



**MEETING OF THE  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**A G E N D A**

**DATE:  
VENUE:  
TIME:**

**28 JULY 2022  
VIRTUAL  
10:00**

# OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT  
Civic Centre  
HERMANUS  
7200

13 July 2022

**TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

**CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

**NOTICE IS HEREBY GIVEN** that the **Municipal Planning Tribunal (MPT)** will go into session **VIRTUALLY** on **Thursday, 28 July 2022 at 10:00** to consider the attached agenda.

**H JANSER (MS)**  
**CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL**

**Distribution:**

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Secretariat

**MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

28 July 2022

**I N D E X**

**ITEM**

**PAGE  
NUMBER**

**APPLICATIONS FOR LEAVE OF ABSENCE**

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| <b>4.1</b> | <b>ERF 463, 17 SHARPIE STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: WRAP PROJECT OFFICE ON BEHALF OF DJ &amp; M ERASMUS</b>  | <b>1</b>  |
| <b>4.2</b> | <b>ERF 2699, 12 TREWWA STREET, GANSBAAI (PERLEMOENBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS INTERACTIVE TOWN &amp; REGIONAL PLANNING ON BEHALF OF DP BOTHA</b> | <b>28</b> |

**1. OPENING**

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

**3. CONFIRMATION OF MINUTES**

**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 30 June 2022**

**4. ITEMS FOR CONSIDERATION**

**4.1 ERF 463, 17 SHARPIE STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: WRAP PROJECT OFFICE ON BEHALF OF DJ & M ERASMUS**

Report attached

**4.2 ERF 2699, 12 TREWWA STREET, GANSBAAI (PERLEMOENBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF DP BOTHA**

Report attached

## 4.1

**ERF 463, 17 SHARPIE STREET, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: WRAP  
PROJECT OFFICE ON BEHALF OF DJ & M ERASMUS**

463 HFH (4050/2022)

H Olivier

9 June 2022

(028) 313 8900

Hermanus Administration

**1. EXECUTIVE SUMMARY**

An application has been received on 3 February 2022 from WRAP Project Office on behalf of DJ & M Erasmus on Erf 463, Fisherhaven in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title conditions E.4.(b), E.4.(c) and E.4.(d) as contained in Title Deed T68400/2017 of the property in order to enable the construction of a second dwelling unit and to remove conditions relating to building lines and coverage.

The restrictive title conditions read as follows:

*"E. **SUBJECT FURTHER** to the following special conditions as contained in Transfer No. T3108/1984, newly imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934, when approving the establishment of Fisherhaven Township, namely:*

4. *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 any 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:-*
  - (b) *it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;*
  - (c) *not more than 30% of the area thereof shall be built upon;*
  - (d) *no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the lateral boundary common to any adjoining erf, provided with the consent of the Local Authority, any outbuildings not exceeding 3,05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf."*

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C. The Title Deed is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

The erf measures 1933m<sup>2</sup> in extent and is developed with a dwelling and Wendy house. The erf is located in a residential area and is zoned Residential Zone I.

## 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation can be summarized as follows:

- ❖ The owners of the property want to erect a second dwelling unit, and although it is a primary right in terms of the Overstrand Municipality Land Use Scheme, the Title Deed restrictions prohibits it. Hence this application.
- ❖ The rationale to remove all three restrictive conditions is to enable the landowners to be able to develop the property in future to its full potential in terms of the Land Use Scheme.
- ❖ The proposal is not out of the ordinary with surrounding properties.
- ❖ The restrictive conditions were originally intended to protect the residential character of Fisherhaven, the existing Overstrand Municipality Land Use Scheme however now makes provision to manage the area in a similar manner, and the older more restrictive title deed restrictions are not required anymore.
- ❖ All services are available to the property, and access will still be obtained from Sharpie Street.
- ❖ In terms of need and desirability the second dwelling will provide for an additional residential option in Fisherhaven, will help increase property value and help the Municipality to obtain additional income.
- ❖ No views, sunlight or the character of the area will be affected.
- ❖ The application will have no Environmental or Heritage impact.
- ❖ The property is not situated in an EMOZ or HPOZ.
- ❖ The application is in line with the SPLUMA and LUPA Planning Principles as follows:

### **Spatial Justice**

The second dwelling will not contribute to spatial injustices.

### **Spatial Sustainability**

Will provide housing opportunity and densify the area, which is in line with the Planning Policies.

### **Efficiency**

It will maximise the usage of the property.

### **Spatial Resilience**

The application is in line with spatial planning policies and the Overstrand Municipality Regulations.

### **Good Administration**

The municipality followed a good consultative process and public participation process.

