



Overstrand Municipality

LAND USE PLANNING REPORT – MUNICIPAL PLANNING TRIBUNAL (MPT)

ERF 678, 87 JAN VAN RIEBEEK CRESCENT, SANDBAAI, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE : M LERM OF PLANACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF RED CHAIR PROPERTIES (EIENDOMS) BEPERK

Reference number	678 HSB (3424)	Application submission date	31 August 2016	Date report finalised	13 December 2016
PART A: AUTHOR DETAILS					
First name(s)	Hanneen				
Surname	Van der Stoep				
Job title	Senior Town and Regional Planner				
SACPLAN registration number	A/1708/2013				
Directorate/Department	Town and Spatial Planning				
Contact details	028 313 8900 hvdstoep@overstrand.gov.za				
PART B: APPLICANT DETAILS					
First name(s)	Meriké				
Surname	Lerm				
Company name	Plan Active Town and Regional Planners				
SACPLAN registration number	A/158/2009	Is the applicant authorised to submit this application	Yes		
Registered owner(s)	Red Chair Properties (Eiendoms) Beperk				
PART C: PROPERTY DETAILS					
Property description (in accordance with Title Deed)	Erf 678, Sandbaai				
Physical address	87 Jan van Riebeek Crescent	Town/City	Sandbaai		
Current zoning	Residential Zone 1	Extent (m2 /ha)	703m ²	Are there existing buildings on the property?	Yes
Applicable zoning scheme	Overstrand Municipality Zoning Scheme Regulations, 2014				
Current land use	Residential	Title Deed number & date	T35804/2015		
Any restrictive title conditions applicable	Yes	If Yes, list condition number(s)	C.1(c); C.2(c) and (d)		
Any third party conditions applicable?	No	If Yes, specify	N/A		
Any unauthorised land use/building work	Yes	If Yes, explain	Unauthorised Wendy House, scullery and pergola.		

PART D: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)			
Has pre-application consultation been undertaken?			No
PART E: LIST OF APPLICATIONS (TICK APPLICABLE)			
Permanent departure	√	Removal, suspension or amendment of restrictive conditions	√
PART F: APPLICATION DESCRIPTION			
<p>An application has been received on 31 August 2016 from Messrs Plan Active Town and Regional Planners on behalf of Red Chair Properties (Eiendoms) Beperk applicable to Erf 678, Sandbaai for removal of restrictive title deed conditions and departure in terms of Sections 16(2)(b) and (f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016.</p> <p>Application for the removal of restrictive title deed conditions C.1.(c), C.2.(c) & C.2.(d) contained in Title Deed T35804/2015 applicable to the above-mentioned property in order to accommodate a second dwelling on the property; and an application for departure in order to encroach the following building lines:</p> <ul style="list-style-type: none"> ➤ street building line with Jan van Riebeek Crescent from 4m to 3,643m & 3,933m to accommodate the existing braai room; ➤ street building line with Jan van Riebeek Crescent from 4m to 2,417m to accommodate the existing pergola; and street building line with Jimmy Smith Crescent from 4m to 2,901m to accommodate a portion of the existing scullery and stoep. 			
PART G: BACKGROUND			
<p>The property is developed with a dwelling unit and a single garage. An illegal wendy house, scullery and pergola also occur on the property.</p> <p>The aim of the application is to convert the existing primary dwelling unit on the property into a second dwelling unit and to construct a new primary dwelling unit. The departure entails building line encroachments (refer to Part F above).</p>			
PART H: SUMMARY OF APPLICANTS MOTIVATION			
<p>Due to the comprehensiveness of the motivation report only the main points are addressed herewith. (See detailed motivation attached to this submission.)</p> <ul style="list-style-type: none"> ➤ The conditions in the Title Deed are more restrictive than the primary land uses and parameters under the Residential Zone I zoning category in the Zoning Scheme and it is therefore proposed to remove these conditions to be in line with the existing zoning and land use restrictions applicable to the zoning. ➤ The zoning and land use will remain unchanged. ➤ All services on the subject property already exist and additional services, if required, will be provided to the satisfaction of the Municipality. ➤ Access will remain from Jan van Riebeek Crescent and since only one (1) additional dwelling is proposed, the impact on the traffic in the area will remain unchanged. ➤ The structures are compatible with the character of the area and do not impact negatively on the rights of anyone else. 			

