

## 4.2

**ERF 844, 14 ROSS STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR CONSENT USE: MESSRS INTERACTIVE TOWN AND REGIONAL  
PLANNERS ON BEHALF OF G & JJ POTGIETER**

844 GFK

SW van der Merwe

(028) 313 8900

Hermanus Administration

11 January 2022

**1. EXECUTIVE SUMMARY**

To consider an application received on 1 March 2021 from Messrs Interactive Town- and Regional Planners on behalf of G and JJ Potgieter applicable to Erf 844, Franskraal in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ removal of restrictive title deed conditions C.5(b) and C.5(d) contained in Title Deed T63560/2017 in terms of Section 16(2)(f) of the By-law of, and
- ❖ consent use to accommodate a proposed dwelling unit (ground floor) in terms of Section 16(2)(o) of the By-law.

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

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

Erf 844, Franskraal is situated in a local business node comprising 6 erven to the western side of Franskraal between Ross Street, Loop Street, Nico Street and Service Street (unmade street). Access is obtained from Ross Street. The erf measures 483m<sup>2</sup> in extent, is zoned for Business Zone 3 purposes and is currently vacant. The adjoining business zoned erven are all vacant, save for an office situated on Erf 846.

The surrounding area comprises low density single residential erven mostly developed with dwelling houses, as well as a public open space and utility services erf to the southeast.

The property, in terms of the title deed is subject to restrictive title conditions that amongst others limits the use of the property to shop purposes only, as well as conditions relating to coverage, building lines, including a no subdivision clause.

The property owner acquired the property during 2017 under the impression that it is a vacant residential erf. The property actually comprises a vacant Business Zone 3: Local Business erf. The property owner wish to construct a dwelling, hence the application for removal of restrictive title conditions and consent use to permit a ground floor dwelling unit.

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

The motivation for the application is summarised as follows:

- ❖ The application property is vacant and surrounded by vacant residential, business and open space properties.
- ❖ The proposal is consistent with the land use and zoning of the area.
- ❖ The proposal is consistent with the By-law that permits a ground floor dwelling unit and flats as a consent use.
- ❖ The proposal will not negatively impact on or be negatively impacted by land uses in the surrounding area.
- ❖ The business rights and option of a potential appropriate future business will be maintained.
- ❖ The owner is not interested to develop the property for business purposes.
- ❖ The application will allow the owner to develop the property for residential use, thus not forcing him to sell the property.
- ❖ The property will not lie vacant indefinitely as with the surrounding business erven.
- ❖ The proposal is consistent with the character of the area.
- ❖ Social and personal benefits in terms of potential higher property value, less potential for crime and provision of housing are foreseen to result from the proposal.
- ❖ Removal of restrictive title conditions will not have a material personal, social or financial benefit of the restrictive condition remaining in place were found, whereas personal and social benefits are foreseen to result from the removal of the restrictive title conditions.
- ❖ The SDF promotes integrated, sustainable and habitable towns and residential areas. The application erf is a vacant business erf, will remain Business Zone 3 and therefore considered consistent with the SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.
- ❖ The application is regarded desirable in the local context and well-integrated with existing community land use activities.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	Yes	18 June 2021	23 July 2021
Gazette	Yes	18 June 2021	23 July 2021
Notices	Yes	18 June 2021	23 July 2021
Internal Departments	Yes	18 June 2021	23 July 2021
Ward councillor	Yes	18 June 2021	23 July 2021
Total letters of objection	<b>One (1) letter of objection</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?			<b>Yes</b>

Was the application processed correctly?	<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?	<b>Yes</b>
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies.	<b>Yes</b>

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

Name	Date received	Summary of comments
Building Department	24/06/2021	No objection.
Waste Management	02/07/2021	No objection.
Environmental Services	23/07/2021	No objection.
District Health	26/07/2021	No objection.
Engineering Services	29/07/2021	Annexure F.
Fire Services	10/08/2021	No objection, subject to compliance with the provision of SANS-A:2016, 10400-T:2020 and the By-Law relating to community fire safety.
Open Serve	12/08/2021	Annexure G.

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

One objection letter was received from Mrs E Goosen, part owner of Erf 763, Franskraal.

**Objector resides opposite the application property for the past 20 years. Any change to the title deed could impact on the objector as well as residents residing in Ross Street and Franskraal as a whole.**

##### Response from applicant

Removal of the restrictive condition will enable the use of the property for the purpose of a shop, offices, restaurant, dwelling unit (above ground floor), flats (above ground floor), caretakers' accommodation and self-catering. Application entails construction of a dwelling unit, which will have a lesser impact on residents in Ross Street. The applicant is of the view that the business on Erf 846 demonstrates that further businesses in the node is not feasible.

Response from town planner

Development of the property will impact upon the objector, specifically views, regardless of the type of land use. Pertaining to the impact of the removal of the restrictive condition permitted land uses will be limited to the provisions of Business Zone 3, in accordance with the scheme regulations. Being a local business node with a reasonable buffer from the closest adjoining residential property the aforesaid land uses is not foreseen to unacceptably detract from the residential amenity of the adjoining property owners.

Although a dwelling might have a lesser impact on adjoining single residential properties, should it be approved, it might negatively impact upon the future use of the application property, as well as adjacent business properties, due to conflicting interests and potential complaints.

**Removal of restrictive title conditions would provide the property owner cart blanc to run any type of business which could be for their benefit only**

Response from applicant

The objector's statement is incorrect. The use of the property will be limited to the land uses permitted under Business Zone 3.

Response from town planner

The applicant's comment is noted and agreed with. As such, the potential impact on the objector as a result of the removal of restrictive title conditions will be limited to the land uses permitted under Business Zone 3 and not any business / commercial use, as per the objector's comment.

**The objector finds it unbelievable that the property owner was under the impression they were purchasing a vacant residential property, since the property had been in the market for a number of years. The estate agent is responsible to inform the buyer about the zoning of the property. As such, the property owner needs to take the matter up with the estate agent or seller.**

Response from applicant

The applicant only noted the objectors' statement.

Response from town planner

The onus remains on the property owner to do his own investigations regarding the land use rights applicable when purchasing the property. As such, the matter is considered a civil legal matter between the property owner, the seller and estate agent involved in the transaction. Despite afore said, each application is still to be considered on the basis of its individual planning merit.

**There is little parking available in the area, thus negatively impacting residents.**

Response from applicant

On-site parking provision will be a challenge. The objector however supports business use of the property (i.e. shops). Thus, objection based on parking seems to be contradicting the objector's support for shops.

Response from town planner

The property owner will be required to provide on-site parking provision in accordance with the provisions of the scheme regulations. This requirement will effectively limit the size and scale of any future construction on the property since the parking ratio is based on the Gross Leasable Area of the property. Ross Street has a 20,5m wide road reserve with a 9,5m distance between the edge of the tar and street boundary of the application property. Thus, ample space for access/egress and it is not foreseen that the development of the property in line with the Scheme Regulations would result in an unacceptable traffic impact.

**Excessive noise and rowdiness would cause unpleasantness to concerned parties.**

Response from applicant

No comment provided.

Response from town planner

The point of objection is noted but deemed speculative since the objector seems to hide behind the fact that the impact of future development is not known. As stated above, the use of the property should the application(s) be successful will be limited to the land uses provided for under Business Zone 3 as per the Land Use Scheme.

**The original purpose of the zoning which is for a shop will be more beneficial to the residents.**

Response from applicant

The objector does not provide any reasons or motivation for the statement. Thus, the objection should be dismissed.

Response from town planner

The applicants' comment is noted and agreed with.

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

N/A

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

N/A

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

### 10.1 Background

N/A

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

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

#### Spatial Justice

The proposal will not further perpetuate historic spatial imbalances being an existing erf within an existing residential area. The proposal will provide access to housing, make optimal use of land in line with the SDF whilst the land will not lie vacant indefinitely.

#### Spatial sustainability

The application is located within the urban edge and will thus not lead to urban sprawl, impact sensitive or biodiversity rich areas or agricultural land. The proposal addresses the current need for housing whilst retaining the option for future business use on the property.

#### Efficiency

The proposal will permit development of the property for residential purpose with access to services, facilities, and opportunities, rather than letting the property lie vacant until such time that an established business is permitted in future.

#### Spatial Resilience

The proposal is consistent with the SDF that adhere to the principle of efficiency.

#### Good administration

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

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

#### Spatial Justice

Same as 10.2 above.

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

#### Overstrand Municipal Spatial Development Framework (2020):

The SDF promotes a balanced land use mix with adequate provision for amongst others commercial growth, tourism development, role of coastal villages as holiday resorts / retirement villages and provision of a balance mix of

housing stock addressing the full range of socio-economic groupings. Strategic policies encourage mixed use densification within urban, suburban and rural centres, whilst these areas are to become the primary commercial areas, whilst limiting commercial development outside these areas. Neighbourhood nodes and the CBD to become the nucleus of business, commercial, public infrastructure and other services.

