be approved** in terms of the provisions of Section 61, subject to the following conditions:
 - (a) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
 - (c) that all the conditions in the Services Report (attached as Annexure G), be complied with.
2. that the application in terms of Section 16.(2)(b) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1619, Pringle Bay for a departure to relax the southwestern lateral building line from 2m to 0,02m to accommodate a portion of the existing dwelling, **not be approved**, in terms of Section 61 of the By-Law.
3. that a rider building plan be submitted within six (6) months from the date of the decision letter to adhere to the building lines.
4. that the building be built accordingly within twelve (12) months after the building plan has been approved.
5. that the applicant and objector 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 decision.

14. REASONS FOR RECOMMENDATION**POINT 1**

- ❖ The conditions applied to the removal is sufficiently guided by the Overstrand Land Use Scheme.
- ❖ The restrictive conditions impede energy and water saving devices in order to address climate change.

POINT 2

- ❖ There is no clarity with regard to the location of the foundations, whether it transgresses the objector's property, which will result in illegal occupation of the adjacent erf.
- ❖ The dwelling is a double storey on 0,02m from the erf boundary and has an impact on the privacy of the objector's erf. It is irrespective as per the application that the windows facing the objector's erf is located in enclosed balconies not regularly in use. It is used and does have an impact on her living space.
- ❖ The impact of the house on natural light and air movement does impact on the developability of the objector's erf.

- ❖ The transgression of the applicant's dwelling over the building lines, forces the owner of Erf 1620 to design and develop their property by taking into account the dwelling located 0,02m from the common boundary.
- ❖ Although the second dwelling is a primary right, it may only be built once the primary dwelling location has been resolved.
- ❖ The Fire Department did not support the application due to non-compliance of fire regulations.

15. ANNEXURES

Annexure A: Locality Plan
Annexure B: Motivation Report
Annexure C: Site Development Plan
Annexure D: Title Deed T123280/97
Annexure E: Objection received
Annexure F: Applicant's response to the objection received
Annexure G: Services Report

SIGNATURE**REGISTERED PLANNER**

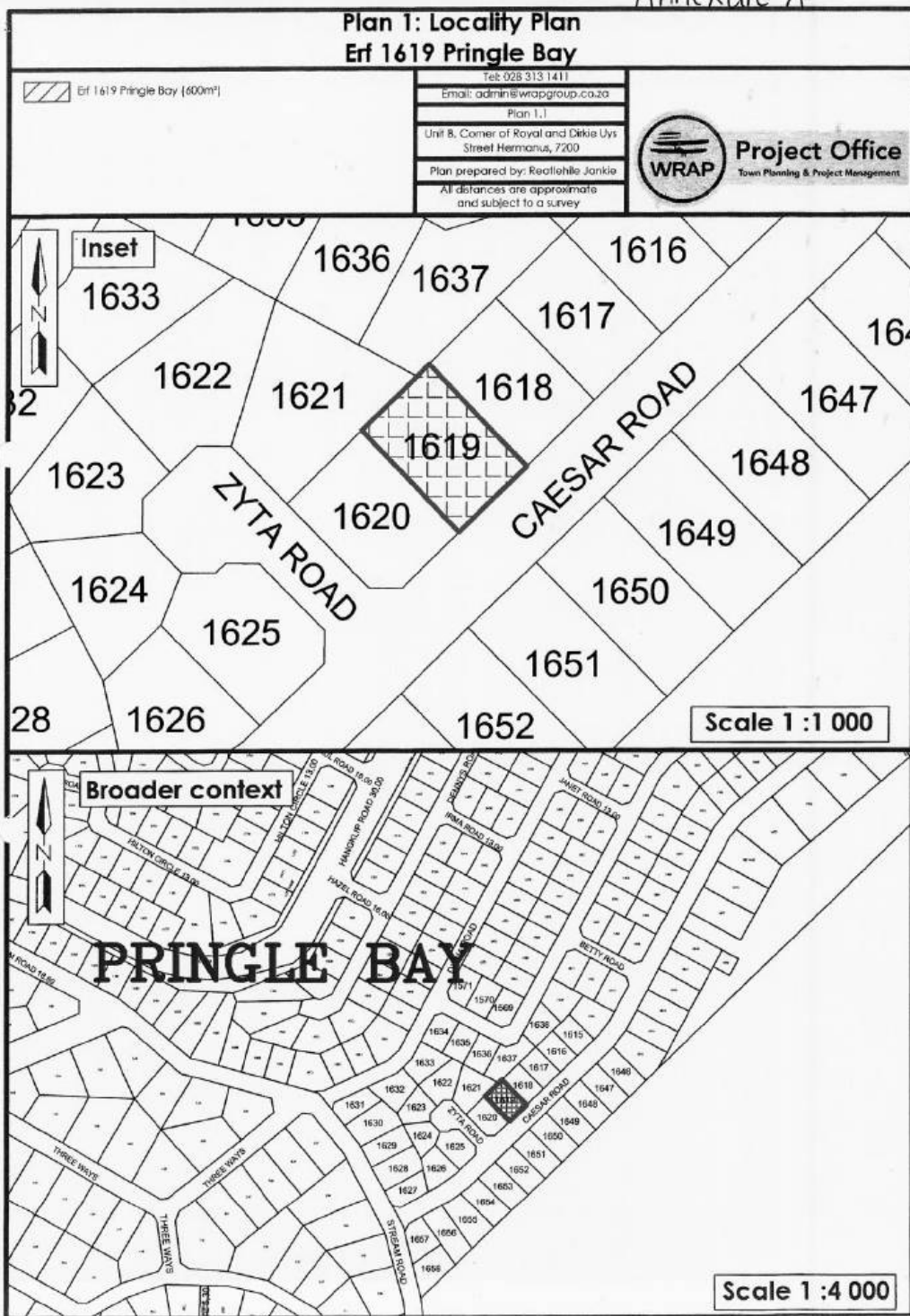
Name : **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

Signature : _____

Date: _____

Annexure A





EXECUTIVE SUMMARY

1. ABBREVIATIONS

1.1	OMLUS	Overstrand Municipality Land Use Scheme, 2020
1.2	SDF	Overstrand Municipality Spatial Development Framework, 2020
1.3	OM	Overstrand Municipality
1.4	By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended
1.5	OMGMS	Overstrand Municipal Growth Management Strategy, 2010
1.6	SPLUMA	Spatial Planning and Land Use Management Act, 2013
1.7	LUPA	Land Use Planning Act, 2014
1.8	DEADP	Western Cape Department of Environmental Affairs and Development Planning
1.9	SDP	Site Development Plan
1.10	SR1	Residential Zone 1: Single Residential

2. SUMMARY OF STATUS QUO PROPERTY DETAILS

2.1	Property description	Erf 1619 Pringle Bay
2.2	Registered owner and applicant	Serfie Serfontein Trust
2.3	Consultant	WRAP Project Office
2.4	Restrictive title deed conditions	B.6(a), B.6.(b), B.6.(b)(i) and B.6.(b)(ii) in title deed T123280/1997
2.5	Property extent	600m ²
2.6	Current zoning	Residential Zone 1: Single Residential (SR1)

3. BACKGROUND AND APPLICANTS BRIEF

- 3.1 The owner of the subject property (hereafter referred to as the applicant) appointed a building contractor to construct the current dwelling in accordance with the building plans (refer **Plan 5**). The plans illustrate that no portion of the dwelling encroaches on the OMLUS and title deed side building line;
- 3.2 When the owner of a neighbouring property started with extensions to an existing dwelling, it was suspected that the existing dwelling encroaches on the south western side building line as prescribed in the OMLUS and title deed. A land surveyor was appointed to survey the location of the existing building in relation to the cadastral boundaries and it was confirmed that the existing dwelling encroaches on the side building line (refer **Plan 4**);
- 3.3 The applicant has therefore appointed WRAP Project Office to obtain the necessary land use approvals to legalise the location of the existing dwelling over the side building lines which is a result of an oversight by the original building contractor; and
- 3.4 The applicant also envisages establishing a second dwelling unit which the title deed of the subject property currently prohibits.

4. PROCEDURE TO ACHIEVE THE DEVELOPERS INTENT

The following application is submitted for the applicant to achieve the brief discussed in Section 3 of this report:



2/15

EXECUTIVE SUMMARY

4.1 Removal of restrictive title deed conditions B.6(a), B.6.(b), B.6.(b)(i) and B.6.(b)(ii) from title deed T123280/1997 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The rationale for the removal of the restrictive title deed conditions will herewith be summarised and motivated in detail in Section 7 of this report.

4.1.1 Restrictive title deed condition B.6(a) *"This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Township Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated in the scheme."*

4.1.1.1 The applicant envisages establishing a second dwelling unit on the subject property which will measure a maximum of 120m² which necessitates the removal of this restrictive title deed condition.