- Sufficient parking is provided for on the property.
- The proposed departure only intends to address the existing dwelling (proposed additional dwelling) that encroaches the Title Deed and Scheme Regulations' street building lines.
- The proposed new main dwelling unit will be positioned and constructed in line with the Zoning Scheme.
- The proposed departure and removal of restrictions are in line with the spatial planning policies of the area.
- The proposed departure and removal of restrictions will not have a negative on the current character and land values of the surrounding erven.

PART I: SUMMARY OF PUBLIC PARTICIPATION

Methods of advertising		Date published	Closing date for comments		
Press	Yes	15/09/2016	21/10/2016		
Gazette	Yes	16/09/2016	21/10/2016		
Notices	Yes	14/09/2016	21/10/2016		
Ward councillor	Yes	15/09/2016	21/10/2016		
Site notice	Yes	15/09/2016	21/10/2016		
Community organisation(s)	N/A				
Public meeting	N/A				
Third parties	N/A				
Other	N	If yes, specify	None		
Total valid comments		One (1)	Total comments and petitions refused	N/A	
Valid petition(s)		No	If yes, number of signatures		
Community organisation(s) response		No	Ward councillor response	Yes	
Total letters of support		None			
Was public participation undertaken in accordance with Section 48 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2016				Yes	N

PART J: SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Mrs PF Mitchell, Erf 680, Sandbaai

- Objection is to Paragraph 3.5 Character of the Environment – Densification. There is a third dwelling on the property in the form of a wendy/cabin. It is believed to be occupied therefore the concern that if a further dwelling is erected as applied for; there will be three (3) dwelling units on the property. All with the potential to be rented out. The densification of the area would therefore not be in line with surrounding densities and the character of the area and could even be considered a fire hazard. She would have no objection if the wooden cabin is removed before any further construction takes place.

The letter of objection is attached as Annexure D, while the Applicant's comment on the objection is attached as Annexure E.

PART K: SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS			
Name	Date received	Summary of comments	Recommendation
Building Department	19/09/2016	Plans do not reflect all structures on site. Submit building plans in compliance with SANS 10400.	Positive
Engineering Services Department	13/10/2016	Attached as Annexure F.	Positive
Operational Services	15/09/2016	No objection.	Positive
Electrical Department	03/10/2016	No objection. The erf is only entitled to one service connection of 60 Ampere single phase or one 20 Ampere 3 phase.	Positive
Fire Department	21/10/2016	No objection.	Positive
Local Heritage	27/09/2016	No comment.	Positive
Senior Manager : Hermanus Administration	N/A	No comments received.	
Ward Councillor	06/10/2016	No comment.	
DEADP	N/A	No comment received.	

PART L: SUMMARY OF APPLICANT'S REPLY TO COMMENTS

- The objector's property only links with the application property with one (1) corner.
- The landowner consulted with the objector and explained that the existing Wendy House will revert back to a garden shed once construction is completed.
- The Wendy House is currently a sleeping quarter while the building process is in progress. It is not the intention to use the Wendy House as an addition dwelling since it will have a negative impact on the look and feel of the two (2) dwelling units once it is completed. There will only be two (2) habitable units (main dwelling and second dwelling) on the property.
- The height of the fence wall on the objector's side will be extended to minimize the visual impact from her side.
- All fire hazard material will be removed.
- Even in the light of the above, the objector still won't withdraw her objection – objector is adamant that the garden shed be removed instead of it being converted back to a garden shed.
- Objector's unwillingness to meet with the landowner is indicative of a possible other motive for objecting.
- The proposed new dwelling unit and renovations to the existing dwelling will enhance the subject property and the surrounding area in a positive way.

- The densification of the area by allowing an additional dwelling unit will be in line with the surrounding densities and residential character of the area.

The Applicant's comment on the objection is attached as Annexure E.

PART M: MUNICIPAL ASSESSMENT OF COMMENTS

Objection: Mrs PF Mitchell, Erf 680, Sandbaai

The basis of the comment of the applicant on the objection is concurred with.

It is further observed that the objector does not object to the second dwelling unit, but to a wooden structure that has no relevance to the application. No further comment is therefore offered on the objection.

