

## 4.4

**ERF 80, 9 GNIDIA ROAD, ROOI ELS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR THE REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION AND DEPARTURE: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF T THORSSON AND C THOMPSON-THORSSON**

80 KRE

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8 June 2021

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## 1. EXECUTIVE SUMMARY

An application was received on 21 September 2020 from Messrs Plan Active Town and Regional Planners on behalf of Messrs. T. Thorsson and C Thompson-Thorsson on Erf 80, Rooi Els for the following:

- ❖ Removal of a restrictive title condition with reference to Clause F.4.(d) of Title Deed T45817/2019 in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020.

Restrictive condition F.4.(d) reads as follows:

*“no building or structure 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 of 1.57 metres of the lateral boundary common to any adjoining erf provided that the consent of the Local Authority an outbuilding 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 and provided further that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such as to make that necessary”*

- ❖ Departure in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 to relax the following:
  - street building line from 4m to 0,73m to accommodate a portion of the existing carport;
  - southern lateral building line from 2m to 0m to accommodate a portion of the existing carport, and
  - southern lateral building line from 2m to 0,2m to accommodate a portion of the existing dwelling.

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. Title Deed No T45817/2019 is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

### 3. BACKGROUND / SITE HISTORY

Erf 80 is located in Rooi Els Township and zoned Residential Zone 1: Single Residential. The existing structures on the property consist of a residential dwelling, double carport, and a garden shed. The erf measures 979m<sup>2</sup> in extent and obtains access from Gnidia Road.

The approved building plans history are as follows:

- Approved building plan dated 1981, subject to that the building needs to comply with the 5m street building line.
- Building plan approved in 1985 show that the dwelling complies with the street building line and the proposed garage with the 1,5m lateral building line.
- Building plan approved in 1994 show extensions on first floor level above the approved garage, but now indicated a 2m lateral building line.

The building and building lines have been depicted differently on the site plans submitted with each building plan. The new owners with the appointment of a Land Surveyor has submitted a site plan depicting the correct location of the building on the property.

### 4. SUMMARY OF APPLICANT'S MOTIVATION

**The proposed departures are motivated as follows:**

The owners bought the property with all the existing structures in place; however, the owners appointed a Land Surveyor to survey the position of the existing structures inherited by the new owners. The survey indicated that all the structures transgress the building lines as well as the erf boundary. The situation created was due to the incorrect erection of the boundary fence on the southern side of the erf.

In order to rectify the situation, the owners intend to demolish the garden shed, the fence as well as part of the carport that transgresses the erf boundary. The owner wants to keep the carport on the street boundary and lateral boundary.

The departure is to accommodate the carport on the 0m street building line and 0,73m on the southern lateral building line. The Overstrand Zoning Scheme Section 16.(2)(b) stipulates that Council may approve carports that encroach street building lines if the width of the carport does not exceed 6,5m and to legalise the existing house that transgresses the lateral building line.

The departure of the house on the lateral building line is a transgression of the bedroom by approximately 3m<sup>2</sup>.

#### Services

None of the Municipal Services will be impacted upon.

**The Title Deed are motivated as follows:**

The Title Deed does prohibit the erection of structures within the 4,72m street and 1,57m and 3,15m rear building lines.

Herewith are the relevant considerations assessed in conjunction with this proposal:

***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 personas of the owner of a dominant tenement.***

The removal of the restriction will allow the current owners to rectify the wrong doings of the previous owner that were not obvious until the survey has been done. The purchase price was for the property and the structures. Addressing the encroachment by mean of the removal of the restrictive condition and departure will retain the value of the property paid.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. The existing owners will not gain anything personally by having the restriction removed, which prevents the development of the subject property. The proposal will have a minor impact on the built form of the area and has been supported in the past. The proposed removal is to address the transgressions of the existing structures. The removal will not influence the value of the properties in the area in general.

***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.***

The property owner will benefit as it will address and accommodate the structures that was wrongfully built.

***The social benefit of the restrictive condition remaining in place.***

The township has already changed with the approval of departures within the area. It is doubtful that if the condition remains that it would have a significant social benefit.

***The social benefit of the removal of the restrictive condition.***

It can be argued that the possible social benefit and the consequent building line departures will be positive and have a social benefit to the current owners to utilise the existing structures.

***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 restriction will not remove the rights completely, since the Overstrand Land Used Planning Scheme does provide a certain level of control that guides development.

Section 47 of the Spatial Planning Land Use Act, 2013, the removal of the restrictive title deed condition will not deprive any person in the subject area of Rooi EIs as contemplated in Section 25 of the Constitution. By denying the removal of the title deed restriction it will also deprive the current owners from utilizing the subject property as it was sold to them.

The building line parameters as per Section 16 of the Land Use Scheme does allow encroachments with detail development parameters, which is less restrictive than the title deed building line conditions. If the condition is not removed, the owner will not have the opportunity to make use of the structures in the encroached areas.

### **Forward Planning**

#### Overstrand Municipal Spatial Development Framework:

The area is earmarked for residential purposes.

#### Overstrand Growth Management Strategy:

The erf is located in Planning Unit 1 – no densification. The application will not have any impact on the densification of Rooi Els.

### **Other relevant legislation:**

#### Heritage Value:

Erf 80 is not situated in the Heritage Overlay Zone.

#### Biophysical Environment:

The application does not trigger any of the NEMA listed activities.

### **Planning Principles**

#### Spatial Justice:

The removal of restrictive condition and departure is in line with current land use tendencies in the area. The application is to rectify transgressions of the previous owner.

#### Spatial Sustainability:

The proposed application is in line with the current character of the established residential area.

#### Efficiency:

The application will optimize the use of space within the developed area.

#### Spatial Resilience:

Spatial resilience refers to the flexibility of plans, policies or land use management systems to enable vulnerable communities to absorb environmental and economic shocks. The application does not fall into this category and thus not applicable.

#### Good Administration:

The application was processed as per instruction from the Municipality.

The application complies with the planning principles.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Local newspaper	<b>Yes</b>	5/11/2020	11/12/2020
Gazette	<b>Yes</b>	6/11/2020	11/12/2021
Registered notices	<b>Yes</b>	5/11/2020	11/12/2020
Ward councillor	<b>Yes</b>	5/11/2020	11/12/2020
Total comments	<b>FOUR (4)</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>Building Control</b>	20/11/2020	No objection. All buildings to comply with the National Building Regulations and all other applicable law.
<b>Engineering Services</b>	26/01/2021	Annexure G.

**7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON**

Four (4) letters of objection were received from the following individuals / parties:

- L Els
- RH Viljoen
- E Brink, and
- Rooiels Ratepayers Association.

The objections are attached as Annexure E. The applicant was provided an opportunity to comment on the objections received, and their comments are attached as Annexure F.

*(Please note that the objection of E Brink was in Afrikaans and has been translated.)*

The objections are hereby addressed in a summarised manner.

❖ **Objection 1**

***The proposed building line relaxation will result in infringe on her rights and views.***

Applicant's response

The removal and departure only relate to the existing structures and no further development of the site is envisaged. Should any further developments take place, the applicant will have to address it through the public participation process.

Town Planner's response

The house was built during the 1980's and the objector (Erf 79) an adjacent owner, has not once objected to the house, views or any infringement and value of her property. It is thus unclear why this is an issue 20 years later. The applicant did approach the objector to rectify the present situation by means of purchasing the portion as per the fence, however she did not consent to it.

The view is not a right, since no view corridor has been registered against the Title Deed of Erf 80, however the carport does impede her living area view.

❖ **Objection 2**

***The existing carport is not in harmony with the existing dwelling nor any of the neighbouring properties. It is also speculated that the carport does not comply with the National Building Regulations***

Applicant's response

The applicant will have to comply with the National Building Regulations and the objector is in no position to speculate whether the carport complies with the National Building Regulations.

Town Planner's response

There is no building style in Rooi Els and thus it is unclear what harmony is referred to. Any structure which is depicted with the submission of a building plan will comply with the National Building Regulations.

❖ **Objection 3**

***It was mentioned that Erf 80 has sufficient space on the northern and eastern side to erect a carport. It is also mentioned that the carport and fences were incorrectly placed and can happen again in the future.***

Applicant's response

The owner purchased the property in 2019. The intention was to submit alterations and the Overstrand Municipality requested the surveying of the erf. Only then it became evident that the building transgresses building and boundary lines onto Erf 79. The application is to rectify the situation.

Town Planner's response

The objection is valid since there is sufficient space on the northern and eastern sides of the erf to erect a carport. The aspect that it can happen again, is highly unlikely now that the property has been surveyed.

❖ **Objection 4**

***It was mentioned that the applicant claimed that the removal of the restriction will enable development as per the primary uses as set out in the Zoning Scheme Regulations. It will attract investors and will increase the market value of the area.***

Applicant's response

The objector is incorrect, the motivation on page 8 stated that *"the proposed removal of restrictive Title Deed condition will not increase or decrease the market value of the property or the area in general."*

Town Planner's response

The removal of the restrictive condition is only applicable to the building lines, should any of the primary rights be executed, the owner will still have to comply with both the Overstrand Land Use Scheme and the Title Deed conditions.

One can assume the objector refers to Section 16 that allows encroachments on street, rear and lateral building lines, less than a 1m high and structures subject to neighbours' consent, which is now restricted by the Title Deed condition pertaining to building lines.

If the applicant refers to the primary land use rights applicable to Residential Zone 1: Single residential, all the rights under this category of the Land Use Scheme are applicable to all erven within the Overstrand Municipal Area.

❖ **Objection 5**

***The carport on Erf 80 is the only structure in Gnidia Road that encroaches the municipal street building line.***

Applicant's response:

The title deed condition contains a 4,72m street building line, 3,15m rear building line and a 1,57m lateral building line and the carport encroaches onto the street and lateral building lines. It is incorrect to indicate that the carport is the only structure transgressing the street building line, as there are other structures that encroach the street building line in the same road.

Town Planner's response

The applicant may be correct in as far as structures encroaching the street building line, however no proof was submitted in this regard. Applications for the relaxation of rear and lateral building lines were received and dealt with. However, none of which requested the street building line to be relaxed to 0,73m from the street boundary.

❖ **Objection 6**

***The carport can be accommodated elsewhere on the property and no information with regard to height is provided.***

Applicant's response:

The intention of the owner is to obtain approval for the existing structures on the subject property. The proposed building line departures will not have any impact on the neighbouring property as it was initially thought that the alterations did not encroach the building lines as it was constructed 3,92m away from the existing fence.

Town Planner's response

The objection is valid since there is sufficient space on the northern and eastern sides of the erf to erect a carport. The width of the carport has been addressed by the applicant's motivation report, page 6, which indicate that the width is less than the allowable 6,5m. The height has not been addressed, and in terms of Section 16 of the Land Use Scheme it may not be higher than 3m. The building plan submitted indicates the height of the carport at 2,7m.

❖ **Objection 7**

***The existing carport should be reduced to a single carport.***

Applicant's response:

The impact of the carport will be the same whether it is a double or single carport as it is not very visible from the street front.

Town Planner's response

The application was for a double carport; however, a single carport may have less of an impact on the streetscape.

❖ **Objection 8**

***The Title Deed condition pertaining to the building lines only be relaxed for the existing buildings.***

Applicant's response:

An application to remove a condition is very expensive and the proposed removal of the restrictive condition will be more feasible if all the restrictions that are more restrictive than the Zoning Scheme Regulations are addressed.

