



Overstrand Municipality

LAND USE PLANNING REPORT - MUNICIPAL PLANNING TRIBUNAL (MPT)

**ERF 599, 91 SCHNEIDER STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA :
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE :
PRINSLOO ARGITEKTONIESE ONTWERP ON BEHALF OF S DICKS**

Reference number	599 GFK (3291)	Application submission date	13 MAY 2016	Date report finalised	17 NOVEMBER 2016
PART A: AUTHOR DETAILS					
First name(s)	SCHALK WILLEM				
Surname	VAN DER MERWE				
Job title	SENIOR TOWN PLANNER				
SACPLAN registration number	A/1850/2014				
Directorate/Department	INFRASTRUCTURE AND PLANNING				
Contact details	028 313 8900 svdmerwe@overstrand.gov.za				
PART B: APPLICANT DETAILS					
First name(s)	Martin				
Surname	Prinsloo				
Company name	Prinsloo Argitektoniese Ontwerp				
SACPLAN registration number	N/A	Is the applicant authorised to submit this application	Yes	No	
Registered owner(s)	S DICKS				
PART C: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erf 599, Franskraal				
Physical address	91 Schneider Street, Franskraal	Town/City	Gansbaai		
Current zoning	Residential Zone 1	Extent (m ² /ha)	593m²	Are there existing buildings on the property?	Yes No
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Single Residential		Title Deed number & date	T70276/2000	
Any restrictive title conditions applicable	Yes	No	If Yes, list condition number(s)	C.16(b) and (d)	
Any third party conditions applicable?	Yes	No	If Yes, specify		

Any unauthorised land use/building work	Yes	No	If Yes, explain	Existing encroachments of the street, lateral and rear building lines

PART D: PRE-APPLICATION CONSULTATION

Has pre-application consultation been undertaken?

Yes

No

PART E: LIST OF APPLICATIONS

Permanent departure

√

Removal, suspension or amendment of restrictive conditions

√

PART F: EXECUTIVE SUMMARY

An application has been received on 16 May 2016 from Prinsloo Argitektoniese Ontwerpskantoor on behalf of the owner of Erf 599, Franskraal in order to legalise encroachments of the existing building, namely:

1. removal of restrictive title conditions with reference to condition C.16(b) & (d) of Title Deed T70276/2000 in terms of Section 16(2)(f) of the aforementioned By-Law, to accommodate a second dwelling unit as well as encroachments of the street-, lateral- and rear title deed building lines on the property;
2. departure in terms of Section 16(2)(b) of the aforementioned By-Law, to accommodate the following encroachments, namely:
 - ❖ encroachment of the 4m street building line with 0,63m and 0,31m respectively to accommodate a first floor balcony and a second dwelling unit;
 - ❖ encroachment of the 2m lateral and rear building lines with 0,45m and 1,04m respectively to accommodate the main dwelling; and
 - ❖ encroachment of the 2m western building line with 0,43m in respect of the second dwelling unit and 0m in respect of the outside braai.

PART G: BACKGROUND

The subject property is developed with a part two, part single storey dwelling, a second dwelling unit and an outside braai, which structures encroach the respective building lines in the manner referred to in Section F above. The existing structures do not have approved building plans. The current owners bought the subject property with the encroachments except for the balcony. The application therefore seeks to legalise the aforementioned encroachments of the street-, rear- and lateral building lines.

PART H: SUMMARY OF APPLICANTS MOTIVATION

The application seeks to legalise the aforementioned encroachments of the street-, rear- and lateral building lines in order to submit building plans for approval. The applicant motivates that the encroachments are desirable due to the following, namely:

Primary dwelling

- the dwelling is not situated on the property boundaries;
- the encroachments will not result in the darkening of adjoining properties due to ample space between the dwelling and property boundaries; and
- the encroachments will not impact on existing rights of adjoining properties.

Wooden deck

- wooden deck is open on all three sides;
- wooden deck serves as carport to the garage below;
- wooden deck is only partially visible from the street due to existing mature trees providing screening; and
- wooden deck will not negatively impact the rights of adjoining properties or the existing built environment.

- the encroachments will not result in the darkening of adjoining properties due to ample space between the dwelling and property boundaries; and
- the encroachments will not impact on existing rights of adjoining properties.

Wooden deck

- wooden deck is open on all three sides;
- wooden deck serves as carport to the garage below;
- wooden deck is only partially visible from the street due to existing mature trees providing screening; and
- wooden deck will not negatively impact the rights of adjoining properties or the existing built environment.

Second dwelling (rondavel)

- street building line encroachment of 0,31m and lateral building line encroachment of 0,43m is not significant; and
- encroachments will not be detrimental to surrounding property owners, including the built environment.

Outside braai

- although braais are not normally supported if not enclosed, the structure exists for a number of years without having caused negative impacts in general;
- being a holiday home it is only occasionally used; and
- the braai will not impact the rights of surrounding property owners or the existing built environment.

PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising				Date published	Closing date for comments				
Press	Yes	No	N/A						
Gazette	Yes	No	N/A						
Notices	Yes	No	N/A	30 August 2016	30 September 2016				
Ward councillor	Yes	No	N/A	30 August 2016	30 September 2016				
Site notice	Yes	No	N/A						
Community organisation(s)	Yes	No	N/A						
Public meeting	Yes	No	N/A						
Third parties	Yes	No	N/A						
Other	Y	N	If yes, specify	N/A					
Total valid comments	N/A			Total comments and petitions refused					
Valid petition(s)	Yes	No	If yes, number of signatures						
Community organisation(s) response	Yes	N	N/A	Ward councillor response		Yes	No	N/A	
Total letters of support	None								
Was public participation undertaken in accordance with Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016								Yes	No

PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection was received from Mr P Barnard, the owner of the adjoining property. The objection can be summarized as follows:

- ❖ the outside braai is untidy and affects the value of his property;
- ❖ the chimney is too low with resulting smoke into his dwelling when used; and
- ❖ tree in close proximity of the objector's property should be removed.

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

Name	Date received	Summary of comments	Recommendation		
			Positive	Negative	Comment
Electro Technical Services	24 August 2016	No objection.	Positive	Negative	Comment
Building Department	30 August 2016	No objection	Positive	Negative	Comment
Health	15 September 2016	No objection	Positive	Negative	Comment
Operational Services	28 September 2016	Attached as Annexure F	Positive	Negative	Comment
Fire Services	2 October 2016	Attached as Annexure G	Positive	Negative	Comment
Engineering Services	13 October 2016	Attached as Annexure H	Positive	Negative	Comment

PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS

The applicants response is attached as Annexure E and can be summarised as follows:

Negative Impact of the outside braai on the objectors property

- the braai is an old, plastered and painted brick structure; and
- applicant refers to alleged unauthorised additions to the objectors property, presumably the result of a neighbourly dispute with no relevance to the current application.

Smoke resulting from low chimney

- according to the applicant the chimney had been sealed and the braai is not used for braai purposes but for storage of wood;
- according to the applicant a mobile braai or braai area inside the main dwelling is used for braai purposes; and
- in accordance with the above, it is not possible for smoke from the outside braai to enter the objectors house.