4.1.2 Restrictive title deed condition B.6.(b) *"No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority."*

4.1.2.1 A portion of the existing building is located 0,02m from the south western side building line which necessitates the removal of this restrictive title deed condition.

4.1.3 Restrictive title deed condition B.6.(b)(i) *"An outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height, measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within the rear space and side space for a distance of 12m shall be measured from the point furthest from the street abutting the erf."*

Restrictive title deed condition B.6.(b)(ii) *"An outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."*

4.1.3.1 The OMLUS provides prescripts which pertain to the location of motor vehicles on properties which are zoned SR1 which makes the title deed conditions superfluous.

4.2 Departure from the 2m south western side building line to 0,02m to accommodate the existing dwelling in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

4.2.1 The existing dwelling is located 0,02m from the south western boundary line which necessitates a departure application. The portion of the existing building which encroaches on the south western boundary line measures 14m² which is minimal and constitutes 8,8% of the total footprint of the existing building. The use of the portions of the building which encroach on the side building line are the covered stoep on the ground floor and habitable rooms as illustrated in the photograph in figure 1;



Figure 1: A photo from the rear of the property, of the portion of the building which encroaches on the side building line.

- 4.2.2** When figure 1 is assessed in conjunction with the survey (refer **Plan 4**) the existing dwelling is "skew" in relation to the cadastral boundaries. At the time of the survey the fence was incorrectly misaligned with the cadastral boundaries which was incorrectly used to inform the construction of the existing dwelling. It is suspected that one of the rear boundary beacons was incorrectly identified when the foundations of the house were set out;
- 4.2.3** Figure 1 also illustrate that the only neighbour who is materially impacted by the building line encroachment is the owner of Erf 1620 Pringle Bay who has become accustomed to the location of the existing building;
- 4.2.4** It would also be financially unfeasible for the portion of the existing dwelling which encroaches on the side building line to be demolished as that will have significant financial implications in terms of the total structure which will have to be rebuilt and the portion of the wall which will have to be demolished and re-constructed at a location which does not encroach on the side building line; and
- 4.2.5** A partial demolition would also destroy the high architectural integrity of the existing building as all the walls of the building currently intersect in a rectangular form.
- 4.3** It is therefore motivated that the approval of this application would retain the visual contribution of the existing building towards the built form of Pringle Bay. This is in contrast with partial demolition as an alternative, which would result in the architectural integrity of the existing building being destroyed.

5. APPLICATION

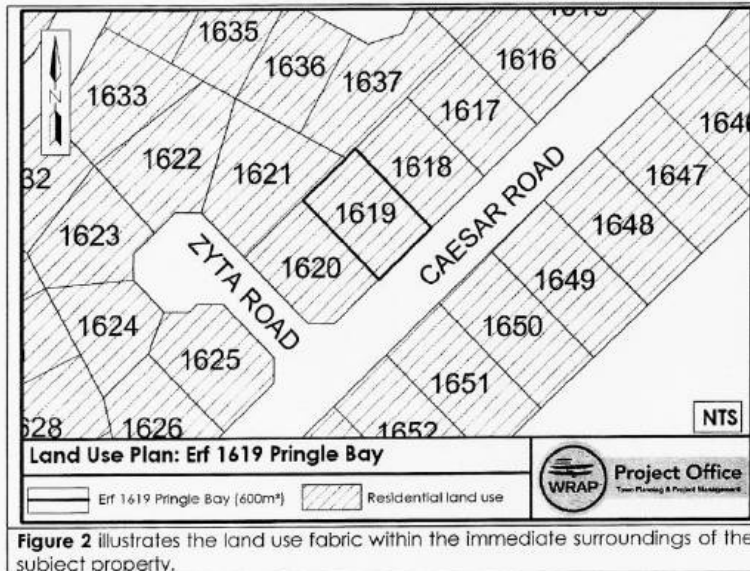
- 5.1** Considering the applicant's intent highlighted in Section 4 the following is applied for:
- 5.1.1 Removal of restrictive title deed conditions** B.6(a), B.6.(b), B.6.(b)(i) and B.6.(b)(ii) from title deed T123280/1997 in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.1.2 Departure** from the 2m south western side building line to 0,02m to accommodate the existing dwelling in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



MOTIVATION

6. LAND USE FABRIC

The land use fabric surrounding the subject property is illustrated below:



The existing dwelling and the proposed second dwelling unit will be used for residential purposes and are in harmony with the residential land use fabric of the area illustrated in figure 2.

7. TITLE DEED

The title deed was perused (refer **Annexure C**), and the following restrictive title deed conditions prohibits the land use rights which are applied for in this application and are proposed for removal:

7.1 Title deed restriction

B.6(a) "This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Township Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated in the scheme."



MOTIVATION

Motivation**Rationale for the proposed removal**

The applicant envisages establishing a second dwelling unit towards the rear of the subject property which will measure a maximum of 120m². The second dwelling unit will be used for the permanent occupancy of a single family.

Background

The restrictive title deed condition which limits one dwelling on the subject property was inserted in 1981 in an era when the prevailing urban development model was low density urban sprawl which was coupled with low population growth.

Status quo

Rapid population growth which is exacerbated by urbanisation places pressure on residential units to be unlocked within the urban edge. This is to avoid the rapid establishment of greenfield developments which are characterised by urban sprawl and negative implications thereof such as habitat fragmentation, water and air pollution and increased infrastructure costs which tend to be incurred by local authorities. The second dwelling unit proposed on the subject property is therefore instrumental in contributing towards unlocking additional accommodation options which alleviate the pressures for outward settlement establishment. All current spatial planning policies promote contextually appropriate densification and the proposed establishment of a second dwelling unit on the subject property is in harmony with the current policy prescripts.

7.2 Title deed restriction

B.6.(b) "No building or structure or any portion thereof except boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1,5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority."

Motivation**Rationale for the proposed removal**

A portion of the existing dwelling is located 0,02m from the south western side building line and encroaches on the 1,5m lateral building line as prescribed in the title deed. The removal of this restrictive title deed condition is necessary to legalise the existing accidental encroachment.

Background

The rationale for the insertion of this restrictive title deed condition was for the creation of a peculiar suburban fabric and for the building lines.

Status quo

The partial demolition of the portion of the existing dwelling which is located over the building line would destroy the architectural integrity of the building and therefore adversely impact on the suburban character of Pringle Bay which surrounding property owners have become accustomed to. The distance between the corner of the existing dwelling on the subject property and the dwelling on the neighbouring Erf 1620 Pringle



MOTIVATION

Bay is 2.3m which acts as sufficient space for access to the back of the neighbouring erf by the fire brigade in case of a fire. On the north-eastern boundary of the subject property no buildings are encroaching on the building line which makes the back of the property easily accessible in case of an emergency or fire. The removal of this restrictive title deed condition is requested by the applicant to correct the error made by the building contractors in positioning the building on the erf and to safeguard the architectural integrity of the existing building on the property.

7.3 Title deed restriction

B.6.(b)(i) "An outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height, measured from the ground floor of the outbuilding to the wall plate thereof, may be erected within the rear space and side space for a distance of 12m shall be measured from the point furthest from the street abutting the erf."

B.6.(b)(ii) "An outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary."

Motivation

Rationale for the proposed removal

Although this proposal is not related to the regularisation of a garage which is located over the building lines, the title deed conditions listed above are a subsection of title deed condition B.6.(B) which necessitates the removal thereof. The OMLUS contains prescripts related to the location of outbuildings over the building lines which makes these title deed conditions superfluous.

Background

This title deed condition was inserted in an era where garages which were located in the side building line were generally offset at a distance from the street boundary which resulted in the creation of long driveways which was the general preference of the property owners who bought erven in Pringle Bay at the time.

Status quo

The status quo is characterised by property owners establishing second dwelling units as sought in this application which increase the amount of space which is used on properties which invalidates the need for long driveways for garages along the boundary line. The OMLUS also contains prescripts relating to the location of garages on properties zoned SR1 which makes the retention of this title deed condition unnecessary.

8. AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS

This application is motivated in conjunction with considerations for the removal of restrictive title deed conditions which is a relevant consideration in terms of Section 35(4) of the By-Law:

- 8.1 The financial or other value of the rights in terms of the restrictive condition 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.**



MOTIVATION

It is unlikely that the existing restrictive title deed conditions add any financial value to the owners of erven in Pringle Bay for the following reasons:

- 8.1.1** Title deed condition B.6(a) was intended to prevent Pringle Bay from having second dwelling units as that was seen to have the potential of altering the single residential look and feel which the neighbourhood has. The proposed second dwelling unit is intended to be located towards the rear of the existing main dwelling and will not be visible from the street. This will therefore not interfere with the single residential look of the subject property from the street which this title deed condition seeks to protect. The OMLUS allows a second dwelling unit as a primary right on properties zoned SR1 in Pringle Bay and the removal of this restrictive title deed condition does not constitute a departure from the land use rights which are enjoyed by other property owners in the Overstrand Municipality. The removal of the restrictive title deed conditions can therefore not be regarded as depriving surrounding property owners of any financial interests which might currently be enjoyed.
- 8.1.2** Title deed condition B.6.(b) pertaining to building lines was inserted to act as a mechanism to allow access to the back of the property in case of fire or emergencies and does not have any financial value. Considering that the distance between the part of the dwelling which encroaches on the side building line and the dwelling on the neighbouring property is 2,3m it constitutes sufficient space to serve this purpose. The removal of this restrictive title deed condition will therefore not undermine the initial intent of this condition and not deprive any property owners of any financial value.
- 8.1.3** Title deed conditions B.6.(b)(i) and B.6.(b)(ii) are unnecessary as the OMLUS contains prescripts related to the location of garages in relation the cadastral boundary lines.
- 8.2 The personal benefits which accrue to the holder of rights in terms of the restrictive condition.**
There are no personal benefits which accrue to the holder of the rights in Pringle Bay. The title deed conditions also limit the ability of the applicant to exercise all primary rights and development parameters applicable to the SR1 zoning which generally promote a better utilisation of land which would not be possible if the title deed conditions remained in place.
- 8.3 The personal benefits which will accrue to the person seeking the removal of the restrictive condition if it is removed.**
The removal of the restrictive condition will enable the applicant to legalise the location of the existing building over the title deed building line and allow the construction of a second dwelling unit in the future when it is financially feasible to do so.
- 8.4 The social benefit of the restrictive condition remaining in place in its existing form.**
There is no social benefit which will accrue with this restrictive title deed condition remaining in place as the land use rights and development parameters applicable on the subject property will still have to conform to the SR1 zoning. This will be a mechanism which will protect the residential character of the site and not deviate from the general expectation which society has for the subject property to be used for residential purposes.



MOTIVATION

8.5 The social benefit of the removal or amendment of the restrictive condition.

The removal of the restrictive title deed condition will have a positive social benefit as it will enable the construction of a second dwelling unit and further encourage the applicant to make improvements to the subject property which would be to the visual benefit of surrounding property owners.

8.6 Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The removal of the restrictive title deed condition will remove the imposition of the title deed building lines which would legalise the encroachment of the existing building over the building lines in conjunction with the building line departure applied for from the OMLUS. The removal of the restriction of the second dwelling unit will allow the applicant to construct a second dwelling unit which is a land use right enjoyed by all other property owners where the applicable zoning is SR1 in the Overstrand Municipal area. The SR1 land use rights which are applicable on the subject property will continue to protect the land use rights enjoyed by the beneficiaries of the restrictive title deed conditions which can be regarded as positive.

9. ZONING

This proposal was assessed in conjunction with the SR1 zoning applicable on the subject property:

Residential Zone 1: Single Residential				
		Parameters	Proposal	Deviate or comply
9.1	(a) Primary use	crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.	Dwelling house and second dwelling unit.	Comply
9.2	(b) Consent use (which may be applied for)	day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture	N/A	Comply
Development rules				
9.3	Coverage	50%	46.3	Comply
9.4	Street building line	4m	5m	Comply
9.5	Side building line	2m	Departure from the 2m south western side building line to 0,02m to accommodate the existing dwelling.	Departure motivated
9.6	Height	8m	6,5m	Comply
9.7	Parking	Dwelling house Two on-site parking bays per dwelling unit, provided that	There are 3 parking bays required and 2 parking bays are proposed in	Comply

9/15



MOTIVATION

	on even less than 400 m ² , only 1 on-site parking bay needs to be provided.	addition to the existing garage.	
	Second dwelling One bay		

Second dwelling unit

The following additional development parameters apply to second dwelling units and the compliance of this proposal therewith will herewith be illustrated.

	Parameters	Proposal	Deviate or comply
9.8	The total floor area (footprint) of the second dwelling unit shall not exceed 120m ² .	120m ² .	Comply
9.9	A second dwelling unit may be contained within the same building as a primary dwelling unit and may be either on the ground or first floor.	The proposed second dwelling unit is not contained within the existing dwelling unit as it is proposed to be a separate structure.	Comply
9.10	A second dwelling unit may not be separately alienated in terms of the Sectional Title Act.	The applicant has no intention to alienate the proposed second dwelling unit in terms of the Sectional Title Act.	Comply
9.11	A second dwelling must be located within the applicable building lines.	The proposed second dwelling unit does not encroach on the building lines which are applicable to the SR1 zoning.	Comply

10. ADDITIONAL REGULATORY REQUIREMENTS

The subject property is not located within the HPOZ or the EMOZ.

11. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated:

11.1 Solid waste

Solid waste is collected from the subject property by the OM on a weekly basis and the additional waste which will be generated from the proposed second dwelling unit will be collected with the waste from the primary dwelling.

11.2 Electricity

The existing building is connected to the electricity network available in Pringle Bay which the proposed second dwelling unit will also connect to.



MOTIVATION

11.3 Water

The existing building is connected to the reliable water network supplied by the OM which the proposed second dwelling unit will connect thereto.

11.4 Sewage

The existing building is connected to a conservancy tank which is located on the subject property and the proposed second dwelling unit will connect thereto.

11.5 Access and egress

Access and egress to the subject property is gained from Caesar Road.

12. SPLUMA MOTIVATION REQUIREMENTS

The following are relevant considerations in terms of Section 42 (c) of SPLUMA and is motivated as follows:

12.1 Public interest

The approval and implementation of this proposal will enable the applicant to construct a second dwelling unit which will increase the value of the subject property. This will consequently lead to higher rates collected by the OM from the applicant which will contribute towards service delivery and is in the public interest.

12.2 Opportunity costs

Opportunity cost in the context of land use planning refers to the devaluation or foregoing a valued land use right of interested and affected parties when an application is approved. The dwelling which encroaches on the side building line and title deed restrictions already exists and will not be an additional visual impact or imposition. The proposed second dwelling unit will be located towards the rear of the subject property and will not be visible from the street and will therefore not be a visual imposition. The approval and implementation of this proposal will therefore not present an opportunity cost for surrounding property owners.

12.3 Respective rights and obligations of all those affected

The legalisation of the existing building over the building lines and construction of a second dwelling unit will not result in surrounding property owners occupying respective properties in discomfort for the following reasons;

12.3.1 The primary dwelling and proposed second dwelling unit is in harmony with the residential land use fabric of the surrounding;

12.3.2 The primary dwelling exists, and neighbours have become accustomed thereto and it is not projected to unlock additional land use rights which may negatively affect surrounding property owners; and

12.3.3 The proposed second dwelling unit is in harmony with the primary land use rights which are conferred by the SR1 zoning which are enjoyed by other property owners with the same zoning in Pringle Bay and therefore does not unlock extraordinary land use rights for the applicant.



MOTIVATION

13. POLICY FRAMEWORK

- 13.1** The compliance of this proposal with the applicable spatial development policies was assessed. These policies are instrumental in guiding spatial development and providing prescripts of what constitutes sound town planning development patterns. The compliance of this proposal in conjunction with provincial and local policies which are key development informants will be illustrated.

	Applicable policy	Administrative authority
13.1.1	Western Cape Provincial Spatial Development Framework, 2014 (PSDF)	Provincial
13.1.2	Overstrand Municipality Spatial Development Framework, 2020 (SDF)	Municipal
13.1.3	Overstrand Municipal Growth Management Strategy, 2010 (OMGMS)	Municipal

13.2 PSDF

13.2.1 Policy preface

The PSDF is a product of a provincial inter departmental and inter-governmental collaboration under the guidance of the interdepartmental steering committee with the private sector, academia, and non-governmental organisations. This broad participatory process has created a shared spatial vision which is intended to inform spatial development patterns of urban areas in the province.

13.2.2 Broad policy objectives

The objective of the policy is to promote liveable settlements with quality infrastructure and high architectural integrity. The development principles in the PSDF are informed by other spatial planning policies which are aimed at creating a policy alignment between different spheres of government. The intent is to ensure that spatial development is uniformly guided according to spatial development principles which have been agreed upon by the relevant stakeholders.

13.2.3 The compliance of this proposal with the policy proposals in the PSDF which are pertinent to this proposal are recorded below:

13.2.3.1 The PSDF promotes the preservation of the unique local built form and typologies. The existing primary dwelling is in harmony with the housing typologies in Pringle Bay and the unique local built form. In contrast, the partial demolition of a portion of the existing primary dwelling which encroaches on the side building line would create an oddly shaped building which would deviate from the housing typologies of the area and therefore deviate from the prescripts of the PSDF;

13.2.3.2 The PSDF promotes progressive housing improvements and incremental development through private finance. The approval and construction of the second dwelling unit will constitute incremental housing improvement on the subject property through private finance as prescribed by the PSDF; and



MOTIVATION

13.2.3.3 The PSDF promotes contained settlement footprints which incrementally transition into contextually appropriate higher density neighbourhoods. This proposal entails the removal of a restrictive title deed condition which would enable the applicant to establish a second dwelling unit in the future when it is financially feasible to do so. This will contribute towards the containment of settlement footprints as the pressure for urban expansion on settlement edges will be reduced.

