

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

4.2

ERF 5318, 23 CONTOUR STREET, FERNKLOOF, HERMANUS, OVERSTRAND MUNICIPAL AREA : REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION : MESSRS WRAP ON BEHALF OF THE JA KLEYNHANS TESTAMENTÊRE TRUST

5318 HEC (3556)

P Roux

26 May 2017

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

To consider an application received on 15 December 2016 from Messrs Wrap on behalf of the owners of Erf 5318, Hermanus, for the following:

Application in terms of Section 16(2)(f) for the removal of restrictive title conditions in Deed of Transfer No. T39326/1980, C(b), C(c), D(1), D(2), D(3), D(4) and D(5) in order to subdivide Erf 5318, Hermanus into four (4) portions.

Application in terms of Section 16(2)(d) for the subdivision of Erf 5318, Hermanus into four (4) portions namely, Portion A $\pm 1528\text{m}^2$; Portion B $\pm 1582\text{m}^2$; Portion C $\pm 1522\text{m}^2$ and a Remainder $\pm 4545\text{m}^2$.

The 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 Subdivisional Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 5318, is situated in Fernkloof (i.e. Eastcliff), Hermanus and measures 9177m^2 . The property is zoned for single residential use and is located in one of the historical residential areas of Hermanus. The erf is developed with an existing dwelling and subservient outbuildings. The applicant proposes to subdivide the subject property into four (4) erven in order to create three (3) additional erven. The applicant also proposes to remove title deed restrictions which restrict the subdivision and development on the erven.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the subdivision is summarised as follows:

- ❖ the property owner wishes to subdivide the subject property in order to create a Remainder with three (3) additional portions namely Portion A, B and C;
- ❖ the applicant motivated the proposed subdivision under the following points:
 - surrounding erf sizes;
 - accessibility;
 - impact on the character of the area;

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

- erf shape; and
- planning principles;
- ❖ the zoning of the properties will remain unchanged;
- ❖ the proposed property sizes are larger than the adjacent single residential zoned property sizes;
- ❖ access to the Remainder of Erf 5318 will remain unchanged, additional access will have to be created from Arc Street for the proposed Portions A, B and C; and
- ❖ title deed restrictions are applicable which the applicant wishes to remove as it can influence the viability and practicability of the proposed sites. The applicant further motivates that the Zoning Scheme is more applicable to the site than the title deed restrictions.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	02/03/2017	07/04/2017
Ward councillor	Yes	02/03/2017	07/04/2017
Total letters of support	None		
Was public participation undertaken in accordance with Section 45- 49 of the Proposed Draft By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments	Recommendation
Operational Services	03/03/2017	No objection.	Positive
Building Department	06/03/2017	No objection.	Positive
Environmental Section	15/03/2017	No objection.	Positive
Local Heritage	16/03/2017	Supported.	Positive
Heritage Western Cape	28/03/2017	Annexure F.	Positive
Electro Technical Services	31/03/2017	No comments.	Positive

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

Telkom	03/04/2017	Annexure G.	Positive
Fire Services	07/04/2017	No objection provided that all structural development is in compliance with the requirements of National Fire Protection Regulations SANS 10400T : 2011	Positive
Engineering Services	11/04/2017	Annexure H.	Positive

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Four (4) objections were received from the surrounding property owners. Most of the issues raised correlate and therefore the points of the objection can be summarised together.

- (a) Erf 5318 is located in a low density area consisting of large residential erven with countrified surroundings**

Applicant's response

The property is situated in planning unit 2 of the OMGMS and the subdivision is in line with the densities as prescribed in the mentioned strategy

Town Planner's response

The proposed sizes of the subdivisions will be in line with the average property size in the area. The same parameters will be applicable to the proposed subdivided properties as are applicable to Erf 5318.

- (b) The proposed subdivisions are of a small size with narrow erf frontage which is in odds with the character of the suburb**

Applicant's response

The proposed sizes will be as follows: Portion A $\pm 1528\text{m}^2$; Portion B $\pm 1582\text{m}^2$; Portion C $\pm 1522\text{m}^2$ and a Remainder $\pm 4545\text{m}^2$. This can hardly be seen as small erven. The average erf frontage will be 28m in width which is adequate for the construction of a large dwelling. Average size of the erven to the north is 1200m^2 and to the south is 1500m^2 one has to regard the larger picture and not the isolated cases.

Town Planner's response

Similar erf dimensions are found in the area. It should be noted that the property across Erf 5318 is a vacant open area and therefore the street

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

frontage will not be noticeable as the street frontage pattern is not maintained throughout Arc Street.

- (c) An acceptable alternative will be to have two (2) larger subdivision erven which faces Arc street**

Applicant's response

Two (2) erven will not be economically feasible, as stated earlier the three (3) erven is in line with the erf sizes of the OMGMS.

Town Planner's response

The objection is noted however, the impact of an additional residential property in an already developed residential area will be very low.

- (d) The proposed application will result in densification which will change the character of the residential area. This will equally contribute to an increase in traffic, noise and human activity**

Applicant's response

The proposed density is in line with the OMGMS. The creation will only be for three (3) additional erven and the traffic impact will be minimal.

Town Planner's response

The usage of the proposed properties will remain the same as Erf 5318. Additional three (3) additional families will therefore not have a major impact on traffic and noise. The impact on human activity is relative as it depends on the individuals perception of what is considered to be a negative effect. Other people enjoy human activities as it gives a sense of comfort and security to know that there is another person around.

- (e) The application is to maximise the Trust's financial gain**

Applicant's response

It is each property owner's right to apply for permission to subdivide his property as long as it is in line with Town Planning Regulations, Policies and Strategies. If an owner is permitted to subdivide his property and he financially gains in the process, it is his privilege as he has acquired a suitable property for this purpose and has most probably paid a premium for it. The applicant indicated that they have tried to sell the subject property, but could not find a purchaser as the property is too large to be maintained for a single family.

Town Planner's response

It's the owner of the property's own prerogative to determine what he or she wishes to do with their property. Furthermore the financial gain gained by the property owner is not necessarily going to influence the neighbours in anyway.

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

- (f) The area is occupied and enjoyed by middle and upper income families where some have school going children who enjoy the comfort, security and natural environment of trees, lawns and open space on large erven**

Applicant's response

The proposed subdivision erven are to be 1500m² in extent and therefore will have enough space for a dwelling and for children to run and play and enjoy the natural environment.

Town Planner's response

As previously stated the use of the property will not change and therefore the rights enjoyed by the surrounding neighbours will not be affected.

- (g) The prevention of subdivision of erven into multiple small erven**

Applicant's response

The proposed erven cannot be seen as multiple small erven. The subdivision of larger erven is promoted in multiple strategies and guidelines. The current trend is to buy smaller manageable erven. However, if a purchaser wants to have a large property then he/she can buy two (2) properties.

Town Planner's response

The proposed erf sizes are compatible with the surrounding erf sizes.

- (h) Large erven attract a wide range of wildlife**

Applicant's response

The wild life will not disappear as they are in the area due to the large open spaces, mountains, the river and the golf course.

Town Planner's response

Animals should not be more affect by the proposed application.

- (i) The subdivision will have a large impact on my family and the residents of the area. – Garth Clarkson**

Applicant's response

The objector who raised this point did not state what the exact impact of the subdivision will have on him and his family as his property is not situated next to the subject property.

Town Planner's response

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

This point is not clearly defined and cannot be properly responded to.

6. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

As stated under point 5.

8. MUNICIPAL ASSESSMENT OF COMMENTS

All the internal departments' comments have been positive. Response to objection is stated under point 5.

9. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

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

The impact of the application for the proposed subdivision is limited to the residential area in Mossel Rivier and is of such a scale that the planning objectives applicable in terms of SPULMA and LUPA cannot be adequately discussed.

The applicant's motivation regarding the principles can be summarised in the following manner:

Spatial Justice

The application will not in any way contribute to perpetuating the spatial imbalances caused by apartheid spatial planning.

Spatial sustainability

The application will have no impact on the conservation status of the area.

Efficiency

The property is approximately 2.7km from the CBD which reduces long travel distances to access services and facilities.

Spatial resilience

The application is aligned with Provincial and Local Government's Policies which promote spatial resilience.

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.

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

Same as above.

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

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

The application is sufficiently motivated to be in line with the SDF as the planning unit is indicated for residential use and the proposed application will not change the use.

The application is further motivated to be in line with the Overstrand Municipal Growth Management Strategy as Erf 5318 forms part of Planning Unit 2. Incremental densification is promoted through subdivision and the development of second dwellings.

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

Not applicable.

9.5 Impact on Municipal engineering services

The existing services are available. The property owner will have to contribute to the bulk service levy for the additional properties.

The comment received from Electrical Services is noted and will form part of the conditions of approval.

Additional access will have to be developed for the proposed subdivisions from Arc Street.

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

Not applicable.

9.7 Existing and proposed zoning comparisons and considerations

The zoning of the proposed properties will remain for single residential use.

9.8 The desirability of the proposal

The proposed subdivided properties are to be Portion A $\pm 1528\text{m}^2$; Portion B $\pm 1582\text{m}^2$; Portion C $\pm 1522\text{m}^2$ and a Remainder $\pm 4545\text{m}^2$ in extent. Similar sized properties are found in the Fernkloof residential area and similar applications have been approved in the past.