Removal of tree in close proximity to objectors property

- applicant is of the opinion that the objector could trim branches that overhang the communal boundary;
- applicant refuse to remove the tree that exists prior to the objector acquiring his property since it is the only source of shade on the property;
- the objector created a problem for himself as a result of the construction of an illegal chimney over the building line, closer to the tree; and
- applicant is of opinion that is it unreasonable from the objector to expect the applicant to remove the tree. The applicant is however prepared to trim branches that overhang the communal boundary.

PART M: MUNICIPAL ASSESSMENT OF COMMENTS

For the record it should be noted that the chimney on the objector's property, Erf 600, which chimney allegedly encroaches the lateral building line had been constructed without approved building plans. This however seems to be the centre of a neighbourly dispute, which has no relevance to the consideration of the planning application. The objector only objects to the retention of the outside braai that is situated on the lateral property boundary on the basis of loss of property value, alleged nuisance as a result of smoke caused by the low chimney and the tree in close proximity to the objector's property.

During the site inspection it was confirmed that the braai measures 1,2m to 1,6m in height and that the chimney is permanently sealed. It is mainly utilised for the storage of wood and a mobile braai. The objection pertaining to smoke from the low chimney could therefore be dismissed. The braai being set back about 23m from the front of the property, abutting a 1,5m boundary wall effectively providing screening from the neighbouring property is not considered to result in a loss of property value sufficient to warrant refusal of planning permission. The comments from Fire Services requires a fire wall to be provided, the implication of which is that the small opening between the top of the flank elevation and roof will be closed, which if utilised will serve to protect the amenities of the adjoining properties and will be dealt with in the conditions of approval. The objection pertaining to the tree has no relevance on the planning application and should be dismissed, since it is considered a civil legal matter to be resolved between the neighbours. In this regard the applicant indicated that he is willing to remove overhanging branches.

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

Was the application processed correctly (if no, elaborate below):

Yes

No

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

No

Application history

Not applicable.

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

It should be noted that the subject property is situated in an established township and residential area, thus it is difficult to evaluate the proposed departure in terms of Section 42 of SPLUMA. However, one can determine its compliance as follows:

Spatial Justice

As mentioned above the subject property is within the existing township, therefore spatial justice does not apply to this application.

Spatial Sustainability

The proposed application is limited to the subject property and therefore does not require additional use of resources such as services or land, which is inherently seen as a sustainable practice.

Efficiency

The applications relates to legalisation of additions to the existing dwelling. The principle of efficiency being situated within an existing township is therefore not applicable.

Spatial Resilience

The existing township in which the subject property is situated is governed with spatial plans, policies and land use management systems which will help the community of the area to resist, absorb and accommodate impacts which are caused by economic and environmental shocks.

Good Administration

The Overstrand Municipality seeks to maintain a good administrative quality which give adherence to well established administrative procedures.

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

Same as above.

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

N/A

(In)consistency with guidelines prepared by the Provincial Minister

N/A

Impact on Municipal Engineering Services

All engineering services are provided; therefore the proposed application will not have an impact on the services provided. The Services Report obtained from the Engineering Department (attached as Annexure E) confirms this.

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

The size and the impact of the application is of such a nature that it does not have an impact on other policies and legislation.

Existing and proposed zoning comparisons and considerations

The existing development does not have approved building plans. The application seeks to legalize the existing development in order to submit building plans, hence the application of the encroachment of the street, rear and lateral building lines.

The desirability of the proposal

The applicant acquired the subject property during 2000 with the existing encroachments, save for the wooden balcony. The second dwelling unit complies with the requirements pertaining to second dwelling units in terms of the Scheme Regulations. The applicant will however be required in terms of the conditions of approval to demonstrate compliance with the parking requirements, i.e. three (3) onsite parking bays.

The encroachment of the side- rear- and street building lines in order to retain the main dwelling and second dwelling unit is not significant and considered desirable for the following reasons:

- ❖ the balcony is open and acts as a carport in front of the garage which is usually supported up to the street boundary;
- ❖ surrounding properties are developed up to or in close proximity to the former 1,57m lateral building lines;
- ❖ the encroachment will therefore not have an adverse impact on the character of the area; and
- ❖ the encroachment will not have an adverse impact on the residential amenity of the locality.

The retention of the outside braai is supported, since it is set back from the road and screened by the existing vibcrete boundary wall, so that it would not unacceptably detract from the visual amenity of the locality or the character of the surrounding area. It should also be noted that the structure is mainly used for storage purposes, of limited scale and requires upgrading to make it fire resistant in order to comply with the Fire Regulations. It is not currently being used as a braai area since the chimney has been sealed. Should the applicant in future wish to utilise the area as an outside entertainment/barbeque area, compliance with the Building and Fire Regulations will be applicable. It is also recommended that the chimney be extended to the satisfaction of the Municipality and that the structure be kept neat and tidy.

Sufficient control exists in terms of the Scheme Regulations in order to control development on the premises. Accordingly the removal of the relevant restrictive title conditions C.16(b) and (d) in order to accommodate the existing development is considered desirable as motivated under Part O below.

PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**The financial or other value of the rights**

The value of the property will increase to the benefit of the owner should the encroachment be legalised.

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

The personal benefits will be no more than that of any other erf in Franskraal, since development is controlled by the Overstrand Zoning Scheme Regulations.

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

The removal of the restrictive conditions will legalise the encroachments and second dwelling unit and facilitate the legalization of the existing structures in terms of the National Building Regulations.

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

The application will only remove the building line- and one (1) dwelling unit restrictions, thereby allowing assessment and approval of the application in terms of the Scheme Regulations. Restrictive conditions pertaining to maximum coverage and a restriction on subdivision remains in place.

PART P: CONCLUSION

The applicant seeks to update the current building plan and to legalise the building line encroachments of the existing development (main house, balcony and outside braai) as well as the second dwelling unit. The application is deemed to be desirable due to the following, namely:

- ❖ the construction of a second dwelling unit is a primary right in terms of the Scheme Regulations;
- ❖ the second dwelling unit complies with the requirements pertaining to second dwelling units;
- ❖ the encroachments of the street-, lateral- and rear building lines will not impact on the visual amenity of the locality or the character of the area; and
- ❖ the legalization of the second dwelling unit and encroachment of the street-, lateral- and rear building lines will not detract from the residential amenity of adjoining properties.