Town Planner's response

The applicant is correct, the removal is an expensive process. The removal of the building line restriction will benefit the erf with regard to the street building line, 4,72m to 4m and the rear building line from 3,15m to 2m, however the lateral building line will be more restrictive from 1,57m to 2m.

The actual impact of the removal of the condition will be on the rear building line.

❖ **Objection 9**

***The condition be amendment only to cater for the existing structures.***

Applicant's response:

Every application should be evaluated on its own merit. The owners inherited the defaults on the property and are in the process to correct it. Surrounding owners are still protected by the Overstrand Zoning Scheme and the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020. Any new application will have to go through a planning process whereby surrounding owners will have an opportunity to provide their comments.

Town Planner's response

In agreement with the applicant.

❖ **Objection 10**

***The proposed application will allow other property owners in the area to submit similar applications.***

Applicant's response:

With the built character of Rooi Els it is believed that similar applications have already been approved in the past by the local authority. The proposed application will not create any new precedent as the built character of the area is already proof to similar applications/encroachments in the area. All applications should be evaluated on its own merit and Council cannot make decisions based on what could happen in the future, but rather should deal with the facts in hand.

Town Planner's response

The applicant is correct. If any owner wants to submit a similar application, it is their right to do so. In evaluating the Rooi Els Township, various outbuildings have been approved in the past, due to the concession of the Title Deed that makes provision for the erection of a garage on the rear, lateral and street building lines. Every application submitted must still comply with the parameters of the condition and the Land Use Scheme.

❖ **Objection 11**

***The application should have been advertised to the whole of Rooi Els Township. This issue was raised on an appeal which is subject to a legal opinion.***

Applicant's response

It remains the Municipality's discretion to what extent the public participation process should take place. The condition which is requested to be removed does not constitute servitudes or contractual rights as stipulated by the objectors, but is considered a limitation on the use of land imposed in the public interest. The neighbouring property owners do have an interest in the restrictions, but it does not vest them in any private property rights within the meaning of Section 25 of the Constitution. Section 25.(1) permits deprivation of property rights if it is done in terms of a law of general application and arbitrary. As a result the removal of restrictive title conditions are permitted and empowered by relevant planning laws, namely Section 47 of the Spatial Planning and Land Use Management Act, 2013, Section 39 of the Western Cape Land Use Planning Act, 2014 and the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020. The title deed condition does not stipulate that the condition was registered in favour of all or every property owner in Rooi Els.

Town Planner's response

It is correct that a legal opinion must be obtained in another application with regard to a consent use for a guest house. This application is for a carport, which can be accommodated via an application process.

Section 4 of the Title Deed make no reference to all owners as it is the Administrator's conditions. The third-party conditions which make reference to all owners, which does not include building lines. It is unclear why the objector requests an all owner circulation if the third-party conditions do not stipulate a restriction on the building lines.

❖ **Objection 12**

***Page 4, Paragraph 4: "this erf shall be subject to the following further conditions, provided especially where 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, relaxation, subject to compliance with such conditions he may impose."***

Applicant's response:

We are of the opinion that the Municipality was at liberty to use their discretion and circulate the application correctly to the surrounding owners. The Ratepayers Association was informed of the application, an on-site notice was displayed for the whole duration of the public participation process and as a result the form of notice was sufficient.

Town Planner's response

With the establishment of Rooi Els, the conditions of the application erf, incorporated the administrative conditions and third-party conditions. The conditions of the Administrator specifically Condition 4.(c), delegate the approval authority to the local authority pertaining building lines and applicable structures that may be considered. It is therefore clear that with regard to Condition 4.(c) the title deed condition does delegate certain powers to the local authority.

**❖ Objection 13**

***The City of Cape Town requires, in accordance to mandatory legal requirement, that all heirs acquired in the relevant township from the same developer be given individual notice. At a recent hearing of the Cape Town Municipal Planning Tribunal, the legal representative of a local taxpayers' association again drew the Tribunal's attention to it.***

***Page 4, Paragraph G of Title Deed No. 45817/2019 stipulates as follows: "Subject further to the following conditions ... imposed by Hangklip Beach Estates Limited, ... as being in favour of the registered owner of any Erf in the Township, viz;"***

**Applicant's response:**

It is clear in the above-mentioned paragraph that should any conditions have been proposed to be removed under this particular section, all property owners should have been informed. We are of the opinion that the Municipality was at liberty to use their discretion and circulate the application to the surrounding owners only due to the fact that the proposed restriction to be removed falls under a different section of the Title Deed.

**Town Planner's response**

Firstly, the application is located in the Overstrand Municipality. Secondly, the reference made by the objector pertaining an application at the Cape Town Municipal Planning Tribunal is not substantiated with any documentation or outcome. Thus, due to lack of information to establish context, it cannot be ascertaining whether the remark has any bearing on the application submitted.

The reference to the third party e.g. Hangklip Beach Estates Limited conditions in the applicants' Title Deed makes no reference of any building line conditions imposed by the third-party.

**❖ Objection 14**

***The application is therefore not valid and that a re-application will have to be made.***

**Applicant's response**

The proposed application is in line with the relevant legislation. The application has followed due process and therefore the application was submitted in terms of the relevant legislation.

**Town Planner's response**

To reiterate, Title Deed Condition 4.(c) does not stipulate an all owners namely third-party conditions. Title Deed Condition 4 delegated certain actions to the local authority, which has the discretion in dealing with the application as per the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020.

The applicant complied with the process as stipulated by the Municipality.

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

See Paragraph 7.

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

See Paragraph 7.

**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 application is within the urban edge and will not impact on agricultural land or environmental areas. The application is in line with the promoting the effective use of the property and buildings on the property.

Efficiency

The landowner wants to use the property to its full potential and make optimal use of municipal services available to the erf that in return contribute economic well-being.

Spatial Resilience

The application is in line with local policies which promote optimal use of an erf to limit urban sprawl.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

- o Spatial development Framework: (2020)

The erf is located in an area earmarked for residential development.

- Overstrand Growth Management Strategy: (2010)

The erf is located in Planning Unit 1 with no densification opportunity.

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

N/A

#### **10.6 Impact on Municipal Engineering Services**

Existing services will be used.

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

- Heritage value

The erf is not located within a Heritage Overlay Zone.

- Biophysical environment

The proposed subdivision does not trigger any listed activities as per NEMA regulations and is also not located in the EMOZ Overlay.

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

The Overstrand Municipality Zoning Scheme Regulations is applicable to this area. The application is consistent with the primary rights and development trends in the area.

### **11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

**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 personas of the owner of a dominant tenement.**

This restrictive condition does not have a beneficial financial or other value for the property owner or anyone else.

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

There are no personal benefits which accrue to the holder of these restrictive title deed conditions.

**The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.**

The purchaser will be able to legalise an illegal structure built by the previous owner.

**The social benefit of the restrictive condition remaining in place.**

There is no social benefit if the restrictive conditions remain in place.

**The social benefit of the removal of the restrictive condition.**

The social benefit refers to public interest and should the condition be removed, there is no social benefit.

**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.**

There are no rights which are enjoyed by any member of the society and the removal of these restrictive conditions do not constitute a deprivation of rights.

## 12. THE DESIRABILITY OF THE PROPOSAL

**In terms of desirability the following aspects need to be considered namely:**

The applicant bought the property and all structures on the property was part of the purchased price and it was only established after surveying the erf that the structures on the property encroach over the building lines and the erf boundary.

A site inspection was conducted, and the following are of importance:

- The double carport is a properly structure built by the previous owner.
- It is located in line with the view corridor of the objector's erf (Erf 79) balcony on first floor level.
- The carport is located on an area levelled during the construction of the house.
- The erf has a drop of approximately a meter from south to north, which would either result in filling and a retention wall should the carport be moved to the north of the dwelling.
- There are also two (2) water tanks within the building lines on the northern side of the erf.

In evaluating the application, the desirability will be dealt with firstly on the departure and secondly the removal of the title deed condition.

### **Departures**

The Land Use Scheme does allow carports on the 0m street building line. The carport does comply with the Land Use Scheme parameters for carports within the street building line in as far as width and height is concerned and it is not an enclosed structure. However, the carport is erected within the view line of the living area and first floor balcony of the objector's dwelling. Although view is not a given right, the application for the carport is an additional right requested for and thus must take the surrounding properties into consideration. The objector's dwelling was built later, and the design is as such to make optimal use of the views available to Erf 79. The double carport on the 0m and 0,73m lateral and street building lines thus does have an impact on Erf 79. The application erf (Erf 80) did have an approved garage that was converted illegally into a guest room. After the survey it was found that the building is located on 0,2m from the lateral building line. The illegal structures (carport) and dwelling (conversion of the single garage) over the lateral building line have a cumulative impact on Erf 79. There is no other legal structure on 0,73m on the street building in Gnidia Road and the thus will have an impact on the street scape. The transgression of built structures in a building line are more than 9m or a third of the lateral building line as per the Land Use Scheme. The departure for a double carport over the street and lateral building lines are not

recommended due to the overall impact on Erf 79, which was designed to make use of the view corridor created by the building lines.

In this case, the approved single garage was converted into a bedroom, thus a habitable space within the lateral building line. Should the conversion not take place, the garage could be accommodated in terms of the Land Use Scheme, however due to the fact that it is habitable, a departure is required to accommodate the conversion. The latter after being surveyed is located 0,2m from the boundary and although the Municipality does not in general support dwellings over the building lines. The structure was designed to form part of the dwelling and is aesthetically pleasing. The objections focus on the carport and not on the conversion of the single garage as such. Should the conversion not be recommended, the present owner needs to demolish a part of the dwelling or convert it back to the approved building plan of a garage. Taking the history into account, it is clear that the structure (single garage) is legal and been built, structurally as per the approved building plan, except with the transgression over the lateral building line. The conversion of the original single garage into a bedroom is recommended for approval, based on the fact that the structure has already impacted on the adjacent neighbour and complies with the street building line.

#### **Removal of the title deed condition:**

Condition F.4.(d) stipulates that a street building line is 4,72m, lateral building line 1,57m and the rear building line 3,15m. It also stipulates that with the approval of the Administration the aforementioned can be removed/amended and or suspended in cases of outbuildings and garages. It further stipulates that an outbuilding can be erected within the rear and lateral building lines with consent of the local authority, but may not be used for human habitation and in special circumstances a garage can be erected on the 0m street building line. The Title Deed thus delegated the relaxation of building lines to the local authority.

The relaxation of the lateral building line to accommodate the conversion of the single garage into habitable space does require the consent of the local authority and not the Administrator as per previous planning dispensation. The single garage, now bedroom, was designed as part of the built development of Erf 80 and thus forms an aesthetical unit. The removal of the lateral building line of 1,57m is recommended since it is less strict than the Overstrand Land Use Scheme.

The application to remove the street building line of 4,72m is recommended for removal due to the following reasons:

- The difference between the Title Deed restriction of 4,72, *vis e vie* 4m has little impact on the street scape and or view lines.
- Gnidia Street has a road reserve of more than 10m and the impact of 0,72m between the restrictive condition and the Land Use Scheme will be minimal.