The uses of the properties will remain unchanged and will therefore be allowed to be developed in line with the residential character and topography as the adjacent area.

The application was sent to Local Heritage and Heritage Western Cape because of the history of the Fernkloof neighbourhood. No objection was received. It should however be noted no structures are proposed to be built or altered at this stage and with the submission of building plans the relevant input will be inquired.

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

The impact on traffic will be low as the usage of the properties remaining the same.

Restrictive conditions are found in the Title Deed which prohibits the proposed application and is addressed in point 9.9. It should be noted that although objections were received against the application, not one of the objectors gave a specific reason why the restrictive conditions cannot be removed.

9.9 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

The financial or other value of the rights

The Mossel Rivier Estate Company who enforced the restrictive conditions does not exist anymore and their function has now been taken over by the Overstrand Municipality.

Not the Overstrand Municipality or the property owner of Erf 5318 or any other property gains financial or other value from the restrictive conditions.

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

It will allow the property owner to subdivide property and develop the property in line with the relevant Scheme Regulations. It should be noted that most of the single residential erven in the Overstrand can be developed in line with the relevant Scheme Regulations without having to obtain prior permission from the estate developer. The Scheme Regulations are therefore considered the primary guideline to ensure privacy and that the character of the area is maintained.

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

As stated earlier most single residential erven are solely developed in line with the relevant Zoning Scheme. Therefore restricting a development with outdated conditions does not promote social cohesion or benefit.

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

All the restrictions which prohibit the erf from being developed in line with the Zoning Scheme and to its full potential will be removed.

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

10. RECOMMENDATION

1. that the objections be noted;
2. that the application in terms of Section 16(2)(f) for the removal of restrictive title conditions C(b), C(c), D(1), D(2), D(3), D(4) and D(5) which is found in the Deed of Transfer No. T39326/1980, **be approved**;
3. that the application for subdivision in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016 (By-Law) applicable to Erf 5318, Hermanus (Fernkloof) to subdivide the property into four (4) portions namely Portion A $\pm 1528\text{m}^2$; Portion B $\pm 1582\text{m}^2$; Portion C $\pm 1522\text{m}^2$ and a Remainder $\pm 4545\text{m}^2$, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the approvals in paragraphs 2. and 3. are subject to the following conditions:
 - (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan as submitted with the application;
 - (b) that the conditions compiled in the Services Report (attached as Annexure H) be complied with;
 - (c) that the comments received from Heritage Western Cape and Telkom (attached as Annexures F and G), be noted; and
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
5. that the applicant and the objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditions of approval

11. REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ The proposed application has a limited impact.
- ❖ The objections which have been received are adequately addressed by the applicant.
- ❖ The character of the surrounding area will be maintained.

12. Annexures

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Subdivisional Plan
- Annexure D: Objections
- Annexure E: Comment on objections

**AGENDA of the
Municipal Planning Tribunal
28 June 2017**

Annexure F: Heritage Western Cape
Annexure G: Telkom
Annexure H: Services Report
Annexure I: Deed of Transfer No. T39326/1980
Annexure J: Conveyancer's Certificate

SIGNATURES

AUTHOR:

Name: **PETRUS ROUX**

Signature: _____

Date: _____

REGISTERED PLANNER

Name : **S VAN DER MERWE**

Signature : _____

SACPLAN registration number: **A/1850/2014**

Date: _____



Erf 3318 Fernkloof Hermanus



EXECUTIVE SUMMARY

2. PROPOSED DEVELOPMENT

Erf 5138 Hermanus is situated in the suburb of Fernkloof and has access from two roads namely Contour Street on the northern boundary and Riverside Street on the southern boundary (refer **Plan 1**).

The purpose of this application is to remove restrictive title deed conditions to be able to subdivide the property into three portions and a Remainder.

It is therefore the intention of the application to apply for the removal of the following restrictive title deed conditions from title deed T57940/2016.

- C (b) "All the buildings being dwelling houses shall be so placed that the front line of such building (including any stoep or porch) shall coincide with the building line laid down by the Transferor. Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The sides of every building shall be parallel to the boundaries of the said Lot, unless the Transferee or his Successors in Title be specially exempt by the Transferor in writing. In the case of irregular lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor."
- C (c) "No building shall be erected within 1,57 meters of the common boundary of any lot in the above Township save where such Lots are owned by one and the same individual."
- D (1) "That the above Lots be used for residential purposes only."
- D (2) "That the above Lots not be subdivided."
- D (3) "That not more than one building be erected on the above lots and that not more than one half the area of the above lots be built upon."
- D (4) "That all buildings to be erected on the above property shall stand back not less than 3.15 meters from the line of the street on which the said Lots abut. Such space may be used as gardens, but shall not be built upon."
- D (5) "That all outbuildings to be erected on the above property shall stand back not less than 6.30 meters from the line of the street on which the Lots abut."

In addition to the aforementioned, application is also made for Erf 5318, Hermanus to be subdivided into the following portions (refer **Plan 2**):

- Portion A $\pm 1528\text{m}^2$
- Portion B $\pm 1582\text{m}^2$
- Portion C $\pm 1522\text{m}^2$
- Remainder $\pm 4545\text{m}^2$

In light of the above, Wright Approach Consultancy (WRAP) was appointed to prepare and submit application documentation to the relevant authority (refer **Annexure A**).

Application is hereby made for the following:

- Removal of title deed restrictions C(b), C(c), D(1), D(2), D(3), D(4) and D(5) from title deed T57940/2016 of Erf 5318 Hermanus in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Planning, 2015; and
- Subdivision of Erf 5318 Hermanus into Portion A ($\pm 1528\text{m}^2$), Portion B ($\pm 1582\text{m}^2$), Portion C ($\pm 1522\text{m}^2$) and Remainder ($\pm 4545\text{m}^2$), in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015.

3. CHARACTER OF ENVIRONMENT

Erf 5318 Hermanus is situated in Fernkloof and is zoned Residential Zone 1: Single Residential (SR1) in terms of the Overstrand Zoning Scheme, 2013. Most of the properties in Fernkloof are zoned Residential Zone 1: Single Residential with a few properties are zoned General Residential Zone 1: Town Housing.

For purposes of motivating the application a planning area map was compiled. The planning area map delineates Fernkloof into 3 Planning areas namely Planning Area A, B and C and outlines the erf sizes applicable in each. An analysis of the map indicates that Planning Area B has the largest erven with Planning Area A and C having smaller erven. There are also properties that are zoned General Residential Zone 1: Town Housing in Planning Area C that have the smallest erven in the delineation.

Erf 5318 Hermanus is 9177m² in extent and is the largest erf in all three Planning Areas and the intention of this application is to obtain approval for the subdivision of the subject property to be more aligned with the erf sizes in the suburb in order to contribute to more uniformity in terms of erf sizes in the area.

The subject erf is in Planning Area B and 56% of the erven in this Planning Area are between 1497m² and 2001m² in extent which is aligned with the proposal on the subject erf to subdivide into Portion A ±1528m², Portion B ±1582m² and Portion C ±1522m² respectively. This is to ensure that the proposal is aligned with the dominant erf sizes and character of the Planning area. There are 9 erven (12%) in Planning Area B that are larger than 3000m² and the Remainder of the proposed subdivision is ±4545 m² in extent which is aligned with that character of this area. The Remainder cannot be subdivided any further because there is an existing building on it. The building on the remainder is approximately 1112.4m² and the Remainder is approximately 4545m² making the coverage 24.47%.

Based on the above, the proposal can therefore be deemed to contribute to the existing erf sizes and is appropriate within the immediate context and character of Planning Area B.

WRAP

MOTIVATION

4. DESIRABILITY

In terms of Section 55 (b) and (c) Land Use Planning Act 7 April 2014 an application can be refused based on it being undesirable. The measure to assess the desirability of the application is the consistency of the application with spatial development frameworks (SDF), applicable structure plans, the principles referred to in Chapter VI and guidelines issued by the Provincial Minister regarding the desirability of the proposed development.

The proposed development needs to be desirable and consistent with the logic character of the town and add value to the owner and the community. The Department of Environmental Affairs and Development Planning (DEADP) published a Guideline on Need and Desirability as part of the EIA Guideline and Information Document Series. Although this application does not include an environmental authorization application, the desirability guidelines set out in the document are also applicable in planning.