13.3 SDF

13.3.1 Policy preface

The SDF's intention is to ensure compliance with national, provincial and district legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development land uses and direction within the urban edge. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which development proposal should ideally attempt to synchronise with.

13.3.2 Broad policy objectives

The broad policy objectives of the SDF include enhancing the image of the Overstrand as a liveable urban and rural area which accommodates a variety of life. Development proposals should also capitalise on the unique sense of place which settlements and urban areas in the Overstrand are renowned for. The SDF promotes developments which enhance the visual quality and attraction of the built environments while preserving the social and cultural attributes which are valued by inhabitants.

13.3.3 The compliance of this proposal with the policy proposals in the SDF which are pertinent to this proposal are recorded below:

13.3.3.1 The SDF highlights that the quality and attraction of the built environment is enhanced as result of a commitment on prioritising aesthetics. The rationale for this proposal is for the applicant to be allowed to legalise the existing location of the subject property over the building line and improve the aesthetics on the subject property by constructing an attractive second dwelling unit which contributes towards creating an attractive built environment as prescribed by the SDF.

13.3.3.2 The policy cites that foreign and unsympathetic buildings should be discouraged in urban settlements to strengthen the local sense of place. The existing primary dwelling which encroaches on the side building lines is sympathetic to the character of the existing settlement and so will the second dwelling unit and can therefore be regarded as being in harmony with the local sense of place.

13.3.3.3 The subject property is designated as urban development in the SDF and the land use rights which are sought in this application are in harmony with this land use designation.

13.4 OMGMS

13.4.1 Policy preface

The policy was created to manage the urban growth of the OM where densification would play a pivotal role in the effective implementation of



MOTIVATION

infrastructure and community facilities provision. The policy carefully considered market cycles, municipal budgeting and capital spending.

13.4.2 Broad policy objectives

The policy acknowledges that low densities are expensive and inefficient and that certain economic activities can only be attained once densities reach a certain threshold. The policy therefore promotes densification through instruments such as second dwelling units (dual occupancy) and subdivisions. The overall rationale for the document is to create an enabling environment for residents in the OM to attain an enhanced quality of life.

13.4.3 The compliance of this proposal with the policy proposals in the OMGMS which are pertinent to this proposal are recorded below:

13.4.3.1 The policy highlights that the built environment of the OM needs to be enhanced. This proposal primarily entails legalising the location of the existing building and enhancing the built environment on the subject property through the construction of a second dwelling unit and consistent with the prescripts of the OMGMS.

13.4.3.2 The policy promotes densification which is sensitive to the immediate surrounding. The proposed second dwelling unit is a marginal densification as the unit is proposed to the rear and will not alter the character of the site when viewed from the street and can be regarded as a form of densification which sensitive to the character of the area as prescribed in the policy.

13.4.3.3 The spatial proposal plan designates the subject property for residential purposes. The land use rights and departure from the development parameter as sought in this application are in harmony with the residential land use rights as prescribed in the spatial proposal plan.

14. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains planning principles which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

14.1 Spatial Justice

Spatial justice in the context of land use planning refers to addressing spatial development imbalances caused by apartheid planning. The construction of a second dwelling unit will create employment opportunities which will primarily benefit the historically marginalised who will use incomes earned to contribute towards accessing housing and services which will contribute towards upward socio-economic mobility. Although the construction of a second dwelling unit is a minor construction project but in the current economic climate which is characterised by limited economic opportunities, such a development proposal is to be welcomed.

14.2 Spatial Sustainability

Spatial sustainability refers to land use management systems which result in communities which are viable. Viability in the context of land use planning means a regulatory and policy framework which enables property owners to continually improve the aesthetics of

File 20/14

Erf 1619 Pringle Bay

December 2020

Page | 13



MOTIVATION

properties to make the properties more liveable. This proposal is in harmony with the principles of spatial sustainability.

14.3 Efficiency

Efficiency in the context of land use planning refers to the need for urban settlements to optimally make use of space, land and resources. The proposed second dwelling unit is intended to optimally make use of space on the subject property to accommodate a single family which is a hallmark of efficiency.

14.4 Spatial Resilience

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner. This proposal is aligned with the spatial resilience principles contained in the PSDF, SDF and OMGMS.

14.5 Good administration

The OM is the organ of state which is responsible for good administration by means of public participation and complying with the prescribed time frames in the By Law. The OM has a credible history of upholding the principles of good administration.

15. NEED AND DESIRABILITY

The need and desirability for the approval and implementation of this proposal will be illustrated in accordance with Section 66 (1) (c) of the OM By-Law and DEADP Provincial Support Document on Relevant Considerations, 2015:

15.1 Need and desirability

Desirability, amongst others, refers to two components where need refers to "time" and desirability refers to "place". In other words, is it the right time and is it the right place for locating the proposed type of land use/activity? The legalisation of the existing primary dwelling which is located over the building lines is proposed at the right time as sufficient evidence has been put together to enable a land use planning application to be submitted. The second dwelling unit is proposed at the most appropriate location as it is located towards the rear where it is not visible from the street and will therefore not adversely alter the visual character which is prevalent on the subject site.

15.2 Impact on views, sunlight and character of the area

The neighbours have become accustomed to the existing primary dwelling which encroaches on the side building line and no additional visual impacts are projected to be unlocked with the approval and implementation of this component of the application. The proposed second dwelling unit does not encroach on the side and rear building lines and therefore not projected to create any shadows into the neighbouring properties. The approval and construction of the second dwelling unit will also not alter the residential character of the area considering that the unit will be located towards the rear.

15.3 Impact on safety and wellbeing

The approval and construction of the second dwelling unit is projected to attract an additional family that would reside on the subject property. This will consequently increase

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**MOTIVATION**

the number of people who would enter and egress the subject property who would be additional surveillance into the surrounding which would act as a crime reduction mechanism.

Annexure C

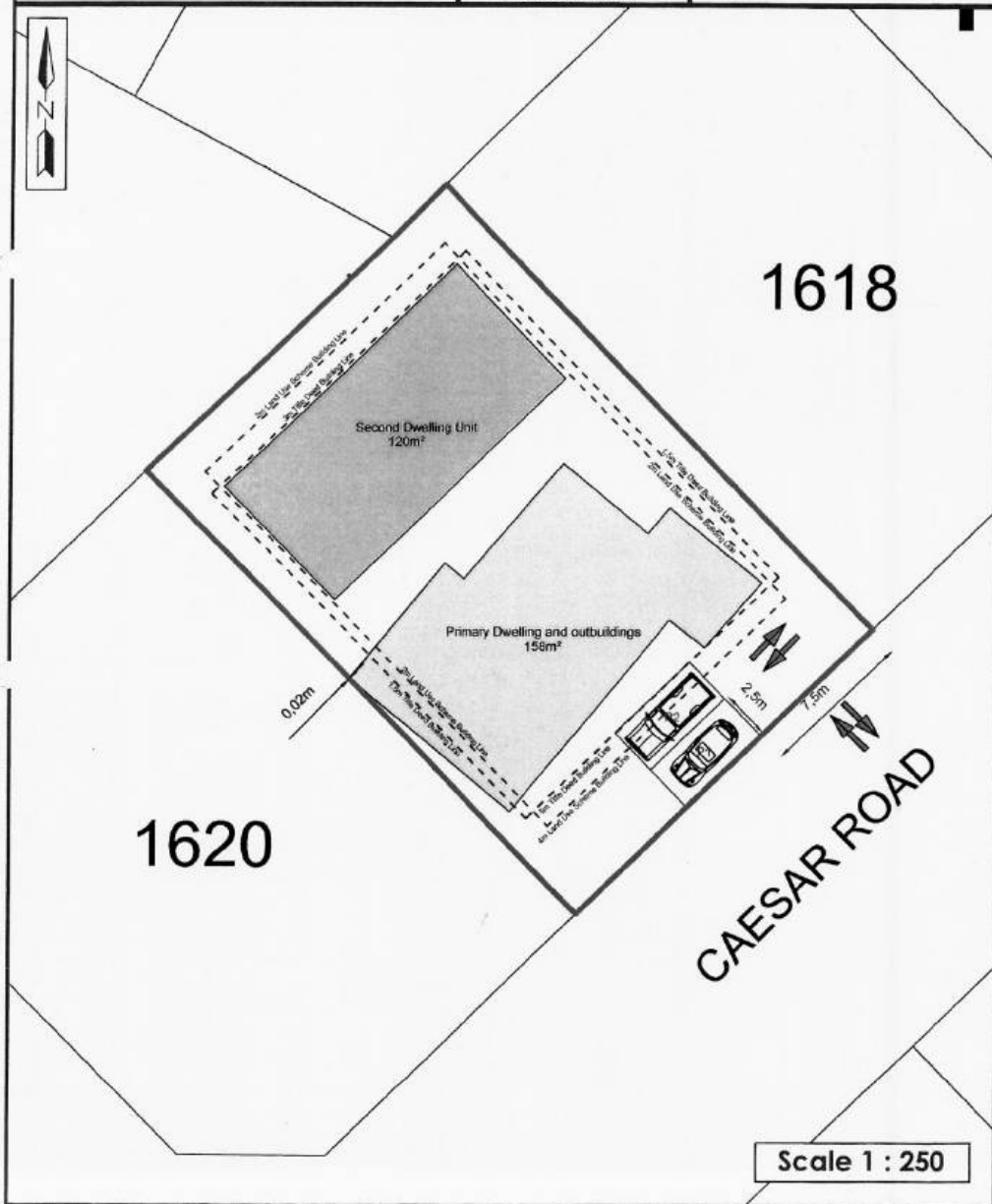
Plan 3: Site Development Plan Erf 1619 Pringle Bay