PART Q: RECOMMENDATION**RECOMMENDATION :**

1. that the objection **be noted**;
2. that in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2016 the application for Removal of Restrictive Conditions on Erf 599, Franskraal to remove condition C.16(b) and (d) in Title Deed T70276/2000, **be approved**;
3. that in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 the departure application on Erf 599, Franskraal to accommodate the following:
 - ❖ encroachment of the 4m street building line with 0,63m and 0,31m respectively to accommodate a first floor balcony and a second dwelling unit;
 - ❖ encroachment of the 2m lateral and rear building lines with 0,45m and 1,04m respectively to accommodate the main dwelling; and
 - ❖ encroachment of the 2m western building line with 0,43m in respect of the second dwelling unit and 0m in respect of the outside braai.

be approved, subject to the following conditions:

- (a) that this approval only has reference to the Site Development Plan, Drawing No. DIC-FK-15/026 dated 16 May 2015 (attached as Annexure B), as submitted with the application;
- (b) that building plans be submitted to the Building Department for approval and that any conditions by the Fire- and Building Departments be complied with at that stage;
- (c) that all the conditions/comments from Operational Services and the Fire Department (attached as Annexures F and G), be complied with;
- (d) that all the conditions contained in the Services Report (attached as Annexure H), be adhered to;
- (e) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
- (f) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and objector 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 complies with the principals as set out in SPLUMA and LUPA;
- ❖ no objections where received from the other departments or the adjoining property owners;
- ❖ the character of the area will not be affected; and
- ❖ the residential amenities of adjoining properties will not be affected.

PART S: ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Site Development Plan
Annexure C:	Motivation Report
Annexure D:	Objection
Annexure E:	Comment on objection
Annexure F:	Comment: Operational Services
Annexure G:	Comment: Fire Services
Annexure H:	Services Report

PART T: SIGNATURES

Author name: **SCHALK VAN DER MERWE**

Author signature: 16.01.2017 

Date: 16.01.2017

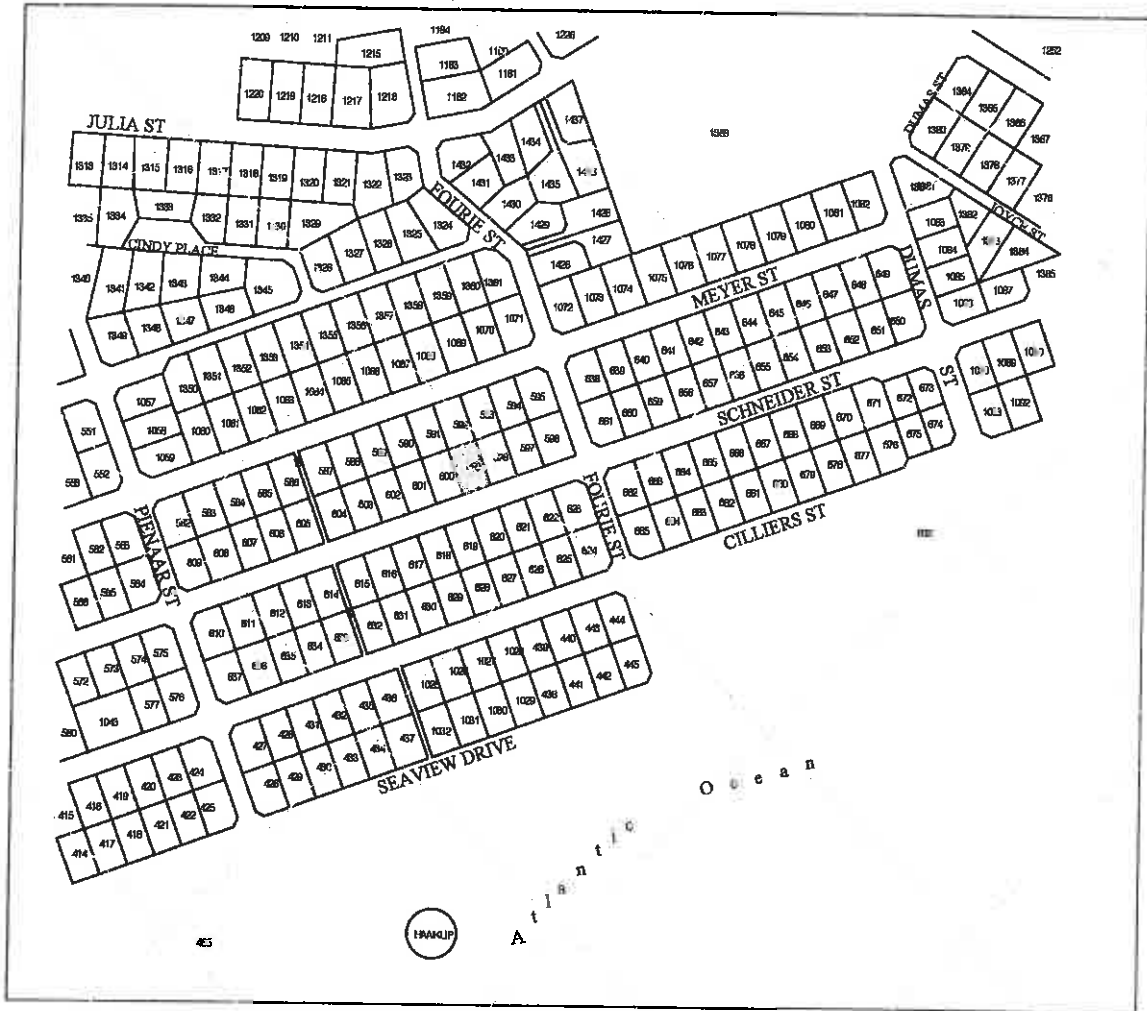
Registered planner name: **HANNEEN VAN DER STOEP**

Registered planner signature: 

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

Date: 23/1/2017

LOCATION PLAN FOR ERF 599, FRANSKRAAL



 **LOCATION PLAN**
SCALE : N.T.S.


PRINSLOO
 ARGITEKTONIESE
 ONTWERPKANTOOR
 GE. 83 7 51566 / 52
MARTIN PRINSLOO
 N.O. ARGITEKTOOR - 515 VAN R. 2 A. 7
 GEDRUK DEUR DR. GANSBAAI 757
 TEL. 1091 207022, 411 4090202
 PRINSLOO@intelnl.co.za

NOTE:
 1. ALL DIMENSIONS AND HEIGHTS TO BE CHECKED ON SITE BEFORE COMMENCEMENT OF WORK.
 2. FOUNDATIONS NOT LESS THAN 100mm BELOW GROUND LEVEL.
 3. ALL WORK ACCORDING TO S.A.S AND MUNICIPAL BUILDING REGULATIONS.
 4. DRAWINGS COPY/RIGHT AND MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS WITHOUT WRITTEN PERMISSION OF THE DESIGNER.

- STRUCTURE
1. CONCRETE STRIP FOUND.
 2. FOUNDATIONS NOT LESS THAN 100mm BELOW GROUND LEVEL.
 3. CONCRETE SLAB ON GRADE.
 4. ALL WORK ACCORDING TO S.A.S AND MUNICIPAL BUILDING REGULATIONS.
- MAIN STRUCTURE
1. TIMBER FRAME WITH JOIST.
 2. ROOF WITH 10% SLOPE TO DRAINAGE.
 3. ROOF WITH 10% SLOPE TO DRAINAGE.
 4. ALL WORK ACCORDING TO S.A.S AND MUNICIPAL BUILDING REGULATIONS.
- FINISHES
1. INTERIOR CLADDING: OSB SHEATHING AND PAINTED.
 2. EXTERIOR CLADDING: OSB SHEATHING AND PAINTED.
 3. FLOORING: CARPET OR LAMINATE.
 4. WALLS: PLASTER AND PAINT.
 5. CEILING: PLASTER AND PAINT.

