



Overstrand Municipality

LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)

**ERVEN 2840 & 2841, 32 & 34 CLIFF ROAD, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA :
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS, CONSOLIDATION AND DEPARTURES :
MESSRS PLAN ACTIVE (obo THE STEWART FAMILY TRUST)**

Reference number	2840 & 2841 KBB (3390)		Application submission date	5 August 2016	Date report finalised	22 November 2016
PART A: AUTHOR DETAILS						
First name(s)	Helena Johanna					
Surname	Van der Stoep					
Job title	Senior Town and Regional Planner					
SACPLAN registration number	A/1708/2013					
Directorate/Department	Infrastructure and Planning					
Contact details	028-3138900 hvdstoep@overstrand.gov.za					
PART B: APPLICANT DETAILS						
First name(s)	John					
Surname	McLachlan					
Company name	Plan Active Town & Regional Planners					
SACPLAN registration number	Tch.PIn B/8250/2014	Is the applicant authorised to submit this application			Yes	
Registered owner(s)	The Stewart Family Trust					
PART C: PROPERTY DETAILS						
Property description (in accordance with Title Deed)	Erven 2840 and 2841, Betty's Bay					
Physical address	Cliff Road	Town/City	Betty's Bay			
Current zoning	Residential Zone I : Single Residential	Extent (m ² /ha)	1563m ² 1544m ²	Are there existing buildings on the property?		Yes
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014					
Current land use	Residential	Title Deed number & date	Erf 2840 - T20701/11 Erf 2841 - T20702/11			
Any restrictive title conditions applicable	Yes	If Yes, list condition number(s)	T20701/11 – Paragraph (c)(b) & Paragraph (c)(d) T20702/11 – Paragraph (c)(b) & Paragraph (c)(d)			
Any third party conditions applicable?	No	If Yes, specify	NONE			

Any unauthorised land use/building work	No	If Yes, explain	NONE
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PART D: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)

Has pre-application consultation been undertaken?	No	If yes, provide a brief summary of the outcomes below.
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PART E: LIST OF APPLICATIONS (TICK APPLICABLE)

Permanent departure	√	Consolidation	√	Removal, suspension or amendment of restrictive conditions	√
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PART F: EXECUTIVE SUMMARY

An application has been received on 5 August 2016 from Messrs. Plan Active Town & Regional Planners on behalf of The Stewart Family Trust for the following:

- ❖ Application for a removal of restrictive title conditions with reference to Clauses (c).A.(b) & (c).A.(d) of Title Deed T20701/11 applicable to Erf 2840 and Clauses (c).A.(b) & (c).A.(d) of Title Deed T20702/11 applicable to Erf 2841 in terms of Section 16(2)(f) of the aforementioned By-Law, in order to accommodate the following:
 - Second dwelling unit on consolidated erf;
 - Existing double garage which encroaches over the Title Deed street building line; and
 - Existing generator room which encroaches the Title Deed street and lateral building lines respectively.
- ❖ Application for a consolidation in terms of Section 16(2)(e) of the aforementioned By-Law, to consolidate Erf 2840 with Erf 2841 to accommodate the existing encroachments on the common boundary line.
- ❖ Application for a departure in terms of Section 16(2)(b) of the aforementioned By-Law, to relax the following:
 - Street building line with Cliff Road from 4m to 1,15m to accommodate the existing double garage;
 - Street building line with Cliff Road from 4m to 1,9m and lateral building line with Erf 2839 from 2m to 0,5m to accommodate the existing generator room; and
 - Lateral building line with Erf 2842 from 2m to 1,57m to accommodate a proposed new braai room.
- ❖ Application for a departure in terms of Section 16(2)(b) of the aforementioned By-Law, to depart from the maximum size prescribed for a second dwelling unit from 120m² to 134,43m².

The erven is zoned Residential Zone 1 and will remain as such.

PART G: BACKGROUND

Erven 2840 and 2841 was established in 1934. Erf 2841 consist of a manor house, garage and a generator room, which is more than 60 years old. Erf 2840 consists of a house, which is more than 30 years old. During the course of the application an actual surveying of the structures were done and found that the existing structures on Erf 2841 transgresses the street, lateral building lines and the boundary line of Erf 2840. The application is to rectify the present situation created more than 60 years ago.

PART H: SUMMARY OF APPLICANTS MOTIVATION

The properties consisting of Erven 2840 and 2841 measure 1563m² and 1544m² in extent respectively. Both erven are zoned Residential Zone 1 and are used as such. The application consists of a Consolidation, Removal of Restrictive Title Deed Conditions and a Departure. The motivation is being dealt with per application type.

Consolidation

The properties consist of a dwelling, double garage, cottage and a generator room. The owner intends to make alterations

to the dwelling and cottage and in order to provide the architect with a site plan, all the buildings were surveyed. It was found that the double garage was constructed over the common boundary between Erven 2840 and 2841. The dwelling was also built over the prescribed building line. The owner intends to make alterations to the existing dwelling and therefore the consolidation. The latter will address the building line encroachments on the common boundary between the mentioned erven. The land use will remain intact. The development parameters of Residential Zone makes provision for a second dwelling and to accommodate the existing cottage an application for a departure is necessary since the cottage of 134m² in size exceeds the 120m² restriction with 43m². The proposed consolidation will have no impact on the surrounding land owners.

Removal of Restrictive Title Deed Restrictions

The restrictive conditions relate to the building lines and the second dwelling and will be dealt with per restrictive condition.

Erf 2840 : Title Deed T2070/11:

Page 2, Paragraph (c)(b): "that only one building, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."

With the consolidation of the erven, a main dwelling and a cottage will be situated on one erf, which leads to two dwellings on one erf and thus the condition needs to be removed.

Page 2, Paragraph (c)(d) : "that no building or structure or any portion thereof, except the boundary walls and fences, shall be erected nearer than 4,72m to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1,57 meters of the lateral boundary common to any adjoining erf."