In terms of the Title Deed the rear building line of 3,15m is more restrictive than the Land Use Scheme, however it does allow any outbuildings within the rear and lateral building lines, whilst the Land Use Scheme restricts outbuildings within the rear and lateral building lines, except through a procedure. The Title Deed does not make provision of any procedure and gives a blanket approval of the aforementioned. Thus, in effect the Land Use Scheme is more restrictive in terms of public participation for any structure over the rear building line.

### General

The applicant did indicate that with the removal of the building line conditions, the erf will be subject to Section 16 of the Land Use Planning Scheme, which allows exemptions over the building. However, these exemptions are still subject to development parameters and or consent from the neighbours. The aforementioned relates to energy saving devices, requirements of Fire- and National Building Regulations and structures less than 1m high.

Section 16 of the Overstrand Land Use Scheme will not have a detrimental impact on the character of the town of Rooi Els taken into consideration that the title deed restriction gives certain power to the Local Authority. In the era of climate change the Land Use Scheme is much more in sync than the title deed restriction pertaining to the SANS Regulations and energy and water saving devices to be accommodated on residential erven.

### 13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 for the removal of restrictive title deed condition Clause F.4.(d) as contained in Title Deed T45817/2019 applicable to Erf 80, Rooiels to accommodate a portion of the existing dwelling, **be approved** in terms of the provisions of Section 61;
2. that the application in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Erf 80, Rooiels for a departure to relax the southern lateral building line from 2m to 0,2m to accommodate a portion of the existing dwelling, **be approved** in terms of the provisions of Section 61 subject to the following conditions:
  - (a) that the departure be restricted to surveyed plan V20189 submitted with the application;
  - (b) that this approval only relates to a building line relaxation (for a portion of the dwelling only) as indicated on plan numbers rooiels80.drw dated 08/2020 and RE80 Bailey dated October 2019;
  - (c) that the revised building plans (*indicating the above approval only*) be submitted to the Building Department, and that all conditions set by the Building- and Fire Departments at that stage, be complied with;
  - (d) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
  - (f) that all the conditions in the Services Report (attached as Annexure G), be complied with.
3. that the application in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 on Erf 80 Rooiels for the following departures, **not be approved**:

- street building line from 4m to 0,73m to accommodate a portion of the existing carport, and
  - southern lateral building line from 2m to 0m to accommodate a portion of the existing carport;
4. that the shed be **demolished**, and the fence be **moved** to the surveyed boundary within three (3) months from the decision letter;
  5. that no additional building work be approved on first floor level transgressing the lateral building line of 2m, and
  6. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

#### 14. REASONS FOR RECOMMENDATION

##### APPROVAL POINT 1

- ❖ The removal of restrictive condition 4.(d) will not be to the detriment of the area.
- ❖ The title deed condition does allow structures within the building lines and is less prescriptive than the Overstrand Land Use Scheme with regard to noise pollution and or visual impact.
- ❖ The removal of the condition will enable the legalization of the conversion and the water tanks, the latter which forms part of climate change adaptation.

##### NON-APPROVAL - POINT 2:

- ❖ The carport on both the street- and lateral building lines will influence the street scape since no other structure in Gnidia Road has been built on the street boundary.
- ❖ The buildings on Erf 80 has not been built according any of the approved building plans and the transgression of both the dwelling and carport has an accumulative impact on Erf 79.
- ❖ There is sufficient space north on the property to erect the carport.

#### 15. ANNEXURES

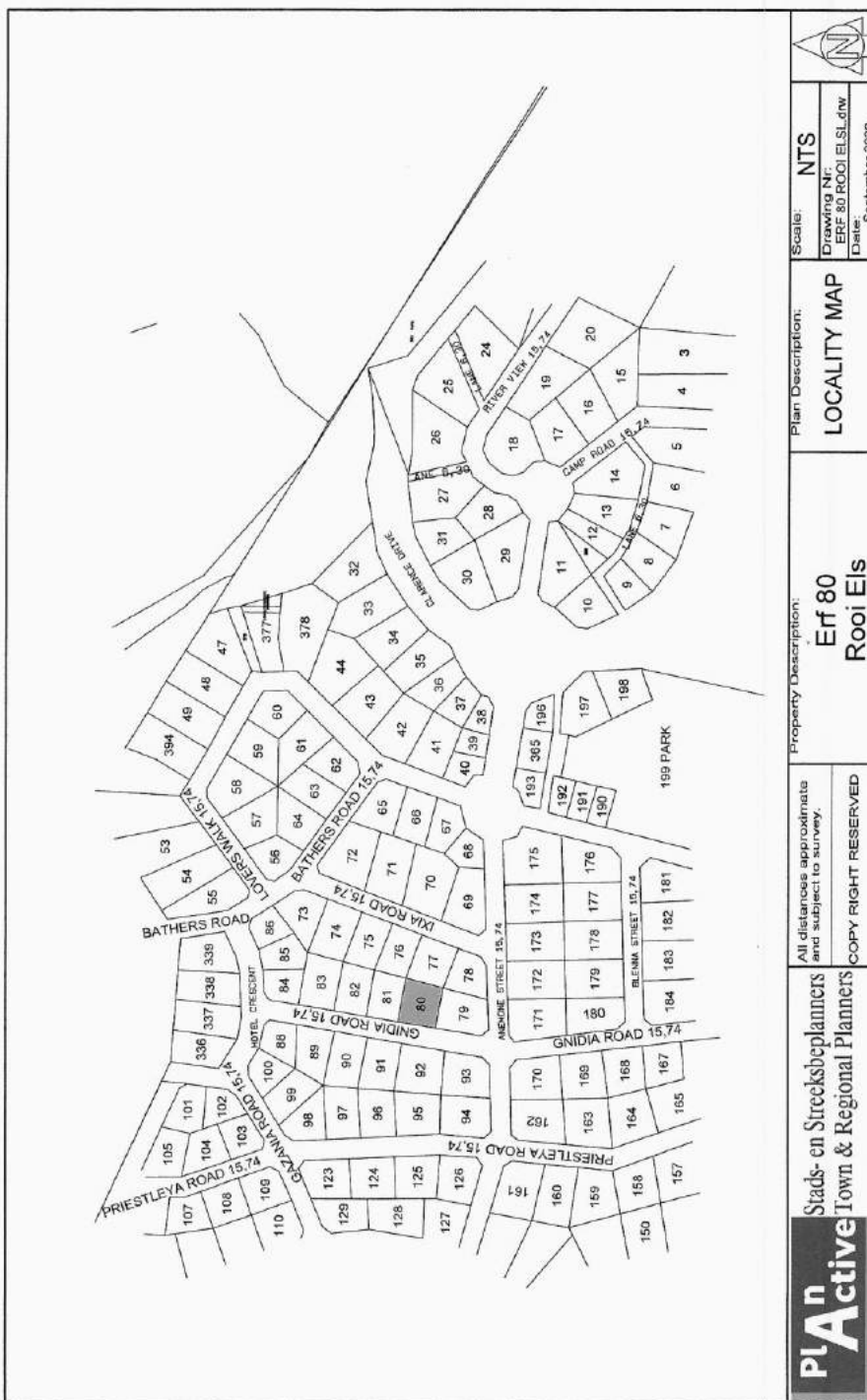
- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Survey Diagram & Site Development Plans
- Annexure D: Title Deed T45817/2019
- Annexure E: Objections received
- Annexure F: Applicant's response to the objections received
- Annexure G: Services Report

**SIGNATURE****REGISTERED PLANNER**Name : **H VAN DER STOEP**SACPLAN Reg No: **A/1708/2013**

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

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

ANNEXURE A



<b>PIA<sup>n</sup></b> Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. <b>COPY RIGHT RESERVED</b>	Property Description: <b>Erf 80                  Rooi Els</b>	Plan Description: <b>LOCALITY MAP</b>	Scale: NTS Drawing No.: ERF 80 ROOI ELS.dwg Date: September 2020
		Drawing No.: ERF 80 ROOI ELS.dwg Date: September 2020		

**PROPOSED REMOVAL OF A  
RESTRICTIVE TITLE DEED CONDITION  
AND DEPARTURES**

**ERF 80 ROOI ELS**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owners of Erf 80 Rooi Els, Mr. T. Thorsson & Mrs. C. Thompson Thorsson have instructed the company Plan Active to apply for the removal of a restrictive Title Deed condition and building line departures of Erf 80 Rooi Els.

The owners purchased the property in 2019. The intention was to submit as built building plans for alterations that were done by the previous owners. After discussions with the Overstrand Municipality and a survey done by Van Dyk Land Surveyors it became evident that a portion of the existing dwelling and the existing garden shed encroach the southern lateral building line and the existing carport encroaches onto the neighbouring property to the south. The owners' intention are to correct these mistakes made by the previous owner.

Erf 80 Rooi Els is 979m<sup>2</sup> in extent and is held by Title Deed Number T45817/2019.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.

## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

Erf 80 Rooi Els is located at 9 Gnidia Road, Rooi Els and is 979m<sup>2</sup> in extent. Please refer to the enclosed locality plan.

### **3.2 ZONING**

Erf 80 Rooi Els is zoned Residential Zone 1 and is utilized as such. The surrounding properties are zoned for single residential purposes, public roads, and public open space.

### **3.3 LAND USE**

Erf 80 Rooi Els is used for residential purposes. A dwelling, carport and garden shed are established on the subject property. Access to Erf 80 Rooi Els is obtained from Gnidia Road.

Land uses that surround Erf 80 Rooi Els are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 80 Rooi Els is situated within a predominantly single residential area.

### 3.4 PROPOSAL

The following are proposed:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.

Erf 80 Rooi Els is 979m<sup>2</sup> in extent. The intention of the owners of Erf 80 Rooi Els is to legalise the existing structures on the subject property that were constructed by the previous owner. At first glance the position of the existing structures seems to be in line with the approved building plans due to the fact that the boundary fence was incorrectly positioned, creating the illusion that the structures are located further from the boundary as what the actual situation is. The current owners appointed a Land Surveyor to survey the position of the existing structures inherited by the new owners in relation to the actual boundaries of Erf 80 Rooi Els. Only then was it discovered that the dwelling, garden shed, and carport are located at the wrong position on the property and that there are a number of encroachments that need to be addressed.

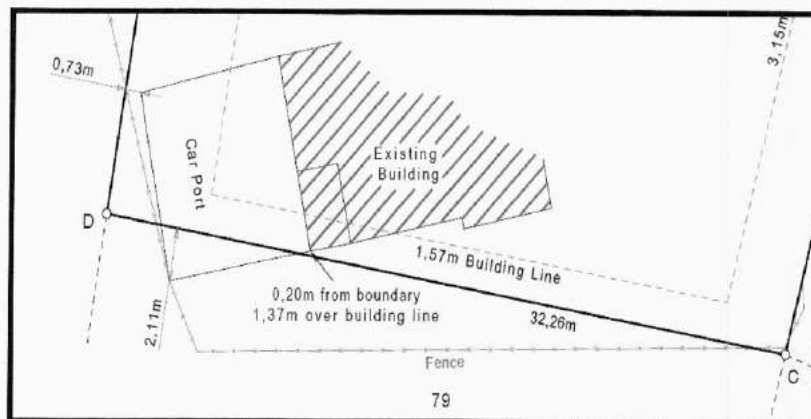
A portion of the fence and existing carport encroach onto Erf 79 Rooi Els. The owners of Erf 80 Rooi Els contacted the landowner of Erf 79 Rooi Els, to negotiate the purchase of a portion of their land to rectify the encroachment. The negotiations were however unsuccessful and therefore it would be required that the portion of the fence and carport that encroach onto Erf 79 Rooi Els will have to be removed. After the removal of a portion of the fence and carport it still would be required that an application

be lodged for the removal of a restrictive Title Deed condition and building line departures. The details of the application are as follow:

### **3.4.2. Proposed Departures**

The owners purchased the property, Erf 80 Rooi Els in 2019. After the registration process of the subject property, the new property owners' intention was to submit as built building plans to legalise all alterations done by the previous owner. During discussions with the municipality it has come to light that there might be building encroachments of building lines and possibly an encroachment of structures onto the neighbouring property, Erf 79 Rooi Els.