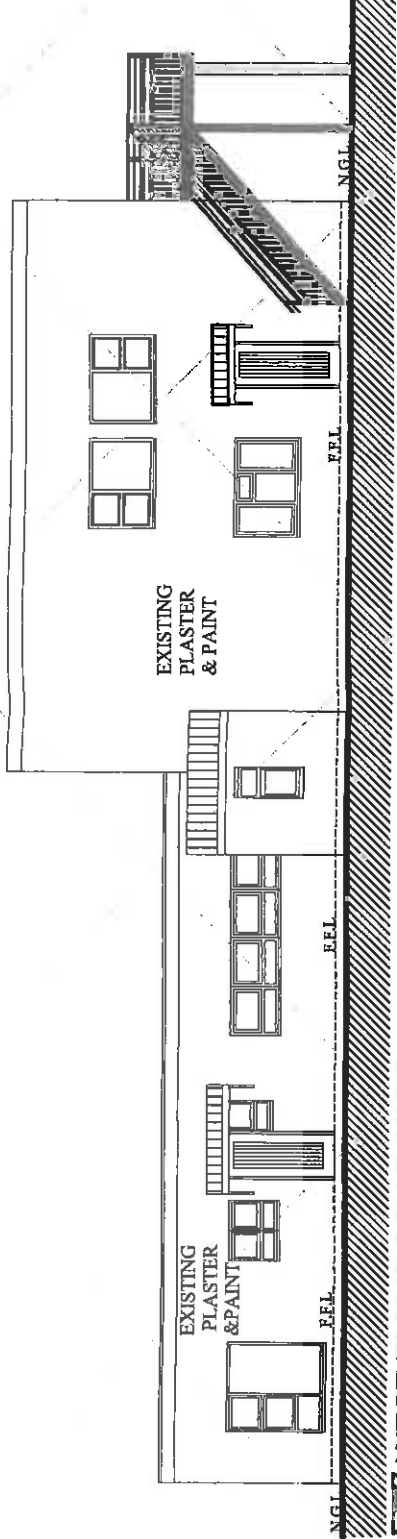
PRINSLOO
 ARGITEKTONIESE
 ONTWERPANTOOK

MARTIN PRINSLOO
 ARCHITECT
 21 BUKHOUTERDIJK 101 CA
 1012 CA AMSTERDAM
 TEL: +31 (0)20 610 1111
 WWW.PRINSLOO.NL

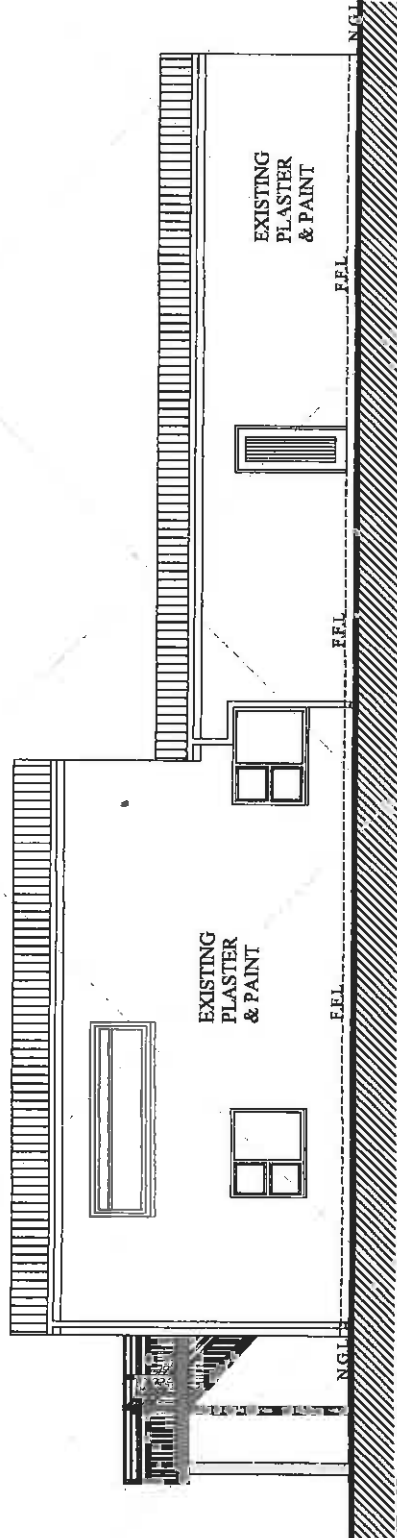
AG BUILD
 FOR
 MRF L. DICKS, BRP 599
 FRANSKRAAL

GANSBAAI

ELEVATIONS	
PROJECT NUMBER	DIC-FK-15/026
DESIGNER	DR. VAN DER WESTHOEVEN
DATE	16/08/16
SCALE	AS SHOWN



WEST ELEVATION (HOUSE)
 SCALE 1 : 100



NORTH EAST ELEVATION (HOUSE)
 SCALE 1 : 100

NOTE GENERAL:
 1. ALL DIMENSIONS AND HEIGHTS TO BE CHECKED ON SITE BEFORE COMMENCING WORK.
 2. DIMENSIONS GIVEN IN TAKE OFF DRAWINGS SHALL BE TAKEN AS PER THE DRAWINGS UNLESS OTHERWISE SPECIFIED.
 3. ALL WORK ACCORDING TO S.A.N.C. AND MUNICIPAL BUILDING REGULATIONS.
 4. THE DRAWINGS SHOW ON THE DRAWING, "COPYRIGHT AND I AM NOT BE USED, COPIED OR REPRODUCED WITHOUT THE WRITTEN CONSENT OF THE DESIGNER."