Evaluation in terms of Section 39(5) (a-f) of the By-Law is as follows:

- (a) No person or entity will be affected financially by the removal of these restrictive title deed conditions.
- (b) No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
- (c) The applicant will be gaining from the removal of the restrictive condition as it will allow her to utilize her property to its full extent.
- (d) These restrictive conditions do not have a social benefit.
- (e) There is no specific beneficiary of these conditions. And no person or entity will be affected if these are removed.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Press	<b>Yes</b>	04/03/2022	08/04/2022
Gazette	<b>Yes</b>	04/03/2022	08/04/2022
Notices	<b>Yes</b>	04/03/2022	08/04/2022
Ward councillor	<b>Yes</b>	04/03/2022	08/04/2022
Total comments	<b>NONE</b>		
Total letters of support	<b>NONE</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly (if no, elaborate below):			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			<b>Yes</b>

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

Name	Date received	Summary of comments
<b>Fire Department</b>	08/03/2022	No objection.
<b>Building Control</b>	07/03/2022	No objection.
<b>Environmental Management Services</b>	06/04/2022	No objection.
<b>Engineering Services</b>	07/03/2022	See Annexure E.
<b>Telkom</b>	15/03/2022	See Annexure F.

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

No objections were received during the public participation process.

It is to be noted that 21 registered notices were sent to surrounding property owners and to the Fisherhaven Ratepayers Association.

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

The objectives relating to:

**Spatial Justice**

N/A

**Spatial Sustainability**

The proposal will promote the alleviation of urban sprawl, and therefore place less pressure on valuable agricultural and sensitive environmental land.

**Efficiency**

The additional dwelling will make use of existing services and road infrastructure, ensuring services and facilities are used efficiently.

**Spatial Resilience**

The application is in line with spatial planning policies which promotes a variety of residential opportunities and also densification.

**Good Administration**

Procedure as determined by the Municipality has been followed and a good public participation process was followed.

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

The application is consistent with the planning principles.

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

Consistent since it remains Residential.

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

Same as Point 10.4. above.

**10.6 Impact on Municipal engineering services**

The area is fully serviced.

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

The Title Deed does contain restrictive conditions, which are being applied for.

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

The application is in line with the Overstrand Spatial documents.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS****The financial or other value of the rights**

There is no financial value of the rights.

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

The personal benefit for the applicant is to create an additional dwelling which can be utilized by friends or family or possibly be rented out for financial gain.

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

By removing the restriction allowing only one dwelling on the property enables the property owner to create one additional dwelling, provides more rental housing opportunities to the community and increase the property and surrounding property values. It could also lead to an additional increase in rates and taxes for the Municipality.

The restrictive conditions applicable to building lines and coverage are now controlled in terms of the Zoning Scheme. However, this application does not include any building work which traverse such building lines and coverage which can be used as motivation, and to measure such impact. Such blanket removals cannot be supported.

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

Application is made to only remove the restriction that a second dwelling may not be erected on the property, some building line restrictions and a 30% coverage restriction.

## 12. THE DESIRABILITY OF THE PROPOSAL

The property is developed with a dwelling measuring 54m<sup>2</sup> in extent and a Wendy house measuring 19.5m<sup>2</sup> in extent.

The application includes the removal of a restrictive condition prohibiting the construction of more than one dwelling on the property.

At this stage the Overstrand Municipality Land Use Scheme allow for second dwellings on properties, therefore the restrictive condition in the Title Deed prohibits the landowner to act on such rights.

In terms of the SDF, 2020 the area is identified for residential purposes. In terms of the Overstrand Municipality Growth Management Strategy, 2010 the area is earmarked for densification up to 10 units/ha. These policy documents promote densification to make the maximum use of infrastructure and facilities. This application complies with such aims.

It is therefore foreseen that this part of the application will not have a negative impact on the character of the surrounding area or surrounding property owners.

The proposal is to erect an additional dwelling of 85m<sup>2</sup> in extent on the property. The total coverage would still only be 9,33%, well below the 30% coverage restriction in the Title Deed and 50% restriction in terms of the Zoning Scheme.

The fact that no objections were received against the application indicates that it will have minimal impact on surrounding property owners and their rights.

Application is also made to remove the Title Deed restrictions limiting coverage to 30%, and which stipulated a 4,72m street building line, 1,57m lateral building line and 3,15m rear building line.

The proposed second dwelling will not be constructed over Title Deed building lines, nor will it be over 30% coverage. Although the applicant motivates that the landowner wants to remove such restrictions for future possible development, the impact thereof cannot be measured with this application, to consider the possible impact of removal thereof. This part of the application can therefore not be supported.