A survey was done by Van Dyk Land Surveyors to determine the position of the structures in relation to the actual boundaries. It became evident that the existing carport and fence were constructed over the boundary line and that the garden shed and a portion of the existing dwelling encroach the prescribed Zoning Scheme Regulations and Title Deed building lines as depicted below.



The survey done on the subject property confirmed the following:

- A portion of the existing carport and fence encroach onto Erf 79 Rooi Els as well as the southern and western building lines;

- The existing shed encroaches the prescribed Zoning Scheme Regulations and Title Deed building lines;
- A portion of the existing dwelling encroaches the prescribed Zoning Scheme Regulations and Title Deed building lines.

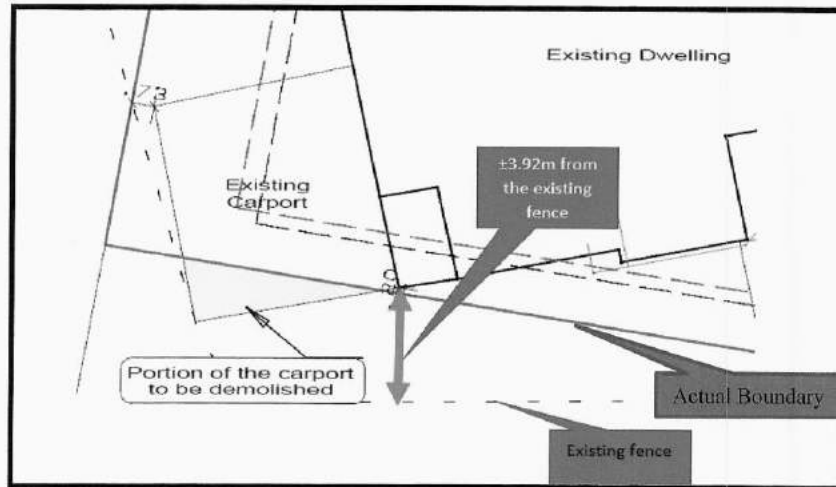
The building line departures can be described as follows:

- Relaxation of the southern lateral building line from **2m to 0.2m** to accommodate a portion of the existing dwelling;
- Relaxation of the street building line from **4m to 0.73m** to accommodate a portion of the existing carport;
- Relaxation of the southern lateral building line from **2m to 0m** to accommodate a portion of the existing carport.

The Overstrand Scheme Regulations stipulate that a 4m street building line and a 2m lateral building line apply to Residential Zone 1: Single Residential properties larger than 400m<sup>2</sup> in extent.

The subject property is 979m<sup>2</sup> in extent and therefore a 4m street building line and a 2m lateral building line apply. The intention of the owners are to demolish the garden shed completely and also to demolish a portion of the carport that encroaches onto Erf 79 Rooi Els up to the actual boundary line as indicated on the site development plan. The portion of the existing dwelling that encroaches the southern building line is a small portion of a bedroom that is ±3m<sup>2</sup> in extent. The bedroom was previously a garage that was changed by the previous owners into a bedroom with an en-suite bathroom.

It is important to note that the property was purchased with the alterations already made. The new owners were under the impression that the dwelling was much further away from the boundary line as illustrated below and it was only proven otherwise after the survey was done of the subject property. The proposed building line departures will not have any impact on the neighbouring property as it was initially thought that the alterations did not encroach the building lines as it was constructed ±3.92m away from the existing fence by the previous owner.



The existing carport was also constructed over the boundary line. The owners intend to demolish the portion of the carport that was constructed over the boundary line and will be done up to the correct boundary line as confirmed by the survey done. Therefore building line departures for the lateral building line from 2m to 0m and for the street building line from 4m to 0.73m to accommodate the existing carport are required.

With reference to Chapter 16, Section 16.1.2(b) of the Overstrand Municipality Zoning Scheme, Council may approve carports that encroach street building lines if the width of the carport does not exceed 6.5m. The carport as seen from Gnidia Road is less than 6.5m in extent and can therefore be supported.

The proposed building line departures will not have a negative impact on the neighbouring properties or the character of the greater Rooi Els area. It is important to note that the owners purchased the property with the alterations already done and that they are in the process of rectifying the mistakes made by the previous owner.

#### **3.4.3. Proposed Removal of a Title Deed restriction**

The enclosed Title Deed, T45817/2019 contains the following Title Deed restriction that has to be addressed:

- **Page 4, paragraph (4)(d): “no building or structure 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 of 1.57 metres of the lateral boundary common to any adjoining erf provided that the consent of the Local Authority an outbuilding 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 and provided further that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such as to make that necessary”**

According to **Chapter 4 Section 35(4)** of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2020 and **Section 39(5)** of the Land Use Planning Act, 2014, when the Municipality considers the removal, suspension or amendment of a restrictive condition; the municipality must consider the following:

- **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 as the owner of a dominant tenement.**

The removal of this Title Deed restriction will allow the current property owners to rectify the wrong doings of the previous owner that were not obvious until a survey was carried out. The purchased price for the property was determined by the size of the property and the established structures thereon. Addressing the encroachments by means of an application for the removal of a restrictive Title Deed condition and departures will retain the value of the property that was paid by the new owners.

- **The personal benefit which accrue to the holder of rights in terms of the restrictive condition.**

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township will gain anything personally by having the restrictions removed, which prevents the development of the subject property. The proposal will have a minor impact on the existing built form in the area however such change has been supported **in the past**. Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020**. The proposed departures and removal of a restrictive Title Deed condition address the existing structures only and no further development of the site is envisaged within the prescribed building lines unless applied for. The proposed removal of the restrictive Title Deed condition will not increase or decrease the market value of the property or the area in general.

- **The personal benefit which will accrue to the person seeking the removal of the restrictive condition if it is removed.**

The property owners will benefit from the removal of the mentioned Title Deed restriction as it will address and accommodate structures that were wrongfully built by the previous owner.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions remaining in place.**

The particular township has already changed with approved departures within the area. If the condition remains in place, the status quo will remain. If the type of condition to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of the restriction will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations requirements and will have the effect that the structures that were erected by the previous owner within the prescribed building lines will have to be demolished.

- **The social benefit of the removal, suspension, or amendment of the restrictive condition**

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for building line departures will be positive. Appropriate densification should be encouraged in all areas. Removing the condition will enable the current owners to make use of the structures that were wrongfully positioned on the erf by the previous owner for which they paid for.

Furthermore, the removal of this Title Deed condition is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

- **Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of the rights**

The removal of the restriction will not remove the rights completely, as the Overstrand Municipality's By-law on Municipal Land Use Planning, 2020 provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of the restrictive Title Deed condition will not deprive any person in the subject area of Rooi Els as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restriction it will also deprive the current owners from utilizing the subject property as it was sold to them.

The Title Deed restriction is applied to be removed and the application is made in the prescribed manner as per the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020. The proposed removal of the restriction will therefore be in the interest of the current and future landowners. In relation to the above, the benefit of removing the Title Deed restriction outweighs the benefits of keeping the restriction in place.

The reasons to have the above mentioned Title Deed restriction **Page 4, paragraph (4)(d)**, removed is mainly to give the owners the opportunity to utilise the property in a manner that it was presented and sold to them.

The Title Deed restriction, **Page 4, paragraph (4)(d)** as mentioned above prescribes a 4.72m street building line, 3.15m rear building line and a 1.57m lateral building line.

According to Chapter 16, Sections 16.1.1 and 16.1.2 of the Zoning Scheme Regulations for the Overstrand Municipality the following additional development rules apply with regard to the encroachment of building lines:

**Chapter 16: GENERAL PROVISIONS APPLICABLE TO ALL ZONES**

**16.1 GENERAL ENCROACHMENTS**

**Encroachment of building lines permitted**

16.1.1 *The following additional development parameters apply with regard to encroachment of building lines:*

**16.1.1**

**General encroachments permitted**

*a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:*

- (i) boundary walls, retaining walls, screen walls, fences and gates not exceeding 2,1 m in height above the existing ground level abutting such wall;*
- (ii) open and uncovered stoeps, pools and filling lower than 1,0 m above the existing ground level;*

- (iii) *entrance steps, landings and entrance porches lower than 1,0 m above the existing ground level;*
- (iv) *a covered and uncovered pedestrian entrance or gatehouse constructed on the street boundary and has a footprint and/or roof area not exceeding 5,0 m<sup>2</sup> and a height not exceeding 3,0 m from natural ground level to the highest point of the structure;*
- (v) *eaves, awnings and canopies projecting no more than 1,0 m from the wall of the building;*
- (vi) *chimney breasts, flower boxes, water pipes and drainpipes not projecting more than 500 mm from the wall of the building;*
- (vii) *minor decorative features not projecting more than 250 mm from the wall of the building;*
- (viii) *swimming pools, if closer than 1,0 m from the erf boundary, an engineering certificate is required;*
- (ix) *pool pumps/pump houses not exceeding 1,0 m above existing ground*

*level;*

- (x) *a refuse room that has a footprint not exceeding 5 m<sup>2</sup> and, if covered, a roof height not exceeding 3,0 m or as required by the Municipality in terms of 17.4;*
- (xi) *built braais up to a maximum of 1,0 m in height above the existing ground level, with the consent of affected neighbours;*
- (xii) *water tanks and gas bottle storage enclosures not exceeding 2,1 m in height and screened behind a boundary wall/screen to the same height; and*
- (xiii) *any encroachment or structure which causes additional impact will be subject to compliance with the applicable policy or legislation.*

***Encroachment of side and rear building lines permitted***

*c) The Municipality may approve the construction of a structure used for the housing of vehicles that encroaches onto the side and rear building lines, provided that:*

- (i) *written consent from the immediate neighbours is obtained;*

- (ii) *no building that encroaches the building line may be higher than 3,5 m above the existing ground level on the common boundary, provided that the height may increase at a 40-degree angle away from such boundary;*
- (iii) *the length and width of the structure does not exceed one third of the lateral and rear boundary concerned or 9,0 m, whichever is the most restrictive (except in cases as prescribed in point (iv) below);*
- (iv) *where the lateral/rear boundary of the property is less than 19,5 m in width, the structure will have a maximum width of 6,5 m on the rear boundary;*
- (v) *no doors and windows shall be permitted in any wall closer than 1,0 m to the rear or side boundary;*
- (vi) *a 1,0 m wide access may be required to the satisfaction of the Fire Department;*
- (vii) *no runoff of rainwater from a roof shall be discharged directly onto adjoining properties;*
- (viii) *the garage/carport shall be included in the calculation of coverage on the land unit; and*
- (ix) *the Municipality is satisfied that the structure does not pose a fire hazard and is constructed of appropriate material to its satisfaction.*

*Should any of the above-mentioned not be complied with, an application will be applicable.*

**Encroachment of the street building line**

*d) Upon an application, the Municipality will also take the following principles into account:*

- (i) *if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a street;*
- (ii) *if, in its opinion, there are special circumstances, motivated to its satisfaction by the property owner, such as the topography of the site;*
- (iii) *all other buildings and outbuildings are to comply with the street building line applicable within the zone concerned; and*
- (iv) *in the case of a garage or carport, 16.1.2 will apply.*

**Garages and carports within street building lines**

## 16.1.2

a) Upon an application, the Municipality will also take the following principles into account:

(i) The Municipality may permit the construction of a garage over a street building line if, in the Municipality's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit or for other reasons provided.