STRUCTURE:
 1. FOUNDATIONS AS SHOWN.
 2. FOUNDATIONS NOT LESS THAN 100mm BELOW FINISHED FLOOR LEVEL.
 3. ALL FOUNDATIONS TO BE APPROVED BY THE ENGINEER.
 4. ALL WORK TO BE UNDER THE SUPERVISION OF THE ARCHITECT.
MAIN STRUCTURE:
 1. TIMBER FRAMING WITH JOISTS AND RAFTERS.
 2. 35mm x 35mm x 10mm JOISTS AND RAFTERS.
 3. 35mm x 35mm x 10mm JOISTS AND RAFTERS.
 4. 35mm x 35mm x 10mm JOISTS AND RAFTERS.
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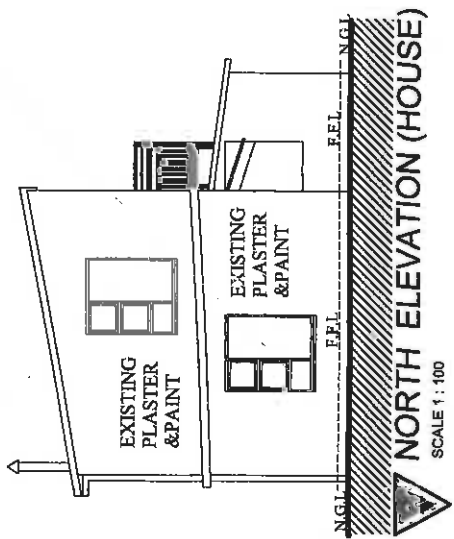
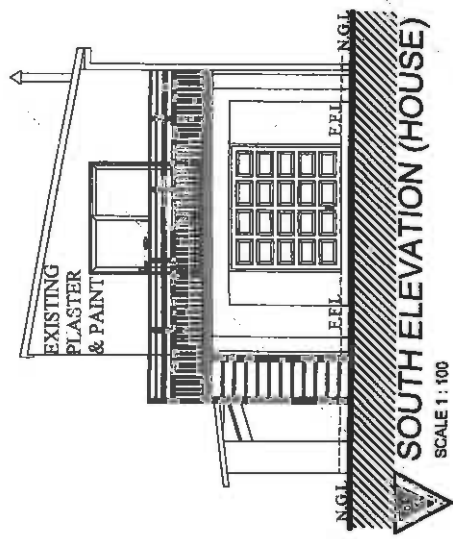
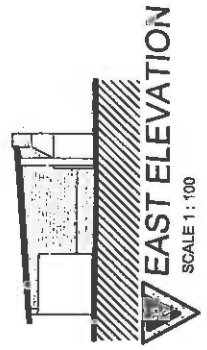
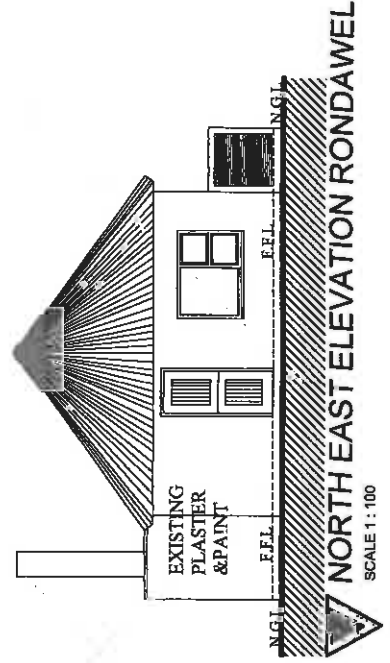
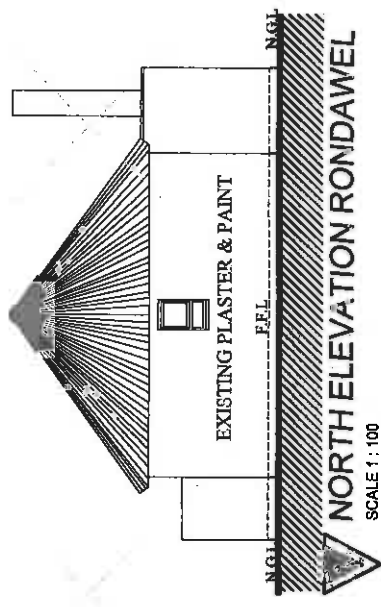
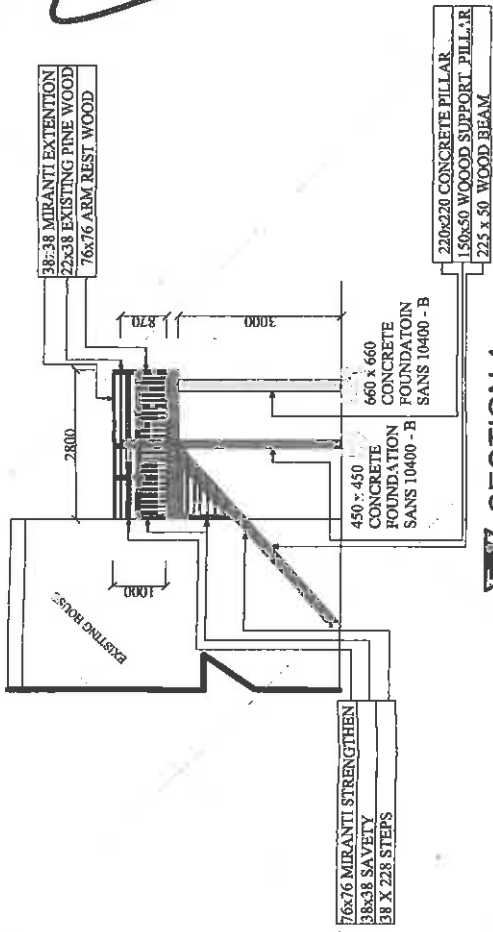
PRINSLOO
 ARCHITECTS
 ONTWERKANTOOR
 CK DE TIEBER 25
 1115 CAPE TOWN
 TEL: 021 462 1111
 FAX: 021 462 1112
 EMAIL: prinsloo@prinsloo.co.za

NS BULD
 PROFESSIONAL ARCHITECT
 MNR L. DICKS, BRT 599
 FRANSKRAAL

GANSBAAI

ELEVATIONS & SECTION A

DATE: 18/08/15 AS SHOWN



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FRANSKRAAL (2016)

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**ERF 599, 91 SCHNEIDER STREET, FRANSKRAAL: APPLICATION FOR
REMOVAL OF RESTRICTIONS, AND SUBSEQUENT APPLICATION
FOR DEPARTURES**

1. OVERVIEW OF APPLICATIONS

- 1.1 **Application** for the Removal of Restrictive Title Deed Conditions (refer to Section C of the application form) in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, here forth the By-law.
- 1.2 **Application** for Departures in terms of Section 16(2)(b), read with Section 20(1)(a) of the By-Law (departures as set out below).
- 1.2.1 Refer to layout plans attached to application. Departures being applied for:
- (a) The entire length of the existing dwelling unit encroaches the applicable 2m (zoning scheme) north eastern lateral building line of the property with approximately 500mm;
 - (b) The existing wooden balcony encroaches the applicable 4m (zoning scheme) street building line of the property with approximately 400mm, as well as the applicable 2m (zoning scheme) north eastern lateral building line with approximately 300mm (that section of the balcony measured from the pillars that affix the balcony to the property, is excluded from the building line encroachment since it is a 200mm overhang);
 - (c) The entire rear section of the existing dwelling unit encroaches the applicable 2m (zoning scheme) rear building line of the property with approximately 1m;

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FRANSKRAAL (2016)

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- (d) Three small portions of the existing second dwelling unit (rondavel) encroaches the applicable 4m (zoning scheme) street building line partially with approximately 100mm and 350mm, as well as a small portion that encroach the applicable 2m (zoning scheme) south western lateral building line of the property, with approximately 450mm; and
- (e) The existing outside braai/lapa encroaches the applicable 2m (zoning scheme) south western lateral building line of the property up to the relevant erf boundary

2. GENERAL INFORMATION

2.1 Title Deed and Property Description

In terms of its Title Deed, the property is described as Erf 599, Franskraalstrand in the Municipality for the Area of Gansbaai, Division Caledon, Province Western Cape, and is 595m² in size.

The property is registered in the name of "Sarina Dicks" (married out of community of property).