The existing double garage that was constructed more than 60 years ago is situated on both erven and encroaches the 4,72m street building line and the garage was constructed with an angle and the closest corner to the street is 1,15m.

The generator room, which was constructed more than 60 years ago and encroaches the 1,57m lateral building line and is located 0,50m from the boundary. The street building line is also transgressed by the structure, which is located at 1,9m from the street boundary. In order to accommodate these structures the condition needs to be removed.

Erf 2841 : Title Deed T20702/11:

Page 2, Paragraph (c)(b) : "that only one building, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."

Same.

Page 2, Paragraph (c)(d): "that no building or structure or any portion thereof, except the boundary walls and fences, shall be erected nearer than 4,72m to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1,57m of the lateral boundary common to any adjoining erf."

The existing double garage that was constructed more than 60 years ago is situated on both erven and encroaches the 4,72m street building line and the garage was constructed with an angle and the closest corner to the street is 1,15m. In order to accommodate the double garage within the street building line, the restrictive condition needs to be removed.

Departure from the land use restrictions

In terms of the Overstrand Zoning Scheme the street building line is 4m and the existing double garage transgresses the street building and is located at 1,15m. The requested departure is from 4m to 1,15m to accommodate the garage.

The existing generator room is built 0,5m from the lateral building line and 1,9m from the street building line. The Overstrand Zoning Scheme building lines is 2m and 4m respectively and the departure is to accommodate the generator room.

The owner intends to make renovations to the existing dwelling and extend the dwelling in an easterly direction to erect a single story braai room. The proposed structure will not encroach the Title Deed restriction of 1,57m, but does deviate from

the Scheme lateral building line of 2m. The proposed addition is a roof structure to complement the existing braai in as far as providing a cover from the house to the braai.

Summary

The Overstrand Zoning Scheme development parameters do allow a second dwelling on a Residential Zone 1 erf. It also prescribed to a 50% coverage and with the consolidation the coverage will only be 16%. No additional traffic is generated, since the consolidated erf will not add any dwelling structures. All Engineering services are available.

PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising		Date published	Closing date for comments
Press	Yes	25 August 2016	30 September 2016
Gazette	Yes	26 August 2016	30 September 2016
Notices	Yes	25 August 2016	30 September 2016
Ward councillor	Yes	25 August 2016	30 September 2016
Site notice	Yes	25 August 2016	30 September 2016
Community organisation(s)	N/A		
Public meeting	N/A		
Third parties	N/A		
Other	Y N	If yes, specify	N/A
Total valid comments	ONE (1)		Total comments and petitions refused N/A
Valid petition(s)	No	If yes, number of signatures	N/A
Community organisation(s) response	No	Ward councillor response	No
Total letters of support	None		
Was public participation undertaken in accordance with section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning			Yes

PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) objection has been received from Messrs Slabbert Venter Yanoutsos Inc Attorneys on behalf of The Stronghold Investment Trust, the registered owner of Erf 2839, the adjacent neighbour. The objection relates to the removal of the restrictive conditions and that the regularization can be achieved by the amendment of the Title Deed conditions. The entire removal of the conditions can lead to future construction of buildings and protect it in the use and enjoyment of its property. This can be avoided if the owner only seeks to simply regularize the existing situation, an amendment of the conditions of title is far more appropriate.

The client proposes that condition (c)(d) be amended as follows:

*"that no building or structure or any portion thereof, except boundary walls, fences, **existing generator room and existing garage** shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1,57meters of the lateral boundary common to any adjoining erf."*

The client proposes further that condition c(b) of Erf 2840 be amended as follows:

“that only two buildings, one with a square meterage of no more than 134 square meters together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.”

There is no objection against the departure, subject to condition that the effect of the departures relates to the existing contraventions and no future contraventions.

PART K: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments	Recommendation
Fire Department	07/10/2016	<ul style="list-style-type: none"> Any structure on new post consolidation boundaries must have 60 minute fire resistant walls. Should the dwellings be used for H5-Hospitality occupancy they must comply with requirements of National Fire Protection Regulation SANS10400T:2011. 	Positive
Engineering Services	09/09/2016	See Annexure F.	Positive
Senior Manager : Kleinmond Administration	02/09/2016	Support application subject to submission of a building plan and compliance with all relevant legislation.	Positive
Building Control	02/09/2016	Supported subject to submission of plans and compliance with SANS 10400.	Positive
Environmental	31/08/2016	We foresee no environmental issues regarding this proposal.	Positive

PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS

In essence there is no objection to the application, with the exception of the restrictive Title Deed conditions to be removed.

The objector will still have the security of building lines being imposed by the current Scheme Regulations for any future alterations or additions not covered in the motivation. The side building lines are more stringent in terms of the Scheme Regulations (currently 2m) than the imposed by the applicable Title Deed of 1,57m. The street building line of 4,72m is 0,72m more restrictive than the Scheme Regulations of 4m and the difference will have no impact on the owner.

The removal of the restrictive conditions will not give the applicant a carte blanche to build any building within side and street building lines other than was approved.

Any future construction works will have to comply with the land use restrictions under the zoning of Residential Zone 1. Any future departures will have to be applied for and will adjacent owners have the opportunity to comment or object to the proposals.

It is our opinion that to amend the Title Deed conditions other than to have removed will serve no purpose due to the fact that there are Scheme Regulations in place to govern any development on any erf that will also safeguard the owner of Erf 2839, Betty's Bay.

It should also be noted that the application also constitutes a consolidation. Prior to consolidation the owner had the right to build a dwelling on each erf within the applicable restrictions. After consolidation and the removal of restrictive condition that limits to the owner to one (1) dwelling only, the intention is to accommodate two (2) dwellings on one property. It is the same number of dwellings that can currently be accommodated on the relevant erven. Therefore the application from a density point of view will have no negative impact on the neighbouring land owner.

The current zoning limits the owner to two (2) dwellings and no additional dwellings may be erected on the erf. The removal of the restrictive condition will not give the land owner the right to construct more dwellings as indicated on the site development plan.

PART M: MUNICIPAL ASSESSMENT OF COMMENTS

The internal departments have no objection against the application.