The application can therefore be partially 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 on Erf 463, Fisherhaven for the removal of restrictive title conditions E.4.(c) and E.4.(d) as contained in Title Deed T68400/2017 of the property in order to remove conditions relating to building lines and coverage, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 463,

Fisherhaven for the removal of restrictive title condition E.4.(b) as contained in Title Deed T68400/2017 of the property in order to enable the construction of a second dwelling unit, **be approved**, in terms of the provisions of Section 61 of the By-Law subject to the following conditions:

- (a) that this approval is only for the removal of restriction and is not an approval in terms of any other legislation;
  - (b) that building plans be submitted for all new buildings to the Building Department for approval, and that all conditions of the Building and the Fire Department be complied with at that stage;
  - (c) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (d) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
  - (e) that all the conditions in the Services Report (attached as Annexure E), be complied with, and
  - (f) that the conditions imposed by Telkom (attached as Annexure F), be complied with.
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 regarding the above conditions of approval.

#### 14. REASONS FOR RECOMMENDATION

##### POINT 1

- ❖ The application did not involve any new building work over the Title Deed building lines or the 30% coverage limitation and did not require the removal of such building lines for the proposed second dwelling.
- ❖ To evaluate the impact of the removal of a Title Deed Restriction a detailed motivation and proposal must be provided for the decision maker to measure the impact of the removal of such restrictions. The applicant only motivated that the reason to remove these restrictions were to allow future development in line with the Overstrand Municipality Land Use Scheme, with no detailed proposal or motivation to properly measure the impact.

##### POINT 2

- ❖ The application has followed due procedure.
- ❖ No new municipal services will be required.
- ❖ The proposed construction of a second dwelling is in line with Policy Plans which promote densification.
- ❖ The proposed second dwelling smaller than 120m<sup>2</sup> will be in line with the primary rights in terms of the Residential Zone I zone in terms of the Land Use Scheme.
- ❖ The restrictive conditions prohibit the property to be developed to its full potential, and the removal of the restrictive condition is thus supported.
- ❖ No negative impact on the character of the area.

- ❖ No objections were received from neighbours; therefore, the impact on neighbours' privacy and rights will be minimal.
- ❖ The application is desirable.

**15. ANNEXURES**

Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Site Development Plan  
Annexure D: Title Deed T68400/2017  
Annexure E: Services Report  
Annexure F: Comments: Telkom

**SIGNATURES****AUTHOR:**

Name: **HENK OLIVIER**

SACPLAN Reg No: **B/8128/2004**

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

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

**SIGNATURE****REGISTERED PLANNER**

Name: **H VAN DER STOEP**

SACPLAN Reg No: **A/1708/2013**

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

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

# Annexure A

## Locality Plan Erf 463 - Fisherhaven

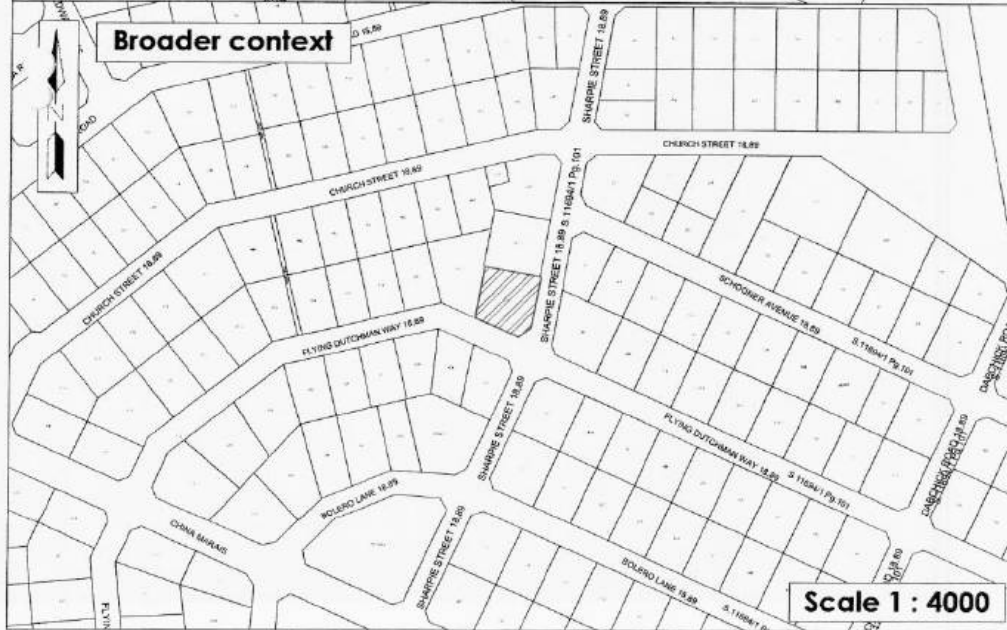
 Subject property

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

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





## MOTIVATION

## 1. ABBREVIATIONS

<b>OM</b>	Overstrand Municipality
<b>OMLUS</b>	Overstrand Municipality Land Use Scheme, 2020
<b>BY-LAW</b>	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
<b>PSDF</b>	Western Cape Provincial Spatial Development Framework, 2014
<b>LUPA</b>	Western Cape Land Use Planning Act, 2014.
<b>MSDF</b>	Overstrand Spatial Development Framework, 2020
<b>SR1</b>	Residential Zone 1: Single Residential