Erf 1619 Pringle Bay (600m²)
50% permissible coverage and 46.3% proposed
3 parking bays required and 2 parking bays and a garage provided

Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Plan 3.1
Unit 8, Corner of Royal and Dikke Uys
Street Hermanus, 7200
Plan prepared by: Reathlele Janke
All distances are approximate
and subject to a survey



Project Office
Town Planning & Project Management



Scale 1 : 250

Annexure D 1/5

108ABE SWERSKY & ASSOCIATES
P O BOX 3830 CAPE TOWN 8000

PREPARED BY ME,


 CONVEYANCER
 BOTHA L

SEELREG DUTY R.....
FOCI FEE R. 35,00

REGISTRATION NO.	DATE	TIME
11	12/2/97	11:30

DEED OF TRANSFER NO T. T 123280/97**KNOW ALL MEN WHOM IT MAY CONCERN :**

THAT LYNNE BOTHA

appeared before me, Registrar of Deeds, at CAPE TOWN he, the said Appearer,
being duly authorised thereto by a Power of Attorney, granted to him by

HUGH RONALD HUMAN
 IDENTITY NUMBER 470211 5103 00 1
 married out of Community of Property

dated the 2ND DECEMBER 1997

signed at CAPE TOWN

and witnessed in accordance with law which Power has been lodged with me;

- 2 -

And the said Appearer declared that the transferor had on the 10TH NOVEMBER 1997 truly and legally sold to, and that he, in his capacity as attorney aforesaid, did by virtue of these presents cede and transfer in full and free property to and on behalf of

**THE TRUSTEES FOR THE TIME BEING OF
SERFIE SERFONTEIN TRUST
No IT 908/93**

Its successors in title or assigns

ERF 1619 PRINGLE BAY
IN THE MUNICIPALITY OF HANGKLIP-KLEINMOND
DIVISION OF CALEDON, WESTERN CAPE PROVINCE

IN EXTENT: 600 (SIX HUNDRED) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No. T.46818/1981 with General Plan T.P. 8158 relating thereto and HELD BY Deed of Transfer No. T.64398/1993.

- A. SUBJECT to the conditions referred to in Deed of Transfer No. T.14827/1970.
- B. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T.46818/1981 imposed by the Administrator when approving the establishment of Pringle Bay Township Extension No. 3 in terms of Ordinance 33 of 1934, namely:-
1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Notice No. 623 dated 14th August 1970.



- 3 -

2. In the event of a Town Planning Scheme or any portion thereof applying or being made applicable to this erf, any provisions thereof which are more restrictive than any conditions of title applicable to this erf shall take precedence. Furthermore, nothing in these conditions shall be construed as overriding the provisions of section 146 of Ordinance No. 15 of 1952, as amended.
3. The owner of this erf shall without compensation be obliged to allow electricity cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or even inside or outside this township to be conveyed across this erf, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
4. The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
5. No building on this erf shall be used or converted to use for any purpose other than that permitted in terms of these conditions.
6. (a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purposes as the Administrator may, from time to time after reference to the Townships Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other buildings as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.

(b) No building or structure or any portion thereof except

④

- 4 -

boundary walls and fences, shall except with the consent of the Administrator, be erected nearer than 5m to the street line which forms a boundary of this erf, nor within 3m of the rear or 1.5m of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority -

- (i) an outbuilding used solely for the housing of motor vehicles and not exceeding 3m in height, measured from the ground floor of the outbuilding to the wall-plate thereof, may be erected within such side and rear spaces, and any other outbuilding of the same height may be erected within the rear space and side space for a distance of 12m measured from the rear boundary of the erf, provided that in the case of a corner erf the distance of 12m shall be measured from the point furthest from the street abutting the erf.
- (ii) an outbuilding in terms of sub-paragraph (i) may only be erected nearer to a lateral or rear boundary of a site than the above prescribed spaces, if no windows or doors are inserted in any wall facing such boundary.
- (c) On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth, these conditions shall apply to the consolidated holding as if it was one erf.
- (d) In the event of this erf being subdivided each subdivided portion, other than any portion deducted for road or similar purposes, shall be subject to the conditions herein set forth as if it were the original erf.

D

5/5

- 5 -

WHEREFORE the Appearer, renouncing all the right and title, the said transferor heretofore had to the premises, did, in consequence, also acknowledge the transferor to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents the said Transferee Trust Its successors in title or assigns, now is and henceforth shall be entitled thereto, conformably to local custom; The State, however, reserving its rights; and finally acknowledging the whole of the purchase price amounting to R35 000,00 (THIRTY FIVE THOUSAND RAND), to have been duly paid or secured.

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

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds,
at CAPE TOWN on *the 22nd of December* 1997.


q.q.

In my presence,


REGISTRAR OF DEEDS

Annexure E 1/17



L Gillion

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Thursday, 08 April 2021 10:33
To: 'Demi Lee Erispe'
Cc: L Gillion
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021
Attachments: IMG_3840.JPG; IMG_3832.JPG; IMG_3833.JPG; IMG_3835.JPG; IMG_3836.JPG; IMG_3837.JPG; IMG_3838.JPG

TP n. (heard (H. ud Stoep))

To whom this may concern,

Attached, please find photos taken from 1620 Caesars Rd's side. The application does not mention the following facts, I thought this is the time to address these issues, before it is too late.

- 1) There is no mention of the garden wall that is built on my property. The wall could be more than a meter over the boundary line.
- 2) There are 2 windows facing the boundary line. This is an invasion of our privacy.
- 3) The roof is well over the boundary line.
- 4) the corner of the building and it's foundations are well over the border line. A lot more than 20mm. The foundation alone should be wider than that.

I can't find much in the documents relating to the boundary line or these encroachments. I read a lot about the building line.

Would you please attach this objection to the ones email by me previously.

Your assistance in this matter is highly appreciated.