Business uses should be limited to existing business nodes within Franskraal and Kleinbaai, whilst densification to address the housing need should take place in accordance with the provisions of the Overstrand Growth Management Strategy.

The applicant argues that the proposal is consistent with the principles of the SDF (2020). Although the zoning remains business the applicant clearly states that it is the intention to use the property for residential purposes and not for business purposes. Although the zoning remains Business Zone 3 the proposal will introduce a predominant single residential use (dwelling unit) in a business node that will sterilize the future use of the property for business purposes. The proposal is not considered to strengthen the role of this business node to become the nucleus of business, commercial and public infrastructure, thereby not consistent with the SDF.

Overstrand Municipality Growth Management Strategy (2010):

The applicant states that the OMGMS indicates that the application property is situated within an area that promotes densification less than 10 dwelling units per ha. The impact of the proposed ground floor dwelling units upon densification is therefore immaterial, thus consistent with the OMGMS.

The application property is situated within a densification zone as per the OMGMS. Being situated within a commercial neighbourhood node densification is to occur via mixed use development comprising both residential and commercial land uses. The proposed ground floor dwelling unit introduces a purely residential land use opposed to a mixed use development and is therefore contrary to the applicant's statements and not consistent with the provisions of the OMGMS.

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

N/A

**10.6 Impact on Municipal engineering services**

No objections were raised by the Engineering Services Department on the basis of availability and capacity of services, subject to compliance with the Engineering Services Report attached as Annexure F.

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

N/A

### 10.8 Existing and proposed zoning comparisons and considerations

The application property is zoned for Business Zone 3 purposes permitting the construction of a shop, offices, restaurant, dwelling unit and flats above ground floor, care takers dwelling and self-catering as a primary right. Consent uses amongst others entail a dwelling unit on ground floor in accordance with the development parameters contained in Section 6.3.2 of the Land Use Scheme.

## 11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The title deed T63560/2017 applicable to Erf 844, Franskraal contains the following restrictive conditions that the applicant seeks to remove, namely:

*“C.5(b) It shall be used for shop purposes only;”*

*“C.5(d) No building or structure or any portion thereof, except boundary walls, fences, verandas and balconies shall be erected nearer than 3,36metres to the street line which forms a boundary to this erf.”*

The applicant motivates the application for removal of restrictive title conditions and is of the view that no material personal, social, or financial benefits to the restrictive condition remaining in place is found, whereas personal and social benefits are foreseen to result from the removal of the restrictive conditions.

In view of the above being stated the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

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

There is no financial value to holder of the rights (municipality).

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

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

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

The property owner was under the impression that the primary land use rights were for residential purposes, whilst the owner is not interested to develop the property for business purposes. The personal benefit would be that the removal will permit the property owner to use the property for residential purposes and not having to sell the property if permitted to be used for residential purposes.

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

There is no material social benefit for the condition to remain in place, whilst the social benefits of removal are considered as follows:

- proposal will relieve the potential traffic impact of an additional business in the area;
- proposal will attract less outsiders into the residential area (thus decreasing potential for crime and increased property value);
- additional surveillance and less vacant land in the area, thus minimising potential for crime, and
- contributes to the housing need in the Overstrand Region.

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

Application is only made for removal of some conditions, whilst the no subdivision and coverage conditions C.5(a) and C.5(c) will be retained.

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

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

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

The application for removal of restrictive title conditions will facilitate development of the applicant's property in accordance with the provisions and applicable development parameters as provided for in the Overstrand Land Use Scheme and not considered to affect vested rights of adjoining properties adversely and therefore supported.

### **Consent use**

Application is made for consent use to permit a ground floor dwelling unit. The applicant states that property owner has no intent of using the property for business purposes. Although the applicant acquired the property under the impression that it is a residential property, the property owner failed to do his homework prior to entering a deed of sale during 2017. Ignorance is therefore not considered a valid excuse.

The applicant motivates that the proposed consent use is consistent with the SDF since no change in zoning is required. The applicant further motivates in that in terms of the OMGMS the area is earmarked for densification less than 10 dwelling units per ha. The proposal comprising a ground floor dwelling in terms of densification targets is considered immaterial, thereby consistent with the OMGMS.

Contrary to the applicants' motivation the proposed ground floor dwelling unit is not considered consistent with the provisions of the SDF and OMGMS for the following reasons:

- The proposal will introduce a residential land use in a business / neighbourhood node.
- The applicant does not intend to use the property for commercial purposes.
- The proposed consent use for a ground floor dwelling unit will thus prevent future use of the property in accordance with the applicable primary rights.
- The proposal does not comprise a mixed-use densification providing for both business and residential uses as per the aforesaid policy documents.

- The proposal will not aid to strengthen the role of the neighbourhood node as nucleus of business / commercial use. It will rather detract therefrom since it will sterilise the future use of the property for business / commercial purposes.

Section 21(3) of the By-law states that consent uses may be granted permanently or for a specified period of time (10 years). Subsection (4) further states:

*“a consent use granted for a specified period of time contemplated in subsection (3) must not have the effect of preventing the property from being utilised in the future for the primary uses permitted in terms of the zoning of land.”*

The applicant indicated although the zoning remains Business Zone 3 with the option of future business use the property owner does not intend to utilize the property for business purposes. Granting of consent use will therefor prevent the property from being utilised for business purposes in future.

The applicant incorrectly describes the character of the area as vacant residential, business, and open space property. The adjoining residential area is predominately developed with dwelling houses, with only some vacant residential erven. The commercial node comprises 6 erven. One erf is developed with an office with the remaining business erven still vacant, whilst the adjoining public open space is undeveloped.

Even though the Land Use Scheme provides for consent use for a ground floor dwelling unit, such application still needs to be considered on its merit having had regard to the applicable forward planning and policy documents, impact upon vested rights and character of the surrounding area, including the business node as well as desirability of the proposed land use.

In this regard, the applicant mainly motivates that the proposed dwelling unit will not adversely impact the character and vested rights of the surrounding predominantly residential area and to a lesser extent will not adversely impact adjoining Business Zone 3 properties. The latter is not agreed with since the view is held that the introduction of a purely residential land use will prevent future business use of the property. A purely residential land use is also not considered compatible with the character of the business node that normally comprises mixed land uses with ground floor business and residential limited to above ground floor level. The proposed dwelling unit will impact upon the future use of the adjoining Business Zone 3 properties due to conflicting rights pertaining to dwelling units opposed to business uses resulting in noise and disturbance complaints as a result of operational hours of business including servicing and deliveries that is not necessary restricted to normal daytime office hours.

The application property is situated within a neighbourhood business node established in terms of the Township Establishment conditions of Franskraal. The SDF requires business / commercial land use to be restricted to existing business zoned properties. In addition, mixed use densification comprising both commercial and upper floor residential land uses are normally encouraged within the CBD, including neighbourhood nodes, in line with the provisions of the SDF and OMGMS. The proposed development does not comprise a mixed use development and is therefore seen as an attempt to introduce a pure single residential land use in a business node. The opinion is held that the proliferation of the business node by the introduction of purely residential land uses is not desirable and more likely to result in conflict between residential and commercial land uses i.e. when a restaurant applies

for a liquor license or as a result of extended business hours, servicing and deliveries to and from these properties.

Considering the above, the application for removal of restrictive title conditions is desirable and supported. The application for consent use is not considered desirable and is not supported.

### 13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 844, Franskraal for removal of restrictive title deed conditions C.5(b) and C.5(d) contained in Title Deed T63560/2017, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 844, Franskraal for consent use to accommodate a dwelling unit on the ground floor, **not be approved** in terms of the provisions of Section 61 of the By-Law; and
3. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

### 14. REASONS FOR RECOMMENDATION

#### Reasons for approval

- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.

#### Reasons for non-approval

- ❖ The proposal does not comprise a mixed use development and is not consistent with the applicable forward planning and policy documents (SDF and OMGMS).
- ❖ The proliferation of business node through the introduction of purely single residential use (dwelling unit) is not desirable.
- ❖ The introduction of a purely single residential land use (dwelling unit) will prevent or sterilise the use of the application property for future business purposes.
- ❖ The introduction of a purely single residential use (dwelling unit) will limit future development of the application property in accordance with the application primary rights.
- ❖ The introduction of a single residential use (dwelling unit) will negatively impact the future development and use of adjoining business erven and will not aid to strengthen the role of the business node as envisaged in the SDF.
- ❖ The property owner failed to conduct proper research regarding the zoning status prior to acquiring the property.