## 2. PROPERTY DETAILS

<b>Consultant</b>	WRAP Project Office
<b>Erf Number</b>	Erf 463 Fisherhaven
<b>Restrictive title deed conditions</b>	Condition E 4(b), (c) and (d)
<b>Extent</b>	1933m <sup>2</sup>
<b>Zoning</b>	Residential Zone 1: Single Residential

## 3. BACKGROUND AND INTENT

Erf 463 Fisherhaven, hereafter referred to as the subject property, is located at the corner of Flying Dutchman Way and Sharpie Street, Fisherhaven (refer **Plan 1**). The property owners (Dirk Jakobus Erasmus and Madelein Erasmus), hereafter referred to as the applicants, bought the property in 2017, and improved it with a dwelling. They now want to construct a secondary residence on the subject property.

A second dwelling unit is a primary right in the OMLUS on a property zoned SR1. The title deed however contains restrictive title deed conditions, which only allows one dwelling unit on the subject property. The applicants approached WRAP Project Office to submit an application to remove the restrictive title deed conditions. (Refer **Plan 4** for the proposed second dwelling plan).

As a result, the following application is required:

- Removal of restrictive title deed conditions E 4(b), (c) and (d);

## 4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

WRAP compiled this report to ensure the applicant's vision is achieved. The following is proposed:

**4.1 Removal of restrictive title deed conditions E 4(b), 4(c) and 4(d)** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

There are three title deed conditions that prohibit the applicant to utilise their property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:



## MOTIVATION

<b>Restrictive Title Deed Conditions</b>
Condition E 4(b) – “it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”
Condition E 4(c) – “not more than 30% of the area thereof shall be built upon;”
Condition E 4(d) – “no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf not within 3,15 meters of the rear or 1,57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3,05 metres in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;”

The rationale for the removal of the restrictive title deed conditions is to enable the applicant to achieve the development intent highlighted in Section 3 and not be restricted in the future. The title deed conditions are more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

## 5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of restrictive title deed conditions E 4(b), 4(c) and 4(d)** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

## 6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed second dwelling is not out of the ordinary and is allowed in terms of the OMLUS.

## 7. TITLE DEED

Title deed T68400/2017 (refer **Annexure B**) was perused and there are several restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit that the applicant's intent with the subject property can be realised.

<b>7.1 Title deed restrictions</b>	<p><b>Condition E 4(b)</b> – “it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”</p>
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## MOTIVATION

**Condition E 4(c)** – "not more than 30% of the area thereof shall be built upon;"

**Condition E 4(d)** – "no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf not within 3,15 meters of the rear or 1,57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3,15 metres in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"

**Motivation**

**The rationale for the proposed removal**

The subject property is currently being used for a single dwelling unit. The applicant has the vision and opportunity to expand on their primary right in terms of the OMLUS by building a second dwelling unit. The proposed development of the property is restricted by the conditions mentioned above and therefore require removal.

**Title deed condition background**

The restrictive title deed conditions were originally intended to protect the residential character of the Fisherhaven area and the new intention is to create additional residential options within the Fisherhaven area. Any amendment or removal of these conditions require the consent of the Administrator. This authority now vests with the Overstrand Municipality.

**Status quo**

The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand Area's residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a residential property.

The current and future development of the property is being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the policies of the Overstrand Municipality, the applicant is not able to utilise her property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;	No person or entity will be affected financially by the removal of these restrictive title deed conditions.

**MOTIVATION**

<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
<i>(c) 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;</i>	The applicant will be gaining from the removal of the restrictive condition as it will allow her to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form; (e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	These restrictive conditions do not have a social benefit.
<i>(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.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

**8. ZONING**

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law:



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
<b>Primary use</b>	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House and Second Dwelling Unit	Comply
<b>Consent use</b>	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
<b>Coverage</b>	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: > 400m <sup>2</sup> and greater = 50%	<b>Development parameters</b> Area of site = 1933m <sup>2</sup> > Existing Dwelling = 54,4m <sup>2</sup> > Second Dwelling area = 85m <sup>2</sup> > Carport = 21,6 > Wendy House = 19,5m <sup>2</sup> > Coverage = 180,5m <sup>2</sup> / <b>9,33%</b>	Comply
<b>Building lines</b>	(i) The street building line is determined in accordance with the net erf area: > 400 m <sup>2</sup> and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: > Greater than 400 m <sup>2</sup> = 2m		Comply
<b>Height</b>	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Existing – Single Storey Proposed – Single Storey	Comply
<b>Garages and carports</b>	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Two parking bays for each dwelling	Comply



## MOTIVATION

### 9. SERVICES

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

#### **Electricity, Water, Sewage and Solid Waste**

The subject property is connected to an electric network, as well the OM's water network and a conservancy tank that is serviced by the OM. The proposal of this application will not greatly affect these networks.