Objection : Messrs Slabbert Venter Yanoutsos Inc Attorneys on behalf of The Stronghold Investment Trust, registered owner of Erf 2839. The amendments proposed will be dealt with in the same manner as per the objection letter 29 September 2016;

In terms of the Overstrand Zoning Scheme, the street building line is 4m and the 0,72m difference will have no impact on the objector's erf. The restriction of a 4,72m street building line has been incorporated in the Title Deeds when there was no Scheme Regulations in place and the Title Deeds have regulated land uses on the properties. Subsequently the less restrictive street building line has been introduced, since the 0,72m made no difference in the setback of a building. The 4m was found adequate to deal off street parking and in the cases were erven are quite small. With the incorporation of all the different Zoning Schemes within the Overstrand Municipality, it was found that most of the schemes did provide for a 4m street building line. The lateral building lines and aggregate that were in place was done away with and a generic 2m building line imposed. The reasoning is to accommodate the various Schemes during integration and to limit building work on the boundaries. The amendment will not necessarily safe guard the objector, since the applicant will have to lodge an application in terms of the Scheme Regulations should any of the building lines be triggered.

The Overstrand Zoning Scheme does allow a second dwelling as a primary right of 120m², however in this case the consolidation of the erven has led to the cottage of 134m² that is existing. It should be noted that if the erven remains as separate properties, that in effect the owner can apply for second dwellings on both properties, which in effect can create four (4) dwellings and not only two (2) as proposed. The second dwelling area in extent is enforced throughout the Municipality, but in this case it is accommodated due to an existing situation and will lessen the possibility of four (4) dwellings. To amend the condition will serve no purpose, since the Scheme parameters will prevail.

PART N: MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

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

(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: Not Applicable

Spatial sustainability: The application, which entails a consolidation, will enhance the scenic and cultural landscapes of the area. The application will also contribute to ensure that the environmental sensitivity of the area is protected due to the fact that the erf will not further be densified.

Spatial resilience: The structures on the property are set back from the coast line, ensuring that the property will be able to withstand climate change and protect the existing services from such events.

Efficiency: The application will make use of existing services. The application ensures that existing structures are used optimally and economically.

Good administration: The application did comply with all relevant procedures and was transparent.
(In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014) Same
(In)consistency with the IDP/Various levels of SDF's/Applicable policies Same
(In)consistency with guidelines prepared by the Provincial Minister N/A
Impact on Municipal engineering services There is no impact on municipal services.
Outcomes of investigations/applications i.t.o other legislation N/A
Existing and proposed zoning comparisons and considerations The application is to address the inconsistency with the Overstrand Zoning Scheme.
Town Planner Evaluation (Desirability) The application is three fold in order to address structures being built more than 60 years ago. Some of the structures built transgress the Title Deed restrictive conditions. The generator room was built, but never shown on a building plan, which is understandable taken into consideration that at that stage no municipal services were available in 1934. In order to address the transgressions, the applicant opted for a consolidation of the two (2) erven, which has the benefit that only two (2) dwellings can be built, and not four (4) dwellings should the erven remain as separate entities. It is to the benefit to the surrounding owners that only the existing dwellings with minor extensions are proposed and not new structures that will influence the character of low density residential development prevalent in the area. The properties are located in a pristine environmental setting in close proximity of the coast line and intrusion of additional structures will definitely influence the setting and ambiance of the area. The removal of the restrictive conditions is not to the detriment of the surrounding erven, since the Scheme Regulations governs development of the area, and is in a manner of speaking more restrictive than the Title Deeds of the erven. The concession of the applicant to consolidate the two (2) erven is to the benefit of the surrounding owners and not the applicant and therefore the removal of restrictive conditions is definitely not to the benefit of the applicant. Any new development on the proposed consolidated erf will be limited due to the stipulations of the Integrated Coastal Management Act, which is very clear on development in the coastal zone. The departures are to accommodate existing structures, including the second dwelling and its extent. It should be noted that the "second dwelling" was the main dwelling of a separate erf and to accommodate its area in extent a departure was necessary since it does not comply with the prescribed 120m ² as stipulated in the Overstrand Zoning Scheme. The only addition is the roof cover between the house and the existing braai on the eastern side of the house.

The application complies with the relevant planning policies and is in line with the proposals of the Spatial Development Framework, 2006.

PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

There is no financial value for the applicant.

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

The applicant will be able to accommodate the existing structures on the properties concerned.

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

The social benefit to the community is that the application will not densify the area and will remain intact. Thus no changes will take place and due to the consolidation, the community has the safeguard that the development parameters are now focussed only on one erf.

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

The rights enjoyed at present are less than the proposed application proposes.

PART P: CONCLUSION

The application is in line with the various planning documents and policies.

PART Q: RECOMMENDATION

RECOMMENDATION :

1. that the application for the removal of title deed restrictions in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 as per Clauses (c).A.(b) & (c).A.(d) of Title Deed T20701/11 applicable to Erf 2840, Betty's Bay and Clauses (c).A.(b) & (c).A.(d) of Title Deed T20702/11 applicable to Erf 2841, Betty's Bay, in order to accommodate the second dwelling unit on the consolidated erf, the existing double garage which encroaches over the title deed street building line and the existing generator room which encroaches the title deed street and lateral building lines respectively, **be approved**;
2. that in terms of Section 16(2)(e) of the Overstrand Municipality By-Law on Land Use Planning, 2016 the application to consolidate Erf 2840 with Erf 2841, Betty's Bay to accommodate the existing encroachments on the common boundary line, **be approved**;
3. that the application in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 for the following departures on the consolidated erf, **be approved**;
 - Street building line with Cliff Road from 4m to 1,15m to accommodate the existing double garage;
 - Street building line with Cliff Road from 4m to 1,9m and lateral building line with Erf 2839, Betty's Bay from 2m to 0,5m to accommodate the existing generator room; and
 - Lateral building line with Erf 2842 from 2m to 1,57m to accommodate a proposed new braai room.