Should the application be approved, a condition be imposed that the wooden structure be utilized as an outbuilding only, that it does not encroach any building lines, that it be properly upgraded, and that it forms part of the building plan submission for the new dwelling unit.

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

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

Yes

Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA?
(can be elaborated further below)

Yes

(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 objective relating to:

Efficiency

The application will ensure that the existing resource, land is used to its maximum in an affordable manner.

Good Administration

The application follows the required planning procedures to ensure all structures are legal and a good public participation process has been followed.

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

Same as above.

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

The scale of the application is so small that it cannot be considered in terms of the SDF.

(In)consistency with guidelines prepared by the Provincial Minister

Not Applicable

Impact on Municipal Engineering Services

The Engineering Department of the Municipality requires that a bulk services levy be paid by the applicant (see report attached as Annexure F).

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

Not Applicable

Existing and proposed zoning comparisons and considerations

Not Applicable

The desirability of the proposal

Erf 678 is a corner property situated in Sandbaai and is therefore allowed to have two (2) access points. Access will however remain unchanged and will be from Jan van Riebeeck Crescent.

The property is encumbered by restrictions in the Title Deed. The owner of the subject property proposes to have these restrictions removed from the Title Deed in order to be in line with the applicable primary rights and development parameters as set out in the Overstrand Zoning Scheme Regulations. Cognisance must be taken of the fact that the Title Deed restrictions date back to before the establishment of the Overstrand Municipality and the relevant Zoning Scheme Regulations. As such the Title Deed was used to convey restrictions on property owners in order to form uniformity and a sense of place; however most of the owners in the township have deviated from their respective Title Deeds by means of relaxations or removals. It is therefore the opinion that the restrictions set out in the Title Deed are not relevant, because they are out-dated, thus the removal of the restrictions will enable the owner to utilise the property more efficiently.

It is the subsequent intention of the landowner to convert the existing main dwelling unit into an additional dwelling unit, as well as to construct a new main dwelling unit.

Further, portions of the existing dwelling encroaches both the eastern and southern street building lines. It is thus further proposed to condone the eastern street building line encroachment from 4m to 3,643m and 3,933m respectively to accommodate the existing braai room, the 4m eastern street building line to 2,417m to accommodate the existing pergola, and the 4m southern street building line from 4m to 2,901m to accommodate a small portion of the existing scullery as well as a portion of the stoep that forms part of the scullery.

The pergola is an open structure and cannot affect any views of motor vehicle drivers. The partial encroachment of the pergola, the small portion of the existing scullery and stoep, is regarded as insignificant in nature.

In view of the above, it is the opinion that the overall proposal will not impact significantly on any vested rights of surrounding property owners or the built environment and is therefore regarded as being desirable from a town planning perspective. Approval is therefore recommended in the manner as set out in Part Q of this submission.

Practical parking can be provided on the property.

PART O: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS (REFER TO ROR GUIDELINE)**The financial or other value of the rights**

The removal of the restrictive conditions will enable the landowner to benefit from the applicable development parameters as contained in the Overstrand Zoning Scheme that is more lenient than the said restrictive conditions. This will enable the landowner to utilize the property to its full potential in terms of the Zoning Scheme that would result in an increase of the property's value that would subsequently have financial benefits for the landowner.

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

The original holder of rights was the township developer whose rights became null and void when the Municipality, the successor in title, took over its functions.

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

Whether the restrictive conditions remain intact or being removed from the Title Deed, it will have no social benefit.

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

No, it will only result in the property being utilized in accordance with the applicable development parameters as contained in the Overstrand Zoning Scheme that would be to the benefit of the beneficiary.

PART P: SUMMARY OF EVALUATION

It is considered that the application is desirable and can be supported.