Solid waste is collected every week by the OM.

#### **Access and Egress**

Access and egress to the subject property is gained from Sharpie Street and the proposal will not affect this.

### 10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

#### **Need and desirability**

The need for the land use application was to ensure the property meets all the needs of the applicants. The desirability is more often a personal feeling of the applicants. The intent is to build a secondary dwelling house and create additional residential options within the Fisherhaven area. The proposed dwelling will not benefit any other users or person, but it will increase the property value and, in the future, may yield additional income for the OM.

To achieve their vision, the applicant has appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

#### **Impact on views, sunlight and character of the area**

The subject property is located in a residential setting and the proposed dwelling house will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

#### **Economic impact**

There is little to no impact on the economy. The building of the proposed dwelling house will temporarily employ a contractor that will use workers to assist in the construction phase. Building materials will be purchased at local suppliers.

#### **Opportunity cost**

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The development will not affect the property values of surrounding properties.



## MOTIVATION

### Impact on heritage

The subject property is not listed in the OM Heritage Register.

### Environmental impact

The subject property is not located within an environmentally important area.

## 11. POLICIES AND REGULATIONS

### **11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)**

The subject property is not located within the Coastal Protection Zone.

### **11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)**

The subject property is not located within this zone.

### **11.3 Spatial Planning Policies**

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

## 12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

### Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling will not contribute to spatial injustices.

### Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a second dwelling will add housing opportunities into the Fisherhaven area, densifying an existing property.

### Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the applicant's requirements are met.

### Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

### Good administration

The OM has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

**RECOMMENDATION****13. EVALUATION**

The applicants envision constructing a second dwelling unit that requires the removal of certain restrictive title deed conditions. The removal of the restrictive title deed conditions was motivated in terms of SPLUMA and LUPA.

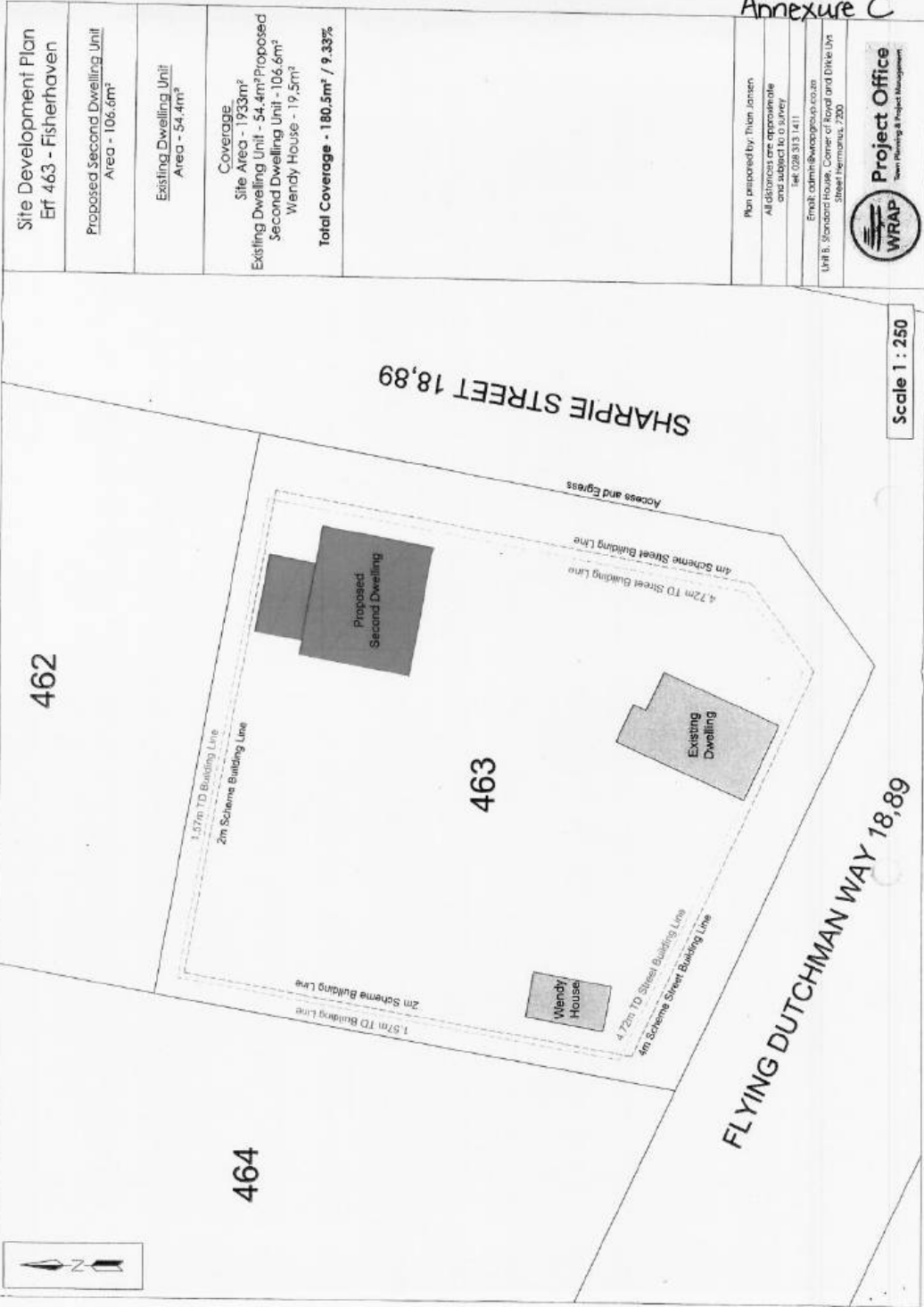
The proposed land use is not out of context with the surrounding area and is not seen as an intrusive land use. The proposed second dwelling unit will also not impede on views, sunlight or negatively affect the character of the area. The proposal for a second dwelling unit is in harmony with all relevant spatial planning policies which illustrates that the applicants did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