4. that the departure in terms of Section 16(2)(b) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016, on Erf 2840, Betty's Bay to depart from the maximum size prescribed for a second dwelling unit from 120m² to 134,43m², **be approved**,
5. that the approvals in Points 1, 2, 3 and 4 be subject to the following conditions:
 - (a) that this approval is only for the departure of the building lines indicated on Plan Number 2.100D dated July 2016, which was submitted with the application;
 - (b) that it is the owner/applicant's responsibility to register the approved consolidation within five (5) years from the date of approval;
 - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (e) that all the conditions in the Services Report (attached as Annexure F), be complied with, and
 - (f) that building plans be submitted to the Building Department for approval, and that all conditions of the Building – and the Fire Department be complied with at that stage.
6. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval.

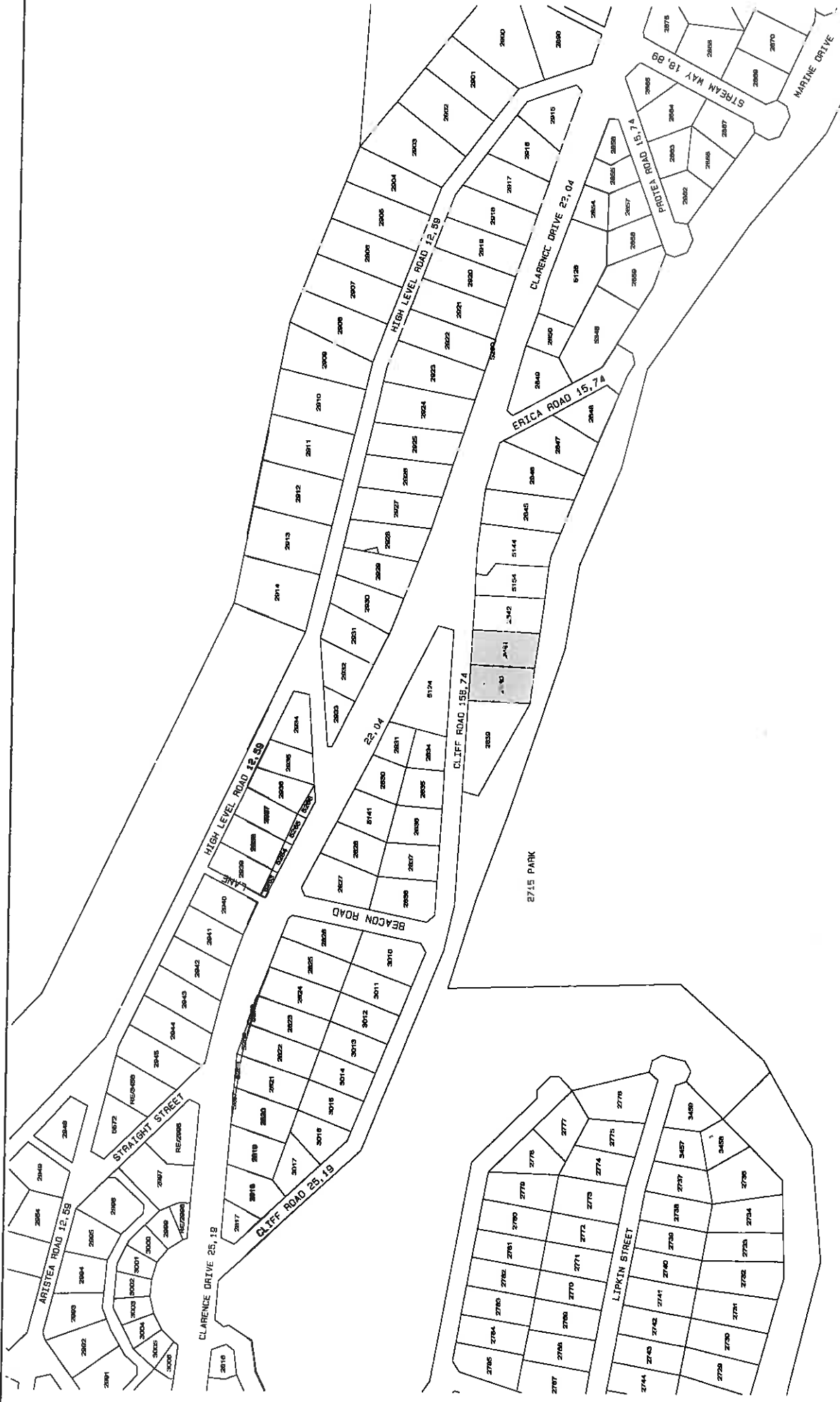
PART R: REASONS FOR RECOMMENDATION

- ❖ The application will enhance the area due to the consolidation.
- ❖ No derogation of the environment.
- ❖ Existing structures to be legalized.
- ❖ Existing structures remains in place, although not earmarked for conservation purposes as per the Heritage Study.
- ❖ The development parameters of residential Zone 1 for the consolidated erf are more restrictive than the Title Deed.
- ❖ The impact will be minimal since it involves a roof structures and entrance porch of which none transgresses the title deed building line, but only the Zoning Scheme building line.
- ❖ The impact is minimal on the surrounding owners and the environment.

PART S: ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Proposed Site Development Plan
- Annexure C: Motivation
- Annexure D: Objection Received
- Annexure E: Applicant's Reply to Objection Received
- Annexure E: Services Report

PART T: SIGNATURESAuthor name: **HANNEEN VAN DER STOEP**Author signature: Date: 23/1/2017Registered planner name : **S VAN DER MERWE**Registered planner signature : SACPLAN registration number: **A/1850/2014**Date: 23/01/2017



Scale: NTS
 Drawing Nr: Bet2840L.drw
 Date: 07/2016

Plan Description:
LOCALITY MAP

Property Description:
**ERVEN 2840 & 2841
 BETTY'S BAY**

All distances approximate
 and subject to survey.
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PLAN Stads- en Streeksbeplanners
 Active Town & Regional Planners

**PROPOSED CONSOLIDATION,
DEPARTURES AND REMOVAL
OF RESTRICTIVE TITLE DEED CONDITIONS**

ERVEN 2840 & 2841 BETTY'S BAY

**DIVISION: CALEDON
OVERSTRAND MUNICIPALITY**

MOTIVATION REPORT

1. BACKGROUND

The owner of erven 2840 & 2841 Betty's, Mr. Peter Stewart, on behalf of the Stewart Family Trust has instructed the company Plan Active to apply for a consolidation, departure from the building lines, departure from the maximum size of a second dwelling unit and a removal of restrictive Title Deed conditions.