(ii) The height of such garage from the natural ground level to the top of the structure does not exceed 4,5 m.

(iii) The front elevation of the garage may not be closer than 5,0 m to the road kerb or surface.

b) The Municipality may permit the construction of a carport over the street building line, provided that:

(i) the width of such carport shall not exceed 6,5 m;

(ii) the roof of the carport shall be supported by a metal or timber post or brick, concrete or masonry pillars;

(iii) the carport shall not be enclosed on any side, except by:

- a boundary fence or wall;
- a wall which forms the external wall of a building; or
- a security or automated gate.

the height of such carport, measured from the natural ground level to the highest point of the structure over the building line, may not exceed 3,0 m on the street boundary, but the height may increase at a 40 degree angle away from such boundary (roof).

The building line restrictions in Title Deed T45817/2019 are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme. In terms of the Zoning Scheme certain structures may be constructed within the street, lateral and rear building lines prescribed in Chapter 16, Sections 16.1.1 and 16.1.2 of the said Zoning Scheme listed above. If the restriction in the Title Deed is not removed the property owner

will not have the opportunity to make use of the structures in the encroached areas.

Please take note that the proposed removal of the restrictive Title Deed condition is mainly to address the wrongful positioning of structures on the erf that were built by the previous owner.

### 3.5 ACCESS

Vehicular and pedestrian access to Erf 80 Rooi Els is from Gnidia Road and will be retained. No new accesses are proposed with the proposed application.

### 3.6 SERVICES

All services on Erf 80 Rooi Els already exists. No additional services are required in order for the proposed application to be approved.

### 3.7 TITLE DEED

The Title Deed T45817/2019 has a restriction that needs to be removed in order for the application to be approved.

The Title Deed restriction that we are applying for to be removed is:

- **Page 4, paragraph (4)(d): “no building or structure 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 of 1.57 metres of the lateral boundary common to any adjoining erf provided that the consent of the Local Authority an outbuilding 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 and provided further that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such as to make that necessary."**

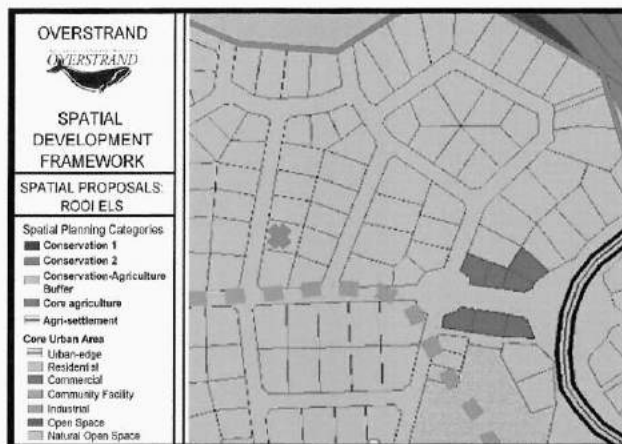
The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.3 above.

There is no bond registered against Erf 80 Rooi Els.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Spatial Development Framework (2006).**

In terms of the Overstrand Municipal Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject property will be retained after the removal of the restrictive Title Deed condition and departure application have been concluded.



**Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 1 that consists of Rooi Els as a whole. No densification proposals are made for this planning unit.

With the proposal, the densification for the Rooi Els area will not be impacted in any way. Therefore, the proposed departures and removal of a restrictive Title Deed condition falls within the prescribed guidelines for the specific area of Rooi Els.

**3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION****3.9.1 HERITAGE VALUE**

Erf 80 Rooi Els is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In light of the above mentioned it is evident that the proposed removal of a restrictive Title Deed condition and departure will not have a negative impact on the heritage value of the subject property or the greater area of Rooi Els.

**3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed removal of a Title Deed restriction and departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

### 3.10 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

**Spatial Justice:** The proposed removal of a Title Deed restriction and departures are in line with the current land use tendencies in the vicinity within the Rooi Els area. The proposed removal of the Title Deed restriction and departures are in order to rectify alterations made by previous owners.

**Spatial sustainability:** The proposed removal of the Title Deed Restriction and departures are in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Rooi Els.

**Efficiency:** The proposed application for the building line departures and removal of a restrictive Title Deed condition will promote the optimisation of the use of space within a developed residential area. The subject property is also situated close to the CBD of Rooi Els.

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The 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, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

**Good administration:** Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

#### 4. **RECOMMENDATION**

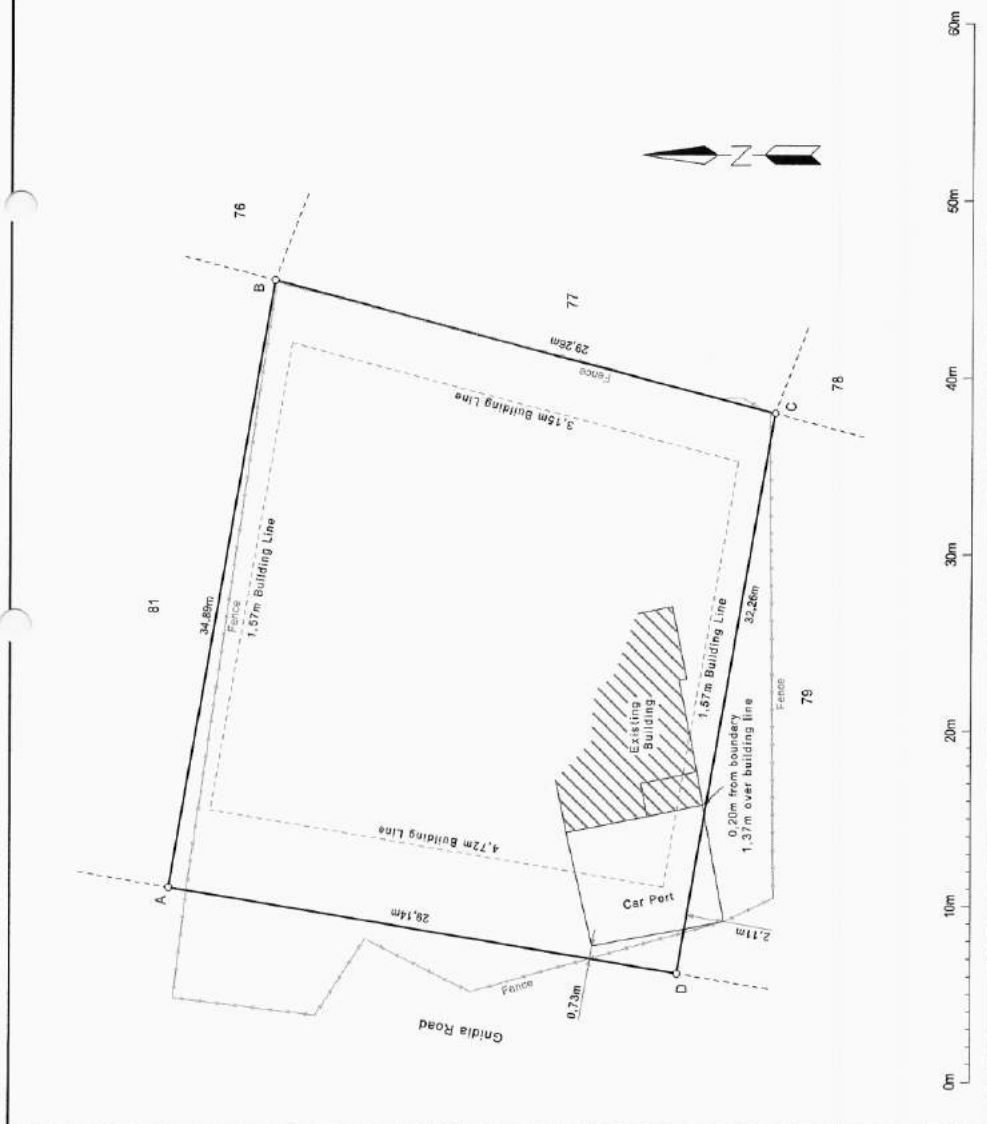
When this application is evaluated it is important to take note of the following:

- The proposed building line departures and removal of a restrictive Title Deed condition fall within the existing land use tendencies in the area;
- The current owners of the subject property purchased the property without the knowledge of the wrongful alterations and additions made by the previous owner that was not disclosed to them;
- The application is to rectify the wrongful positioning of existing structures built by the previous owner. No additional land use rights will be obtained.
- The proposed building line departures and removal of a restrictive Title Deed condition will not have a negative impact on the current character and land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the building line departures and removal of a restrictive Title Deed condition applicable to Erf 80 Rooi Els.

ANNEXURE C 1/3

NAME: Sitaxon Certificate Station Description: A, C, D ... 12m from Pags B ... Western Fence Post		VAN DYK & ASS. inc. P.O. BOX 2025 HERMANUS 7200 SOUTH AFRICA VAN DYK & ASS. inc. TEL: (020) 313 0077 E-MAIL: info@vandykassay.co.za	
Station: WGS84 / Lo 19 Datum: WGS84 Height System: Mean Sea Level	Scale: 1 : 200 Date: May 2020	Landowner: L A van Dyk Project Title: ERF 80 Property Title: ROOI ELS	Title: POSITIONING OF EXISTING BUILDING
Drawing Number: V20189 Drawn by: JS / DJP Checked by: JS / DJP Date: 1 May 2020	Sheet: 1 of 1		





**NOTES**

- Boundary line
- Existing Fence
- Scheme Building line
- Title Deed Building line

<p><b>PLAN</b> Stads- en Streeklaanwysers Town &amp; Regional Planners</p>	<p>Property description: <b>ERF 80 ROOI ELS</b></p>	<p>Scale: 1:200 Drawing No.: 08620 Date: 08/2008</p>
	<p>City of Johannesburg Municipality</p>	<p>Site PLAN</p>

**GENERAL NOTES:**

1. THE ARCHITECT'S DESIGN IS BASED UPON THE INFORMATION PROVIDED BY THE CLIENT AND THE CONTRACT DOCUMENTS. THE ARCHITECT IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.
2. THE ARCHITECT'S DESIGN IS BASED UPON THE ASSUMPTION THAT ALL MATERIALS AND METHODS OF CONSTRUCTION SHALL BE AS SHOWN ON THE DRAWINGS AND SPECIFICATIONS.
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**West Elevation**  
Scale: 1/8" = 1'-0"

**North Elevation**  
Scale: 1/8" = 1'-0"

**South Elevation & Section**  
Scale: 1/8" = 1'-0"

**East Elevation**  
Scale: 1/8" = 1'-0"

**Ground Floor Plan**  
Scale: 1/8" = 1'-0"

**ADDITIONAL NOTES:**

- 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 2. FINISH FLOOR IS 1'-0" ABOVE FINISH GRADE UNLESS OTHERWISE NOTED.
- 3. FINISH GRADE IS 1'-0" ABOVE FINISH GRADE UNLESS OTHERWISE NOTED.
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- 20. FINISH GRADE IS 1'-0" ABOVE FINISH GRADE UNLESS OTHERWISE NOTED.