PART Q: RECOMMENDATION

1. that the application for the removal of restrictive conditions C.1.(c), C.2.(c) & C.2.(d) contained in Title Deed T35804/2015 applicable to Erf 678, Sandbaai, **be approved**, in terms of Section 16(2)(f) of the Overstrand By-Law on Municipal Land Use Planning, 2016;
2. that the application for departure applicable to Erf 678, Sandbaai in order to encroach the 4m eastern street building line from 4m to 3,643m and 3,933m respectively to accommodate the existing braai room, the 4m eastern street building line to 2,417m to accommodate the existing pergola, and the 4m southern street building line from 4m to 2,901m to accommodate a small portion of the existing scullery as well as a portion of the stoep that forms part of the scullery, **be approved**, in terms of Section 16(2)(b) of the Overstrand By-Law on Municipal Land Use Planning, 2016;
3. that the approvals in 1. and 2. above be subject to the following conditions:
 - (a) the building line encroachments be strictly in accordance with the dimensions as indicated on the site layout plan number erf678_MULLERA1/01-2016-DA 1 and 2, as submitted with the application;
 - (b) building plans must be submitted to the Building Department for approval, and any conditions required by the Fire- and Building Departments, must be complied with;
 - (c) that all the conditions in the Engineering Services Report (attached as Annexure F), be complied with;
 - (d) that the wendy-house be utilized as an outbuilding only (no residing purposes), that it may not encroach any building lines, it be properly upgraded, and that it forms part of the building plan submission for the new dwelling unit; and
 - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation, and
 - (f) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and the objector be notified of their respective rights of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2016 with regard to the above conditional approvals.

PART R: REASONS FOR RECOMMENDATION

- ❖ The application has followed due procedure.
- ❖ No new municipal services will be needed.
- ❖ This is an existing situation and the approval of this application will have no additional impact on surrounding neighbours.
- ❖ The application is regarded as being desirable from a town planning point of view.

PART S: ANNEXURES

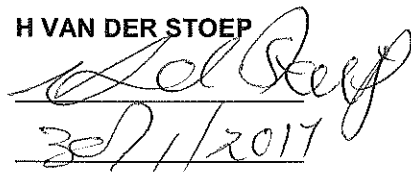
Annexure A	Locality Plan
Annexure B	Motivation
Annexure C	Site Development Plan
Annexure D	Objection received
Annexure E	Applicant's response to the objection received
Annexure F	Services Report

PART T: SIGNATURES

Author name:

H VAN DER STOEP

Author signature:



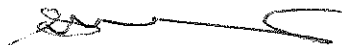
Date:

30/1/2017

Registered planner name:

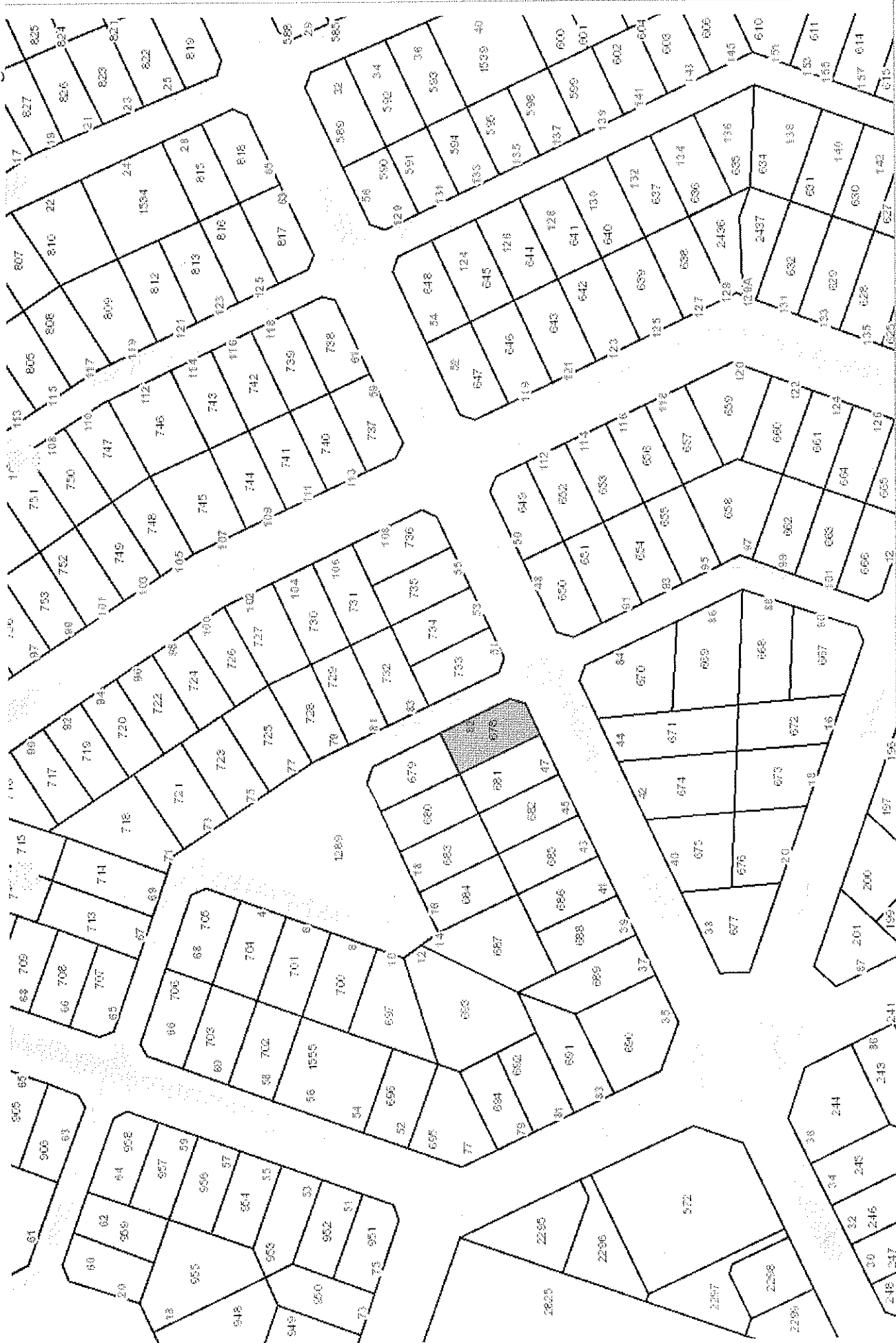
S VAN DER MERWESACPLAN registration number: **A/1850/2014**