**15. ANNEXURES**

Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Title deed  
Annexure D: Objection  
Annexure E: Comment on objection  
Annexure F: Services Report  
Annexure G: Comment: Open Serve

**SIGNATURES****AUTHOR:**

Name: **SW VAN DER MERWE**

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

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

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



1. Introduction	
<p><b>a. Brief</b> Refer to <b>Annexure A</b> for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by the owner of the property, Gerhard &amp; Johanna Potgleter to prepare and submit an application for <u>the removal of restrictive title deed conditions and a consent use to allow for a dwelling unit on the ground floor of Erf 844, Franskraal</u> in terms of Chapter IV, Section 16.2(f)&amp;(o) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020.</p>
<p><b>b. Background</b></p>	<p>The owner of the application area was under the impression that he was purchasing a vacant residential property which was actually a vacant 483m<sup>2</sup> Business Zone 3: Local Business (B3) property located at 14 Ross Street.</p> <p>The owner wishes to <u>construct a dwelling unit on the ground floor</u> of the property.</p> <p>This proposal for a dwelling unit on the ground floor is permitted as a <b>consent use</b> according to the Overstrand Municipality Land Use Scheme, 2020 and the parameters for "General Residential Zone 2: Townhousing on the perimeter" are applicable to the proposed development for a dwelling unit on the ground floor of the property.</p> <p>According to the title deed there are two restrictive conditions which are required to be removed, in order to allow for the proposed land-use and a 3m in lieu of a 3.36m street building line.</p>
<p><b>c. Development Objective &amp; Application Proposal</b></p>	<p>The <b>development objective</b> is to allow for a dwelling unit on the ground floor of the property.</p> <p>Subsequently, the <b>application proposal</b> is for the following:</p> <ul style="list-style-type: none"> <li>• Consent use to construct a dwelling unit on the ground floor</li> <li>• Removal of restrictive title deed conditions to allow for: <ul style="list-style-type: none"> <li>○ Land-use other than a "shop"</li> <li>○ Street building line of 3m in accordance with the Overstrand Municipality Land Use Scheme, 2020, in lieu of a 3.36m title deed street building line.</li> </ul> </li> </ul>

2. The Application																					
<p><b>a. Analysis: Title Deed</b></p> <p>Refer to Annexure D for the Conveyancer Certificate.</p>	<p>The Conveyancer Monica Korf from Virtual Lawyers issued a certificate confirming that there are title deed conditions that restrict the development proposal.</p> <p>The restrictive title deed conditions in Title Deed T63560/2017 are conditions C.5(b) &amp;(d).</p> <p>C. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No.T4371/1985, imposed by the Administrator of the Province of the Cape of Good Hope when approving the establishment of Franskraal Township Extensions No.3 in terms of Ordinance No.33 of 1934, namely:</p> <p>5. This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the Local Authority, it is expedient that the restriction in an such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose:</p> <p>(b) It shall be used for shop purposes only;</p> <p>(d) No building or structure or any portion thereof, except boundary walls, fences, verandas and balconies shall be erected nearer than 3.36 metres to the street line which forms a boundary to this erf.</p>																				
	<p><b>b. Analysis: Development Criteria:</b></p> <p>The development parameters for Erf 844 Franskraal, Overstrand as per the Overstrand Zoning Scheme Regulations, 2020, are summarised as follows:</p>	<table border="1"> <thead> <tr> <th>Parameters</th> <th>Existing Zoning</th> <th>Proposal</th> <th>Comments</th> </tr> </thead> <tbody> <tr> <td>Zoning</td> <td>Business Zone 3: Local Business</td> <td>Business Zone 3: Local Business</td> <td>Consistent</td> </tr> <tr> <td>Primary Uses</td> <td>Shops, dwelling unit (above ground floor, flats (above ground floor), offices, restaurant, caretaker's accommodation and self-catering</td> <td>Dwelling unit (above ground floor)</td> <td>Consistent</td> </tr> <tr> <td>Consent Uses</td> <td>Bottle store, business premises, clinic, conference facility, dwelling unit (on ground floor) in accordance with 6.3.2, flats (on ground floor), town housing, tourist accommodation, hotel, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, sale of alcoholic beverages, service station, service trade and transmission apparatus</td> <td>Dwelling unit (on ground floor)</td> <td>Application includes a consent use for a dwelling unit on the ground floor as well as removal of restrictive title deed condition regarding permitted land-use</td> </tr> <tr> <td>Coverage</td> <td>75% 65% in terms of 6.3.2 in case of dwelling on the ground floor</td> <td>65%</td> <td>Consistent</td> </tr> </tbody> </table>	Parameters	Existing Zoning	Proposal	Comments	Zoning	Business Zone 3: Local Business	Business Zone 3: Local Business	Consistent	Primary Uses	Shops, dwelling unit (above ground floor, flats (above ground floor), offices, restaurant, caretaker's accommodation and self-catering	Dwelling unit (above ground floor)	Consistent	Consent Uses	Bottle store, business premises, clinic, conference facility, dwelling unit (on ground floor) in accordance with 6.3.2, flats (on ground floor), town housing, tourist accommodation, hotel, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, sale of alcoholic beverages, service station, service trade and transmission apparatus	Dwelling unit (on ground floor)	Application includes a consent use for a dwelling unit on the ground floor as well as removal of restrictive title deed condition regarding permitted land-use	Coverage	75% 65% in terms of 6.3.2 in case of dwelling on the ground floor	65%
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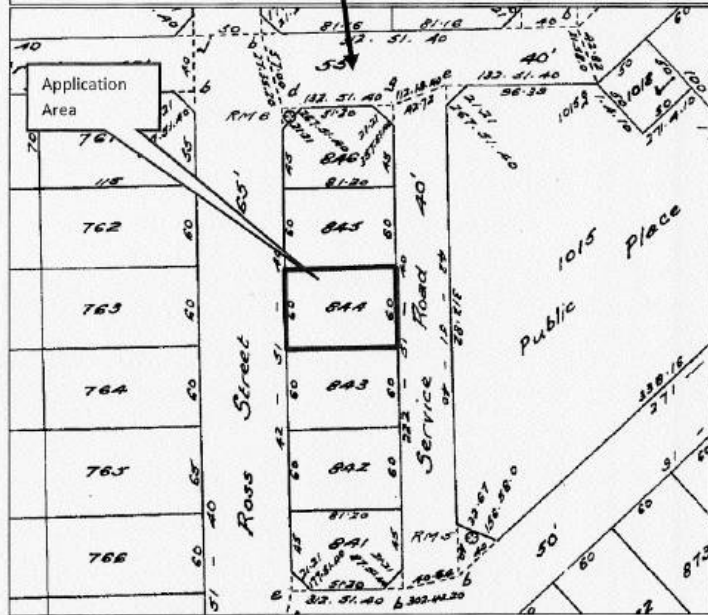
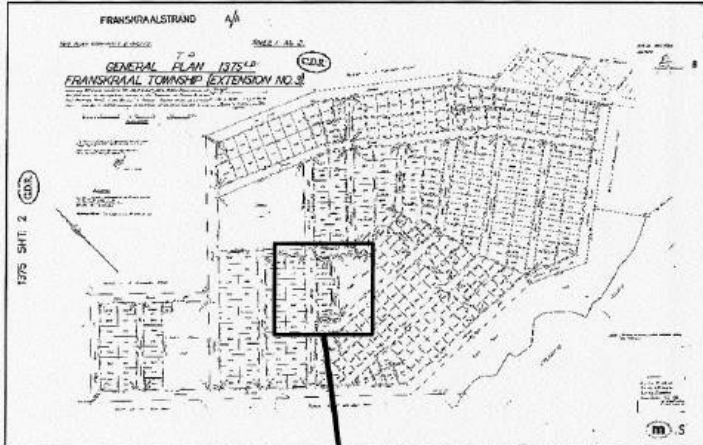
	<b>Height</b>	8.5m 8m in terms of 6.3.2 in case of dwelling on the ground floor 2 storeys	2 storeys	Consistent
	<b>Building Lines</b>	<b>Street</b>	0m 3m in terms of 6.3.2 in case of dwelling on the ground	3m 3.36m (Title Deed) Application includes removal of restrictive title deed condition regarding the street building line
		<b>Common</b>	0m 3m in terms of 6.3.2 in case of dwelling on the ground	3m Consistent
	<b>Parking</b>	4 bays per 100m <sup>2</sup> GLA for shops 2 bays per dwelling unit	2 bays per dwelling unit	Consistent
<b>c. Application</b>	<p>Application is hereby made in terms of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020 for:</p> <ul style="list-style-type: none"> <li>• Removal of restrictive title deed condition C.5(b) from Title Deed T63560/2017 in terms of Chapter IV, Section 16.2(f).</li> <li>• Removal of restrictive title deed condition C.5(d) from Title Deed T63560/2017 in terms of Chapter IV, Section 16.2(f).</li> <li>• Consent for a dwelling unit on the ground floor in terms of Chapter IV, Section 16.2(e).</li> </ul>			

**3. Contextual Site Information**

a. Property Description	Property	Extent	Title Deed	Registered Owner
	844 Franskraal	483m <sup>2</sup>	T63560/2017	Gerhard & Johanna Potgieter

Refer to Annexure E for the SG Diagrams, Annexure B for the Title Deed of Erf 844 Franskraal

The following Surveyor General Plans reflect the application site:



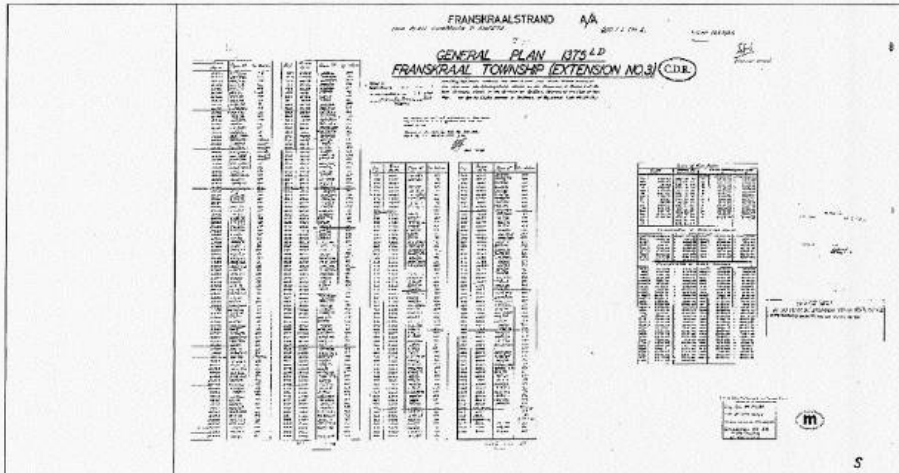


Figure 1: Extracts of the Surveyor General Plans of the application site

**b. Location:**

For the Locality Plans refer to Annexure F.

**Regional Context:**

Within the regional context, the application area is located within Franskraal residential suburb, located south east of Gansbaai and within the Overstrand municipal area. Franskraal functions as a popular residential, holiday and retirement suburb of Gansbaai.

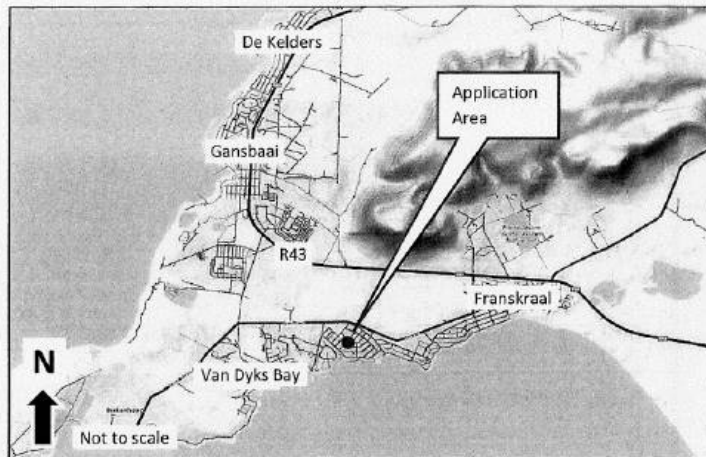


Figure 2: Locality Plan – Regional Context

**Local Context:**

Within the local context the application area is located at 14 Ross Street.



Figure 3: Locality Plan – Local Context

**c. Land Use:**

Refer to the Land Use Plan attached as Annexure H.

Erf 844 Franskraal is a vacant property surrounded by vacant, residential, business and open space properties. The proposal is consistent with the land use of the area.

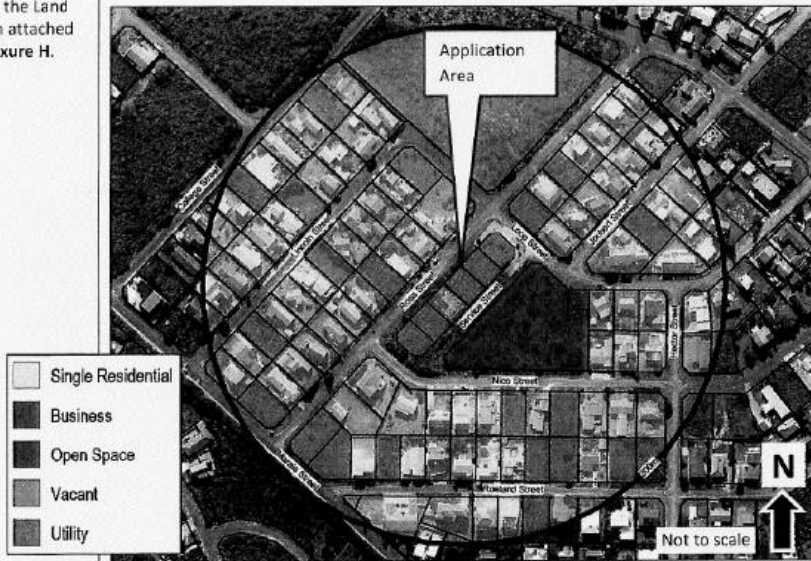


Figure 4: Land use plan based on a 2020 aerial photo

<p><b>d. Zoning:</b></p> <p>Refer to the zoning map attached as Annexure G.</p>	<p>The application area, Erf 844, Franskraal is zoned Business Zone 3: Local Business. The surrounding erven are zoned Business Zone 3: Local Business, Residential Zone 1: Single Residential as well as Open Space Zone 2: Public Open Space. The proposal is consistent with the zoning of the area.</p>
<p>Figure 5: Overstrand online zoning viewer extract</p>	
<p><b>e. Spatial Planning Policy</b></p>	<p>The following policy guidelines from the following relevant policy documents are <u>applicable</u> to the application area.</p> <ul style="list-style-type: none"> <li>• <b>Overstrand Amendment By-law on Municipal Land-use Planning, 2020</b></li> </ul> <p>7.2.1 The following <u>use restrictions</u> apply to property in this zone:</p> <p>a) Primary uses are: shops, dwelling unit (above ground floor) in accordance with 6.3.2, flats (above ground floor), offices, restaurant, caretaker's accommodation and self-catering.</p> <p>b) <u>Consent uses</u> are: bottle store, business premises, clinic, conference facility, <u>dwelling unit (on ground floor) in accordance with 6.3.2, flats (on ground floor)</u>, town housing in accordance with 6.3.2, tourist accommodation, hotel, institution, place of assembly, place of entertainment, place of instruction, place of worship, recreational facilities, residential building, sale of alcoholic beverages, service station, service trade and transmission apparatus (subject to the provisions of Chapter 16.10).</p> <p><b><u>The proposal is consistent with 7.2.1(b) where a dwelling unit (on ground floor) in accordance with 6.3.2, flats (on ground floor) is allowed as a consent use subject to approval.</u></b></p> <p>The following excerpts from the by-law is applicable to <u>the removal of restrictive conditions</u>:</p> <p>35. (4) When the Municipality considers the removal, suspension or amendment of a restrictive condition, the Municipality must have regard to the following: (a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, <u>irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</u></p>

(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition; (c) the personal benefits which will accrue to the person seeking the removal of the restrictive condition, if it is removed; (d) the social benefit of the restrictive condition remaining in place in its existing form; (e) the social benefit of the removal or amendment of the restrictive condition; and (f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The application for the removal of restrictive conditions was evaluated according to the above-mentioned criteria and no material personal, social or financial benefits to the restrictive conditions remaining in place were found, whereas personal and social benefits are foreseen to result from the removal of the restrictive title deed conditions.

Therefore, the application proposal is **consistent** with the Overstrand Amendment By-law on Municipal Land-use Planning, 2020.

- **Overstrand Municipality Spatial Development Framework 2020**

The SDF is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas.

The application area is a vacant business erf within an urban development area.

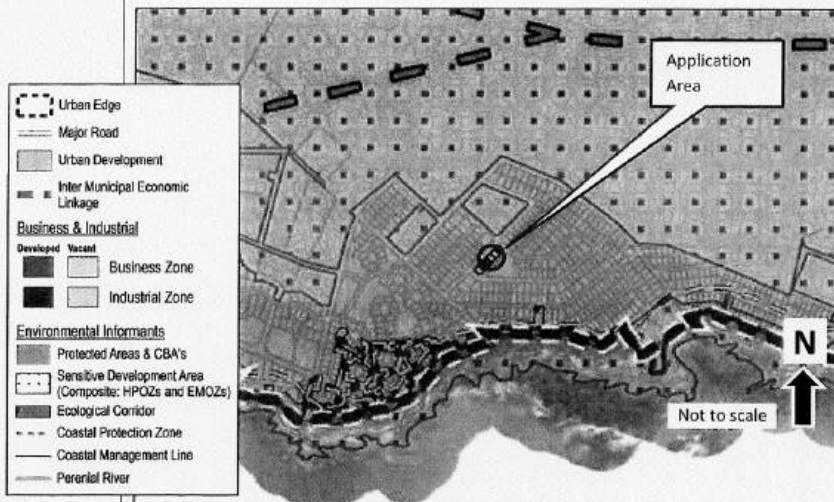


Figure 6: 2020 MSDF Spatial Proposal Franskraal

The proposal is for a consent for a dwelling unit on the ground floor and therefore no change in zoning is proposed for the application area, which will remain Business Zone 3, in accordance with the SDF, 2020.