**ADDITIONS & ALTERATIONS**

**DATE:** 10/15/2024

**PROJECT:** [REDACTED]

**CLIENT:** [REDACTED]

**ARCHITECT:** [REDACTED]

**SCALE:** 1/8" = 1'-0"

**SHEET:** 3/3

39

STRAUSS DALY (Western Cape) INC  
 Unit 13  
 Canal Edge One  
 Tyger Waterfront  
 Carl Cronje Drive  
 Bellville  
 7530

Prepared by me

HENDRIK GIDEON VAN ZYL VISSER  
 CONVEYANCER

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R 2 500 000,00	R 1 588,00
Reason for exemption	Category Exemption	Exemption 1 to Sec/Reg Act/Proc

T 038045917, 2019

## DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

TJAART JOHANNES KRIEL / SHELLEY ANN FELDMAN

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney granted to him/her by

The Executrix in the Estate Late  
 JAMES ANTHONY BAILEY  
 Number 011944/2019

which said Power of Attorney was signed at CAPE TOWN on 22 AUGUST 2019.

Page 2

And the appearer declared that his/her said principal had, on 1 August 2019, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **THORDUR THORSSON**  
Born on 21 August 1969  
Married, which marriage is governed by the laws of Iceland
2. **CHANTELL THOMPSON-THORSSON**  
Identity Number 830821 0047 089  
Married, which marriage is governed by the laws of Iceland

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

ERF 80 ROOI-ELS  
IN THE OVERSTRAND MUNICIPALITY  
DIVISION CALEDON  
PROVINCE OF WESTERN CAPE

IN EXTENT 979 (NINE HUNDRED AND SEVENTY NINE) Square metres

FIRST TRANSFERRED by Deed of Transfer No. T13663/1970 with Diagram No. 1562/1970 relating thereto and held by Deed of Transfer No. T10776/2017

- A. SUBJECT to the conditions referred to in Deed of Transfer No. T10776/2017.
- B.
- C. ENTITLED to the benefit of the conditions referred to in the servitude endorsement dated 24<sup>th</sup> June 1940 on Certificate of Consolidated Title No. T3720/1937 dated 17<sup>th</sup> April 1937 which endorsement reads as follows:-  
  
"By Deed of Transfer No. 6068/40 dated 24/6/40 certain conditions relating to (b) prohibition of Petrol Station on land; (d) wood and iron buildings; (e) slaughter poles, cattle kraals and manufacture of bricks, tiles etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer."
- D. SUBJECT FURTHER to the following conditions contained in Deed of Grant made in favour of A.J Louw on 30<sup>th</sup> April 1839 (Stellenbosch Quitrents Vol. 12 No. 18), reading as follows:-

V

Page 3

"On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted, that the said land shall be liable (without compensation to its proprietor) to have any road made over it for the public good, by order of Government. That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay - and be allowed, without hindrance, to fish there, and he shall be bound, (according to the existing laws of this Settlement to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall in future be established in respect of the land granted under similar tenure."

- E. ENTITLED to the benefits of the Servitude reference where to is made in the endorsement dated 8<sup>th</sup> April 1949 on Certificate of Township Title No. T13357/1948 dated 23<sup>rd</sup> June 1948, which endorsement reads as follows -

Registration of Servitude.

By Notarial Deed No. 107/48 dated 10<sup>th</sup> March 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the erfholders and such Local Authority has been granted certain rights relating to: (a) supply of water to erfholders and Local Authority; (b) delivery of the said water to the abovementioned Township by means of a pipeline indicated on the servitude diagram No. 8589/48 by the letters a, b, c, d, e, f, g, h, j, k, l, m, n annexed to aforesaid Notarial Deed; (c) storage of water and constructing the necessary impounding works; (d) aqueducts; (e) purification works and reservoirs; (f) access to and egress from the present or future headworks site, pipeline, reservoirs and purification over the remainder of the farm Hangklip under Cert. of Cons. Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed, a copy of which is annexed hereto."

- F. SUBJECT FURTHER to the following conditions contained in said Deed of Transfer No. T13883/1970 dated 21<sup>st</sup> May 1970 imposed by the Administrator of the Province of the Cape of Good Hope when approving the General Plan and of the said Rooi Els Township under the provisions of Ordinance 33 of 1934 reading as follows:-

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 17<sup>th</sup> October 1935 and in the memorandum which accompanied the said regulations.
2. The owner of this erf shall, without compensation be obliged to allow the sewage and drainage including storm water of any other erf or erven 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.

Page 4

- 3 The owner of this erf shall be obliged, without compensation, to receive the material or permit 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 the 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 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.
- (a) It shall not be subdivided;
  - (b) It shall be used for residential purposes only, but no building other than one dwelling together with such outbuildings as are ordinarily required to be used therewith shall be erected thereon.
  - (c) Not more than half the area thereof shall be built upon.
  - (d) No building or structure 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 of 1.57 metres of the lateral boundary common to any adjoining erf provided that the consent of the Local Authority an outbuilding 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 and provided further that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such as to make that necessary.
  - (e) .....
- G. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T13653/1970 dated 21<sup>st</sup> May 1970, imposed by Hangklip Beach Estates Limited (hereinafter referred to in these conditions as the "Company"), as being in favour of the registered owner of any erf in the Township, viz:-
- (b) No wood and iron buildings of any description shall be erected on this erf, nor shall corrugated iron be used for roofing purposes;
  - (c) No slaughter poles, cattle kraals, pigsties or cowsheds shall be erected on by any person whomsoever on this erf.
  - (d) Save with the consent in writing of the Company and of any Local Authority,

Page 5

- (e) No building (excluding outbuildings) shall be erected on this erf of a superficial area of less than 99 square metres.
- (f) No noxious trade or noxious business shall be carried on this erf.
- (g) The transferee shall not camp overnight or light fires on the erf save with the written consent of the Company."

H NOT ENTITLED to the benefit of the conditions set out in said Deed of Transfer No. T13663/1970 dated 21<sup>st</sup> May 1970 referred to in the servitude endorsement dated 1<sup>st</sup> December 1959, on the said Certificate of Township Title No. T13367/1948 dated 23<sup>rd</sup> June 1948, which conditions relate to reservation of water rights, which rights have been reserved to Hangklip Beach Estate Limited and its successors in title as owner of the remaining extent of the said Township of Rooi Els held by Certificate of Township No. T13367/1948 dated 23<sup>rd</sup> June 1948.

Page 6

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

**Estate Late JAMES ANTHONY BAILEY**

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

1. **THORDUR THORSSON, Married as aforesaid**
2. **CHANTELL THOMPSON-THORSSON, 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 R2 500 000,00 (TWO MILLION FIVE HUNDRED 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 29 OCT 2019



q.q.

In my presence



REGISTRAR OF DEEDS

ANNEXURE E 1/7

**L Gillion**

**From:** Luzette Els <luzette.els@gmail.com>  
**Sent:** Friday, 11 December 2020 17:24  
**To:** L Gillion; francois@fdpass.co.za; Johan  
**Subject:** Mun. notice 134/2020 - Erf 80 Rooiels



TP - A Theart  
(Huid Stoep)

By email: [Loretta@overstrand.gov.za](mailto:Loretta@overstrand.gov.za)

Dear Ms. H. vd Stoep  
 Friday 11 December 2020

**OBJECTION TO THE PROPOSED CHANGES TO THE TITLE DEED OF ERF 80 ROOIELS**

Name: E.L.J. Els

Physical address: Erf 79, Rooiels, Western Cape.  
 Postal address: 17 Black Rock, 221 Main Road, Three Anchor Bay, 8005.

Contact info: 082 928 7396 (c), [Luzette.Els@capetown.gov.za](mailto:Luzette.Els@capetown.gov.za) / [luzette.els@gmail.com](mailto:luzette.els@gmail.com)

Interest in application: Owner of Erf 79 (borders the Southern perimeter of Erf 80)

Reasons for objection:

1. The moving of the building line will result into the construction or extension of buildings, which will infringe on my rights, and have a negative influence on the value of my property.
2. Construction of buildings to the proposed new building line will complete destroy the sea view from my property.
3. The structure (carport) is of such a nature and construction that it is not in harmony with the dwelling on Erf 80, nor with any of the neighboring properties.
4. The materials used and the construction method of the carport, is probably not in accordance with National Building Regulations.
5. There is ample space on the Northern and Eastern areas of Erf 80 to build a carport that will be out of sight when viewed from Erf 79.
6. The owners of Erf 80 in recent history illegally constructed the carport and erected a fence inside the borders of my property, causing concern that such actions will be repeated.

Please note that I reserve all my rights pertaining to this matter.

Yours sincerely,

L. Els

FILE NO:	EL 80-KRE ✓
SCAN NO:	ELS
COLLABORATOR NO:	1489112

1

TP 11 DEC 2020

2/7

TP-A Theart  
(Hvidstoeep)

FILE NO: EL 80 - KRE ✓
SCAN NO: KRE 80
COLLABORATOR NO: 148 8861

From : RH Viljoen  
Erf 92  
Rooiels  
10 December 2020

TO : Municipal Manager  
Overstrand Municipality  
PO Box 20  
Hermanus, 7200

RE : Municipal Notice 134/2020

Erf 80, 9 Gnidia Rd, Rooiels : Application for removal of a restrictive title deed condition and departure : Plan Active.

Dear Sir/Madam:

Our property is located directly opposite Erf 80, in Gnidia Rd. Our comments are therefore mostly regarding the application for relaxation of building lines on the Gnidia Road Boundary.

We acknowledge the new owners' intent to correct the current situation.

1. Title deed Page 4 par (4)(d) : ".....provided that a garage may be erected up to such street line if in the opinion of the Local Authority the level of the erf is such to make it necessary. " This is not valid as can clearly be seen on site plan. Various options exist that allows accessibility and space. The motivation report (Page 6) claims that removal of such title deed restriction will increase market value of the area and attract investment opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning scheme Regulations of the Overstrand Municipal area. Above statement is acceptable as far as relaxing Title deed restriction to General Municipal Zoning restrictions. It is simply not acceptable as far as departure from Municipal Zoning restriction is concerned. We do not agree that removal of such Title deed restriction will increase the value of the property and the area as stated on Page 7 of the motivation.
2. We have no objection to remove the restrictive Title condition regarding the building line on Gnidia Road from 4.72m to the less restrictive Municipal building line of 4 m.
3. However, even after this concession, approximately 50% of the carport still exceeds the (4m) building line on Gnidia road. This is the only structure on Gnidia in the vicinity as far as we know to exceed the Municipal building line and therefore has a negative impact on the

TP 11 DEC 2020

- street and the original intention of the Title deeds to have boundaries even further than 4 m. We believe it will therefore negatively affect surrounding properties.
4. The survey and application has no information regarding street level and height above street level as required. We can therefore not give consent since the information was not presented.
  5. No fence is allowed to exceed the boundary lines. No mention is made of the fence that clearly exceed the boundary lines on Gnidia street. All fences to be moved back to boundary lines.
  6. Chapter 16.1.2
    - a. (i). The garage/carport can definitely be sited at another place which does not exceed building lines.  
(ii). No information on height is given, therefore no consent can be given.  
(iii). No information is provided, therefore no consent can be given.
    - b. (i). Width exceeds 6.5 m  
(ii). Accepted.  
(iii). Height information not provided as required.
  7. The total carport size is 6.6x5.3 m, of which approximately 3.7x3.2m exceed the larger of the Title deed and Municipal building lines. This is approximately 50% of the dimensions of the double carport on each side.