2.2 Bond/s

The property is not encumbered by any bond/s.

2.3 Current Zoning Status

Erf 599, 91 Schneider Street, Franskraal is zoned for Residential Zone 1 purposes.

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2.4 Existing Development on the Property

The property is currently developed with a Single Residential Dwelling Unit that is partially two story, a single garage that forms part of the dwelling, and an open wooden balcony directly above the entrance to the garage. In addition a detached second dwelling unit (rondavel) and a partially enclosed outside braai occurs on the property (see photos below).

No records (building plans) could be found that indicate when these structures on the property were developed. "As build" building plans will be submitted by the landowner once the above applications have been approved by the municipality.

BELOW: EXISTING PRIMARY DWELLING UNIT VIEWED FROM A WESTERLY DIRECTION



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BELOW: EXISTING DETACHED SECOND DWELLING UNIT (RONDAVEL) VIEWED FROM SCHNEIDER STRET



BELOW: EXISTING BRAAI/LAPA ON THE SOUTH WESTERN BOUNDARY OF THE PROPERTY



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BELOW: EXISTING OPEN WOODEN BALCONY ABOVE ENTRANCE TO GARAGE VIEWED FROM SCHNEIDER STREET



3. BACKGROUND AND PROPOSED DEVELOPMENT

- 3.1 The property was purchased, as is, during 2000 with the said structures at its current locations on the property, except for the wooden balcony. The current owner had the wooden balcony constructed after acquiring the property.
- 3.2 Refer to the Site Development Plan attached to the application. It is the sole intension of the landowner to legalize the infringement of the building lines as described in paragraph 1 above, and subsequently to submit "as build" building plans of all structures to the Munisipality for approval. The landowner is a laymen with regard to town planning and related legislation, and purchased the developed property in good faith at the time.

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It was determined that at the time of transfer of the property to the current owner during 2000, applications for clearance certificates were not circulated to all the various municipal departments for comment as is the case at present times. It was further determined that the reason was that the municipality underwent an approximate 5 year transition period at the time as a result of the then newly approved Municipal Systems Act. Aforesaid subsequently resulted that the layout of the various departments within the municipality, as is the case at present, were not in place during the transfer of the property. It is thus the opinion that at the time of the transfer of the property, the current contraventions were not detected by any of the parties involved. This should be taken into consideration during the decision making phase of the application. It is further believed that numerous such cases still occur in the broader Gansbaai area.

5. MOTIVATION**Intro:**

(It is generally known that outdated town planning legislation has recently been repealed and replaced with new legislation, and subsequently various decision making powers in this regard have also been delegated from Provincial Level to Local Authority levels in the Western Cape.

Restrictive title deed development parameters were registered against title deeds decades ago during the processing of township development applications. These conditions however are regarded as "burdens" to Authorities and landowners since zoning schemes have been in place for years already in terms of which the development parameters of properties are regulated by local authorities.

Thus, from a technical point of view, the motivation for the departure applications should also be read as the motivation for the removal of the relevant restrictive title deed conditions.)

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- 5.1 Due to lacking documents (building plans etc.), it can be assumed that the construction of the structures on the property occurred years prior to the transfer thereof to the new owner during 2000. The current landowner has been in ownership of the property for approximately 16 years, and according to the owner she is not aware of any complaints by surrounding landowners relating to the position of the structures. This is likely because none of these structures, except for the braai/lapa, actually encroach building lines up to the relevant property boundaries.

See photos on following page of primary structure that encroach the lateral building line, as well as the rear building line:

BELOW: PRIMARY STRUCTURE THAT ENCROACH THE ENTIRE NORTH EASTER LATTERAL BUILDING LINE WITH APPROXIMATELY 500mm.



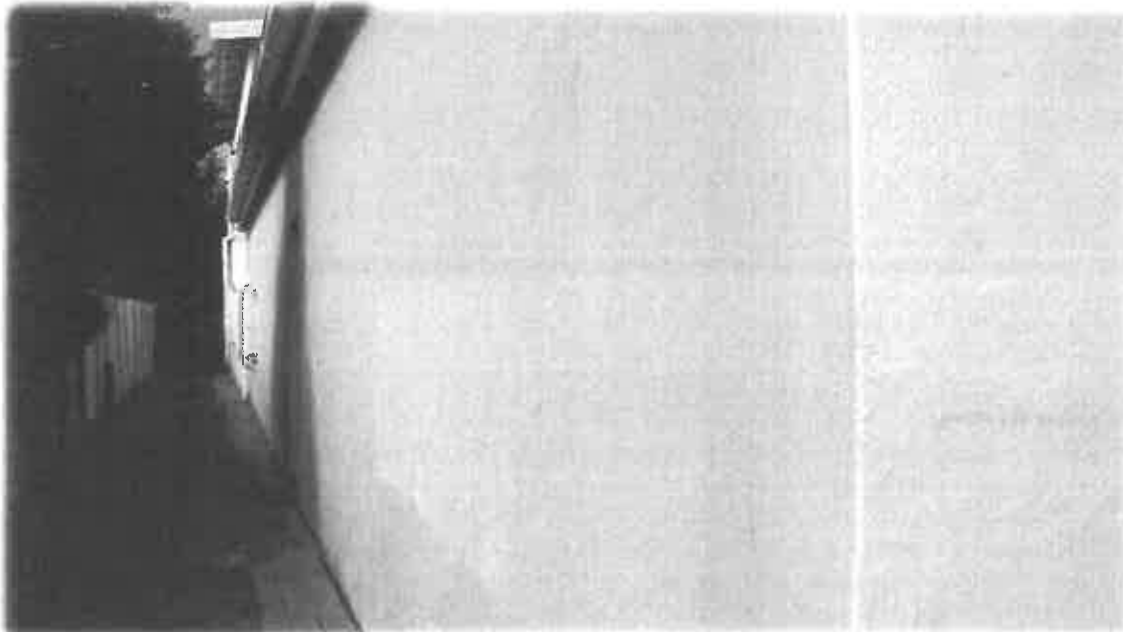
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BELOW: PRIMARY STUCTURE ENCROACHMENT SEEN FROM A DIFFERENT ANGLE.



BELOW: VIEW OF PRIMARY STRUCTURE FROM REAR OF PROPERTY TOWARDS SCHNEIDER STREET INDICATING NORTH EASTER BUILDING LINE ENCROACHMENT



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BELOW: VIEW OF PRIMARY STRUCTURE THAT ENCROACH REAR BUILDING LINE WITH APPROXIMATELY 1m



5.2 Desirability of the Existing Development

Primary Dwelling Unit

As can be observed from the photos above, ample space occur between the boundaries of the adjacent properties to ensure no views towards various directions are spoiled. Hence it is the opinion that these encroachments has in the past and currently has no mentionable impacts on surrounding property owners. Further, no complaints by surrounding landowners are aware of in this regard. (It is believed that the surrounding landowners are not even aware of the existing encroachments.)

Also, taking any possible “darkening” of surrounding properties into consideration, the same above points of motivation are seen as noteworthy and relevant, mainly due to the ample open spaces between the erf boundaries.