In terms of the above, a number of questions need to be asked with regard to the need and desirability of a proposal, which include the following:

Need and desirability measure	Yes or No	Applicability to the subject property
Is the land use considered within the timeframe intended by the existing approved SDF agreed to by the relevant environmental authority?	Yes	The proposed removal of restrictive title deed conditions and subdivision are well aligned with SDF agreed upon by the competent authorities and the spatial planning initiatives section of this report will elucidate this.
Does the community/area need the activity and the associated land use concerned?	Yes	The erven proposed for subdivision in Fernkloof are aligned with the logic character and erf size of the suburb to contribute to creating uniformity in the town.
Are the necessary services with adequate capacity currently available, or must additional capacity be created to cater for the development.	Yes	There are existing road access for the proposed erven and should the application be approved, bulk service levies will be payable to the Overstrand Municipality for water, electricity, sewage, roads, solid waste and storm water for the proposed subdivision.
Is this development the best practicable environmental option for this land/site?	Yes	The proposal does not trigger any of the activities listed in NEMA and is therefore the best environmental option for the site.
Would the approval of this application compromise the integrity of the existing approved and credible municipal IDP and SDF as agreed to by the relevant authorities?	No	The proposed removal of restrictive title deed conditions and subdivision will not compromise on the approved credible IDP and SDF as agreed to by the relevant authorities and the spatial planning initiatives section of this report will elucidate this.
Do location factors favour this land use?	Yes	The subject property is ideally located within an area that is zoned Residential Zone 1: Single Residential and will fit into the existing land use character of the area.
How will the activity or the land use associated with the activity applied for, impact on sensitive natural and cultural areas?	No	The proposal will not adversely impact on any sensitive natural or cultural areas.
Will the proposed activity or the		The proposed development will not in any way

WRAP

WRAP

MOTIVATION

land use associated with the activity applied for, result in unacceptable opportunity costs?		result in unacceptable opportunity cost.
Will the proposed land use result in unacceptable cumulative impact.	No	The proposed removal of restrictive title deed conditions and subdivision will not in any way have an adverse impact on the community or environment.

4.1 Services

Should the application be approved, the land owner will pay the bulk services levies to the Overstrand Municipality for water, electricity, sewage, solid waste, roads and storm water for each newly subdivided erf. The capacity of these services are considered to be adequate for the additional Portion A, B and C that are proposed.

4.2 Traffic impacts

The impact of traffic that will be generated by Portion A, B and C is minimal.

5. TITLE DEED

An analysis will be provided of the title deed and restrictions that are applicable and the justification for the removal of the title deed restrictions with the intention of ensuring the viability of the entire proposal.

Below are title deed restrictions of Erf 5318 Hermanus.

Property Description	Extent	Ownership	Title Deed Number
Erf 5318 Hermanus, in Overstrand Municipality, District Caledon, Western Cape Province	9177m ²	J A Kleynhans Testamentere Trust	T57940/2016

A copy of the title deed of the subject property is attached as **Annexure B**. A perusal of the title deed has revealed that the following title deed restrictions exist on the subject property that need to be removed to ensure the viability and practicability of the proposed development.

This table list the title deed conditions and the justification for the removal of the title deed conditions.

In favour of	The title deed restriction.	Justification for the removal of the restrictive title deed condition.
Mossel River Estate Company Limited	C (b) "All the buildings being dwelling houses shall be placed that the front line of such building (including any stoep or porch) shall coincide with the building line laid down by the Transferor. Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The sides of every	The Overstrand Municipality Zoning Scheme 2013, is a more recent regulatory tool applied to regulate building lines and also provides building line exemptions. The removal of this restriction would enable only the Overstrand Municipality Zoning Scheme to be applicable as the modern regulatory tool alongside the Municipal By Law on Land Use

WRAP


 WRAP

MOTIVATION

	<p>building shall be parallel to the boundaries of the said Lot, unless the Transferee or his Successors in Title be specially exempt by the Transferor in writing. In the case of irregular lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor"</p> <p>C (c) "No building shall be erected within 1,57 meters of the common boundary of any lot in the above Township save where such Lots are owned by one and the same individual"</p>	<p>Planning; 2015.</p>
Administrator	<p>D (1) "That the above Lots be used for residential purposes only."</p>	<p>The Overstrand Municipality Zoning Scheme; 2013 provides the following primary uses for the subject property;</p> <p>Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.</p> <p>These primary rights in terms of the modern Overstrand Municipality Zoning Scheme provide the land owner with more rights which is not only limited to residential purposes. To obliterate the discrepancy between the modern Zoning Scheme and the title deed restriction it is proposed that this title deed restriction be removed.</p>
Administrator	<p>D (2) "That the above Lots not be subdivided."</p>	<p>The intention of this application is to remove this title deed restriction in order to enable the subdivision of the property into a Remainder and three Portions. The removal of this restriction is the only way in which the proposal can be practically viable and implementable.</p>
Administrator	<p>D (3) "That not more than one building be erected on the above lots and that not more than one half the area of the above lots be built upon."</p>	<p>(1) The Overstrand Municipality Zoning Scheme; 2013 provides the following primary rights.</p> <p>Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.</p> <p>The primary rights above allow for a second dwelling unit and the title</p>


 WRAP

WRAP

MOTIVATION

		<p>deed restriction only allows for one building and this creates some discrepancy that the removal of this title deed restriction will obliterate.</p> <p>(2) The title deed restriction also states that not more than one half the area be built upon. The Zoning Scheme parameters outline that the maximum permissible coverage under Residential Zone 1: Single Residential is 50% therefore the removal of this title deed restriction will remove this duplication.</p>
Administrator	D (4) "That all buildings to be erected on the above property shall stand back no less than 3.15 meters from the line of the street on which the said Lots abut. Such space may be used as gardens, but shall not be built upon."	The Overstrand Municipality Zoning Scheme provides a street building line of 4m that is more restrictive than the 3.15m in the title deed. The removal of this title deed restriction will still make the more restrictive building line applicable on the subject property.
Administrator	D (5) "That all outbuildings to be erected on the above property shall stand back not less than 6.30 meters from the line of the street on which the Lots abut."	The Overstrand Municipality Zoning Scheme outlines that all outbuildings should comply with the relevant building lines outlined in the Zoning Scheme and the removal of this title deed restriction will not exempt the property from being subject to the Overstrand Municipality Zoning Scheme which is a more recent regulatory tool that responds to the current development pressures of the town.

Requirements for the amendment, suspension or removal of restrictive conditions:

Section 35(4) of the By-Law on Municipal Land Use Planning, 2015, outlines what the Municipality must consider in the removal, suspension or amendment of a restrictive condition. The following benchmarks must be considered:

Benchmark	Applicability on the subject property
(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 vests in the person of the owner of a dominant tenement.	The restrictive condition does not have a beneficial financial or other value for the owner
(b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition.	The restrictive conditions in favour of the Mossel River Estate Company Limited do not have personal benefits to the holder of the rights as they were the original township developers and their

WRAP


 WRAP

MOTIVATION

	<p>functions have been taken over by the Overstrand Municipality.</p> <p>The restrictive title deed conditions that are in favour of the Administrator do not hold any personal benefit to the Overstrand Municipality which is the Administrator, as the Overstrand Municipality Zoning Scheme; 2013 is a credible and modern land use regulatory tool that is used by the Municipality.</p>
(c) The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.	The removal of the restrictive title deed conditions would enable the proposed subdivision to be practicable and also that the development parameters set out in the Overstrand Municipality Zoning Scheme; 2013 are applicable on the subject property in the same manner as applicable on other properties in the Greater Hermanus.
(d) The social benefit of the restrictive condition remaining in place.	The restrictive condition remaining in place does not have any social benefit.
(e) The social benefit of the removal or the restrictive condition.	The removal of the restrictive condition will not have any social benefit.
(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 removal of the title deed restriction will completely remove the restriction that prohibits the erf from being used to its full potential permitted as a primary right in the Overstrand Municipality Zoning Scheme; 2013.

The removal of the restrictive title deed conditions will enable the subject erf to be subdivided, will remove other title deed conditions that create a regulatory discrepancy with the Overstrand Municipality Zoning Scheme.

The removal of the restrictive title deed conditions will also enable the subject property to be subject to the same Zoning Scheme rights and development parameters applicable on other properties in the Greater Hermanus without an additional regulatory burden caused by the restrictive title deed conditions.

6. ZONING OVERLAY

The zoning of the property is Single Residential Zone 1: Single Residential (SR1) in terms of the Overstrand Municipality Zoning Scheme, 2013. The proposal is only for the removal of restrictive title deed conditions and a subdivision with no alteration of the zoning applicable on the subject property.

The parameters associated with this zoning, development parameters and whether the proposal deviates or complies with the development parameters as follow:

Residential Zone 1: Single Residential


 WRAP

File Erf 5318 Hermanus December 2016 Page 14

WRAP

MOTIVATION

	Parameters	Proposal	Comply or deviate
Primary use	Dwelling house, day care centre, guest rooms, home occupation and second dwelling unit.	N/A	N/A
Consent use	Crèche, guest house, green house, house shop, institution, place of instruction, place of worship, residential building and tourist accommodation.	N/A	N/A
Land Use Restrictions			
Coverage	50%	There are no buildings proposed in this application for portion A, B and C. The building on the remainder is approximately 1112.4m ² and the Remainder is approximately 4545m ² making the coverage 24.47%	Comply
Street building line	4 metres to any street boundary provided that in the case of a corner site with an average depth of 20m or less has a 3m street building line.	The existing building on the proposed Remainder is 9.9m from the street boundary line.	Comply
Side and Rear building line	Side and Rear building lines for erven greater than 400m ² are 2m.	The existing building is; 3.5m from the north eastern boundary. 6.3m from the east southern boundary. 30.7m from the south western boundary.	Comply
Height	8 m measured from the base level to the top of the roof.	Comply	Comply
Garages and carports	Garages and carports may be constructed within the building lines in accordance with 16.1.2.	N/A	N/A
Parking	Parking and access shall be provided on the land unit in accordance with Section 17.1 of the Overstrand Municipality Zoning Scheme of November 2013. 2 on-site parking bays per dwelling unit provided that	Sufficient parking is provided on the Remainder and sufficient parking will be provided on the proposed portions should building plans be submitted and approved by the Overstrand Municipality.	Comply