Therefore, the application proposal is **consistent** with the Overstrand Municipality Spatial Development Framework 2020.

It is concluded however, that amendment of the SDF may be required in future as five of the six erven demarcated for business have been vacant for many years which leads to the conclusion that this area is unsuitable for business development.

• **Overstrand Municipality Growth Management Strategy, 2010**

The Overstrand Growth Management Strategy defines, explains, and uses densification as a growth management tool to positively redress and counteract the effects of urban sprawl to promote the longer-term sustainability of the Overstrand Municipality and its sub-regions' environmental quality.

The following extracts from this document with regards to densification is applicable to the proposal.

- o The application area is within a less than 10 Dwelling Units Per Hectare Densification Zone.

**As the proposal is for a consent for a dwelling unit on the ground floor, the densification per ha is considered to be immaterial.**

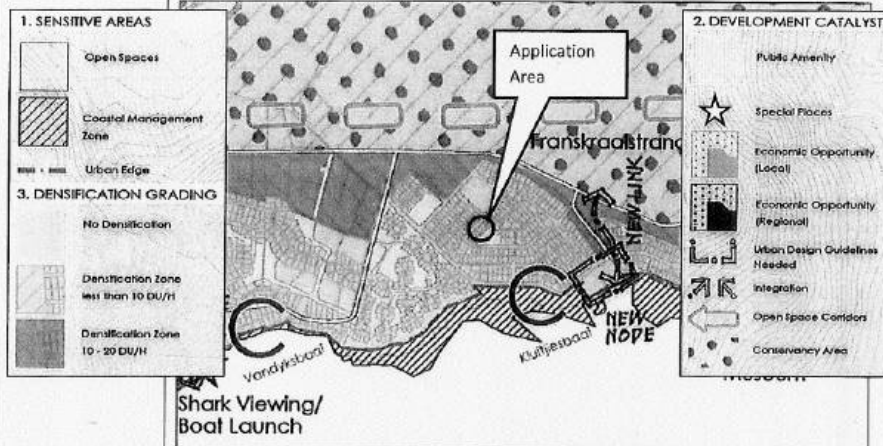


Figure 7: Extract from the Overstrand Municipality Growth Management Strategy, 2010

The application is therefore **consistent** with the Overstrand Municipality Growth Management Strategy, 2010.

#### 4. Motivation

Motivation for the application:

Refer to Annexure I for the Site Plan.

##### a. Introduction & Background:

The owner of the application area was under the impression that he was purchasing a residential property which was actually a 483m<sup>2</sup> Business Zone 3: Local Business (B3) property, located at 14 Ross Street.

The vacant application area is one of 6 erven located along Ross Street which are all zoned for Business Zone 3: Local Business. Five of the six erven have been vacant for many years, leading to a possible conclusion that this area has not yet been recognized as a suitable area for business practices. A public open space erf and a utility erf are located behind the application area. The rest of the erven in the surrounding area consist of single residential zoned erven with existing dwelling units or vacant land.

The owner wishes to construct a dwelling unit on the ground floor of the property.

This proposal for a dwelling unit on the ground floor is permitted as a consent use on a Business Zone 3 erf according to the Overstrand Municipality Land Use Scheme, 2020, and the parameters for "General Residential Zone 2: Townhousing on the perimeter" are applicable in this case.

According to the title deed there are two restrictive conditions which are required to be removed in order to allow for the proposed land-use as well as for a 3m in lieu of a 3.36m street building line.

##### b. Proposal

As the owner wishes to construct a dwelling unit on the ground floor of the vacant 483m<sup>2</sup> Business Zone 3 property, the following two applications are required:

- Firstly, a dwelling unit on the ground floor is permitted as a consent use on a Business Zone 3 erf of which the parameters of "General Residential Zone 2: Townhousing on the perimeter" are applicable to the proposal as tabled below, in accordance with the Overstrand Municipality Land Use Scheme, 2020.

**Table 2: PROPOSAL PARAMETERS: Erf 844 Franskraal**

<b>Zoning</b>	Business Zone 3	
<b>Consent Use</b>	Dwelling Unit on ground floor	
<b>Building Lines</b>	<b>Common</b>	3m
	<b>Street</b>	3m
<b>Coverage</b>	65%	
<b>Height</b>	2 storeys	
<b>Parking</b>	2 bays	

Therefore, the application is for a consent use for a dwelling unit on the ground floor subject to the parameters as indicated in Table 2 above.

- Secondly, the following two title deed conditions from Title Deed T63560/2017, restrict the proposal in the following way:
  - The proposed land-use for a dwelling unit on the ground floor, is prohibited as the title deed condition C.5(b) states that: "It shall be used for shop purposes only."
  - Title deed street building lines are more restrictive than the 3m street building lines required by the Overstrand Municipality Land Use Scheme, 2020, as title deed condition C.5(d) states that: "No building or structure or any portion thereof, except boundary walls, fences, verandas and balconies shall be erected nearer than 3.36 metres to the street line which forms a boundary to this erf."

Therefore, the application is for a removal of restrictive title deed conditions (b) and (d).

On the condition that the above-mentioned applications are approved and before the construction phase commences, building plans will be submitted in accordance with the applicable parameters as set out in Table 2 above.

**c. Character**

The application area is one of six Business Zone 3 erven situated adjacent to and between Ross Street along the front and Service Street along the back of the erven. The surrounding erven consist of public open space behind the application area, adjacent to Service Street as well as single residential dwellings, as illustrated in Figure 8 below.

**Figure 8: Location of Business Erven & Character of the surrounding area**

The proposed land-use for a dwelling unit on the ground floor is foreseen to support the tranquil residential character of the surrounding area while maintaining business rights and the option of a potential appropriate future business on this property.

The proposed residential land-use is consistent with the surrounding residential land-use and is not foreseen to impact negatively on the adjacent business zoned erven as the proposed land-use is a less intensive use than the land-uses permitted by the adjacent business zonings.

Furthermore, the proposed land-use is not foreseen to be impacted by potential future business land-use either, as the businesses here are foreseen to represent offices and/or speciality businesses which should not significantly impact in a negative way in terms of noise or traffic. Any potential impact on the application area should be equal to the impact from businesses on the existing surrounding single residential dwellings within the area.

However, it is noteworthy that five of the six business zoned erven are still vacant, leading to the conclusion that this area has not yet been recognized as a suitable area for business practices. The possibility exists that these business zoned erven may all eventually even be developed for residential purposes rather than for business purposes.

**d. Evaluation of the proposal in terms of Section 35(4) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020**

The application proposal has been evaluated in terms of Section 35(4) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020 regarding personal and social benefits which are foreseen to result from the removal versus non-removal of the restrictive title deed conditions and the following conclusions were made:

	<p>(a) <u>Financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement</u></p> <p><u>No material financial or other value of the rights</u> in terms of the restrictive condition enjoyed by the owner, are evident.</p> <p>(b) <u>Personal benefits which accrue to the holder of rights in terms of the restrictive condition</u></p> <p><u>No material personal benefits</u> which accrue to the holder of rights in terms of the restrictive condition, are evident.</p> <p>(c) <u>Personal benefits which will accrue to the person seeking the removal of the restrictive condition</u></p> <ul style="list-style-type: none"> <li>• The owner was under the impression that the primary land-use rights on the erf were for residential purposes</li> <li>• The owner is not interested to develop the property for business purposes</li> <li>• The property owner will be allowed to construct a dwelling unit on the ground floor of the property</li> <li>• There will be no need for the owner to resell the property due to not being permitted to develop it for residential purposes</li> </ul> <p>(d) <u>The social benefit of the restrictive condition remaining in place in its existing form</u></p> <p><u>No material social benefits</u> to the restrictive conditions remaining in place in its existing form, are evident.</p> <p>(e) <u>The social benefit of the removal or amendment of the restrictive condition</u></p> <p>The social benefits of the removal of the restrictive conditions are considered as follows:</p> <ul style="list-style-type: none"> <li>• On a small and accumulative scale, relieves the potential traffic impact of an additional business in the area</li> <li>• On a small and accumulative scale, attracts less outsiders into the residential area, thus decreasing the potential for crime and potentially increasing property value</li> <li>• Additional surveillance and less vacant land in the area, thus minimizing the potential for crime</li> <li>• Contributes to the housing need in the Overstrand region</li> </ul> <p>(f) <u>Will the removal, suspension or amendment of the restrictive condition completely remove all rights enjoyed by the beneficiary or only some of those rights</u></p> <p>The only rights which will be removed are that the property shall no longer be permitted to be used for shop purposes only. The removal will allow for a dwelling unit on the ground floor to be constructed subject to a 3m street building line in lieu of the 3.36m title deed street building line. The construction of the dwelling unit will be subject to all the relevant Development Management Scheme, 2020 regulations and title deed restrictions, other than the subject restrictive conditions for which a removal is being applied.</p> <p><b>e. Desirability of the proposal</b></p> <p>The proposal is considered desirable for the following reasons:</p> <ul style="list-style-type: none"> <li>• The owner was under the impression that the application area is for residential use and would like to use it as such.</li> </ul>
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- According to the Overstrand Municipality Land Use Scheme, 2020, Business Zone 3 makes provision for a dwelling unit on the ground floor as a consent use.
- The proposed land-use is not foreseen to impact negatively on or be negatively impacted by the land-uses in the surrounding area.
- The business rights and the option of a potential appropriate future business on this property will be maintained.
- As the owner is not interested to develop the property for business purposes, the proposal allows the owner to develop the property for residential use, therefore not forcing him to sell the property.
- The property will not lie vacant indefinitely as is the case with the surrounding vacant business erven.
- The proposal is consistent with the character of the area.
- Social and personal benefits in terms of potentially higher property value, less potential for crime and the provision of housing are foreseen to result from the proposal.