Therefore,

1. We accept the proposed removal of the restrictive Title condition regarding the building line on Gnidia Road from 4.72m to the less restrictive Municipal building line of 4 m to have the Title deed and Municipal boundaries the same.
2. We object to proposed departure to exceed already relaxed building lines in Gnidia street since the carport can easily be relocated well within building lines and will be the only structure in lower Gnidia Street to exceed the Municipal building lines if it was allowed. This may have a negative impact on surrounding property values.
3. We therefore propose to reduce the size of the double carport to a single one and/or erect a double carport at a suitable place that does not exceed building lines.
4. We request that all fences are moved back to boundary lines.

Sincerely,

  
RH Viljoen

Erf 92, Gnidia, Rooiels.



4/7

Overstrand Munisipaliteit  
 Patersonstraat 16  
 Hermanus  
 7200  
 loretta@overstrand.gov.za

Posbus 12772  
 Meulstraat  
 8010  
 8 Desember 2020  
 eldie.brink@gmail.com  
 Selnommer 082 5759801

TP - A Theart  
 (Huidstoep)

U VERWYSING: 134/2020

ERF 80 GNIDIAWEG, ROOIELS: BESWAAR TEEN OPHEFFING VAN TITELVOORWAARDE EN ALGHELE OPHEFFING VAN BOULYNE.

1. Ek is die eienaar van erf 237 Rooiels. Ek het belang by die opheffing van die boulyne en titelvoorwaarde waarvoor gevra word, omdat goedkeuring van die aansoek, soos wat dit tans lees, daarop sal neerkom dat ander eienaars ook vir die opheffing van boulyne kan vra, strydig met die titelvoorwaardes wat vir my en al die ander erfeienaars 'n saaklike reg (praedial servitude) skep.
2. Die aansoeker vra vir die algehele opheffing van al die boulyne en vir die algehele opheffing van die betrokke titelvoorwaarde, in stede daarvan om net te vra vir die opheffing van die boulyne waar die historiese oorskryding is, sonder om al die ander boulyne op te hef, en om te vra vir 'n dienoreenkomstige wysiging van die titelvoorwaarde, sonder om dit algeheel op te hef.
3. Ek het die beswaarbrief van die Rooiels Belastingbetalersvereniging, gedateer 8 Desember 2020 gesien, en ek stem saam met die voorstel daarin gemaak om:
  - 3.1 Slegs 'n verslapping van die boulyne te maak waar die oorskryding is, en nie van die ander boulyne nie; en
  - 3.2 'n Geskikte wysiging van die bewoording van die titelvoorwaarde te doen om die ruimtelikheid van Rooiels te bewaar in die geval van latere sloping van die bestaande oorskrydende bouwerk om nuwe bouwerk binne die boulyne op te rig. In daardie geval word die ou boulyne weer van krag.
4. Die Vereniging het, ten einde die aansoekers tot hulp te wees, die konsepbrief vir die aansoekers gegee om vir hul dorpsbeplanner te gee. Ek verstaan dat geen terugvoering gekry is nie, en om hierdie rede het die Vereniging sy oorspronklike beswaarbrief nou ingedien.
- 5.1 Ek vestig graag die aandag daarop dat al die erfeienaars van Rooiels nie kennis van die aansoek gekry het nie, waarskynlik net die bure.
- 5.2 Dit is 'n dwingende regsvereiste volgens die grondwetgewing dat aan alle eienaars wat saaklike regte (praedial rights) ontvang het vanaf dieselfde ontwikkelaar, in hierdie geval die hele Rooiels, individuele kennis van die aansoek gegee moes word.
- 5.3 Die kwessie van wettige kennisgewing is tevore in detail deur my opgeneem met die Munisipale Bestuurder en ook in 'n tans nog hangende appél by Overstrand Munisipaliteit. Die Munisipaliteit het regsadvies aangevra oor die regskwessies in die appél.
- 5.4 Stad Kaapstad vereis, ooreenkomstig die dwingende regsvereiste, dat aan alle erfeienaars wat in 'n betrokke dorpsgebied van dieselfde ontwikkelaar verkry het, individuele kennis gegee moet word.

TP - 8 DEC 2020

FILE NO: EL 80 - KRE ✓
SCAN NO: BRINK
COLLABORATOR NO: 1488012

In 'n onlangse sitting van die Kaapstadse Munisipale Beplanningstribunaal het die regsverteenvoorder van 'n plaaslike belastingbetalersvereniging weer die Tribunaal se aandag daarop gevestig.

6. Ek is derhalwe van mening dat die aansoek weens ongeldige kennisgewing nie geldig is nie en dat 'n heraansoek gedoen sal moet word.

Dit is jammer dat die aansoeker skynbaar nie ag geslaan het op ons vereniging se brief nie. Dit skep nou net die moontlikheid van verdere vertraging.

Die uwe,

E Brink



Rooiels Ratepayers' Association / Rooiels Belastingbetalers Vereniging.

TP - A Theart  
(H vld stoep)

8 December 2020

Town Planning Department

Overstrand Municipality  
Hermanus

Attention : loretta@overstrand.gov.za

APPLICATION FOR REMOVAL OF BUILDING LINES REF134/2020-

FILE NO:	EL 80 - KRE ✓
SCAN NO:	KRE 80
COLLABORATOR NO:	1488009

**OBJECTION TO THE COMPLETE REMOVAL OF TITLE DEED BUILDING LINE RESTRICTIONS ON ERF 80 GNIDIA STREET, ROOIELS.**

To whom it may concern

We understand that this application for the removal of building lines restrictions on ERF 80 in Rooiels is an attempt to correct a historical error when the present dwelling was originally built. However, we feel that such applications and the granting thereof, should be handled with the utmost care so as to not set dangerous precedents for future applications and to protect the restrictions in title deeds that were put there in accordance with regulations and for the distinct purpose of upholding the ethos of what we want to preserve in Rooiels.

**1. OUR PROPOSAL**

**1.1 Limited relaxation of building lines**

We propose that, instead of removing the entire Clause 4.d building line restriction, thereby removing building lines that are not affected by the historical encroachment by a previous owner, only the building lines along the boundaries that are affected, be relaxed.

**1.2 Reversion to prior building lines.**

The motivation is for addressing the historical encroachment by a previous owner. This does not justify removal of all other building lines, which are not affected, nor does it justify future building alterations and building additions within the building lines that are to be relaxed.

The present changes that will have to be made to the existing carport within the prior building lines because of the demolition of the encroachment will be in our opinion be repairs, not alterations.

**1.3 Addition to the existing Clause 4.d. (Please note that the clause as reproduced in the application is not the complete one as per the title deed).**

We propose that the following wording be added to the existing Clause 4.d:

"Notwithstanding the above, the southern lateral building line will be 0.0 m instead of the prior 2m to accommodate a portion of the existing dwelling and existing carport, and the street building line will be 0,73m instead of the prior 4m to accommodate a portion of the existing carport, provided

2020 Committee: Chairperson: Hilgard Muller; Vice-Chair: Veronica Jacobs; Treasurer: Ivan Becker; Communication: Leeanne Becker; Communication: Heather Hartwig; Projects/Workshops: Allison Vlenings and Linda Hiles; REC and Environmental matters: Gavin Lundie; Work group HPOZ: Piet van Rensburg; Breeze Archive Project: Margie Ellis; REC and KBRC representative, Ian Milne.

In association with Rooiels Conservancy, Rooiels Security Association, Rooiels Boatclub and Rooiels Disaster Incident

TP - 8 DEC 2020



***Rooiels Ratepayers' Association / Rooiels Belastingbetalers Vereniging.***

that the southern lateral building line and the street building line will revert to their original 2m and 4 m respectively before any building structure alterations or building structure additions within the prior building lines are made."

1.2 Building plans to be examined.

The changes that will have to be made (as per the building plans submitted) to the existing carport, within the prior building lines because of the demolition of the encroachment, will be in our opinion be repairs, not alterations.

The building plans for repairing the carport should be scrutinized for purposes of the application, to ensure that the changes within the prior building lines are not of such an extent that they would amount to alterations and or additions, which should not take place in the prior building lines.

**2. COMPLIANCE WITH THE LAW FOR REMOVAL OF RESTRICTIONS.**

Although we have framed our letter as an objection, we do not at this stage comment on the rest of the application as far as compliance with the statutory requirements are concerned. We do not think it will be necessary, if our proposal is accepted, except for drawing the attention to the following:

**2.1 NOTICE TO ALL ERF OWNERS OF ROOIELS IS A MANDATORY LEGAL REQUIREMENT**

We understand that this, apparently, is settled law for all erf owners in Rooiels as they have all acquired their praedial rights in Rooiels from the same developer.

**2.2 OUR PROPOSAL SHOULD NOT BE USED TO DEFEAT OBJECTIONS BY THE NEIGHBOURS**

We do not know the history of erf 80 , and therefore we should not unknowingly detract from objections by the neighbours of erf 80.

We would suggest that our objection letter be made available to the neighbours as a possible solution to which they can agree instead of objecting.

Yours faithfully,

Hilgard Muller

Chairperson  
Rooiels Ratepayers' Association



TOWN & REGIONAL PLANNERS  
STADS-EN STREEKSBEPLANNERS

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Our reference: PA20019  
Your reference: 80 KRE

TP. n. Ahoort  
(H. vd Stoep)

8 February 2021

The Municipal Manager  
Overstrand Municipality  
PO BOX 20  
Hermanus  
7200

FILE NO:	80
	Rooi Els
SCAN NO:	
COLLABORATOR NO:	1505541

FOR ATTENTION: MRS H. VAN DER STOEP

Sir

**ERF 80 ROOI ELS: PROPOSED REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION AND DEPARTURE**

**CLIENTS: MR. T THORSSON & MRS. C THOMPSON-THORSSON**

Reference is made to our application dated 21 September 2020 as well as your email dated 29 December 2020.

The objections received from Mrs. L. Els, Mr. R. Viljoen, Mr. E. Brink and the Rooiels Ratepayers Association refers and can be summarized as follows:

- The objector states that the proposed building line relaxation will result in the construction or extension of buildings which will infringe on her rights as well as obstructing the existing sea views.

According to our motivation report, page 8, it is mentioned that the proposed departures and removal of a restrictive Title Deed condition are to address the existing structures only and no further

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Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand, MSAPf Nr 10908; SACPLAN Toh.Pln B/8250/2014  
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACPLAN Pr.Pln A/158/2009

development of the site is envisaged within the prescribed building lines unless applied for. If any future developments are proposed that will require a departure the neighbouring property owner will be given an opportunity to comment on proposals during the public participation process. Although it is proposed to remove a restrictive Title Deed condition, surrounding property owners are still protected by the policies / bylaws in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.**

- **According to the objector the existing carport is not in harmony with the existing dwelling nor with any of the neighbouring properties. It is also speculated that the carport is not in accordance with the National Building Regulations.**

With the building plan submission process to the Building Control Department of the Overstrand Municipality, the building plans will be evaluated in terms of the National Building Regulations. The objector is in no position to speculate whether the existing structure is in line with the National Building Regulations. Only an inspection done by the building inspector will determine whether the structure is compliant with the National Building Regulations.