WRAP

WRAP

MOTIVATION

	on erven less than 400m ² only one on-site parking bays needs to be provided.		
Subdivision and density standard	<p>(a) Minimum subdivision area. Council may specify the minimum size of a subdivisional area in terms of an overlay zone and may prescribe the minimum size of subdivided portions to be achieved in such a zone.</p> <p>(b) Maximum density Council may specify a maximum density for a land unit in terms of an overlay zone.</p>	<p>(a) The smallest erf in Planning Area B as indicated on a plan is 1497m² and this application intends to ensure that the proposed subdivision portions are above 1500m² not to deviate from the erf sizes and character of the area that exists.</p> <p>(b) The Overstrand Municipality does not have an overlay zone however the Overstrand Growth Management Strategy serves as a guideline for the densities that can be envisaged in this area. The spatial planning initiatives section of this report outlines how the proposal is aligned with the strategy.</p>	Comply
Second dwelling unit	<p>The provisions of 5.2.4 apply; provided that;</p> <p>(a) The total floor area of the second dwelling units shall not exceed 120m².</p> <p>(b) The same development rules apply as for the primary dwelling unit.</p> <p>(c) One on-site parking bay must be provided to the satisfaction of Council; and</p> <p>(d) Confirmation of the availability of services shall be obtained from the Director of Infrastructure and Planning or his successors in title.</p>	N/A	N/A
Guest rooms	The provisions of 5.1.6 apply.	N/A	N/A
Day care centre	<p>The provisions of 5.1.7 apply, provided that:</p> <p>(a) No more than 3 persons in total shall be engaged in the day care centre activities on the property, including the occupant and any assistants.</p>	N/A	N/A
Home occupation	<p>The provisions of 5.1.8 apply, provided that;</p> <p>(a) No more than 3 persons</p>	N/A	N/A

WRAP

WRAP

MOTIVATION

	in total shall be engaged in home occupation activities on the property, including the occupants and any assistants; and (b) On-site parking must be provided to the satisfaction of Council, provided that at least one on-site parking bay is provided.		
House shop	The provisions of 5.4.9 apply.	NA	NA

The proposed removal of restrictive title deed conditions and subdivision will in no way deviate from the development parameters for Residential Zone 1: Single Residential as outlined in the Overstrand Municipality Zoning Scheme.

7. SPATIAL PLANNING INITIATIVES

The purpose of this section is to assess the consistency of the proposed application with the existing spatial planning initiatives. This is to ensure that the development does not deviate from the spatial planning initiatives and that it is in line with the urban structure that is envisaged by Local- and Provincial Authorities.

Provincial Spatial Development Framework 2014 (PSDF)

The aim of the PSDF is to give spatial expression to the national and provincial development agendas and serves as a basis for coordinating, integrating, and aligning ground delivery of national and provincial departmental programmes. The framework also aims to communicate the government's spatial development intentions to the private sector and civil society. This section will outline how the proposed development is aligned with the aims of the PSDF.

The spatial logic below refers to the physical and socio-economic manifestation of activity within a neighbourhood. Below is a list of the spatial logic that underpins the PSDF and how the proposed development is in sync with the spatial logic:

Spatial logic	Alignment of the proposal with the spatial logic.
" Capitalise and preserve unique local built form and natural typologies, character and heritage"	About 56% of the erven in the Planning Area B are between 1497m ² and 3000m ² and the proposed subdivision of the Portion A, Portion B and Portion C will remain within the dominant character of Fernkloof. This is to preserve the unique local built form and character of the area.
" Promote urban rather than suburban model: avoid further fragmentation of townships."	The proposed removal of restrictive title deed conditions will contribute to creating uniformity in the urban structure of Fernkloof in an attempt to avoid the fragmentation of the township.
" Focus on creating connections to economic and social opportunity to promote spatial and socio-economic integration"	There is an existing social capital that exists in Fernkloof that the residents of the proposed subdivided portions will be connected to.
" Cluster all social facilities and complementary activities"	There are no social facilities proposed on the subject property however the close proximity of the subject Erf to the Hermanus Golf Estate, Grotto and other beaches, the

WRAP

WRAP

MOTIVATION

	Mountain and other open space areas makes the proposed erven close to social facilities that are within a radius of 2.5km and that would ensure a quality of live for residents that would reside there.
--	--

Overstrand Spatial Development Framework (2006) SDF

The objective of the SDF is to formulate strategic spatially based policy guidelines and proposals where the needs, changes and growth in the area can be managed to benefit the inhabitants and the environment in the Overstrand Municipality. The SDF is guided by a set of objectives and this section will assess the consistency of the proposed development with these core objectives.

Goals	The consistency of the proposal with the goals.
"To provide an environmentally and economically sustainable bulk service infrastructure and road transport network."	There are existing roads that the proposed subdivided portions will have access to. The required bulk service levies will be paid to the Overstrand Municipality should this application be approved.
"To ensure that ongoing pressure and its spatial implications are managed in a sustainable manner that protects the unique character of the existing cultural landscapes and the place-specific character and form of the existing settlement pattern."	The unique character of Planning Area B of Fernkloof is that all erven are larger than 1497m ² and the proposed subdivision seeks to protect the urban structure form and place specific character that exists.
"Restrict development within the carrying capacity limitation of the natural resources."	The proposed application will still be within the carrying capacity limitation of resources available on the subject erf.
"To improve the aesthetic quality of the built environment"	The land where Portion A, Portion B and Portion C are proposed is currently vacant and underdeveloped and the purpose of this application is to utilise the development potential that exists on the subject erf with the intention of improving the aesthetic quality of the built environment.

Overstrand Municipal Growth Management Strategy May 2010

The purpose of the Growth Management Strategy is to improve the Overstrand Municipalities overall environmental sustainability by enhancing the quality and efficiency of the built environment. The section will outline how the proposed development will contribute towards the aims and objectives of this strategy.

To follow is a table with the core objectives of the strategy and how the proposed development is aligned with these objectives.

Goal	The consistency of the proposal with the goals.
"Ensure optimal land use planning and the efficient use of infrastructure, services, facilities and	The proposal seeks to optimally utilise the development potential that exists on the subject erf in a manner that will promote the efficient use of

WRAP

WRAP

MOTIVATION

land."	infrastructure and services.
"Contribute to place making and the development of attractive and safe urban environments."	The proposed development will contribute to place making and create the potential for development of attractive properties in the future.
"Ensure that the scale and character (in terms of bulk, height and architectural styling) of the higher density areas are appropriate to the immediate context."	The proposed sizes of the erven are appropriate to the immediate context of the surrounding erven and the proposal does not include a building and that will have an adverse impact in the bulk, height and architectural styling of the neighbourhood.

The subject erf is situated in Planning Unit 2 in Hermanus East and the current density on the proposed erf is 1.1 dwelling units per hectare. The proposed subdivision will increase the density on the subject property to 4.3 dwelling units per hectare. This is aligned with the densification envisaged for Planning Unit 2 which is less than 10 dwelling units per hectare and also aligned with the proposed increase of the gross residential density from 3.2 dwelling units per hectare to 4.2 dwelling units per hectare. The proposed sizes of the erven after subdivision, calculated as units per hectare will be as follows:

Remainder: 4545 m² = 2.2 units per hectare
 Portion A: 1528 m² = 6.6 units per hectare
 Portion B: 1582 m² = 6.3 units per hectare
 Portion C: 1522 m² = 6.5 units per hectare

All the proposed erven will, after subdivision be well within the desired density for the area of less than 10 units/ha and will contribute to increasing the proposed increased gross residential density for the area to 4.2 units per hectare.

8. PLANNING PRINCIPLES

The purpose of this section is to analyse the consistency of the application with the planning principles and also to provide a recommendation to the Municipality for the development. These spatial planning principles are in terms of Section 42 of the Spatial Planning and Land Use Management Act, 2013 and also Chapter VI of the Land Use Planning Act, 2014.

Below are the spatial principles and the consistency of the proposed development with these planning principles:

Planning principles	Consideration and impact
Spatial Justice "Refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land."	The proposed removal of restrictive title deed conditions and subdivision will not in any way contribute to the perpetuation of past apartheid spatial development imbalances.
Spatial Sustainability "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."	The removal of the restrictive title deed conditions will not in any way compromise environmentally sensitive areas and cultural landscape and is proposed within the urban edge. The proposal will also not have any impact on agricultural land and can therefore deem to be spatially sustainable.
Efficiency	The subject property is approximately 2.7km

WRAP

WRAP

MOTIVATION

<p>"This also has to do with the manner in which the settlement itself is designed and functions which should reduce the need to travel long distances to access services, facilities and opportunities.</p>	<p>from the Hermanus CBD. The close proximity to the CBD means that the Fernkloof suburb is designed in a manner that reduces the need to travel long distances to access services, facilities and opportunities that are available in the CBD.</p>
<p>Spatial Resilience "Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner."</p>	<p>The spatial plans and policies compiled by the Provincial Department of Environmental Affairs and Development Planning and the Overstrand Municipality all promote spatial resilience in land use management. The proposed removal of restrictive title deed conditions is aligned with these spatial plans and policies as the spatial initiatives section of this report has proven and this will result in the proposal being able to accommodate economic and environmental shocks in a timely and efficient manner.</p>
<p>Good Administration Good administration 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 a joint planning approach is pursued.</p>	<p>The proposed development will promote consultative planning as the Municipality will advertise the proposal to the general public to allow the comments of the public to be taken into consideration. WRAP will also respond to the comments of the general public and take the comments into consideration in the planning of the project. All of the above measures ensure that a joint planning approach is pursued to the benefit of the property owner and the community.</p>

The proposed development is therefore aligned with the core planning principles as outlined in SPLUMA, LUPA and the "Motivation Guideline Report" compiled by the Overstrand Municipality Town Planning Department. The proposed application can therefore be viewed as encompassing and promoting all planning principles and is desirable.