**14. RECOMMENDATION**

Based on the abovementioned motivation, it is recommended that the following be approved:

**14.1 Removal of restrictive title deed conditions E 4(b), 4(c) and 4(d)** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;

Annexure C



Site Development Plan Erf 463 - Fisherhaven
Proposed Second Dwelling Unit Area - 106.6m <sup>2</sup>
Existing Dwelling Unit Area - 54.4m <sup>2</sup>
Coverage Site Area - 1933m <sup>2</sup> Existing Dwelling Unit - 54.4m <sup>2</sup> Proposed Second Dwelling Unit - 106.6m <sup>2</sup> Wendy House - 19.5m <sup>2</sup>
<b>Total Coverage - 180.5m<sup>2</sup> / 9.33%</b>

Plan prepared by: Thion Jansen  
 All drawings are approximate  
 and subject to: 1:1000  
 Tel: 028 937 1411  
 Email: admin@wragroup.co.za  
 Unit 8, Standard House, Corner of Royal and Dilke Lys  
 Street, Hermanus, 7250

**Project Office**  
 Wragroup  
 Water Planning & Project Management

Scale 1 : 250

Annexure D 1/5

**340**

DYKES VAN HEERDEN SLABBERT  
 HOPKINS  
 Unit E4/2  
 Edward IV  
 120-122 Edward  
 Bellville 7530  
 South Africa

Fee endorsement	
Amount	CRP/fee
Purchase price/Value	R 395 000,00 / R 580,00
Heritage capital Amount	R. .... R. ....
Stamp duty	Stamp L.E.O.

Prepared by me

*[Signature]*  
 CONVEYANCER  
 LISE COETZEE

<b>VERBOD MORTGAGES</b>	
VIR FOR R 918 832,00	
000030598 / 2017	<i>[Signature]</i>
17 NOV 2017	REGISTRAR
T 000058400 / 2017	

**DEED OF TRANSFER**

BE IT HEREBY MADE KNOWN THAT

**LISE COETZEE**

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 ONRUS on 5 September 2017 granted to him by

**SARAH-ANNE DONNELLY**  
 IDENTITY NUMBER 711218 0541 08 4  
 UNMARRIED

BATA / VERIFY  
 28 NOV 2017  
 MARLYN BARLOW

DATA CAPTURE  
 23 NOV 2017  
 VUYELWA LAMANI

And the appearer declared that his said principal had, on 28 June 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:

**DIRK JAKOBUS ERASMUS**  
**IDENTITY NUMBER 861125 5048 08 0**  
**AND**  
**MADELEIN ERASMUS**  
**IDENTITY NUMBER 860716 0082 08 1**  
**MARRIED IN COMMUNITY OF PROPERTY TO EACH OTHER**