Kind Regards
Yvonne Ruster
082 741 0408

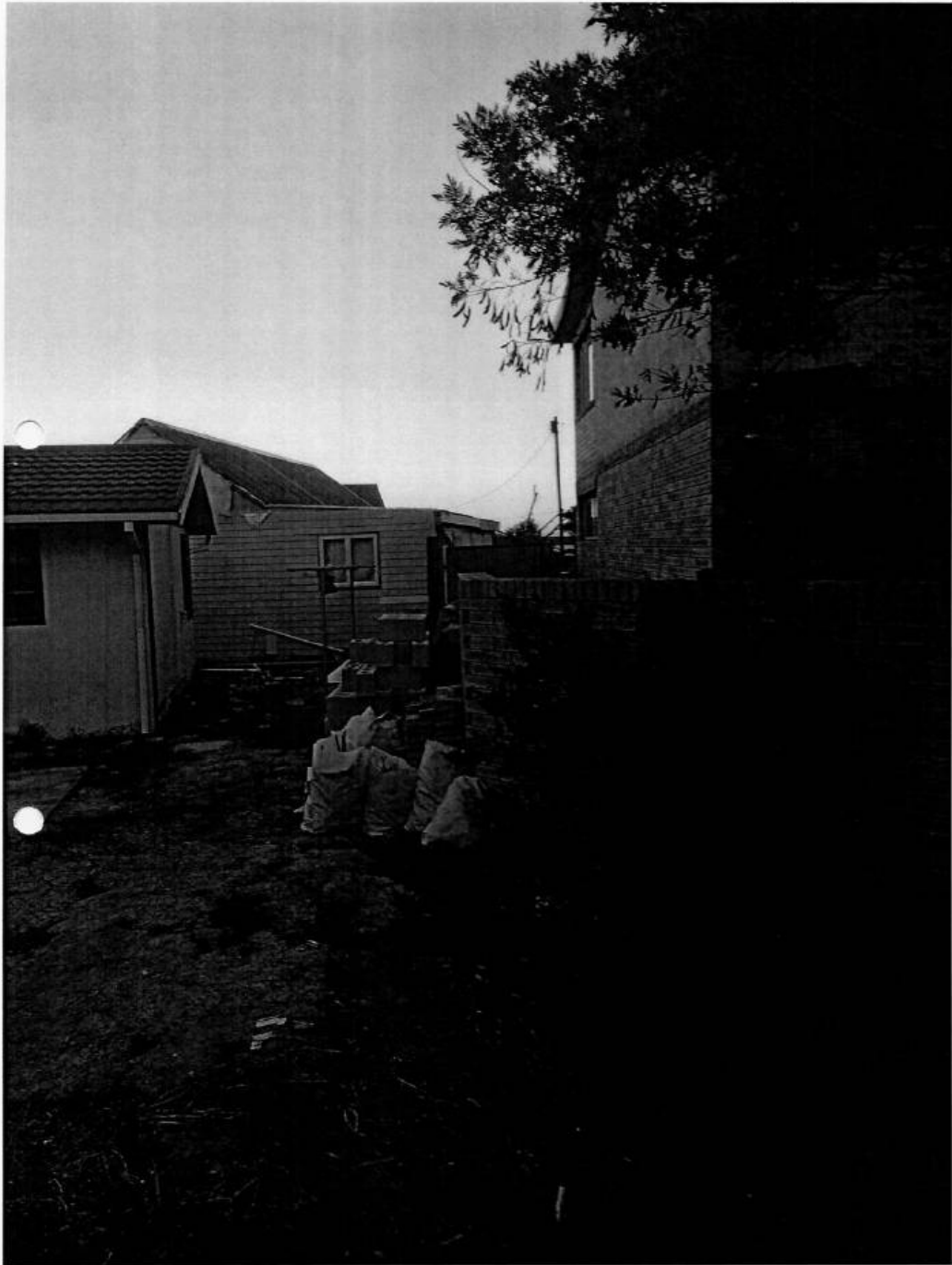
FILE NO:	OF 1619 ✓
	Pringle Bay
SCAN NO:	
COLLABORATOR NO:	1526493

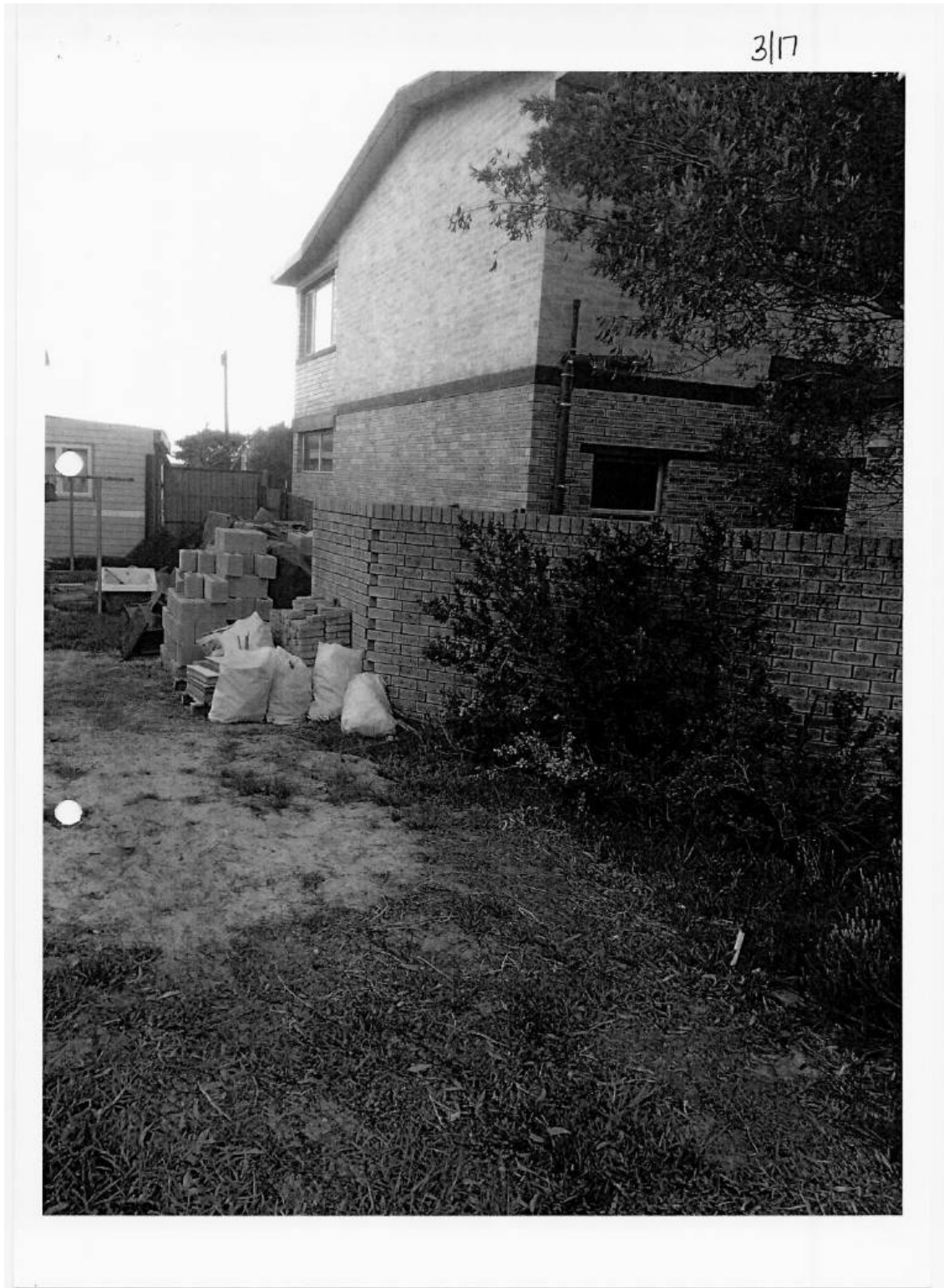
From: Demi Lee Erispe [mailto:demie@lawforall.co.za]
Sent: Thursday, 01 April 2021 12:39
To: Yvonne Ruster
Subject: FW: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

From: H van der Stoep <hvdstoep@overstrand.gov.za>
Sent: Thursday, 01 April 2021 12:07
To: Demi Lee Erispe <demie@lawforall.co.za>
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

TP 08 APR 2021

2/17





4/17



5/17



6/17



7/17



8/17



TP. N. (Heart
(H. van der Stoep)

9/17



L Gillion

From: Demi Lee Erispe <demie@lawforall.co.za>
Sent: Friday, 26 March 2021 11:41
To: L Gillion; H van der Stoep
Cc: Yvonne Ruster
Subject: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021
Attachments: FW: C4839-3-2021 Urgent please; FW: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van

Importance: High

Your ref: MUNICIPAL NOTICE 31/ 2021
 YVONNE RUSTER
 082 741 0408
 Erf 1620 Pringle Bay
 Jur ref: C4839-3-2021

FILE NO:	Er 1619 ✓
	Pringle Bay
SCAN NO:	KPRB 1619
COLLABORATOR NO:	1521150

"WITHOUT PREJUDICE"

Good day,

We refer to the above matter.

We confirm that we act on behalf of Mrs Y Ruster (hereinafter referred to as "our Client") who holds a LIPCO LAW FOR ALL Policy.

We confirm that we have received instructions from our Client, to direct this correspondence to you

We confirm that our client has received correspondence from the Municipality, with special regard to Notice 31/2021.

It is the intention of our client to heavily oppose the application.

Our client has already provided her reasons for opposition which we mention below:

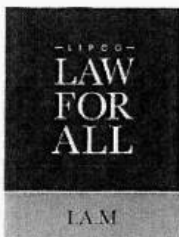
- 1) I have called you and Sherwin every day since Monday 15th and left a message for you to please call me to discuss this matter to tell you that the detail regarding the proposal was not available at Betty,s Bay library
- 2) No documents have been given to me
- 3) No discussion has been initiated by the applicant
- 4) There has been financial gain by the applicant
- 5) My application for the relaxation of the departing by-law is jeopardised
- 6) The longer it takes for you to help me, and explain my options, the more likely I will need an extension
- 7) I only heard about this at the ratepayers association meeting on Friday 19 March, 2 days ago. They gave me a few pages of the documents, and I downloaded the full set.

Please advise as to our clients options herein.