**f. Planning Principles**

The application has also been analyzed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:

- (i) **Spatial Justice** which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.

**Possible results of the development**

The need for housing is directly addressed by the proposal.

The following strategies and principles encouraged by the Overstrand Municipal Spatial Wide Development Framework, 2006 is supported by the proposal, namely, optimal use of land which is encouraged due to the scarcity thereof and catering for a full range of residential needs.

Furthermore, the property will not lie vacant indefinitely as is the case with the surrounding vacant business erven.

The application is consistent with the principle of spatial justice.

- (ii) **Spatial Sustainability** which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

**Possible results of the development**

The proposed development is situated within the urban edge and does not affect any agricultural, environmentally sensitive, biodiversity rich areas or scenic and cultural landscapes.

The proposal addresses the current growing need for housing in the Overstrand and allows the option to operate a business permitted by Business Zone 3 in future, should the owners or future owners wish to establish a business on the application area.

Due to the location of the application area within the urban edge, the proposal will also contribute to minimizing urban sprawl.

The application is consistent with the principle of spatial sustainability.

- (iii) **Efficiency** which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

**Possible results of the development**

The proposal will allow for the property to be developed for residential purposes with access to services, facilities and opportunities, rather than letting the property lie vacant until such time as and if a business is established here in future.

The application is **consistent** with the efficiency principle.

- (iv) **Spatial Resilience** which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

**Possible results of the development**

The proposed development will not lead to any economical and/or environmental shocks as the proposed land-use is for a dwelling unit on the ground floor.

The application is **consistent** with the principle of spatial resilience.

- (v) **Good Administration** which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

**Possible results of the development**

Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the Government and the general public to participate in the eventual decision-making process.

The application is **consistent** with the principle of good administration.

## 5. Conclusion

Approval of the application allows for the optimal use of scarce land to address the housing need, rather than letting the land lie vacant without certainty as to whether a future business will or will not be established here.

Furthermore, the application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities.

It is therefore recommended that the application **be approved** in terms of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020, as follows:

- Removal of restrictive title deed condition C.5(b) from Title Deed T63560/2017 in terms of Chapter IV, Section 16.2(f).
- Removal of restrictive title deed condition C.5(d) from Title Deed T63560/2017 in terms of Chapter IV, Section 16.2(f).
- Consent for a dwelling unit on the ground floor in terms of Chapter IV, Section 16.2(o).

ANNEXURE C 1/4

1-245 0422 CC		75,00
Reason for conveyance	Section	Act

Prepared by me

*(Signature)*

CONVEYANCER  
LOUISE DEKKER

DATA / VERIFY  
03 NOV 2017  
NANDIPHA KETILE

DEED OF TRANSFER

000063560/2017

BE IT HEREBY MADE KNOWN THAT

LYNNE BOTHA

*(Signature)*

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at LOUIS TRICHARDT on 29 August 2017 granted to him by

The Trustees for the time being of

LSG TRUST  
Registration Number T3485/2003

*(Signature)*

DATA / VERIFY  
01 NOV 2017  
MARLYN BARLOW

And the appearer declared that his said principal had, on 19 July 2017, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

**GERHARD POTGIETER**  
 Identity Number 491108 5112 08 8  
 and  
**JOHANNA JAKOBA POTGIETER**  
 Identity Number 540928 0087 08 9  
 Married in community of property to each other

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

**ERF 844 FRANSKRAALSTRAND, IN THE OVERSTRAND MUNICIPALITY,  
 DIVISION CALEDON, PROVINCE OF THE WESTERN CAPE**

**IN EXTENT 483 (FOUR HUNDRED AND EIGHTY THREE) Square metres**

**FIRST TRANSFERRED by Deed of Transfer T4371/1985 with Diagram No. 6433/1984 annexed thereto and held by Deed of Transfer T23702/2016.**

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- A. SUBJECT to the conditions as are referred to in Deed of Transfer no. T5544/1941.
- B. SUBJECT FURTHER to the conditions of the Notarial Deed as referred to in the Endorsement dated 18 April 1951 on Deed of Transfer No. T5546/1941, which Endorsement reads as follows:

"Registrasie van Serwituut (Restant para 1 en para 2)

Kragtens Notariële Akte Nr.478/1951 gedateer 3 Maart 1951, is die eiendomme hieronder gehou, onderhewig aan sekere serwitute met betrekking tot waterregte, waterleiding, opgaardamme en suiweringswerke, soos aangedui op Serwituut Kaart Nr.3241/50, aan gesegde Notariële Akte geheg, tesame met sekere bykomende regte, en onderhewig aan sekere Trust vir sodanige Plaaslike owerheid oor die Dorp Franskraal wat hierna ingestel mag word, om te behou ten voordele van die Erfhouers en sodanige Plaaslike Oweheid, soos meer breedvoering sal blyk uit gesegde Akte en Kaart 'n kopie waarvan hierna geheg is."

- C. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No.T4371/1985, imposed by the Administrator of the Province of the Cape of Good Hope when approving the establishment of Franskraal Township Extensions No.3 in terms of Ordinance No.33 of 1934, namely:
1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No. 401

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Page 3

dated the 17<sup>th</sup> October 1935, and in the memorandum which accompanied the said regulations.

2. The owner of this erf shall without compensation be obliged to allow electricity and water mains and the sewage and drainage including stormwater of any erf or even within or without this Township to be conveyed across this erf, if deemed necessary by the Local Authority and in such manner and position as may from time to time be reasonably required; this shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove, or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
3. The owner of this erf shall be obliged, without compensation to receive such material or permit such excavation on the erf as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the Local Authority.
4. In the event of the provisions of a Town Planning Scheme being made applicable to this erf, which provisions are more restrictive than the provisions contained in the above, then the provisions of such scheme shall apply.
5. This erf shall be subject to the following further conditions provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the Local Authority, it is expedient that the restriction in an such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such conditions as he may impose:
  - (a) It shall not be subdivided;
  - (b) It shall be used for shop purposes only;
  - (c) Not more than two-thirds of the area thereon shall be built upon;
  - (d) No building or structure or any portion thereof, except boundary walls, fences, verandas and balconies shall be erected nearer than 3.36 metres to the street line which forms a boundary to this erf.

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

**The Trustees for the time being of LSG TRUST**  
**Registration Number T3485/2003**

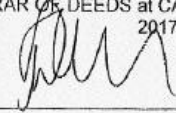
heretofore had to the premises, did in consequence also acknowledge them to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**GERHARD POTGIETER and JOHANNA JAKOBA POTGIETER, Married as aforesaid**

their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled thereto, conformably to local custom, the State, however reserving its rights, and finally acknowledging the purchase price to be the sum of R195 000,00 (ONE HUNDRED AND NINETY FIVE THOUSAND RAND).


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

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

27 October 2017  


q.q.

In my presence

  
REGISTRAR OF DEEDS

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**A Conradie**

---

**From:** Bradley Meredith <bradleymeredith100@gmail.com>  
**Sent:** Tuesday, 20 July 2021 18:39  
**To:** A Conradie  
**Subject:** ERF 844: REMOVAL OF RESTRICTED TITLE DEEDS CONDITIONS

To whom it concerns<sup>9</sup>

Mrs E. Goosen, 19 Ross Street, Franskraal. Cell No 0712286233.

I received registered mail from Inter Active Town & Regional Planning with regards to(wrt) erf 844, 14 Ross Street, Franskraal dated 18 July 2021 requesting that I consent or raise objections to the removal of restrictive title deeds on the above mentioned erf.

My interest in the application is that I have been residing opposite erf 844 for the past twenty years(20) at 19 Ross Street, Franskraal and that any amendments to the above title deeds could have a direct impact on me, residents residing in Ross Street and the Franskraal community as a whole.

The owner's of the erf are seeking to simultaneously have a dwelling on the ground floor without losing the right to possibly run a business from the property.

The property was zoned for business purposes and was to have a shop of some sorts which one would assume would be to the benefit of the residents of Franskraal and the owner.