9. EVALUATION AND CONCLUSION

Herewith a synopsis of the viability of the proposed development and reasons justifying the recommendation for the approval of the proposal.

Title deed restrictions

- A study of the title deed has revealed that there are title deed restrictions that need to be removed to make the proposed development viable and practical.
- The title deed restrictions that are proposed for removal are C (b), C (c), D (1), D (2), D (3), D (4) and D (5) from title deed T57940/2016.

Proposed subdivision

In addition to the above proposed removal of restrictive title deed conditions it is proposed that Erf 5318 be subdivided into the Portions below (refer **Plan 2**):

- Remainder ±4545m²
- Portion A ±1528m²
- Portion B ±1582m²

WRAP

- Portion C ±1522m²

Erf 5318 Hermanus measuring 9177m² is the largest erf in Fernkloof and the intention to subdivide the Erf is to ensure that it is aligned with the other erf sizes in the area.

Desirability

The proposal is aligned with the SDF, will contribute to uniformity of the logic character of the town, is the most practical environmental option and will not have any adverse impact on the sensitive and cultural areas. The proposal can therefore be deemed to be desirable.

Services

- Should the application be approved, the owner of the property will pay the required bulk services levies to the Overstrand Municipality for water, electricity, sewage, solid waste, roads and storm water for each additional erf created.
- The traffic that will be generated by the proposed Portion A, B and C is minimal.

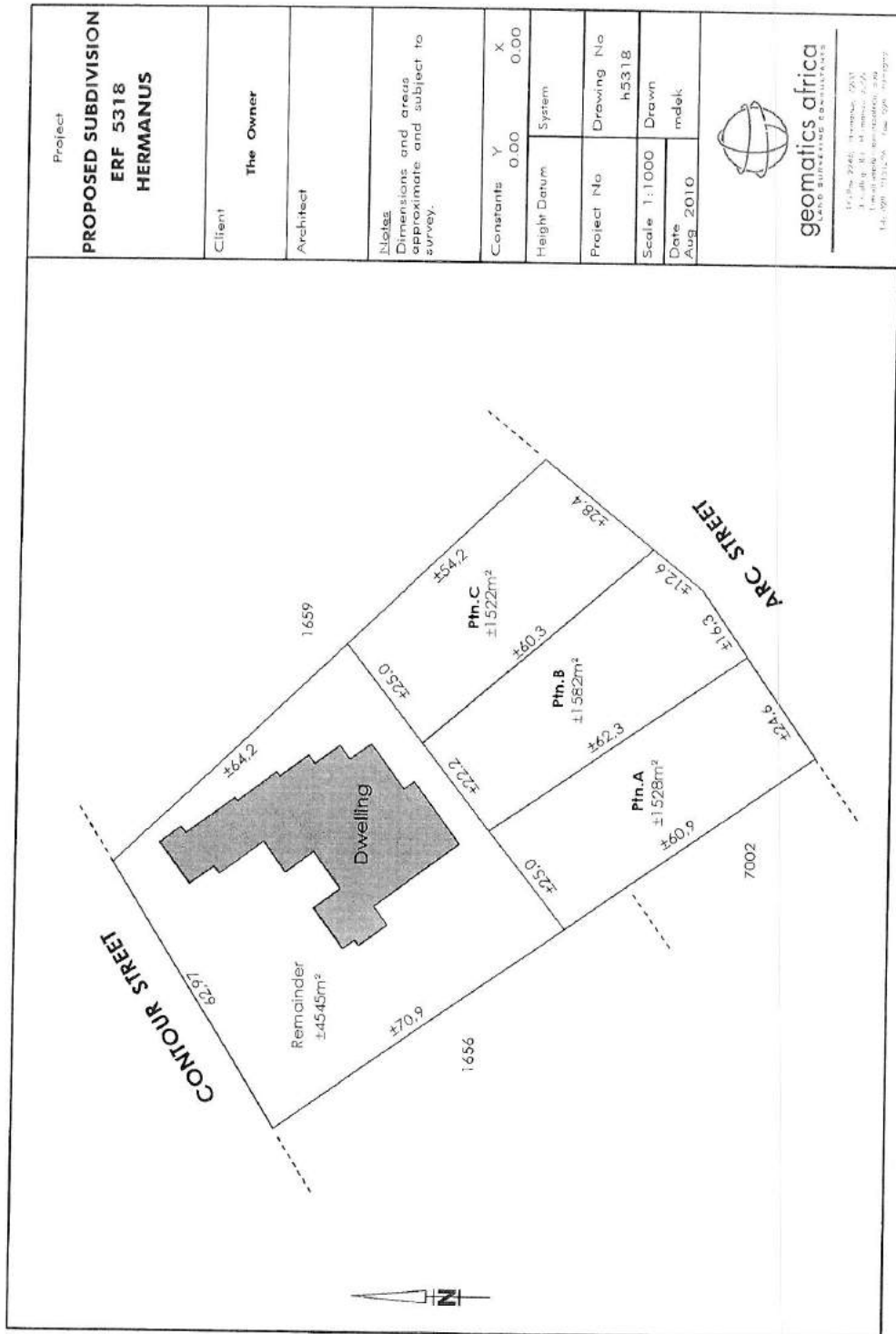
Zoning

The subject erf will still comply with all the development parameters that are set out in the Single Residential Zone 1: Single Residential (SR1).

Spatial planning initiatives

- The proposal seeks to preserve the character of the area by subdividing the existing property in a manner that will avoid the fragmentation of the township. The proposed development is situated in an area where there is exiting social capital and close to social facilities such as the Hermanus Golf Estate, Grotto Beach and will ensure a high quality of life for the residents as prescribed by the PSDF.
- The proposed erven will gain access from existing roads and preserve the unique character of Fernkloof Planning Area B which has erven that are larger than 1497m². The proposal also seeks to improve the aesthetic quality of the built environment by optimising on the development potential that exists on the subject erf within sound town planning principles as prescribed by the SDF.
- The proposal is for an average gross residential density of 4.3 dwelling units per hectare which is aligned with the less than 10 dwelling units per hectare envisaged by the Overstrand Municipal Growth Management Strategy and aligned with the intention to increase the density in Planning Unit 2, to 4.2 dwelling units per hectare.
- The proposal promotes the five spatial planning principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration and can be deemed to be within sound town planning principles.

Based on the evaluation and conclusion the proposed development can be deemed to be desirable, viable and practicable and will contribute to the logical uniformity of character that exists in the suburb of Fernkloof.





ANNEXURE D 1/5

C. H. Olivier

GB Clarkson
16 Arc Street
Fernkloof
Hermanus
7200

Mobile: 0836612908

Email: garth.clarkson@gmail.com

5 APRIL 2017

MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY

PER EMAIL: ALIDA@OVERSTRAND.GOV.ZA

FILE NO:	ER 5318-Herm
SCAN NO:	42
COLLABORATOR NO:	1011416

Dear Sir/Madam

MUNICIPAL NOTICE NO: 21/2017 – PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION OF ERF 5318 – 23 CONTOUR STREET - FERNKLOOF

I write to you as the owner of 16 Arc Street (ERF 11168) which is situated two properties away from the subject property.

I hereby object to the proposed removal of the restrictive title deed conditions as well as the current subdivision proposal on the grounds set out herein.

ERF 5318 is located in a low density urban residential area.

This area was historically developed and continues to be an area consisting of large prime residential properties where individual erven consist of single dwellings.

The character of the area is that of middle to upper income families where some of which have school going children who all enjoy the comfort, security and above all the natural environment of trees, lawns and open space on large erven.

This has been achieved and maintained for the enjoyment of the residents of the area by preventing the subdivision of erven into multiple small erven below the average erven size historically found in the suburb of Fernkloof.

As other suburbs in Hermanus have unique attributes which form the foundation of what the suburb is about and the appeal which attracted residents to the particular suburb, so too does Fernkloof and the large erven, big gardens with established trees and open spaces is what Fernkloof is known for.

Such an environment also attracts and is a home to a wide range of wild creatures from the Cape Spotted Eagle Owl to porcupines amongst many others creatures for this very reason and why it is so important that we don't give up on what the suburb is about and allow it to be destroyed.

6 APR 2017

In particular the proposed portion A, B and C are small in size and with the limited street frontage would have the appearance of a townhouse development surrounded by large erven not to mention an intensive use of the land available.