Kind Regards,
 Demi Lee Erispe

TP 26 MAR 2021

10/17



Demi Lee Erispe

Legal Professional

demie@lawforall.co.za t 0215212000 f 0215226401

f t g

11/17

L Gillion

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Wednesday, 24 March 2021 14:05
To: Demi Lee Erispe
Subject: FW: C4839-3-2021Urgent please

From: Yvonne Ruster [mailto:smallfry@telkomsa.net]
Sent: Tuesday, 23 March 2021 13:53
To: 'mlanddok@lawforall.co.za'
Subject: FW: C4839-3-2021Urgent please

From: Yvonne Ruster [mailto:smallfry@telkomsa.net]
Sent: Tuesday, 23 March 2021 13:30
To: 'mlanddok@lawforall.co.za'
Subject: C4839-3-2021Urgent please

Hi my name is Yvonne Ruster I am sending all the info I have for your assistance Please .
 Thank you
 Yvonne Ruster
 0827410408

From: H van der Stoep [mailto:hvdstoep@overstrand.gov.za]
Sent: Tuesday, 23 March 2021 12:54
To: L Gillion
Cc: smallfry@telkomsa.net
Subject: RE: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van

Good Afternoon Yvonne

Please set up a meeting with Marilise, Kleinmond Building section. I am there on Friday.

Regards

hanneen
 Hanneen van der Stoep
 Senior Town and Regional Planner
 Overstrand Municipality
 e-mail; hvdstoep@overstrand.gov.za
 Tel: 028-3138906

From: L Gillion <loretta@overstrand.gov.za>
Sent: Tuesday, 23 March 2021 12:51

12/17

To: H van der Stoep <hvdstoep@overstrand.gov.za>
Subject: FW: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van
Importance: High

Hanneen

Sien epos.

Loretta

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Tuesday, 23 March 2021 12:34
To: L Gillion <loretta@overstrand.gov.za>
Subject: RE: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van

Dear Ms Van Der Stoep

I tried you again today, left another message and am following up to the email I sent yesterday

I hereby officially oppose the said application.

Please can we arrange a meeting at 1620 Caesar rd with Sherwin you and your manager to discuss all the options. Way forward.

It is simply not good enough for you to tell me to contact the applicant for a meeting at this time.

I would like to have this meeting soon, to allow me enough time to respond appropriately and officially before the 9th of April.

All I expect is that the structure in question should be a legal distance from my boundary.

Regards
Yvonne Ruster
0827410408

Receipt is hereby acknowledged of your email.

Regards

Loretta Gillion
Administrator : Town & Spatial Planning
Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20

B/17

T: 028 313 8900 | F: 028 313 2093 | E: loretta@overstrand.gov.za

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Monday, 22 March 2021 19:33
To: L Gillion <loretta@overstrand.gov.za>
Subject: Application for removal of restrictive title deed conditions Erf 1619Pringle Bay H van

Dear Ms H van der Stoep
 This is a written submission made by myself:

Name:
 Yvonne Ruster

Address:
 Erf 1620 Pringle Bay

Cell:
 0827410108

Interest:
 Next door neighbour 1619 Caesar Road Serfontein trust.

Reason for comment:

- 1) I have called you and Sherwin every day since Monday 15th and left a message for you to please call me to discuss this matter to tell you that the detail regarding the proposal was not available at Betty,s Bay library.
- 2) No documents have been given to me
- 3) No discussion has been initiated by the applicant.
- 4) There has been financial gain by the applicant
- 5) My application for the relaxation of the departing by-law is jeopardised
- 6) The longer it takes for you to help me, and explain my options, the more likely I will need an extension.
- 7) I only heard about this at the ratepayers association meeting on Friday 19 March, 2 days ago. They gave me a few pages of the documents, and I downloaded the full set.

Regards
 Yvonne Ruster
 0827410408



Overstrand Municipality
 A: 1 Magnolia Street, Hermanus, 7200 | P: P.O Box 20, Hermanus, 7200
 T: +27 (0) 313 8000 | F: +27 (0) 312 1894
 E: enquiries@overstrand.gov.za | W: www.overstrand.gov.za

Vision Statement: "To be a centre of excellence for the community"

Disclaimer: This e-mail (including attachments) is subject to the disclaimer published at: <http://www.overstrand.gov.za>
 Please read the disclaimer before opening any attachment or taking any other action in terms of this e-mail. disclaimer.
 By replying to this e-mail or opening any attachment you agree to be bound by the provisions of the disclaimer

L Gillion

Re: Erf 1619 Pringle Bay



From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Monday, 22 March 2021 19:33
To: L Gillion
Subject: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van

Dear Ms H van der Stoep
 This is a written submission made by myself:

TP : A Theart
 (H.v.d. Stoep)

Name:
 Yvonne Ruster

Address:
 Erf 1620 Pringle Bay

Cell:
 0827410108

FILE NO: ERF 1619 KPRB ✓
SCAN NO: Ruster
COLLABORATOR NO: 1519447

Interest:
 Next door neighbour 1619 Caesar Road Serfontein trust.

Reason for comment:

- 1) I have called you and Sherwin every day since Monday 15th and left a message for you to please call me to discuss this matter to tell you that the detail regarding the proposal was not available at Betty's Bay library.
- 2) No documents have been given to me
- 3) No discussion has been initiated by the applicant.
- 4) There has been financial gain by the applicant
- 5) My application for the relaxation of the departing by-law is jeopardised
- 6) The longer it takes for you to help me, and explain my options, the more likely I will need an extension.
- 7) I only heard about this at the ratepayers association meeting on Friday 19 March, 2 days ago. They gave me a few pages of the documents, and I downloaded the full set.

Regards
 Yvonne Ruster
 0827410408

TP 23 MAR 2021

15 | 17

L Gillion

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Tuesday, 23 March 2021 12:34
To: L Gillion
Subject: RE: Application for removal of restrictive title deed conditions Erf 1619 Pringle Bay H van

Dear Ms Van Der Stoep

I tried you again today, left another message and am following up to the email I sent yesterday

I hereby officially oppose the said application.

Please can we arrange a meeting at 1620 Caesar rd with Sherwin you and your manager to discuss all the options. Way forward.

It is simply not good enough for you to tell me to contact the applicant for a meeting at this time.

I would like to have this meeting soon, to allow me enough time to respond appropriately and officially before the 9th of April.

All I expect is that the structure in question should be a legal distance from my boundary.

Regards
Yvonne Ruster
0827410408

Receipt is hereby acknowledged of your email.

Regards

Loretta Gillion

Administrator : Town & Spatial Planning
Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | F: 028 313 2093 | E: loretta@overstrand.gov.za

From: Yvonne Ruster <smallfry@telkomsa.net>
Sent: Monday, 22 March 2021 19:33
To: L Gillion <loretta@overstrand.gov.za>
Subject: Application for removal of restrictive title deed conditions Erf 1619Pringle Bay H van

LI
8 April 2021



L Gillion

From: L Gillion
Sent: Tuesday, 06 April 2021 12:04
To: H van der Stoep; 'Demi Lee Erispe'; Yvonne Ruster
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

TP. N. Theart
(H. vd Stoep)

Dear Ms Erispe

Your clients comments have been received.

Please note that no template and or prescribed documents are necessary to submit comments / objections to Overstrand Municipality.

Regards

Loretta Gillion

Administrator : Town & Spatial Planning
Overstrand Municipality
A: 16 Paterson Street, Hermanus, 7200 P: P O Box 20
T: 028 313 8900 | F: 028 313 2093 | E: loretta@overstrand.gov.za

FILE NO:	SF 1619
	Pingo Bay
SCAN NO:	KPRB 1619
COLLABORATOR NO:	1525683

From: H van der Stoep <hvdstoep@overstrand.gov.za>
Sent: Thursday, 01 April 2021 12:07
To: L Gillion <loretta@overstrand.gov.za>
Subject: FW: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

From: Demi Lee Erispe <demie@lawforall.co.za>
Sent: Thursday, 01 April 2021 11:41
To: H van der Stoep <hvdstoep@overstrand.gov.za>
Yvonne Ruster <smallfry@telkomsa.net>
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

Good day Mr Van Der Stoep,

Thank you, our clients objections are attached.
This is the third time we are sending same.

Please advise whether there are any prescribed documents that need to be submitted as whenever we follow up our client objections are requested again?

Regards,

06 APR 2021



Demi Lee Erispe

Legal Professional

demie@lawforall.co.za t 0215212000 f 0215226401

f t i

17/17

From: H van der Stoep <hvdstoep@overstrand.gov.za>
Sent: Thursday, 01 April 2021 11:38
To: Demi Lee Erispe <demie@lawforall.co.za>
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021

Good Morning Demi

Loretta is on leave. The lady had discussions with me in this regard and it is of utmost importance that her objections be submitted before the 9th of April 2021. If she did submit objections within the comment period and wants to add information or resubmit the objections, please do so. Any discussions and or objections received before the comment period is not a valid objection in terms of the application procedure.

I would advise submit any previous comments or objections as part of the objections during the comment period in order to ensure all the issues are addressed.