Registered planner signature:



Date:

1/02/2017



**LOCALITY PLAN
ERF 678
SANDBAAI**



**PROPOSED REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS
& DEPARTURE**

ERF 678 SANDBAAI

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active has been appointed by Mr J.L. Venter on behalf of Red Chair Properties Pty Ltd, the owners of erf 678 Sandbaai, to apply for the removal of restrictive title deed conditions and departure of erf 678 Sandbaai.

Erf 678 Sandbaai is 703m² in extent and is held by title deed number T35804/2015.

Currently there is an existing dwelling with a single garage on the subject property. The owners intend to convert the existing dwelling into a second dwelling and construct a new primary dwelling on the subject property. However, it came under the owners' attention that there are conditions in the title deed concerning the allowable primary land use of the subject property that contradicts the primary land uses allowed for under Residential Zone I: Single Residential. It is therefore intended to remove the conditions in the title deed that prohibit the construction of a second dwelling on the subject property to accommodate two dwellings (a primary dwelling and a second dwelling) on the subject property.

Furthermore the existing dwelling (proposed second dwelling) encroaches the applicable street building lines on the subject property. This application also proposes to address the encroachment of the existing dwelling onto the eastern and

southern street building lines as specified in the Overstrand Zoning Scheme Regulations as well as the title deed.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of the restrictive title deed conditions;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departures (building lines only) of the Overstrand Zoning Scheme of erf 678 Sandbaai.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

The subject property is situated on the corner of Jan van Riebeek and Jimmy Smith Streets (82 Jan van Riebeek Street), Sandbaai. Please refer to the locality plan attached. Erf 678 Sandbaai is 703m² in extent and it is situated in a residential environment.

3.2 ZONING

Erf 678 Sandbaai is zoned Residential Zone 1: Single Residential.

Surrounding properties are zoned for single residential purposes.

3.3 LAND USE

There is an existing single storey main dwelling and existing single garage situated on erf 678 Sandbaai.

Land uses that surround erf 678 Sandbaai are dwellings, public open space and public roads.

3.4 PROPOSED DEVELOPMENT

- The removal of the restrictive title deed conditions in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016;
- The departure of erf 678 Sandbaai in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, to:
 - relax the eastern street building line (Jan van Riebeek Street) from 4m to 3,643m and 3,933m respectively to accommodate the existing braai room;
 - relax the eastern street building line (Jan van Riebeek Street) from 4m to 2,417m to accommodate the existing paved area with pergola on the subject property;
 - relax the southern street building line (Jimmy Smith Street) from 4m to 2,901m to accommodate a portion of the existing scullery as well as the existing scullery's stoep on erf 678 Sandbaai.