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

**ERF 463 FISHERHAVEN**  
**IN THE OVERSTRAND MUNICIPALITY**  
**DIVISION CALEDON**  
**PROVINCE OF WESTERN CAPE**

**IN EXTENT 1933 (ONE THOUSAND NINE HUNDRED AND THIRTY THREE)**  
**Square metres**

**FIRST TRANSFERRED** by Deed of Transfer No. T3108/1984 with Diagram No. T7706/76 relating thereto and Held by Deed of Transfer No. T71666/2016

- A. **SUBJECT** to the conditions referred to in Deed of Transfer No. T71666/2016
- B. **SUBJECT FURTHER** to the conditions mentioned in Deed of Partition Transfer No. T8000/1931, in favour of Josias Servaas Delport, that Petrus Johannes Delport and his successors in title of the property called ROOI SAND, part of AFDACS RIVIER, transferred to him on 22 October 1931, No. 7998, shall have the right of trekking with his sheep twelve times a year over the property hereby transferred at a spot to be indicated by the said Transferee and his aforesaid.
- C. **SUBJECT FURTHER** as set forth in Certificate of Uniform Title No. T5659/1959:
- (a) .....
- (b) To the right to take land and remove materials for making and repairing public roads.
- D. **SUBJECT FURTHER** to the condition referred to in the endorsement dated 11th May 1970 on said Deed of Transfer No. 11975/1967, which Endorsement reads as follows:-

"Registration of Servitude

The Within described land is subject to a Servitude with regard to apportionment of water in terms of an Order of the Water Court district (District No. 11/64) dated 1st February 1965, as will more fully appear on reference to the copy of the said Order annexed to Deed of Transfer No. 11190/60"

E. **SUBJECT FURTHER** to the following special conditions as contained in Deed of Transfer No. T3108/1984, newly imposed by the Administrator of the Province of the Cape of Good Hope in terms of Ordinance 33 of 1934, when approving of the establishment of Fisherhaven Township, 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 dated 17th 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 other erf or erven 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. This erf shall be subject of the following further conditions, provided especially that where in the opinion of the Administrator after consultation with the Township Board and the Local Authority, it is expedient that the restriction in any 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 only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith.
- (c) not more than 30% of the area thereof shall be built upon.
- (d) no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, any outbuildings not exceeding 3,05 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.
- (e) 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, the provisions of such scheme shall apply.

F. **SUBJECT FURTHER** to the condition as contained in Deed of Transfer No. T3108/1984 imposed by LAKE MARINA PROPERTIES PROPRIETARY LIMITED in its favour as owner of the remainder of Fisherhaven Township and its successors in title, and held by it by Deed of Transfer No. T11975/1967 to wit:

"No building shall be placed on the land hereby sold until the plans and locations of the buildings have been submitted and approved by both the Company and the Local Authority."

In the foregoing condition, the expression "The Company" shall mean LAKE MARINA PROPERTIES PROPRIETARY LIMITED and its successors in title.

G. ....

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

**SARAH-ANNE DONNELLY, Unmarried**

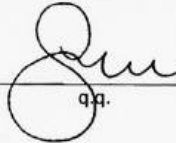
heretofore had to the premises, did in consequence also acknowledge her to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

**DIRK JAKOBUS ERASMUS and MADELEIN ERASMUS, 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 R395 000,00 (THREE 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 2017-11-17

  
\_\_\_\_\_  
q.q.

In my presence

  
\_\_\_\_\_  
REGISTRAR OF DEEDS

## Annexure E

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS:  
ERF 463, FISHERHAVEN**

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

**Conditions**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to minimum requirements of SANS 10400 – P:2010: Drainage;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that stormwater be allowed to discharge through Erf 463, Fisherhaven, unobstructed;
6. that any additional and / or extended vehicles entrances will be for the owner's account;
7. that no on-street parking be allowed.

*Dennis Hendriks*  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

*07/03/2022*  
DATE



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive  
Pinelands  
7404

15 March 2022

Attention: Loriaan Isaacs  
**TOWN PLANNING**  
**OVERSTRAND MUNICIPALITY**  
**HERMANUS**

FILE NO.	Er 463 ✓
	Fisherhaven
SCAN NO.	HFH 463
COLLABORATOR NO.	1655477



TP- N. Ineart  
(M. Olivier)

I Peters (Mrs)

Tel: 021 414 5614

Fax: 086 480 0617

Email: ihlaamp@openserve.co.za

Our Ref.: WWIP\_WHWS0850\_22

Your Ref.: 463 HFH

**OPTIC FIBRE CABLE SERVICES AFFECTED**

**APPLICATION FOR WAYLEAVE: ERF 463, 17 SHARPIE STREET – FISHERHAVEN**

With reference to your application dated March 2022.

As important OPTIC FIBRE cables are affected, please contact our representatives MELT VAN AS at telephone number 0813637873/MeltVA@openserve.co.za at least 48 hours' prior of commencement on construction work.