The manor house, garage and generator room are older than 60 years and the existing cottage is approximate 30-36 years old. The owner of the subject erven intends to make alterations to the existing manor house and cottage and subsequently had the property surveyed. After surveying the property it was discovered that the existing garage encroaches onto Erf 2840 Betty's Bay and that it also encroaches the prescribed street building line of 4m in terms of the Overstrand Municipality Zoning Scheme and the 4.72m street building line prescribed in the Title Deed. The generator room also encroaches the 2m side building line and 4m street building line in terms of the Overstrand Municipality Zoning Scheme and the 1.57m side building line & 4.72m street building line prescribed in the Title Deed.

The detail of the application will be described in detail later in this document.

The detail of erven 2840 & 2841 Betty's Bay can be summarised as follow:

Erf Number	Zoning	Title Deed No.	Size
2840 Betty's Bay	Residential Zone I	T20701/11	1563m ²
2841 Betty's Bay	Residential Zone I	T20702/11	1544m ²

Currently there are an existing dwelling, garage, generator room and cottage situated on the subject erven.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the consolidation of Erven 2840 & 2841 Betty's Bay;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions applicable to Erven 2840 & 2841 Betty's Bay;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for departure from the building lines and the maximum size applicable to a second dwelling unit applicable to Erven 2840 & 2841 Betty's Bay;

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Erven 2840 & 2841 Betty's Bay are situated in Cliff Road Betty's Bay. Please refer to the enclosed locality map. Erven 2840 & 2841 Betty's Bay are 1563m² and 1544m² in extent and are situated in a single residential area.

3.2 ZONING

The subject properties are zoned Residential Zone I: Single Residential, and will be used as such. Surrounding properties are zoned for single residential purposes, public roads and public open spaces and are being used as such.

3.3 LAND USE

Erven 2840 & 2841 Betty's Bay are used for residential purposes. A dwelling and a portion of a double garage is located on Erf 2841 Betty's Bay with remaining extent of the double garage located on Erf 2840 Betty's Bay. A generator room and cottage are situated on Erf 2840 Betty's Bay. Please refer to the enclosed site plan that was prepared by Robyn Connors Architects.

3.4 PROPOSAL

Application is being made for the following:

- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the consolidation of Erven 2840 & 2841 Betty's Bay;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions applicable to Erven 2840 & 2841 Betty's Bay;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for departure from the building lines and the maximum size applicable to a second dwelling unit applicable to Erven 2840 & 2841 Betty's Bay;

3.4.1 PROPOSED CONSOLIDATION

A dwelling, double garage, cottage and generator room are located on erven 2840 & 2841 Betty's Bay. The owner intends to make alterations to the dwelling and cottage. In order to provide the architect with a site plan indicating the features of the site and the correct location of the mentioned structures it was decided to have the property surveyed. After surveying the subject properties it was discovered that the existing double garage was constructed over the common boundary between Erven 2840 & 2841 Betty's Bay. Furthermore, the dwelling has also been built over the prescribed building line. Due to the fact that the owner also intends to make alterations to the existing dwelling it would be the most logic option to apply for a consolidation of the subject erven.

A consolidation will address both the building line encroachments on the common boundary between the 2 subject erven as well as the encroachment of the garage onto the adjoining erf. After consolidation the property will be 3 107m² in extent and the same Residential Zone 1 zoning will be retained. The land use will also remain the same except for minor alterations to be made to the main dwelling and cottage as indicated on the site plan.

The land use restrictions in terms of the Residential zone 1 Zoning makes provision for a single dwelling, second dwelling unit and associated outbuildings as a primary right. With this application it will be required to apply for a departure in order to accommodate the cottage as a second dwelling unit because of the size thereof. The total area of the cottage will be ±134.43m² in extent and the maximum size for a second dwelling unit in terms of the Scheme Regulations is 120m². The departure will be discussed later in this document under the heading "Departure From The Land Use Restrictions".

The proposed application for the consolidation of erven 2840 & 2841 Betty's Bay will have no impact on the surrounding land owners due to the fact that the existing land uses will remain as is except for minor changes to the main dwelling and cottage.

3.4.2 REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

There are restrictive title deed conditions that have to be removed to accommodate the existing double garage and generator room within the building lines prescribed in the Title Deeds and to accommodate a second dwelling unit on the consolidated erf.

Please refer to the abstracts of restrictive Title Deed conditions below and the reason for its removal:

Title Deed T20701/11: Erf 2840 Betty's Bay

Page 2, Paragraph (c)(b): "That only one building, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."

With the proposed consolidation of erven 2840 & 2841 Betty's Bay a main dwelling and a cottage will be situated on one erf. Even though one dwelling is permitted per residential erf in terms of the Title Deed, after consolidation there will be 2 dwellings in effect on one erf. The Title Deed prohibits the second dwelling unit and it is therefore required that this restriction be removed.

Page 2, Paragraph (c)(d): "That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4.72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1.57 metres of the lateral boundary common to any adjoining erf."

The existing double garage that was constructed more than 60 years ago is situated on erven 2840 & 2841 Betty's Bay and encroaches the 4.72m street building line as described above. The garage was constructed at an angle and not parallel to the street boundary of which the closest corner of the double garage to the street boundary is $\pm 1.15\text{m}$.