Currently there is an existing dwelling with a single garage on the subject property. The owners intend to convert the existing dwelling into a second dwelling unit and construct a new primary dwelling on the subject property. However, it came under the owners' attention that there are conditions in the title deed concerning the allowable primary land use of the subject property that contradicts the primary land uses allowed for under Residential Zone I: Single Residential. It is therefore intended to remove the conditions in the title deed that prohibit the construction of a second

dwelling on the subject property to accommodate two dwellings (a primary dwelling and a second dwelling) on the subject property.

The Overstrand Zoning Scheme specifies the following primary rights for Residential Zone 1: Single Residential properties:

Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit.

A second dwelling unit is therefore a primary right for Residential Zone 1: Single Residential properties. However, title deed no. T35804/2015 has a condition that restricts the construction of a second dwelling unit on the subject property. It is therefore intended to remove the condition in the title deed that prohibit the second dwelling on erf 678 Sandbaai to allow the owners to construct a new primary dwelling and convert the existing dwelling into a second dwelling.

Furthermore the existing dwelling (proposed second dwelling) encroaches the applicable title deed street building lines on the subject property. This application also proposes to address the encroachment of the existing dwelling (proposed second dwelling) onto the eastern and southern street building lines as specified in the Overstrand Zoning Scheme Regulations and the title deed.

To accommodate the primary and second dwelling units on erf 678 Sandbaai as part of the subject property's primary right in terms of the Overstrand Zoning Scheme, and to address the existing and new encroachments of the street building lines it is proposed to remove the following conditions in the title deed:

Title deed no. T35804/2015, pages 2-4, paragraph C. 2.(c):

C. "Onderhewig verder aan die volgende spesiale voorwaardes vervat in gesegde Transportakte nr. T8455/1953, naamlik:-

1. Opgelê vir die voordeel van die Sandbaai Seaside Estate Company Proprietary Limited as eienaars van die Restant van Perseel Nr. 3 van die plaas Onrust Rivier gehou kragtens Transportakte Nr. 11466/1929 en die eienaars van persele in die gesegde dorp alreeds getranspoteer of wat in die toekoms getranspoteer mag word, onderhewig aan soortgelyke voorwaardes, naamlik:

(c) That no building shall be erected on any stand unless and until the plans for such buildings have been submitted to and approved by the Directors of the said Company or the successors in title of the said Company;

2. Wat opgelê is deur die Administrateur:-

(c) That not more than one dwelling, together with the necessary outbuildings and accessories, be erected on any one of the above erven and that not more than one-half the area of any one of the above erven be built upon.

(d) That no building shall be erected on the above erf or erven within 4,72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."

The removal of condition C.2.(d) as mentioned above is to accommodate the existing paved area with pergola, the existing braai room and the existing scullery with stoep within the 4,72m title deed street building line as follows:

- Paved area with pergola: 4,72m to 2,417m;
- Braai room: 4,72m to 3,643m and 3,933m respectively;
- Scullery with stoep: 4,72m to 2,901m.

The proposed new primary dwelling will be 127,5m² in extent and will comply with the land use parameters for SR1 zoned properties as stipulated in the Overstrand Zoning Scheme Regulations. The proposed second dwelling (existing dwelling) complies with all conditions to allow a second dwelling on a Residential Zone I: Single Residential zoned property:

- The second dwelling will be 104,3m² in extent and does not exceed the total allowable floor area of 120m². It should be noted that the additions of 37m² already exist and are included in the total extent of the second dwelling unit.
- The second dwelling is smaller than the primary dwelling;
- Provision is made for one on-site parking bay;
- The second dwelling encroaches the applicable street building lines only. This is because the existing dwelling (including As Built additions as shown on the Site & Floor Plan) that will be converted to the second dwelling encroaches the street building lines. The proposed new primary dwelling will be constructed within the applicable building lines.
- The second dwelling is fully serviced (existing primary dwelling to be converted to second dwelling).

Refer to the Site & Floor Plan as well as the Sections & Elevations Plan attached.