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In view of the above the long existing position of the primary dwelling unit is not regarded as being undesirable from a planning point of view and will not have any detrimental impacts on the rights of surrounding property owners nor the existing build environment in future.

Wooden Deck

Refer to above photos. As can be observed the wooden deck is properly constructed and open on all three sides. It forms part of the main dwelling unit, and is used to gain access to the upper level of the dwelling unit (access is also gained to the upper level of the dwelling from within the dwelling via an existing staircase). Another function of the wooden deck is to serve as a carport directly in front of the existing garage.

It is the considered opinion that the building line encroachments are not significant in nature. The only possible impacts it may have, if any, are on the owners of the properties directly abutting on each street side of Erf 599. Due to the fact that it is open on all three sides, the said adjacent property owners have unobstructed sight views. The deck is also only partially visible from Schneider Street due to tree growths.

In view of the above the wooden deck is not regarded as being undesirable from a planning point of view and will not have any detrimental impacts on the rights of surrounding property owners nor the existing build environment, and can thus be legalized.

Second Dwelling Unit (Rondavel)

(Second dwelling units are now primary uses under the new scheme. Application for the usage right of the second dwelling unit is therefore not necessary.) The existing second dwelling unit (rondavel) is approximately 35m² in extent. The street building line encroachments are very insignificant in nature, and is further regarded as interior architectural features only, being brick built cupboards that form part of the structure.

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That small section (100mm) of the wall of the structure that encroach the lateral building line can also be regarded as insignificant in nature.

(The chimney of the "rondavel" does not encroach any building lines.) It is therefore not felt necessary to painstakingly motivate the encroachments. It is further the opinion that the encroachments does not have any detrimental impacts on surrounding property owners nor the existing surrounding build environment, and is thus regarded as not being undesirable from a planning point of view.

The second dwelling unit (rondavel), conforms to the minimum requirements for living/residing purposes in terms of the National Building Regulations. During holiday seasons family members or friends that require more privacy, utilizes the second dwelling unit for accommodation purposes.

Outside Braai/Lapa

The outside braai/lapa is only approximately 8m² in extent and is situated at the rear side of the property on the south western boundary thereof. It is covered with zinc roof plates. It is further only partially enclosed. The highest point of the structure, being the tip of the chimney, is only approximately 1,5m in height, whilst the lowest point thereof is only approximately 1,2m in height. The chimney is situated approximately 900mm away from the boundary line.

Although these braai areas are normally not supported by the municipality if it is not completely enclosed, it is on the other hand the opinion that the specific structure has been in existence for years already without having caused any negative impacts in general. It should on the other hand also be noted that property is a holiday home, and it is only occasionally utilized as such.

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In view of the above facts it is again the considered opinion that the braai structure also will not impact on the rights of surrounding property owners, nor the surrounding build environment, and is thus also not regarded as undesirable from a planning point of view.

5.3 Forward Planning Documents

Not applicable since no change in land use of the property is being applied for.

5.4 Services Infrastructure and Municipal Engineering Services

Not applicable, since the property has for years already been fully serviced, and no upgrading is necessary.

6. CONCLUSION

From the content of this report it is apparent that the existing building line encroachments of the structures on the Erf 599, Franskraal will have no negative impacts in general, and it is thus recommended that the Municipality approve the applications as set out in paragraph 1. of this report.

END OF MOTIVATION REPORT

TP- A Theart
144C Submewej



Alida Calitz - i.s. Erf 599 Schneiderstraat 91 Franskraal

From: "Twane Bester" <philip.barnard@sanlam4u.co.za>
To: <alida@overstrand.gov.za>
Date: 2016/09/28 12:08 PM
Subject: i.s. Erf 599 Schneiderstraat 91 Franskraal
Attachments: 20150628_121336.jpg; 20150628_121403.jpg; 20150628_121409.jpg; 20150628_121420.jpg

Goeie dag Alida

Hoop dit gaan goed

Ek is: Philip Barnard, eienaar van:
 Efr 600 Franskraal
 Tel: 0833 205 103
 Werk: 021 8729263
 E-pos: philip.barnard@sanlam4u.co.za

My redes vir beswaar is:

- 1) Sy braaiplek is onnet en het 'n invloed op die waarde van my huis.
- 2) Sy skoorsteen is te laag en rook trek in my huis as hy die braaiplek gebruik.
- 3) Boom groei tot teenaan my woning en moet asb verwyder word.

Aangeheg het ek foto's geneem van bogenoemde besware.

Kontak my gerus indien u enige vrae het.

Beste groete

Philip Barnard
 Senior Finansiële Adviseur
Boiaud BlouSter
 Finansiële Adviesdienste


T +27 21 872 9263 F +27 21 872 5697
Philip.barnard@sanlam4u.co.za
 The Towers, 333 Main Road, Paarl, 7646

FILE NO:	62 599 Franskraal
SCAN NO:	12
COLLABORATOR NO:	941174

Sanlam is 'n Geïsensieerde Verskaffer van Finansiële Dienste



23 SEP 2016

23 SEP 2016







6 Oktober 2016

Vir aandag: Me Alida Calitz

Reaksie op die besware wat mnr P. Barnard (erf 600 Franskraal) lig rakende ons eiendom (erf 599 Franskraal)

Geagte Me Calitz,

Baie dankie vir die voorlegging van mnr Barnard se besware.

Ek wil graag puntsgewys as volg reageer.

1. Mnr Barnard argumenteer die buitebraai is onnet en het 'n negatiewe invloed op die waarde van sy eiendom.

My reaksie op hierdie stelling:

Die buitebraai is 'n baie ou gepleisterde en geverfde baksteen struktuur wat reeds daar was jare voordat mnr Barnard sy erf besit het en dus ook nog lank voordat hy (met bouplanne?) sy huis gebou het. Mnr Barnard het sy skoorsteen sonder my toestemming aan die buitekant van sy huis se buitemuur teenaan ons grenslyn opgerig, na my mening sonder goedgekeurde planne. Ek maak die logiese afleiding dat sy versuim om my vir goedkeuring van die oprig van die skoorsteen oor die boulyn, tot bitter na-aan die grenslyn, op te rig direk verband hou met die afwesigheid van 'n goedgekeurde bouplan, en dat die bouery dus onwederegtelik is. Met die aanbou van sy braai se skoorsteen en die stoorkamer teenaan die skoorsteen, het sy bouers verdere skade aan die asbes dak van ons buitebraai aangebring. Ek reken mnr Barnard se frustrasie en opmerking oor die sogenaamde onnetheid (waarvan hy nooit oor die afgelope 16 jaar gekla het nie), het direk hiermee te doen. Ek is meer as gewillig om die dak wat hy beskadig het, op sy koste, of gedeeltelik op sy koste (omdat dit in alle billikheid 'n ou dak is), te vervang.