If one should now consent to the removal of the restrictions to the title deed conditions, one is giving the owners carte blanche to run any type of business from the property which could benefit them only and not the residents as they have not given any concrete indications what their plans are.

I find it inconceivable that the owners say that they were under the impression they were purchasing vacant residential property for the following reason:

Over the years various Estate Agents have brought numerous clients to view the property and it would be their responsibility to inform the prospective purchaser for which purpose the property has been zoned. If this was not done then the owner should take the matter up with the Estate Agent or the seller as a matter of recourse.

Cognizance must be taken of the fact that there is no or very little parking available in the area which would cause problems to the residents and that the people residing in close proximity are elderly and any excessive noise and rowdiness would cause a great deal of unpleasantness to the concerned parties.

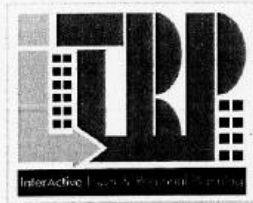
I am commenting wrt the above matter as it could and would impact on me directly should the removal of the restrictions take place.

I am of the belief that the original purpose of the zoning of the property which is for a shop would be more beneficial to the residents.

The option that the owner has carte blanche to do with the property as they like should I consent to their request could and would more than likely result in the owners running a business for their benefit only and not to the benefit of the residents.

It's with this in mind and the ambiguity (not knowing) for which the property will eventually be utilised and factors mentioned above, I strongly do not consent to the removal of a restrictive title deed conditions & consent use

Mrs E. Goosen



**InterActive Town & Regional Planning**

PO Box 980

Hermanus

7200

Reference: Franskraal 844

Date: 27 August, 2021

Office of the Director: Infrastructure and Planning, Town Planning

**Attention:** Mr SW van der Merwe (Senior Town Planner)

**RESPONSE TO OBJECTION: ERF 844, 14 ROSS STREET FRANSKRAAL, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND CONSENT USE**

Your letter 844 GFK dated 28 July 2021 in which a written reply to the objection from Mrs E Goosen is requested, refers.

In summary the application proposal was made for the following:

- Consent use to construct a dwelling unit on the ground floor
- Removal of restrictive title deed conditions to allow for:
  - Land-use other than a "shop" and
  - Street building line of 3m in accordance with the Overstrand Municipality Land Use Scheme, 2020, in lieu of a 3.36m title deed street building line.

The objective of the application is to obtain the necessary consent from the local authority to construct a dwelling on the ground floor of the property.

The motivation for the objection received from Mrs. Goosen can be summarized is interpreted as follows:

- Residing on the property for the last 20 years
- Stating that any amendments to the title deed could have a direct impact on objector and residents in Ross Street as well as the Franskraal community as a whole.
- As the property was originally zoned for business purposes which would allow some shops would be to the benefit of the residents of Franskraal and the owner.
- If the removal of the restrictive title conditions is approved, any type of business may be operated from the property which would only benefit the owner and not the residents as no plans are provided of what is proposed.
- The applicant wants simultaneously a dwelling on the ground floor without losing the right to possibly operate a business from the property.
- It is found unconceivable that the owner was under the impression that they were purchasing vacant residential property
- The application site has very little space for parking negatively impacting the residents.
- The original purpose and zoning would be more beneficial to the residents
- The removal of the condition to allow a residential dwelling unit would be more beneficial for the owner than for the residents
- The ambiguity for the use of the property resulted to the non-support of the application.

In response to the objection, the objector was contacted via telephone to ensure that she understood the content of the application. It was evident from the discussion that the objector in contradiction with her letter of objection is not in support of businesses in Ross Street. Currently only one business building on Erf 846 Franskraal no other have been built on the business zoned property in Ross Street, on the corner of Ross and Loop Streets. She indicated that any building on the vacant erven would restrict their view from their property.



Subsequent to the above-mentioned discussion a letter was e-mailed to the objector confirming that the owner intends only to build a dwelling house on ground floor level and there-by requesting the owner to withdraw her application (refer to Annexure A).

Based on the summary of the objections, a response to each of the points of objections are provided here-below:

Objection	Response
Stating that any amendments to the title deed could have a direct impact on the objector and residents in Ross Street as well as the Franskraal community as a whole.	<p>Condition C.5.(b) of the title deed states that the property may only be used for shop purposes.</p> <p>The removal of the mentioned condition will imply that the property may be used with a consent from the local authority for:</p> <p>“Shops, dwelling unit (above ground floor), flats (above ground floor), offices, restaurant, caretaker’s accommodation and self-catering”</p> <p>and with the specific consent applied for; for a dwelling unit on the ground floor.</p> <p>The impact is that the property may be used for in addition to shops, also for residential purposes and in this case for a dwelling unit on ground floor level.</p> <p>The impact of the a dwelling unit is considered to be less than that of businesses and subsequently not impact the residents in Ross Street.</p>

<p>As the property was originally zoned for business purposes, it would allow for some shops and benefit the residents of Franskraal and the owner.</p>	<p>It is not clear from the objector what benefits are foreseen for the businesses to the Franskraal residents.</p> <p>It is evident that one business premises on Erf 846 Franskraal is not a thriving business and given its location, threshold area and accessibility it is not foreseen to become any better in future which clearly illustrates the non-feasibility of more business premises along Ross street.</p> <p>As mentioned here-above from the telephone discussion with the objector, it rather seems that she uses this argument to attempt to prevent any construction that could impact her view from her property.</p>
<p>If the removal of the restrictive title conditions is approved, any type of business may be operated from the property which would only benefit the owner and not the residents as no plans are provided of what is proposed.</p>	<p>The objector's statement is incorrect. Should the restrictive condition be removed exactly the same businesses will be able to operate as the relevant Overstrand Zoning Scheme, 2020.</p>
<p>The applicant wants simultaneously a dwelling on the ground floor without loosing the right to possibly operate a business from the property.</p>	<p>This point of objection is incorrect and based on uninformed assumptions.</p> <p>It is clearly stated in the application document that the objective of the owner is to obtain permission to erect a dwelling unit on the ground floor of the property.</p> <p>The owner has no intention to operate a shop from the property and would be prepared to compromise the business rights, however, the business rights on the property will remain as per this application.</p> <p>Therefore the objector is completely wrong in her assumption that the owner wants retain simultaneously the right to operate a business and have a dwelling on the ground floor.</p> <p>It is clearly in the application that the owner intends to use the property for a dwelling unit and was confirmed in the cover e-mail as reflected in <b>Annexure A</b>.</p>
<p>It is found unconceivable that the owner was under the impression that they were purchasing vacant residential property.</p>	<p>This statement is noted.</p>
<p>The application site has very little space for parking negatively impacting the residents.</p>	<p>The objector is correct and the provision of parking on this property with suitable manoeuvring space with economical feasible shops is considered to be a challenge.</p> <p>However, taking cognisance of the objector's support and encouragement of a business use on the property but highlighting the potential parking problems, contradict her support of a business use on the property.</p> <p>Should in an unlikely event a thriving business have been possible on the application site it would have resulted to more traffic generated</p>

	<p>in Ross Street and potentially impacting negatively on this tranquil and quiet rural street and suburb.</p> <p>It is derived from the confusing and contradicting arguments that the objector uses the opportunity of objecting to the application to prevent a building structure in front of her dwelling house which will block her views from her property.</p>
The original purpose and zoning would be more beneficial to the residents.	The objector does not provide any reason or motivation for this statement of objection and should therefore be rejected.
The removal of the condition to allow a residential dwelling unit would only benefit the owner.	<p>Similar to the previous point, does the objector not provide any motivation or reason for this point of objection.</p> <p>As previously mentioned from the telephone discussion with the objector; is that she acknowledged that any building on the application property will deprive her sea-view.</p>
The ambiguity for the use of the property resulted to the non-support of the application.	<p>The application is clear with regards to the specific intention of the owner, being to obtain permission to construct a dwelling house on ground floor level on the property.</p> <p>The objector is clearly wrong in stating that she does not know what the property will eventually be utilised for.</p> <p>As mentioned in the responses here-above, it is evident that these arguments are being used to prevent any structures on Erf 844 Franskraal which could potentially deprive the sea views from her property.</p>

**Conclusion:**

The application for the removal of the restrictive title conditions and consent use will not impact negatively on the residents of Ross Street. The reasons for the objection is based on incorrect assumptions, uninformed statements and vague, incorrect and confusing arguments and it can be derived that the objection was used to prevent the construction of a structure in the view-lines of the objectors property.

In the light of the above it is requested that the objection from Mrs E Goosen be rejected and that the application be considered favourable

Regards

Kind Regards



Andre Wiehahn Pr Pln A/927/1996  
B Art et Sc (Town and Regional Planning)  
Tel: 082 466-0490

# Annexure A

Erf 488 Franskraal

gerhard.potgieter@vrompa.com

To: Afrikaans - English - Translate message

Streeklus Nieu Oosenaar

Aangetyde 'n brief stuur versoen. Met die skrywe wil ons u net informeer dat ons steps 'n prokureur valensie hê om u op te oef en dit is wettig en aanvaar gemaak het by die Ministerie.