The generator room that was also constructed more than 60 years ago was also built at an angle and not parallel to the side boundary and encroaches the side building line described above that is 1.57m. The closest corner of the generator room in relation to the side boundary is $\pm 0.50\text{m}$ from the boundary. The generator room also encroaches the street building line and is located $\pm 1.9\text{m}$ from the street boundary.

In order to accommodate these old structures it would be required that the above mentioned Title Deed restrictions be removed.

Title Deed T20702/11: Erf 2841 Betty's Bay

Page 2, Paragraph (c)(b): "That only one building, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."

As mentioned above, the proposed consolidation of erven 2840 & 2841 Betty's Bay a main dwelling and a cottage will be situated on one erf. Even though one dwelling is permitted per residential erf in terms of the Title Deed, after consolidation there will be 2 dwellings on one erf. The Title Deed prohibits the second dwelling unit and it is therefore required that this restriction be removed.

Page 2, Paragraph (c)(d): "That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4.72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 1.57 metres of the lateral boundary common to any adjoining erf."

As mentioned above, the existing double garage that was constructed more than 60 years ago is situated on erven 2840 & 2841 Betty's Bay and encroaches the street building line. The street building line described above is 4.72m. The garage was constructed at an angle and not parallel to the street boundary of which the closest corner to the street boundary is ± 1.15 m.

In order to accommodate the double garage within the prescribed street building line it would be required that the above mentioned Title Deed restriction be removed.

The above mentioned Title Deed restrictions are confirmed by Smith Tabata Buchanan Boyes Attorneys. Please refer to a copy of the enclosed Conveyancer Certificate.

No bond is registered over the subject properties.

3.4.3 DEPARTURE FROM THE LAND USE RESTRICTIONS

- **Departure from the Building Lines in terms of the Overstrand Municipality Zoning Scheme in order to accommodate existing structures.**

As mentioned earlier in this report the dwelling, garage and generator room were constructed in the late 1930's and after having the property surveyed it was discovered that some of the buildings were built over the prescribed building lines. Under a zoning of Residential Zone I the prescribed side building line is 2m and the street building line is 4m.

The existing double garage was constructed at an angle to Cliff Road and the nearest corner of the double garage to the street boundary is $\pm 1.15\text{m}$. We are therefore applying to relax the street building line from 4m to $\pm 1.15\text{m}$ in order to accommodate the existing double garage.

The existing generator room encroaches the 2m side building line and the 4m street building line. This structure was also built at an angle to the side boundary and street boundary. The distance of the closest corner of the generator room to the side boundary is $\pm 0.5\text{m}$ and the distance of the closest corner of the generator room to the street boundary is $\pm 1.9\text{m}$. We are therefore required to apply for the relaxation of the side building line from 2m to $\pm 0.5\text{m}$ and the street boundary from 4m to $\pm 1.9\text{m}$ to accommodate the existing generator room.

The building encroachments and building line encroachments on the common boundary of erven 2840 & 2841 Betty's Bay will be remedied by means of the consolidation.

- **Departure from the Building Lines in terms of the Overstrand Municipality Zoning Scheme in order to accommodate the proposed alterations.**

With reference to the enclosed site development plan the alterations to the existing dwelling and cottage are indicated in red. The proposed alterations to the cottage do not encroach any prescribed building lines.

It is however proposed that the dwelling be extended in an eastern direction as indicated on the site plan. The owner's intention is to erect a single storey braai room that will be an extension of the dwelling in an easterly direction. Due to site constraints and the current layout of the dwelling it is the only logical location for the proposed braai room.

Please note that the braai room will not encroach the prescribed building line that is described in the Title Deed that is 1.57m. With this application it is therefore proposed that the side building line be relaxed from 2m to 1.57m as indicated on the site plan.

The dwelling situated on the adjoining erf, Erf 2842 Betty's Bay, is situated on the eastern boundary of the erf with dense vegetation between the dwelling and the dwelling situated on Erf 2841 Betty's Bay. The proposed building line relaxation from 2m to 1.57m in order to accommodate a braai room will not have a negative impact on the adjoining erf.

3.7 CHARACTER OF THE ENVIRONMENT

It is not proposed to change the primary land use that is single residential. The following are proposed:

- The erven 2840 & 2841 Betty's Bay be consolidated;
- The Title Deed restrictions be removed in order to accommodate existing buildings within prescribed building lines and to accommodate the existing cottage as a second dwelling unit;

- The building lines be relaxed in terms of the Scheme Regulations in order to accommodate the existing generator room and double garage. A building line relaxation is also applied for to relax a lateral building line from 2m to 1.57m to accommodate a braai room on the eastern portion of Erf 2841 Betty's Bay.
- It is also required to apply for a departure from the maximum size prescribed for a second dwelling unit that is 120m². The cottage that is situated on Erf 2840 Betty's bay is the primary dwelling on this erf. In order to rectify building encroachments and the fact that the properties have been managed as one it was decided to consolidate the two erven. Subsequently the existing cottage will become the second dwelling unit. The total area of the cottage will be 134.43m² after alterations have been made.

With reference to the above application proposals it is clear that the land use will remain the same and that only minor alterations will be done to the existing main dwelling and the existing cottage.

3.8 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

The subject property's zoning and primary land uses will remain single residential as prescribed in the Overstrand Municipality Zoning Scheme. The application is made mainly to rectify building encroachments between erven 2840 & 2841 Betty's Bay, building line encroachments of existing structures that were built more than 60 years ago and to make provision for minor alterations to the existing dwelling and cottage. The current land use will remain the same.

After the consolidation of erven 2840 & 2841 Betty's Bay the consolidated erf will be 3107m² in extent. Subsequently the coverage of the consolidated erf will be 16% (498.84m²) taking into consideration the current structures and proposed alterations. The maximum permissible coverage for a single residential erf in terms of the Scheme Regulations is 50%.

With reference to the above it is clear that the residential character of the subject properties will be retained and therefore the proposal will be compatible with the surrounding single residential erven and can therefore be deemed to be desirable.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.9.1 PROVISION OF SERVICES

All services on the subject properties already exist and no additional dwelling units are proposed. Therefore the proposal will not have a negative impact on existing services that are provided by the Overstrand Municipality. The application for the consolidation of erven 2840 & 2841 Betty's Bay, the removal of restrictive Title Deed conditions, departure from the building lines and a departure from the land use restrictions applicable to the existing cottage can therefore be supported.