- **It is mentioned by the owner of Erf 79 Rooi Els that there is ample space on the northern and Eastern side of Erf 80 Rooi Els to erect a carport. It is also mentioned the fact that the carport and fences were wrongfully erected the possibility that such actions can be repeated in the future.**

As discussed in the motivational report the owners purchased the property in 2019 with the structures already erected on the subject property. The intention was to submit as built building plans for alterations that were done by the previous owners. After discussions with the Overstrand Municipality and a survey done by Van Dyk Land Surveyors it became evident that a portion of the existing dwelling and the existing garden shed constructed by the previous owner/s encroach the southern lateral building line and the existing carport encroaches onto the neighbouring property to the south, Erf 79 Rooi Els.

As per the survey plan that was provided by the land surveyor it also became clear that the existing fences of Erf 80 Rooi Els are incorrectly placed. The owner intends to correct all these mistakes that were made by the previous owner and that it is the main reason why the proposed application was submitted to the Overstrand Municipality for approval.

- **According to the objector the motivation report of the applicant claimed that the removal of the Title deed restriction will increase the market value of the area and attract investment opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning Scheme Regulations of the Overstrand Area. The objector states that the applicant stated on page 7 of the motivation report that the removal of the Title Deed restriction will increase the value of the property and the area.**

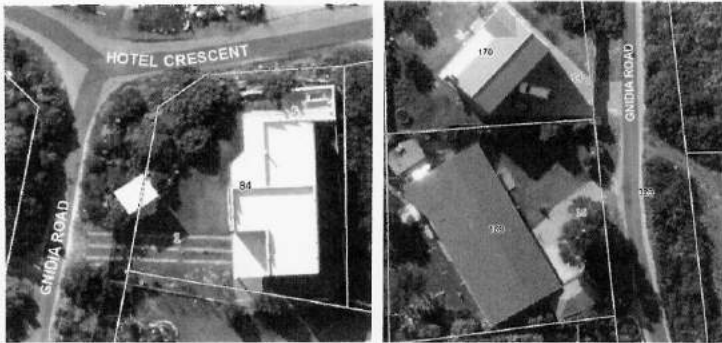
It is clear with the evidence at hand that the objector confused the proposed application with another application. According to page 8 of our motivation report we stated that:

*"the proposed removal of the restrictive Title Deed condition will not increase or decrease the market value of the property or the area in general".*

The statement made by the objector is therefore not correct and should be regarded as false.

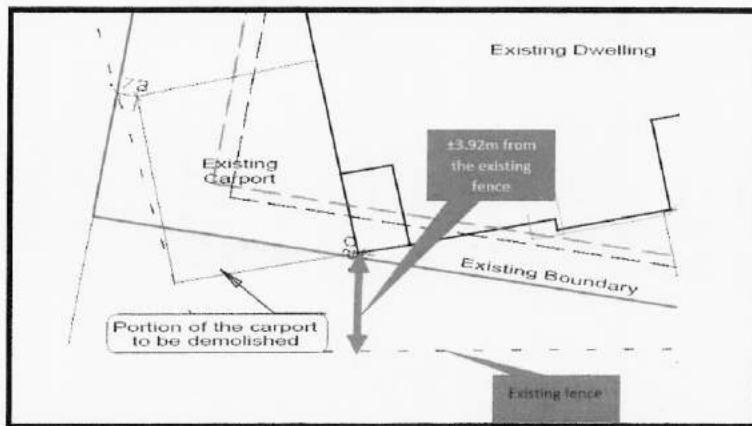
- **The objector has no objection to only remove the restriction regarding the 4.72m Street building line. According to the objector the carport on Erf 80 Rooi Els is the only structure in Gnidia Road that encroaches the municipal street building line.**

The Title Deed condition contains a 4.72m street building line, 3.15 rear building line and a 1.57m lateral building line. The existing carport encroaches the street and lateral prescribed Title Deed building lines. The statement that the carport on Erf 80 Rooi Els is the only structure that encroaches the street building line in Gnidia Road is incorrect. As seen in the picture below there are a few structures that encroach the street building line in Gnidia Road.



- The objector states that the carport can be accommodated elsewhere on the property. It is also stated that no information with regards to the height is provided therefore no consent can be provided.

The intention of the owners is to obtain approval for the existing structures on the subject property. The intention of the owners is not to relocate any structures on the subject property. As motivated in the motivational report the proposed building line departures will not have any impact on the neighbouring property as it was initially thought that the alterations did not encroach the building lines as it was constructed  $\pm 3.92\text{m}$  away from the existing fence by the previous owner as seen in the picture below. It should also be noted that a portion of the carport that encroaches onto the neighbouring erf will be demolished.



- **The objector suggest that the existing carport should reduce in size from a double carport to a single carport.**

The impact of the carport will be the same whether it is a double or a single carport as it is not very visible from the street front. The owner intends to only demolish the portion of the carport that encroaches the boundary line as indicated on the drawing above.

- **According to the Rooiels Ratepayers Association only the Title Deed building lines that are affected should be relaxed for the existing structures only.**

An application to remove Title Deed Restrictions are very costly. The owners already have so much unexpected costs that they had to cover, and the proposed removal of the restrictive Title Deed conditions will be more feasible if all the restrictions that are more restrictive than the Zoning Scheme Regulation are addressed.

The surrounding property owners will still be protected by ***Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.***

- **It is stated by the Rooiels Ratepayers Association that addition to the existing Clause 4.d. (Please note that the clause as reproduced in the application is not the complete one as per the title deed).**

**It is proposed that the following wording be added to the existing Clause 4.d:**

**"Notwithstanding the above, the southern lateral building line will be 0.0 m instead of the prior 2m to accommodate a portion of the existing dwelling and existing carport, and the street building line will be 0,73m instead of the prior 4m to accommodate a portion of the existing carport, provided that the southern lateral building line and the street building line will revert to their original 2m and 4 m respectively before any building structure alterations or building structure additions within the prior building lines are made."**

Every application should be evaluated on its own merit. The owners applied to remove the Title Deed restriction completely. We believe that the proposed application has merit. The owners inherited the defaults on the subject property and are in the process of correcting it. The application does not constitute a removal of all the restrictions applicable to Title Deed Number T45817/2019, but only the restriction on **Page 4, paragraph (4)(d)** as stated in the motivation report. The Surrounding property owners are still protected by the policies in place for the area such as the ***Zoning Scheme Regulations of the Overstrand Municipal Area*** and the ***Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020***. Any new applications will have to go through a public participation process whereby surrounding property owners will have the opportunity to provide their comments. With the proposed application no new structures are proposed on the subject property.

- **According to the objector the proposed application will allow other property owners in the area to submit similar applications in the future.**

With the built character of the area of Rooi Els it is believed that similar applications have already been approved in the past by the local authority. The proposed application will not create any new precedent as the built character of the area is already proof of similar applications / encroachments in the area. All applications should be evaluated on its own merit and therefor the council cannot make decisions based on what could happen in the future but should rather deal with the facts at hand. The owners intends to correct the defaults on the subject property and will do so with their full cooperation.

- **It is mentioned that the application should have been advertised to the whole Rooi Els Township. According to the objector the issue of legal notice was previously raised in detail with the Municipal Manager and also in a currently pending appeal to Overstrand Municipality. The Municipality sought legal advice on the legal issues in the appeal.**

It remains the municipality's discretion to what extent the public participation process should take place. The Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020 stipulates the following with regards to the serving of notices to the public when a removal of restrictive Title Deed conditions apply:

35. Requirements for amendment, suspension or removal of restrictive conditions

- (1) The Municipality may on application in terms of Section 15(2) by notice in the *Provincial Gazette* amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.
- (2) In addition to the procedures set out in Chapter V, the owner must -
  - (a) submit the a certified copy of the title deed to the Municipality; and
  - (b) submit the bondholder's consent to the application, where applicable.
- (3) The Municipality must cause a notice of its intention to consider an application under Subsection (1) to be served on—
  - (a) all organs of state that may have an interest in the title deed restriction;
  - (b) every holder of a bond encumbering the land;
- (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
- (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

The restrictive Title Deed condition which is requested to be removed does not constitute servitudes or contractual rights as stipulated by the objectors but is considered a limitation on the use of land imposed in the public interest. The neighbouring property owners do have an interest in the restrictions, but it does not vest them with any private rights to property within the meaning of Section 25 of the Constitution of the Republic of South Africa. Section 25(1) of the Constitution permits the deprivation of property rights if it is done in terms of a law of general application and is not arbitrary. As a result the removal of restrictive title deed conditions are permitted and empowered by the relevant planning laws namely Section 47 of the Spatial Planning and Land Use Management Act, 16 of 2013, Section 39 of the Western Cape Land Use Planning Act, 3 of 2014, and Overstrand Municipality's Amended Municipal Planning Bylaw (2020). In addition, the Title Deed condition does not stipulate that the condition was registered in favour of all or every property owner in Rooi Els. Please refer to the abstract below from the Title Deed:

***Page 4, Paragraph 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."***

We are therefore of the opinion that the municipality was at liberty to use their discretion and circulate the application correctly to surrounding property owners only.

Despite the proposed application not being circulated to all the ratepayers of Rooi Els as part of the formal public participation process, other community members via the Rate Payers Association were also informed of the proposed application. The number of objections received is prove that the public participation process was not flawed and that it was sufficient. An on-site notice was displayed for the whole duration of the public participation process and as a result the form of notice given for the application suffices. All comments and statements that refer to the public participation process being inadequate should therefore be dismissed.

- **The City of Cape Town requires, in accordance with the mandatory legal requirement, that all heirs acquired in the relevant township from the same developer be given individual notice. At a recent hearing of the Cape Town Municipal Planning Tribunal, the legal representative of a local taxpayers' association again drew the Tribunal's attention to this.**

*Page 4, Paragraph G* of Title Deed No. 45817/2019 stipulates the following:

***"SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T13663/1970 dated 21<sup>st</sup> May 1970, imposed by Hangklip Beach Estates Limited (hereinafter referred to in these conditions as the "Company"), as being in favour of the registered owner of any Erf in the Township, viz;"***

It is clear in the above-mentioned paragraph that should any conditions have been proposed to be removed under this particular section, all property owners should have been informed of the proposed application as it states that: "***as being in favour of the registered owner of any Erf in the Township***". We are therefore of the opinion that the municipality was at liberty to use their discretion and circulate the application to surrounding property owners only due to the fact that the proposed restriction to be removed falls under a different section of the Title Deed as stated earlier on our response.

- **I am therefore of the opinion that the application is not valid due to invalid notice and that a re-application will have to be made.**

The proposed application is in line with the relevant legislation. The proposed application has been submitted in accordance with the Overstrand Municipality Land Use Scheme Regulations and has been deemed as being complete. The proposed application has followed due process and therefore the application was submitted in terms of the relevant legislation.

We trust that you will find our comments on the objections received in order and that the application will be dealt with favourably.

Yours faithfully



Darren Adams

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED  
CONDITIONS & DEPARTURE: ERF 80, ROOI ELS**

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

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that stormwater be allowed to discharge through Erf 80, Rooi Els, unobstructed;
4. that no on-street parking be allowed;

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

  
**DATE**