The proposed subdivision will create an influx of new residents into a small area with a significant increase in vehicle traffic, noise and human activity and would be an extra strain on the environment and on facilities.

This will not only have an impact on my family and me but the other residents of Fernkloof.

The property located between my property and the subject property has now been placed on the market.

The proposed application is quite clearly an exercise to maximise the financial advantage for the benefit of the trust to the detriment of the neighbours and the area in general, as the clear intension of the Trustees is sell all of the proposed subdivisions.

A more reasonable application should have been submitted detailing larger erven which would be keeping with surrounding properties and the basis of what Fernkloof is about and why I and many other residents have invested in the area and call it home.

It is most unfortunate when financial gain clouds judgement and common decency to ones neighbours and the community.

In the circumstances, I hereby strongly object to the proposal and request that the application be refused.

Yours faithfully



Garth Clarkson

ANNEXURE D 3/5

Andre Hugo Trust
 PO Box 5532
 Weltevreden Park
 Roodepoort, 1715



6 April 2017

MUNICIPAL MANAGER
 OVERSTRAND MUNICIPALITY
 Per email: alida@overstrand.gov.za

TR A Theart
 (Moliver)

Dear Sir/Madam

**MUNICIPAL NOTICE NO: 21/2017 – PROPOSED REMOVAL OF RESTRICTIVE
 TITLE DEED CONDITIONS AND SUBDIVISION OF ERF 5318 – 23 CONTOUR
 STREET - FERNKLOOF**

I write to you as a trustee of the Andre Hugo Trust, which is the owner of 14 A Arc Street, Fernkloof (ERF 6318)

I hereby object to the proposed removal of the restrictive title deed conditions as well as the current subdivision proposal on the following grounds:

ERF 5318 is located in a low density urban residential area consisting of large residential properties with countrified surroundings.

The proposed portion A, B and C are small in size and with very narrow street frontage totally at odds with the character of the suburb.

An acceptable alternative would be to instead create 2 larger subdivisions on the Arc Street facing.

I hereby request that the application is refused.

Yours truly,

André Hugo
 082 377 4409
andre@hugoorthodontics.com

FILE NO:	ER 5318
	Hermanus
SCAN NO:	40
COLLABORATOR NO:	1011412

6 APR 2017



19 Contour Street
Fernkloof
Hermanus

6 April 2017

TRATheat
(H Olivier)

The Municipal Manager
Overstrand Municipality
Paterson Street
Hermanus

Dear Sir

Objection to Subdivision of Erf 5318

I wish to object to the proposed sub-division, and removal of restrictive conditions as per the Municipal Notice No 21 | 2017 in respect of the above-mentioned property.

The proposed sub-division will result in densification, which will dramatically change the character of the neighbourhood. In addition, there will be an increase in traffic, noise and human activity.

The proposed application is clearly an attempt to maximise financial gain for the Trust.

A sub-division detailing larger erven (maximum two) would be in keeping with the size of surrounding properties, and the character of Fernkloof.

I hereby request that the application is refused.

Yours faithfully

ERROL VAN STADEN
Mobile 083 637 0700

E-mail: errol@talentinstitute.ae

FILE NO:	EC 5318 Herm
SCAN NO:	41
COLLABORATOR NO:	1011414

6 APR 2017



J L Dugmore
18 Arc Street
Fernkloof
Hermanus
7200

Mobile: 0833009561

Email: jenny@dugmore.co.za

7 APRIL 2017

TP- A Theart
(H Olivier)

MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY

Dear Sir/Madam

MUNICIPAL NOTICE NO: 21/2017 – PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION OF ERF 5318 – 23 CONTOUR STREET - FERNKLOOF

As the owner of 16 Arc Street (ERF 7002) situated next door to ERF 5318, I hereby strongly object to the proposed removal of the restrictive title deed conditions and the current subdivision proposal on the grounds set out below.

ERF 5318 is located in a low density urban residential area. Historically, Fernkloof was developed as an area consisting of large prime residential erven comprising single dwellings.

The proposed portion A, B and C are extremely long and narrow with VERY limited street frontage, creating the appearance of a townhouse development. This is not practical and as most of the potential owners would require sea facing homes, this would necessitate encroaching the boundaries, or building extremely close to the boundary line. The homes would not be aesthetically in line with the properties in Fernkloof and would limit our enjoyment of our home which we bought as we enjoyed the space around our home. We believe that the subdivision would significantly reduce the value of our property.

Whilst we are not against the more effective use of available land for sub-division, we suggest that an acceptable alternative would be to create 2 larger subdivisions which would be more in line with the existing properties in the area.

I therefore strongly object to the proposal and request that the application be refused.

Yours faithfully

Mrs J L Dugmore

FILE NO:	EL5318-Herms
SCAN NO:	65
COLLABORATOR NO:	1011547

TP

7 APR 2017



ANNEXURE E 1/3

TR A Theart
(P Roux)ESTABLISHED
2002Town and
Regional
PlanningMunicipal
Legislation
and ProceduresLocal Economic
Development
Technical
Assistance35 Duiker Street
P O Box 1247
Hermanus
7200

Tel: +27 (0)28 313 1411

Fax: +27 0865083248

Email:
wrap@telkomsa.netWeb:
www.wrapgroup.co.zaWright Approach
Investments 136 CCReg No
CK 2002/060745/23Our Reference: 16/29
Your Reference: 5318 HEC (3556)

21 April 2017

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Sir

FILE NO:	EL5318
	Hermanus
SCAN NO:	14
COLLABORATOR NO:	1016286

ERF 5318 HERMANUS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION

Your letter dated 11 April 2017 has reference.

We hereby respond to the following letters of objection that were submitted on the above application.

1. Andre Hugo Trust, letter dated 6 April 2017;
2. E van Staden, letter dated 6 April 2017;
3. J L Dugmore, letter dated 7 April 201; and
4. G B Clarkson, letter dated 6 April 2017.

As most of the above objections contain the same points of objection we prepared a summary and will comment on each as follow:

1. Erf 5318 is located in a low density urban residential area consisting of large residential properties with countrified surroundings.

The subject property is situated in Planning Unit 2 of the Overstrand Municipal Growth Management Strategy and as motivated in our report the proposed subdivision is in line with the densities as prescribed in the mentioned Strategy.

2. The proposed portion A, B and C are small in size and with very narrow street frontage totally at odd with the character of the suburb.

TP 23 APR 17



Portions A, B and C are 1528m², 1582m² and 1522m² in extent respectively, which can hardly be seen as small and the frontages are on average 28m which is also considered adequate to build a large dwelling on it. Even to the north of the subject erf, are an average of 1200m² in extent and to the south, the erven are on average 1500m² in extent which brings the proposed subdivision in line with the character of the area. We don't dispute that there are erven immediately around the subject erf that are larger, but this cannot be seen in isolation and the larger picture brings it more in line with the proposed subdivision.

3. An acceptable alternative would be to instead create 2 larger subdivisions on the Arc Street facing.

It would be less economically feasible to create only two erven and as said under paragraph 2, the sizes of the proposed three erven are in line with the Overstrand Municipal Growth Management Strategy and other erven in the surrounding area.

4. The proposed subdivision will result in densification which will dramatically change the character of the neighbourhood. In addition there will be an increase in traffic, noise and human activity.

As mentioned in our first response, the proposed density is in line with the Overstrand Municipal Growth Management Strategy and other erven in the surrounding area. The subdivision of the subject property will only create three additional erven and the increase in traffic noise and human activity will be minimal.

5. The proposed application is clearly an attempt to maximise financial gain for the Trust.

It is the right of every property owner to apply for permission to subdivide his property as long as it is in line with town planning regulations, policies and strategies. If an owner is permitted to subdivide his property and he financially gains in the process, it is his privilege as he has acquired a suitable property for this purpose and has most probably paid a premium for it. The applicant indicated that they have tried to sell the subject property for the past 8 years but could not find a buyer and the main reason provided by prospective purchasers was that, although the asking price was reasonable, the property is too large to be used and maintained by a single family.

6. The character of the area is that of middle to upper income families where some of which have school going children who all enjoy the comfort, security and above all the natural environment of trees, lawns and open space on large erven.

As previously stated, the subdivided erven will be larger than 1500m² which is in normal town planning standards quite large and surely there is enough space on such an erf for children to play and the natural environment of lawns and trees would still be maintained.

7. The prevention of subdivision of erven into multiple small erven.

An additional three erven can hardly be seen as multiple erven and the proposed sizes can also not be seen as small and the subdivision of historical large erven are promoted in various strategies and guidelines of the Overstrand Municipality.



As already mentioned, property owners nowadays prefer slightly smaller erven, but if there are buyers who wants to buy a larger stand he can always buy two and consolidate them. It is anticipated that a purchaser of an erf with an established garden will try to retain as much as possible of such garden, especially large trees.

8. The large erven and open environment attract a wide range of wild life.

With the subdivision the wild life will definitely not disappear as they are in the area due to the large open spaces, mountains, the river and the golf course.

9. The subdivision will have an impact on my family and me and the other residents of Fernkloof.

The objector, who raised this point, does not state what impact the proposed subdivision will have on him and his family as his property is not even situated next to the subject property.