Regards

hanneen
 Hanneen van der Stoep
 Senior Town and Regional Plannner
 Overstrand Municipality
 e-mail; hvdstoep@overstrand.gov.za
 Tel: 028-3138906

From: Demi Lee Erispe <demie@lawforall.co.za>
Sent: Thursday, 01 April 2021 10:08
To: L Gillion <loretta@overstrand.gov.za>; H van der Stoep <hvdstoep@overstrand.gov.za>
Cc: Yvonne Ruster <smalfry@telkomsa.net>
Subject: RE: MUNICIPAL NOTICE 31/ 2021 - Y RUSTER | C4839-3-2021
Importance: High

Dear Loretta,

Please advise whether there is anything else our client needs to do besides providing her objections attached to our previous correspondence, to oppose the plans or intentions of the Applicant herein.

Annexure F 1/5



Project Office

Town Planning & Project Management

Our Reference: 20/14
Your reference: 1619 KPRB

5 May 2021

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Ms H van der Stoep

ERF 1619 PRINGLE BAY: RESPONSE TO OBJECTIONS FOR THE APPLICATION FOR THE REMOVAL OF RESTRICTION TITLE DEED CONDITIONS AND DEPARTURE.

Your letter dated 23 April 2021, refers.

Several objections were received from Ms Y Ruster.

FILE NO:	EL 1619-KPRB ✓
SCAN NO:	KPRB 1619
COLLABORATOR NO:	1537459

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Wright Approach Investments
136 CC

Unit B, Standard House,
Cnr Royal and Dirkie Uys Street
Hermanus, 7200

Tel: +27 (0)28 313 1411

Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

(Reg No. 2002/060745/23)

Established 2002

- 6 MAY 2021



Response to objections to the removal of restriction title deed conditions and departure.

Comment from Ms Y Ruster	Response to comment
<p><i>I have called you and Sherwin every day since Monday 15th and left a message for you to please call me to discuss this matter to tell you that the detail regarding the proposal was not available at Betty's Bay library.</i></p>	<p>The objection is noted. The comment is directed to the planning- and building department.</p>
<p><i>No documents have been given to me</i></p>	<p>The standard public participation process was followed regarding this application.</p> <p>The application document was open to the public on the Overstand Municipality website and upon request from the Overstand Municipality.</p> <p>The normal procedure is that a copy of the motivation and applicable plans are sent to neighbours and other interested and affected parties (in the discretion of the municipality). A registered letter was sent by registered mail with tracking number PA475929515ZA on the 2nd of March 2021 to the following address: Erf 1620 Y RUSTER PO BOX 498 PRINGLE BAY 7196</p>
<p><i>No discussion has been initiated by the applicant.</i></p>	<p>Once the owner of Erf 1619, Pringle Bay (hereafter referred to as the applicant) became aware of the encroachment of their house, they immediately discussed options regarding the rectification process with the objector, the owner of Erf 1620 Pringle Bay.</p> <p>Some of the topics of discussion being - offering to purchase a portion of the objector's property to rectify the situation. This offer was however declined.</p> <p>Since the above offered solution was declined, this submitted land use application became the only option to rectify the situation. This current situation that the applicant finds themselves in is at no fault of their own. As mentioned in the application's motivation report it is due to an error by the builder when he located the erf beacons in the pre-construction phase.</p>



<p><i>There has been financial gain by the applicant</i></p>	<p>There has been no financial gain to the applicant from the situation.</p> <p>The objector's comment is too vague to address the comment properly.</p>
<p><i>My application for the relaxation of the departing by-law is jeopardised.</i></p>	<p>Noted, but we have no recollection of what is being referred to.</p>
<p><i>The longer it takes for you to help me, and explain my options, the more likely I will need an extension.</i></p>	<p>Noted, but it seems if the comment is addressed to the municipality.</p>
<p><i>I only heard about this at the ratepayer's association meeting on Friday 19 March, 2 days ago. They gave me a few pages of the documents, and I downloaded the full set.</i></p>	<p>Noted, but the comment is addressed to the municipality.</p> <p>As previously mentioned, the standard public participation process was followed regarding this application.</p> <p>In this process it is important to note that an on-site notice was required to be present for 30 days on the subject site (Erf 1619, Pringle Bay). This is done to ensure all affected parties are made aware of the submitted application.</p> <p>In addition to this, the fact is that the objector was in fact aware of and did have access to the application documents even though it is stated above that the documents were not received.</p>
<p><i>There is no mention of the garden wall that is built on my property. The wall could be more than a meter over the boundary line.</i></p>	<p>As mentioned in the application, it was never the intention of the applicant to build over or encroach the building line.</p> <p>This wall was built with the construction of the house approximately 10 years ago. When the applicant became aware of the encroachment, he offered to demolish the wall. The objector however requested that the wall remain as they are intending on building a structure flush to the wall and utilising parts thereof.</p> <p>The municipality can however make it a condition of approval of the application that the wall be demolished.</p>
<p><i>There are 2 windows facing the boundary line. This is an invasion of our privacy.</i></p>	<p>It is acknowledged that the windows are facing the boundary line.</p>



	<p>The windows facing the boundary are both from enclosed patios.</p> <p>It is used occasionally and are not predominately liveable areas. As mentioned before, it was never the intention of the applicant to build over or encroach the building line and with this application they are attempting to rectify the issue.</p>
<p>The roof is well over the boundary line.</p>	<p>This is a valid objection and should be rectified.</p> <p>It should be noted that the survey diagram that was provided by the objector's land surveyor, did not indicate the encroachment of the roof overhang.</p> <p>The approved building plans indicates the roof overhang on the sides of the house measures approximately 280mm. With the building being 20 mm from the boundary, the roof should be shortened with at least 260 mm as to not encroach onto the objector's land.</p> <p>This is the only option available to the applicant and will be done to ensure the overhang does not encroach over the boundary line.</p> <p>Figure 1 below illustrates the overhang and also the method of rectification.</p>

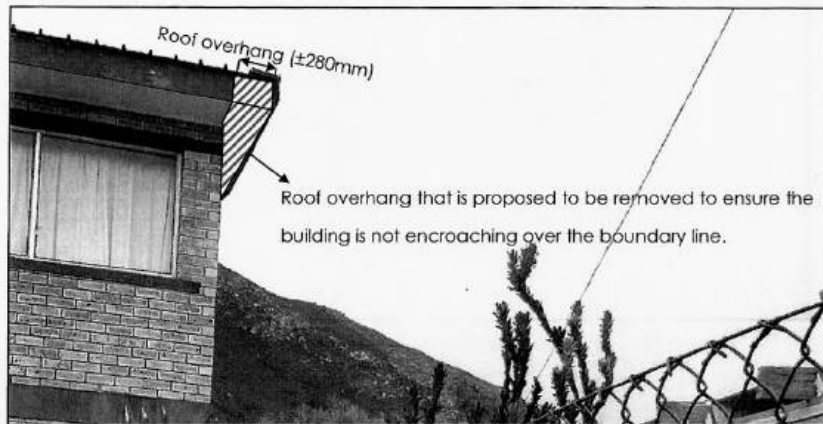


Figure 1 illustrates the overhang and the roof area that is required to be removed.



<p><i>the corner of the building and it's foundations are well over the border line. A lot more than 20mm. The foundation alone should be wider than that.</i></p>	<p>The corner of the building is 0.02m (20 mm) from the boundary line as indicated by the land surveyor that was appointed by the objector. As mentioned in the application, it was never the intention of the applicant to build over or encroach the building line. The building contractor was responsible for the mistake in the pre-construction phase.</p>
<p><i>I can't find much in the documents relating to the boundary line or these encroachments. I read a lot about the building line.</i></p>	<p>When referring to the foundation there is no clear indication on where the foundation is situated. To identify the foundation, it would need to be dug open and exposed.</p>
	<p>It is acknowledged that the foundation may be located partially over the boundary line, but it has no fundamental impact on the objector as it is located under the ground for the past 10 years. If a boundary wall was for instance built on the boundary line, the foundation would have been shared between the properties.</p>

Conclusion

The objection reveals that the objector is against the approval of the application and not in support thereof. It is requested that the municipality take into consideration that it was never the intention to construct the building over the building line. Also, this land use application is an attempt to rectify the error of the past.

Demolishing or attempting to partially reconstruct the house would also destroy the high architectural integrity of the existing building as all the walls of the building currently intersect in a rectangular form.

Mitigation measures were proposed in this response to the objections to rectify the situation and for the dwelling house on the applicant's erf to remain in its current position and state.

Considering that this response has adequately addressed all the concerns raised by the objector, it is recommended that the planning application be approved as submitted.

Yours faithfully

T JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

Annexure G

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS &
DEPARTURE: ERF 1619, PRINGLE BAY**

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

Conditions

1. 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;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigates and determine the limitations of the site in terms of drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning;
5. that any additional and / or extended vehicle entrance will be for the owner's account;
6. that, 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 Senior Manager: Operational Services (Kleinmond) for written approval;
7. that stormwater be allowed to discharge through Erf 1619, Pringle Bay, unobstructed.

D.P. R. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

29/04/2021
DATE