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.

Approval is granted, subject to the following conditions.

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

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.

TP 15 MAR 2022

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

2/3

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.

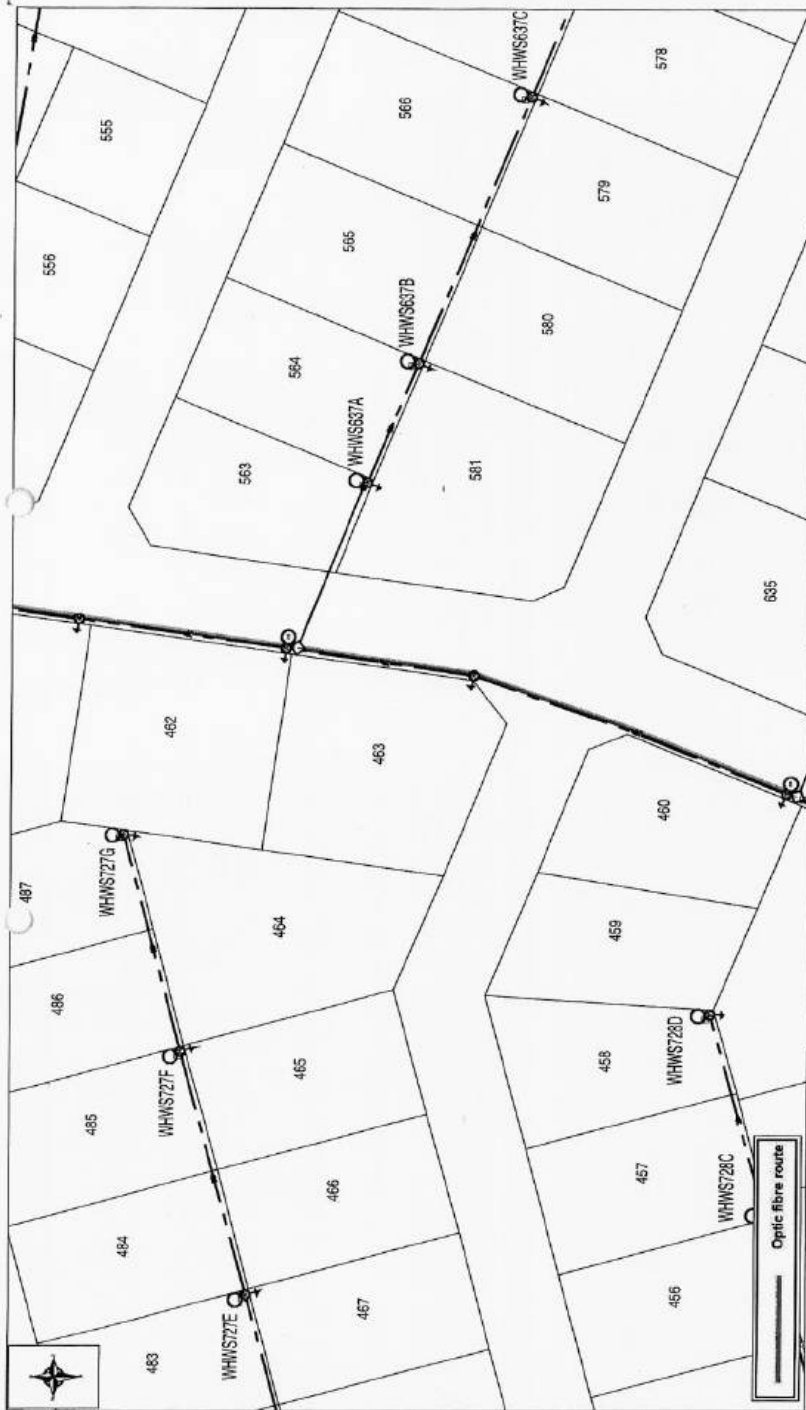
All Open Serve rights remain reserved.

Yours faithfully



---

Ihlaam Peters  
for  
Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region



Optic fibre route

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 Inboard DP
	Planned Inboard DP
	To Be Recovered DP
	Existing DP
	Planned DP
	To Be Recovered DP
	Existing Pole
	Planned Pole
	To Be Recovered Pole
	Existing Underground Route
	Planned Underground Route
	To Be Abandoned Underground Route
	Existing Overhead Route
	Planned Overhead Route
	To Be Recovered Overhead Route
	Existing Min OMDP
	Planned Min OMDP
	Existing Strut and Stay

TELKOM REGIONAL EXECUTIVE	
Compiled By	J. Pilliers
Client	OVERSTRAND MUNICIPALITY
Client ref	14/05/2022
Details	WWIP-WHWS0850_22
	OPTIC FIBRE SERVICES AFFECTED
Page Size	Act