3.9.2 TRAFFIC IMPACT, PARKING AND ACCESS

The existing access to the existing double garage situated partially on erven 2840 & 2841 Betty's Bay will be used as the required parking bays for the main dwelling as determined in the Overstrand Municipality Zoning Scheme. The 1 additional parking bay required for the cottage will be located on the eastern boundary of Erf 2841 Betty's Bay as indicated on the enclosed site development plan. The additional parking bay and double garage will both gain access from Cliff Road.

The impact on vehicular flow and the number of trip generated will be minimal due to the fact that the land use of the subject properties remains the same.

3.10 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.10.1 HERITAGE VALUE

Erven 2840 & 2841 Betty's Bay are not earmarked for heritage conservation purposes and are not included in the Overstrand Heritage Survey Report (Nicolas Baumann) that was prepared for the Overstrand Municipality.

Most of the structures, the dwelling, double garage and generator room were constructed in the late 1930's. These structures are therefore older than 60 years. Because the application does not trigger any listed activities it is not required that a Notice of Intent to Develop be submitted to Western Cape Heritage. It is however required that an application be lodged in order to obtain a permit to make alterations to the existing structures. Once approval is obtained for this application the Architect, Robyn Connors Architects has been appointed to submit an application to Western Cape Heritage in order to obtain the necessary permits to make alterations to the existing dwelling and cottage.

Final building plans will then also be submitted to the Overstrand Municipality for their approval before construction work commence. In terms of land use planning an approval is not required for this application from Western Cape Heritage

In the light of the above mentioned it is evident that the proposed application does not constitute that an approval be obtained from Western Cape Heritage and that the architects will ensure that the alterations will blend in with the character of the existing styles of the dwelling and cottage and that all necessary permits be obtained. The application will therefore not have a negative impact on the heritage value of the Betty's Bay area.

3.10.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of a restrictive Title Deed condition does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.11 FORWARD PLANNING AND LAND USE DOCUMENTS

The Overstrand Municipal Growth Management Strategy (OMGMS) indicates erven 2840 & 2841 Betty's Bay within Planning Unit 7. Planning Unit 7 consists of the majority of the Betty's Bay area. The subject erven fall within a predominantly single residential area and no densification is promoted for this area. The zoning of Residential Zone I will be retained and no additional dwellings are applied for.

The application for consolidation, the removal of restrictive Title Deed restrictions and departure from the land use restrictions can be supported due to the fact that the primary land use that is single residential will be retained and no additional dwellings will be created.

The Overstrand Municipal Wide Spatial Development Framework (2006) earmarks erven 2840 & 2841 Betty's Bay for single residential purposes.

The proposed application will not have a negative impact on the surrounding land owners and is in line with the forward planning of the area.

3.12 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience do not apply to this application.

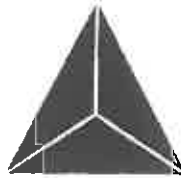
Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process.

4. RECOMMENDATION

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

- All services on the subject property already exist and no additional services are required;
- The application consists of the consolidation of the subject erven in order to remedy boundary and building line encroachments. No additional dwelling unit will be created;
- The proposed building line relaxation in order to accommodate a braai room will not have a negative impact on the adjoining erf.
- The proposals are compatible with the existing built character of the area;
- The proposed removal of restrictive Title Deed conditions is merely to accommodate existing old structures that were built in the late 1930's and to accommodate a second dwelling unit due to the consolidation of the subject erven.
- The proposed consolidation, removal of restrictive Title Deed conditions and the departure from the land use restrictions are in line with the forward planning of the area.
- The impact on vehicular flow and the number of trip generated will be minimal due to the fact that the land use of the subject properties remains the same.
- With this application it is clear that the residential character of the subject properties will be retained and therefore the proposal will be compatible with the surrounding single residential erven and can therefore be deemed to be desirable.

With regards to the above mentioned it would be appreciated if Council would approve the proposed consolidation, removal of Restrictive Title Deed conditions, and departure from the land use restrictions applicable to erven 2840 & 2841 Betty's Bay.



**SLABBERT VENTER YANOUTSOS INC
ATTORNEYS • CONVEYANCERS**

MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
HERMANUS ADMINISTRATIVE DEPARTMENT

Our Ref: AJS/at/

Your Ref:

ATTENTION: MS. H VAN DER STOEP

Date: 29 September 2016

BY EMAIL: loretta@overstrand.gov.za

Dear Sirs

**RE: APPLICATION FOR REMOVAL OF TITLE DEED RESTRICTIONS,
CONSOLIDATION AND DEPARTURE OF ERVEN 2840 AND 2841 BETTY'S BAY.**

1. We act on behalf of the Stronghold Investment Trust ("our client"), the registered owner of Erf 2839 Betty's Bay.
2. Our client's property is situated immediately adjacent to Erf 2840 Betty's Bay.

The application to remove title deed conditions

3. Our client is entitled to the protection afforded by the title deed conditions and objects to the abovementioned application. The basis of our client's objection is set out below.
4. The motivation for the application is to regularize existing contraventions of the title deed conditions applicable to Erven 2840 and 2841 Betty's Bay and to allow the owner of those properties to build a new braai room on its eastern boundary.
5. It is not necessary for the applicable title deed conditions to be removed to regularize the existing contraventions. Regularization of the existing contraventions could be achieved by the **amendment** of the title deed conditions, rather than by the entire removal thereof. However, the application seeks the **entire removal** of the applicable title deed conditions contained in the title deeds to the properties
6. Our client object to the entire removal of the conditions, in light of the fact that this could lead to the future construction of structures or buildings within the area currently covered by the title deed conditions and which protect it in the use and enjoyment of its property.