Ek vind dit vreemd dat mnr Barnard juis nou oor die buitebraai se voorkoms kla, terwyl hy onregmatig, weereens sonder my toestemming, ten tye van die aanbou van sy skoorsteen en stoorkamer, 'n gedeelte van die vibcrete grensmuur (wat reeds ongeveer 'n jaar tevore deur die wind omgewaai is, maar deur my toedoen herstel is) tussen die twee erwe verhoog het. Hy is moontlik nie eens daarvan bewus dat die verhoging in die grensmuur 'n groot veiligheidsrisiko veroorsaak het nie. Met nadere ondersoek sou hy kon sien dat die muur wankelig is. Mnr Barnard het na maande eers die muur na

sy oorspronklike hoogte herstel, onge-ag die veiligheidsrisiko en onooglike voorkoms. Verdere skade wat hy aan die muur veroorsaak het met die afbreek van die verhoogde gedeelte het ek self probeer herstel.

Ons buitebraai is na my mening nie onnet nie, geensins meer onnet as die buurman agter hom se aanbouings vas aan sy grensmuur nie.

2. Mnr Barnard beweer ons braairook trek by sy kombuisdeur in omdat ons skoorsteen te laag gebou is.

My reaksie:

Die braai word reeds vir baie, baie, jare nie gebruik nie. Die skoorsteen is bo-op geseël sodat water nie in die braai kan inloop nie en dit behoort van sy kant van die erf ook duidelik sigbaar te wees. In die 17 jaar wat ons die huis besit, is die braai omtrent net 5 keer gebruik terwyl mnr Barnard tuis was. Ons het die buitebraai in die afgelope 6 jaar nooit gebruik nie en soos genoem, is dit hoegenaamd nie meer as 'n braai bruikbaar nie. Ons het 'n braai op wiele en ook 'n binnebraai in die huis wat gebruik word. Die braai waarna mnr Barnard verwys was, soos in punt 1 genoem, reeds in sy bestaande vorm op ons erf toe hy sy huis gebou het. As hy toe 'n probleem met rook voorsien het, sou hy sy huis se bouplanne so kon opstel dat dit hom nie sou affekteer nie. Die enigste doel van die ons braai area, al vir jare, is stoorplek vir braaihout en stoor van die braai op wiele.

Slotsom: Daar is nie meer rook wat by sy kombuisdeur kan intrek nie.

3. Mnr Barnard maak kapsie oor boomtakke wat aan sy skoorsteen en huis raak.

My reaksie:

Die takke waarna mnr Barnard verwys is fyn takkies wat maklik met 'n ligte snoeiskêr afgesny kan word. Intendeel – hy het self opdrag aan sy tuinman gegee om van die dicker takke af te saag. Ek is ten sterkste gekant daarteen om so 'n prag van 'n ou boom, wat geplant is lank VOOR mnr Barnard sy huis gebou het, en ook die ENIGSTE koelte in ons erf is, van kant te maak; net omdat 'n paar fyn takkies effens aan sy nuutgeboude skoorsteen, stoorkamer of huis raak. Mnr Barnard ondervind nou meteens 'n probleem omdat die skoorsteen wat hy teenaan sy huis vasgebou het oor die boulyn en baie na aan die grenslyn is, soveel so dat hy in die boom "ingebou" het. Weens hierdie onregmatige aanbouing (ek is nooit gevra om toestemming te gee nie; derhalwe is my afleiding dat daar ten tye van die

aanbouing nie goedgekeurde planne was nie) het hy te na aan die boom gebou. Ek kan wel onderneem om die takkies wat nou aan sy skoorsteen raak, of dan selfs net oorhang na sy erf, af te saag. Dit behoort die probleem op te los. Ek kan nie die sin insien om die hele boom te verwyder nie en argumenteer dat dit 'n onbillike versoek van mnr Barnard is. Dit druis ook in teen die bewaring van ons boomerfenis.

Ek dink dit is baie onredelik van mnr Barnard om te verwag ons moet die boom in geheel afkap. Sy huis het nie eens vensters aan die kant van die boom nie.

Ek vertrou dat my argumente deur die munisipaliteit aanvaar sal word en dat mnr Barnard hiermee ook sal verstaan dat ons billike versoeke van hom met die nodige redelikheid sal oorweeg.



Prof LMT Dicks

Uitgelese Professor aan Stellenbosch Universiteit

E-pos: LMTD@sun.ac.za

Munisipaliteit – U-Masipala – Municipality
OVERSTRAND

INTERNAL MEMORANDUM

Aandag / For Attention:	Town Planning department: A Calitz	Van / From:	Department Operational Services
Afskrif / Copy:		Datum / Date:	28 September 2016

Ref: Erf 599, Franskraal

RE: APPLICATION FOR DEPARTURE (BUILDING LINES) ON ERF 599, FRANSKRAAL

The request for comment from the Department: Operational Services (Gansbaai) dated 24 August 2016 with regard to the abovementioned proposal refers.

The Department: Operational Services (Gansbaai) **has no objection to the application for departure with regard to building lines on Erf 599, Franskraal as indicated in the application, subject to the following conditions:**

1. That the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development on Erf 599, Franskraal.
2. That the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage.
3. That on-site parking facility is provided as per the Planning Schedule, and to the satisfaction of the Directorate: Operational Services.
4. That any additional and / or extended vehicle entrances will be for the owner's account.

Yours faithfully



W. Germishuys
Principal Technician: Operational Services
Gansbaai



J. de Villiers Pr. Eng.
Senior Manager: Operational Services
Gansbaai

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Municipaliteit • U-Masipala • Municipality

OVERSTRAND



File reference:	3291
Date:	24/08/2016

INTERNAL MEMORANDUM

From	:	Town Planning Department
Town Planner	:	SCHALK VAN DER MERWE

TO:

Area Manager	Building Department	District Health	Electrical Department
Environmental Officer	Fire Department	Infrastructure and Planning (Onrus)	Local Heritage Committee
Operational Services	Traffic Department	Ward Councillor (D Botha)	Waste Management

Applicant	PRINSLOO ARGITEKTONIESE ONTWERP obo SARINA DICKS
Property Details	ERF 599 FRANSKRAAL
Application Description	PROPOSED DEPARTURE & REMOVAL OF RESTRICTIONS

ATTACHMENTS :

1. Notice	Should the information be insufficient to you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Plan	
3. Site & Ground Floor Plans	
4. Motivation	

MUNICIPALITEIT OORSTRAND MUNICIPALITY

FIRE BRIGADE / BRANDWEER
APPROVED / GOEDGEKEUR

17 OCT 2016

YOUR DEPARTMENT'S COMMENTS:

① The braai/recreational area on boundary must be of non-combustible material alternatively a 60 minute fire wall must be provided on boundary

② All openings in section of structure on proposed new building lines may not exceed a total of 5m²

Signature: _____ Date: _____

Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo by not later than the date stipulated below. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

- Building Control Department to confirm that all structures on the property/ies are in accordance with the approved building plans.

COMMENTS REQUIRED BY: 30 SEPTEMBER 2016

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE & REMOVAL OF RESTRICTIONS: ERF
599, FRANSKRAAL (3291)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. that any additional and / or extended vehicle entrances will be for the developer's account;
5. that stormwater be allowed to discharge through Erf 599, Franskraal, unobstructed;
6. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

13/10/2011
DATE