We trust that our response to these objections will enable you to take an informed decision on this matter.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Pine Pienaar", written in a cursive style.

PINE PIENAAR
PRINCIPLE TOWN PLANNER (Pr Pln. A409/85)

ANNEXURE F 1/1



Our Ref: HM/OVERSTRAND/HERMANUS/ERF 5318
 Case No.: 17030313AS0313E
 Enquiries: Andrew September
 E-mail: andrew.september@westerncape.gov.za
 Tel: 021 483 9543
 Date: 28 March 2017

JA Kleyhans Testamentere Trust
 23 Contour Street
 Hermanus
 7200

RESPONSE TO NOTIFICATION OF INTENT TO DEVELOP: FINAL
 In terms of Section 38(2) of the National Heritage Resources Act (Act 25 of 1999) and the Western Cape
 Provincial Gazette 6061, Notice 298 of 2003

NOTIFICATION OF INTENT TO DEVELOP: PROPOSED SUBDIVISION AND TITLE DEED RESTRICTION REMOVAL ON ERF 5318, HERMANUS, SUBMITTED IN TERMS OF SECTION 38(1) OF THE NATIONAL HERITAGE RESOURCES ACT (ACT 25 OF 1999)

CASE NUMBER: 17030313AS0313E

The matter above has reference.

Heritage Western Cape is in receipt of your application for the above matter received on 13 March 2017. This matter was discussed at the Heritage Officers meeting held on 24 March 2017.

You are hereby notified that, since there is no reason to believe that the proposed subdivision will impact on heritage resources, no further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) is required.

However, should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately and Heritage Western Cape must be notified without delay.

This letter does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority.

HWC reserves the right to request additional information as required.

Should you have any further queries, please contact the official above and quote the case number.

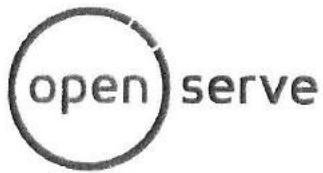
Yours faithfully

Mr Mxolisi Dlamuka
 Chief Executive Officer, Heritage Western Cape

www.westerncape.gov.za/cas

Street Address: Protea Assurance Building, Green Market Square, Cape Town, 8000 • Postal Address: Private Bag 110007, Cape Town, 8001
 • Tel: +27 (0)21 483 9543 • E-mail: cas@westerncape.gov.za

Straatadres: Protea Assuransgebou, Groenmarkiesplein, Kaapstad, 8000 • Posadres: Private Sak 110007, Kaapstad, 8001
 • Tel: +27 (0)21 483 9543 • E-pos: cas@westerncape.gov.za



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

03 April 2017

Attention: S Muller

Overstrand Municipality
HERMANUS

**WAYLEAVE: REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: ERF 5318, 23
CONTOUR STREET, FERNKLOOF, HERMANUS**

With reference to your application received **03 March 2017**.

I hereby inform you that Telkom 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, Telkom SA LTD 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.

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

11 APR 2017



TR A Theart
(C H Olivier)

Candice Spammer
Tel: 021 414 5582
Fax: 086 480 0617
Email: spammec1@telkom.co.za

Our Ref.: WWIP_WHMN0996_17
Your Ref.: 5318 HEC 3556

FILE NO:	EL 5318
	Hermanus
SCAN NO:	
COLLABORATOR NO:	1013455

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.

As important cables are affected, please contact our representative Frederik Swart at telephone number 028 514 1199 / 081 363 7815 at least 48 hours prior of commencement on construction work.

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 Telkom SA infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Telkom SA LTD rights remain reserved.

Yours faithfully



Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

This wayleave, Reference Number WWIP WHMN0996 17 is valid for 12 months from date hereof and is subject to the following conditions:

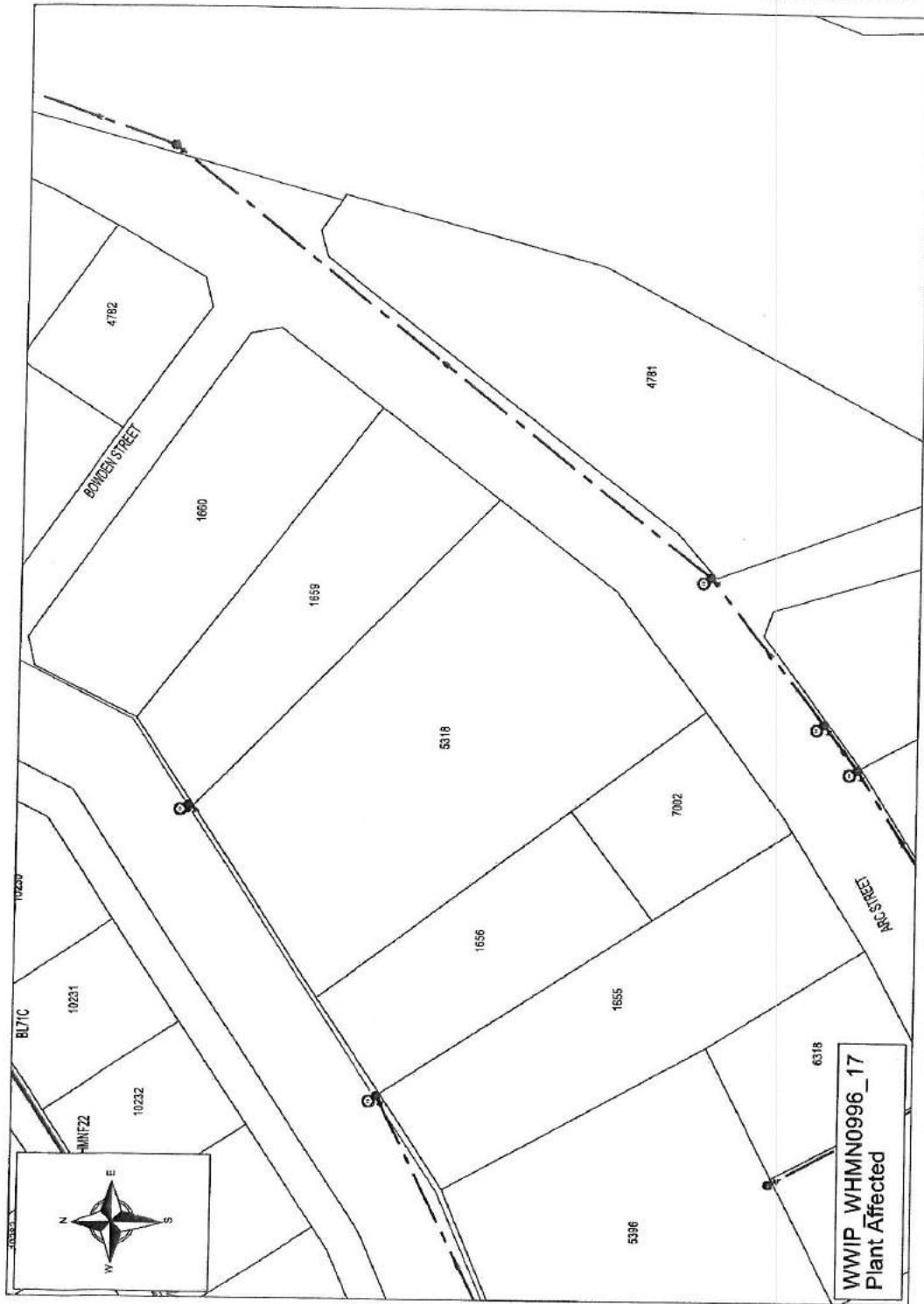
1. No mechanical plant or vibrator type compactors may be used within three meters of any Telkom Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Frederik Swart at Telephone No 081 363 7815 must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Telkom Plant will be indicated on site.
3. A written request must be submitted to Telkom for consideration, should the of the work, upon which the actual location of Telkom Plant will be applicant require our plant to be relocated. The cost of such a 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 Telkom immediately, should the applicant locate any Telkom Plant which is not indicated on the plans.
5. Should the applicant expose any Telkom 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 any damage or loss as a result thereof.

Date: 2017/04/04

By: C Spammer
For Regional General Manager
Western Cape

Telkom Symbol Legend	Green
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)	





**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTION & SUBDIVISION: ERF 5318,
FERNKLOOF (3556)**

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

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.

1.1 Developments containing Sectional Title Units/ Commercial Buildings
(non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.

1.2 Developments with free standing properties (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.

The contribution according to the current policy (**2016/2017**) is as follows:

Freehold erven:

Water	R 21 500.00 x 3	=	R 64 500.00
Sewerage	R 14 496.00 x 3	=	R 43 488.00
Roads	R 6 500.00 x 3	=	R 19 500.00
Stormwater	R 7 500.00 x 3	=	R 22 500.00
Solid Waste	R 1 300.00 x 3	=	R 3 900.00
Electricity	R 30 197.80 x 3	=	<u>R 90 593.40</u>
TOTAL (inclusive of VAT)		=	R244 481.40

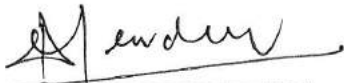
Note:

1.3 The above figures are estimates

1.4 The above figures do not include connection fees

2. that only the standard 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 developer's cost;

3. that each individual erf be provided with its own water and sewerage connections;
4. that only a standard 60 Amp single phase electricity connection will be available per erf;
5. that stormwater be allowed to discharge through the proposed erven , Fernkloof, unobstructed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

11/4/2017
DATE

158

MEINTJES & CHAMPION
TEL: 02291-71634

59

105

ANNEXURE I/8

VIR ENDOSSEMENTE KYK BLADSY
FOR ENDORSEMENTS SEE PAGE 7

1981

52

MICRO FILMED - MIKROVERFILM	
DATE - DATUM	OPERATOR - OPERATEUR
1980-11-27	

T39326 1980

REGISTERED	REGISTERED
3/11/82	3/11/80
OPERATOR	OPERATOR

1472

Deed of Transfer

(By virtue of a Power of Attorney).