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7. This is to be avoided and, as the owner of the properties seeks simply to regularize the existing situation, an amendment of the conditions of title is far more appropriate than the entire removal thereof.
8. Our client therefore proposes that condition (c)(d) be **amended** by the addition of the bold and underlined words below, to state as follows –

“that no building or structure or any portion thereof, except boundary walls, fences, existing generator room and existing garage shall be erected nearer than 4.72 meters to the street line which forms a boundary of this Erf. No such building or structure shall be situated within 1.57 meters of the lateral boundary common to any adjoining Erf.”

9. With regard to paragraph c(b), namely that only one building is entitled to be erected on the Erf, our client again objects to the application. This condition could be amended to regularize the current position, which is the intention of the applicants.
10. In the circumstances, our client suggests that paragraph c(b) on page two of the title deed of Erf 2840 Betty’s Bay be **amended** by the addition of the underlined words, to read as follows –

“that only two buildings, one with a square meterage of no more than 134square meters, together with such outbuildings as are ordinarily required to be used therewith, be erected on this Erf.”

11. The essence of our client’s objections are to allow the current contraventions to be regularized and to remain in place but to preclude future contraventions of the title deed conditions.

The departure applications

12. Similarly, where the departure applications are concerned, our client has no objection to them being granted, subject to conditions being imposed by the local authority to the effect that the departures only allow the existence of the current contraventions and not future contraventions.
13. Please acknowledge receipt of our client’s objections herein.

Many thanks and kind regards,

Yours faithfully
SLABBERT VENTER YANOUTSOS INC.

Per: **AJ SLABBERT**

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 HERMANUS
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19 October 2016

TRATheart
 CHub(stoop)

Our reference: 16051

Your reference: 2840 & 2841 KBB (3390)

The Municipal Manager
 Overstrand Municipality
 PO Box 20
 HERMANUS
 7200

For attention: Ms. H. van der Stoep

Sir,

FILE NO:	Erven 2840 & 2841
SCAN NO:	Betty's Bay
	10
COLLABORATOR NO:	962511

COMMENTS ON THE OBJECTION: PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSOLIDATION AND DEPARTURE: ERVEN 2840 & 2841 BETTY'S BAY

Your letter dated 6 October 2016 with an enclosed objection from Slabbert Venter Yanoutsos INC Attorneys on behalf of the Stronghold Investments Trust, owner of erf 2839 Betty's bay refers.

In essence the objector has no objection against the proposed application in order to consolidate the property, to apply to rectify building line encroachments of existing buildings and the new proposed braai room. Their main concern is the proposed removal of the restrictive Title Deed conditions that refers to the building lines and that only one dwelling may be erected on the erf. It is their opinion that the restrictive Title Deed conditions be amended instead of being totally removed.

Our comments on the objection are as follows:

- The owner of erf 2839 Betty's bay will still have the security of building lines being imposed by the current Scheme Regulations that will be enforced by the Overstrand Municipality for any future alterations or additions not covered in our motivation. The side building lines are more stringent in term of the Scheme Regulations (currently 2m) than what is imposed by the applicable Title Deed (1.57m). The street building lines that are imposed by the Title

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 Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI Nr.10908; SACPLAN Tch.Pl n B/8250/2014

Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)

Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pl n A/158/2009

20 OCT 2016

20 OCT 2016

Deed is 4.72m and in terms of the applicable Scheme Regulations the street building line is 4m. The difference of 0.72m on a street building line will have no impact on the owner of Erf 2839 Betty's Bay.

- After the approval of the proposed removal of restrictive Title Deed conditions and departures the owner will not have cart-blanche to build any building within side and street building lines other than what was approved. (Existing generator room, existing double garage and braai-room)
- Any future construction works will have to comply with the land use restrictions under a zoning of Residential Zone 1. Any future departures will have to be applied for and will the adjacent land owners have the opportunity to comment or object to the proposals.
- It is our opinion that to amend the Title Deed conditions other than to have them removed will serve no purpose due to the fact that there are Scheme Regulations in place to govern any development on any erf that will also safeguard the owner of Erf 2839 Betty's Bay. Any deviation from the land use restrictions will require an application that will be circulated, the same as if an application was lodged to have the Title Deed restrictions amended or removed.
- It should be noted that the application also constitutes a consolidation. Prior to the consolidation the owner had the right to build a dwelling on each erf within the applicable land use restrictions. After consolidation and the removal of the restrictive Title Deed condition, that limits the owner to 1 dwelling only, the intention is to accommodate 2 dwellings on 1 property. It is the same number of dwellings that can currently be accommodated on the relevant erven. Therefore the application from a density point of view will not have a negative impact on the neighbouring land owner.
- The current zoning limits the owner to 2 dwellings only, of which one would be the manor house and the other dwelling will constitute a second dwelling. No additional dwellings will be permitted in terms of the current zoning. The removal of the restrictive Title Deed restriction that limits the number of dwellings will not give the land owner the right to construct more dwelling units other than what is indicated on the site development plan.

117

With reference to our comments above it is our opinion that the application can be supported and especially the removal of restrictive Title Deed conditions due to the fact that there are land use restrictions applicable to the consolidated site in terms of the Zoning Scheme that is enforced by the Overstrand Municipality that will safeguard the owner of Erf 2839 Betty's Bay.

We trust that you will find our comments in order and we look forward to the finalisation of this application.

Yours faithfully



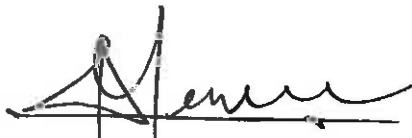
John Mc Lachlan

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS,
CONSOLIDATION AND DEPARTURE: ERVEN 2840 & 2841, BETTY'S BAY
(3390)**

Electricity	:	Eskom Area
Water	:	In order
Sewer	:	In order
Stormwater	:	In order
Roads and traffic	:	In order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that stormwater be allowed to discharge through the proposed erven, Betty's Bay, unobstructed;
3. that no on-street parking be allowed;
4. that should any municipal services or access be relocated, it will be for the developer's cost.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**



DATE