Hoop dit die stigting u u sal help om u beskou te herwinning.

U kan my by streeklus hê kontak maak u enige vrae het.

By Weebal Desk  
Gerhard Potgieter  
082 062 0766



Beveiligde Oorsender

Reply Reply all Forward

## PROPERTY: REZONING & CONSENT USE APPLICATION


Dear Mrs F Goozen

Your objection dated 20 July 2021 to the application for the removal of restrictive title conditions and consent use for Erf 444 Franskraal as well as the telephone discussion with Mr Wiehahn, InterActive Town and Regional Planning consultant on Friday 13 August 2021 refer.

From the mentioned telephone discussion it was clear that you would wish to rather have a single residential dwelling house on Erf 488 Franskraal and not businesses.

I wish to confirm, that should the application be successful my intention is to construct a dwelling house on the property.

Gerhard Potgieter owner of Erf 488 Franskraal

Signature:   
Cell 082 062 0766

In light of the above I kindly request to complete the following unconditional withdrawal letter:

I, \_\_\_\_\_  
hereby unconditionally withdraw my objection dated 20 July 2021 to the application for the removal of restrictive title conditions and consent use application for Erf 444 Franskraal

Signed at \_\_\_\_\_ on this \_\_\_\_\_ (day) \_\_\_\_\_ (month), 2021

Signature \_\_\_\_\_

### Witness Signatures:

1. Signature \_\_\_\_\_ Name: \_\_\_\_\_

2. Signature \_\_\_\_\_ Name: \_\_\_\_\_

## ANNEXURE F

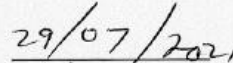
**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEEED  
CONDITIONS & CONSENT USE: ERF 844, FRANSKRAAL**

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

**Conditions:**

1. that, Erf 844 be provided with a municipal water meter as per detail and requirements stipulated;
2. that Erf 844 be provided with adequate sewer conservancy tanks;
3. that only the existing, standard electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
4. 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;
5. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
6. that any additional and / or extended vehicle entrances will be for the developer's account;
7. that stormwater be allowed to discharge through Erf 844, Franskraal, unobstructed.

  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

  
**DATE**



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

Janice Fortes  
Tel: 021 414 5616  
Fax: 086 478 5461  
Email: JaniceF@openserve.co.za

Our Ref.: WWIP\_WFKS2632\_21  
Your Ref.: Erf 844 GFK

12 August 2021

Attention : M. Miller

Overstrand Municipality  
Town Planning

Dear Sir / Madam

PLANT AFFECTED

WAYLEAVE APPLICATION – ERF 844, 14 ROSS STREET, FRANSKRAAL

With reference to your application dated 18 June 2021.

As important cables are affected, please contact our representative Melt Van As at telephone number 021 852 1717/081 363 7873/MeltVA@openserve.co.za at least 48 hours prior of commencement on construction work.

As per sketch attached, Open Serve infrastructure will be affected, consequently the conditions below and on the attached legend will apply.

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for 12 months only, after which reapplication must be made if the work has not been completed.

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

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,  
Private Bag X881, Pretoria, Gauteng, 0001

Approval is granted, subject to the following conditions.

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

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

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

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

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

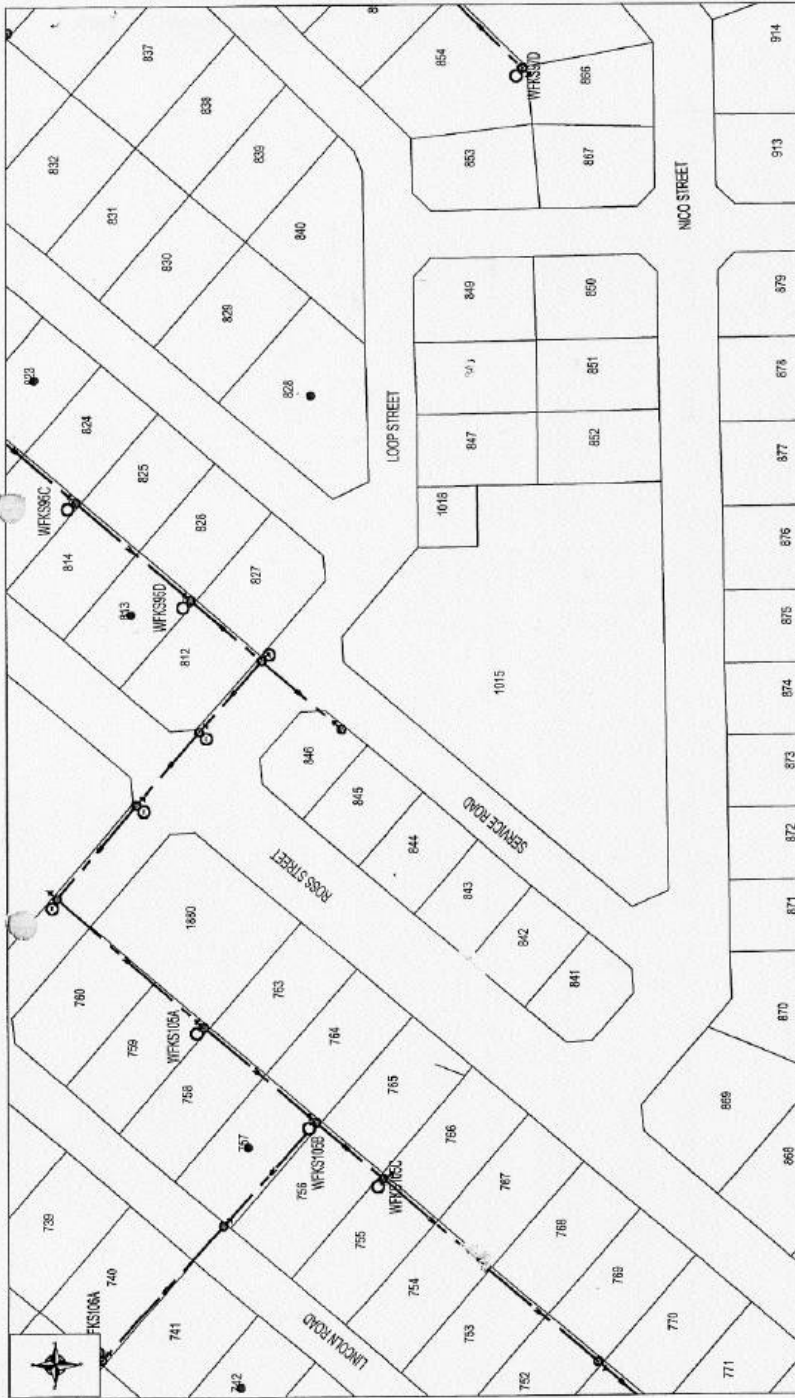
All Open Serve rights remain reserved.

Yours faithfully



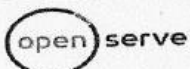
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Janice Fortes  
for  
Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region



Legend	
	Existing Manhole
	Planned Manhole
	To Be Abandoned Manhole
	Existing Jointing Pit
	Planned Jointing Pit
	To Be Abandoned Jointing Pit
	Existing PJB
	Planned PJB
	To Be Abandoned PJB
	Existing In-line DP
	Planned In-line DP
	To Be Recovered DP
	Existing DUC
	Planned DUC
	To Be Recovered DUC
	Existing Piller Joint
	Planned Piller Joint
	To Be Recovered Piller Joint
	Existing Underground Route
	Planned Underground Route
	To Be Abandoned Underground Route
	Existing Overhead Route
	Planned Overhead Route
	To Be Recovered Overhead Route
	Existing Mini OMDP
	Planned Mini OMDP
	Existing Strut and Stay

TELKOM REGIONAL EXECUTIVE	
Consulted By	J. Fox
Client	Overland Municipality
Client ref	Erf 844-GRK
Details	Plant Affected
Date	12/09/2021
OpenDraw ref	WWP_WPKS2632_21
Page Size	A4



This wayleave, Reference Number **WWIP WFKS2632 21** is valid for 12 months from date here of and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three metres of any Open Serve plant ( I.E. any Telecommunication equipment above or below ground level ).
2. The position of our plant affected by the proposal is indicated as approximate and **Melt van As** at telephone number **021 852 1717/081 363 7873** email address : **MeltVA@openserve.co.za** must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of Open Serve Plant will be indicated on site.
3. A written request must be submitted to Open Serve for consideration should the applicant require our plant to be relocated. The cost of such relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Open Serve immediately should the applicant locate any Open Serve plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for the damage or loss as a result thereof.

Date: 12 August 2021

By: J. Fortes

For Wayleave Management  
Western Cape

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

The pipeline indicated contains **OPTIC FIBRE** cables.  
**Melt Van As @ telephone 021 852 1717/081 363 7873**  
must be contacted at least 48 hours before commencement of work.