Prepared by me :

[Signature]
Conveyancer.

Know all men whom it may concern

THAT CHRISTIAAN MATTHYS STIMIE
appeared before me, Registrar of Deeds, he being duly authorized
thereto by a Power of Attorney dated 6th day of
AUGUST, 1980 executed at HERMANUS
and granted to him by

PAMELA MARY SWART
(Born George on 12th June, 1925)
married out of community of property
to Johannes Jacobus Swart
(Ext A N C No. 89/66)

2/ AND

BLADSY/PAGE 7
 ENDOSSEMENT OP 39326
 ENDORSEMENT ON T | 80
 EIENDOM/PROPERTY Erf 5318
Hermanus:

59019 88

Be

B 38731 | 1980

CANCELLED
 GEKANSLEER
 1988-12-05
 REGISTRAR
 REGISTRAR

VERBOND
 MONTGAGED
 vir R50 268,00 *and* (met ~~preferensie~~ *with preference*)
 for R5 600,00 P.R. 80
 for an additional amount not exceeding P.R. 80
 Antekentoor, Deeds Office
 K. 1015A, Cape Town. Arst.-Registrar/Asst. Registrar



VIR ENDOSSEMENTE KYK BLADSY 8 ET *EQ.
 FOR ENDORSEMENTS SEE PAGE

AND the Appearer declared that on 28th JULY, 1980 his Principal as aforesaid sold the following property to the under-mentioned transferee

|

NOW THEREFORE the said Appearer in his capacity as aforesaid, did, by these presents cede and transfer in full and free property, to and on behalf of

JOHANNES ADOLF KLEYNHANS
(Born on 31st March, 1943)

- WHITE GROUP -

}

his Heirs, Executors, Administrators or Assigns

3/ CERTAIN

8

B **18234/85**

VERBIND MORTGAGED

vir R 150 000,00 (met preferensie) ✓
 for R (with preference)

vir 'n verder bedrag nie te bogaande ✓
 for an additional amount not exceeding

R 30000,00

Aktekantoor, Deeds Office
 Kaapstad, Cape Town

[Signature]
 Registrateur/Registrar

B **65735-96**

VERBIND MORTGAGED

vir R 830 000,00 (met preferensie)
 for (with preference)

vir 'n verder bedrag nie te bogaande
 for an additional amount not exceeding

R 170 000,00

Aktekantoor, Deeds Office, Kaapstad, Cape Town

Registrateur/Registrar

VERBIND MORTGAGED

VIR FOR R 1 000 000,00

B **51076 97**

1997-08-14

[Signature]
 REGISTRATEUR/REGISTRAR

NO FURTHER ENDORSEMENTS SEE
 NO VERDERE ENDORSEMENTS SIEN

WHITE GROUP
BLANKE GROEP

CERTAIN piece of redeemed quitrent land situate in Mossel River West Township and the Municipality of Hermanus, Division of Caledon, being Erf No. 5318 HERMANUS

MEASURING: Nine Thousand One Hundred and Seventy-Seven (9 177) Square Metres

EXTENDING as the Certificate of Consolidated Title No 6086 with Diagram No. 8294/67 annexed, made in favour of the Appearer's Principal on the 20th day of March, 1972, will more fully point out.

In so far as each of the figures AfDE and fBCD on the said Diagram (No. 8294/67) is concerned:-

SUBJECT:

- A. To the conditions contained in the said Certificate of Consolidated Title No. 6086 dated 20th March, 1972.
- B. To the special condition contained in Amended Title granted under the provisions of Act No. 9 of 1879 to the Mossel River Estate Company Limited on the 22nd November 1904 (Caledon Quitrents Volume 10 No. 19):

"THAT the land granted thereby shall be subject to all such duties and regulations as either are already or shall in future be established with regard to such land."
- C. To the following special Conditions set out in Deed of Transfer No. 152B dated 27th February, 1941, imposed by the Mossel River Estate Company Limited for its benefit and that of its Successors in Title as owners of the remainder of Mossel River West Township held by the said Certificate of Registered Title No. 3907 dated 25th June, 1932:-
 - (a) There shall not be erected on the said Lots any buildings which have not been submitted and approved by the Transferor in writing prior to the commencement of building operations.

4/ (b) All

26
B

- (b) All the buildings being dwelling houses shall be so placed that the front line of such building (including any stoep or porch) shall coincide with the building line laid down by the Transferor. Outbuildings shall be erected behind the building line in such position as shall be approved by the Transferor. The sides of every building shall be parallel to the boundaries of the said Lot, unless the Transferee or his Successors in Title be specially exempt by the Transferor in writing. In the case of irregular lots the relation between the sides of the building and the boundaries of the property shall be subject to the approval of the Transferor.
- (c) No building shall be erected within 1,57 metres of the common boundary of any Lot in the above Township save where such Lots are owned by one and the same individual.
- (d) No obligation shall rest upon the Transferor under any circumstances to construct, repair or maintain any streets laid down in the plan of the Township, save that it shall provide practical roadway access to the said lots.

D. To the following special Conditions set out in the said Deed of Transfer No. 1528 dated 27th February, 1941 imposed by the Administrator in approval of the said Mossel River West Township:-

- (1) That the above Lots be used for residential purposes only.
- (2) That the above Lots be not subdivided.
- (3) That not more than one building be erected on the above lots and that not more than one-half the area of the above lots be built upon.
- (4) That all buildings to be erected on the above property shall stand back not less than 3,15 metres from the line of the street on which the said Lots abut. Such space may be used as gardens, but shall not be built upon.
- (5) That all outbuildings to be erected on the above property shall stand back not less than 6,30 metres from the line of the street on which the Lots abut.

5/ E. ENTITLED

28
13.

E. ENTITLED TO the benefit of the terms of certain servitude, a reference where to was on the 27th November, 1934, endorsed against the said Certificate of Registered Title No. 3907/1932, reading:-

"BY Deed of Transfer No. 10530/1934 the owner of the land held hereunder has acquired the right to divert certain water across the land conveyed by the said Transfer (Para.2) as will more fully appear on reference to the said Transfer."

B

4

112

WHEREFORE the Appearer in his said Capacity, renouncing all the right and title the said TRANSFEROR

heretofore had to the premises, did, in consequence also acknowledge the said TRANSFEROR

to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents, the said

TRANSFeree

his Heirs, Executors, Administrators or Assigns, now is and henceforth shall be entitled thereto conformably to local custom; State, however, reserving its rights; and finally acknowledging the said TRANSFEROR

to be satisfactorily paid the whole of the purchase money amounting to the sum of R89 000,00 (EIGHTY-NINE THOUSAND RAND)

IN WITNESS whereof, I, the said Registrar, together with the Appearer q.q. 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, in CAPE TOWN on the 17th day of October in the Year of our Lord, One Thousand Nine Hundred and Eighty (1980)

[Signature] q.q.
[Signature]
REGISTRAR OF DEEDS.

In my presence,

Registered in the Green Register of Harman Book Folio 5318 Clerk in Charge.

[Signature]

1. Transfer Duty Receipt No. issued	
at	on for
R	
2. Rates Clearance Certificate issued by	
available until:	Checked: 1.

[Handwritten marks]

ESTATE LATE JOHANNES ADOLF KLEYNHANS
MASTER'S REFERENCE: 9523/2009 (CAPE TOWN)

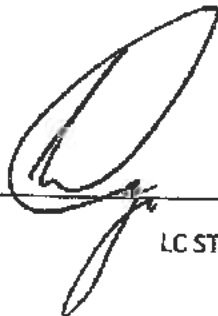
CONVEYANCER'S CERTIFICATE

I, the undersigned, LUCAS CORNELIS STEYN, Conveyancer of Hermanus, do hereby certify that:

1. Deed of Transfer No T39326/1980 in terms whereof the Deceased held Erf 5318 Hermanus, in the Overstrand Municipality, Division of Caledon, Western Cape Province, and
2. Deed of Transfer No T32039/1983 in terms of whereof the Deceased held Erf 5525 Hermanus, in the Overstrand Municipality, Division of Caledon, Western Cape Province.

Were on 22 September 2016 endorsed by the Deeds Office in terms of Section 40(1)(b) of the Estates Act, Act 66 of 1965 to the effect that the provisions of the Will of the Late Johannes Adolf Kleynhans dated at Hermanus on 27 January 1998 will apply to the properties and that the properties will be controlled and managed by the Trustees of the JA Kleynhans Testamentary Trust in terms of the provisions of the aforementioned Will.

Signed at HERMANUS on 10 October 2016.


LC STEYN