The proposed new main dwelling on erf 678 Sandbaai will be 127,5m² in extent and will be accommodated within the land use parameters applicable to Residential Zone I: Single Residential zoned properties. It is proposed to demolish a portion of the existing single garage to allow the remainder of the structure to form part of the proposed new primary dwelling unit. The proposed new main dwelling will not encroach any building lines or height in terms of the relevant zoning scheme regulations.

The second dwelling encroaches only because the existing structure deviates from the applicable building lines. The second dwelling does not encroach the height as specified in the zoning scheme regulations. The total extent of the existing structures is also within the maximum allowable coverage of 50% for Residential Zone I: Single Residential properties. The coverage of all existing structures will be $\pm 33\%$ ($\pm 231,8\text{m}^2$).

The proposed removal of the restrictive title deed conditions and departure will have a minimal impact on the surrounding properties since the both the primary and second dwelling will only be single storey, the total coverage will only be $\pm 33\%$ for all the structures on the subject property, the second dwelling unit is within the primary land uses allowed for in terms of the relevant zoning. Except for the street building line encroachments (existing structures that encroach) the second dwelling does not encroach any land use parameters applicable to Residential Zone I: Single Residential properties.

The proposed removal of restrictive title deed conditions and departure are not in contrast to the existing land uses tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.5 CHARACTER OF THE ENVIRONMENT

It is not proposed to change the land use of the subject property. The impact on the character of the area will therefore remain unchanged. Furthermore the proposed encroachment of building lines is to accommodate the existing structures only and not further additions to the proposed second dwelling are proposed. The proposed

new main dwelling is positioned within the Overstrand Scheme Regulations building lines.

Since only the existing structures encroach the street building lines (no lateral building lines are encroached) the proposed removal of restrictive title deed conditions and departure will not have a negative impact on the privacy of the neighbours. The impact on the streetscape will therefore also be kept to a minimum since the street building line encroachment is to accommodate the existing structures and the proposed new main dwelling will not encroach any street building lines.

The densification of the area by allowing an additional dwelling unit will be in line with the surrounding densities and residential character of the area.

3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

The subject property's zoning and land use will remain unchanged. The location of the subject property within a single residential area allows the property to be developed (in future) for low impact land uses. The proposed departure and removal of restrictions application will not hinder any future land use applications on erf 678 Sandbaai.

The extent of the subject property allows for the densification of the property by means of adding a second dwelling (subdividing the property is not an option since the minimum erf size requirements cannot be met). The owners want to convert the existing main dwelling into a second dwelling. The existing dwelling already encroaches the relevant scheme and title deed street building lines hence the reason for the scheme and title deed street building line encroachments to accommodate the existing dwelling (proposed second dwelling). The subject property has sufficient space (and coverage) left to position the new main dwelling in such a manner to avoid any scheme or title deed building line encroachments.

Since the land use and zoning will remain unchanged the impact on the surrounding properties will be kept to a minimum. The scheme regulation street building lines and the title deed street building lines will be encroached to accommodate the existing dwelling (proposed second dwelling). No scheme lateral building line encroachments are proposed and therefore the impact of the aforementioned street building line encroachments will not have a negative impact on the privacy or property values of surrounding erven.

3.7 IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1 PROVISION OF SERVICES

All services on the subject property already exist. Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

3.7.2 TRAFFIC IMPACT, PARKING AND ACCESS

Erf 678 Sandbaai is a corner property and is therefore allowed to have two access points. Access to erf 678 Sandbaai will remain unchanged and will be from Jan van Riebeek Street. The proposed new main dwelling and the second dwelling will both take access from Van Riebeek Street. No accesses are proposed from Jimmy Smith Street. Refer to the Site & Floor Plan attached.

The Overstrand Zoning Scheme Regulations stipulates that a minimum of two parking bays are required for the primary (main) dwelling and an additional parking bay for a second dwelling unit. The existing single garage on the subject property will be partially demolished to form part of the proposed new main dwelling. Consequently provision is made for three new parking bays on the subject property as shown on the Site and Floor Plan. All the proposed parking bays will be accessed from Jan van Riebeek Street.

The subject property will still be used for single residential purposes only and therefore the impact on the traffic flow in the area will remain unchanged.

3.8 TITLE DEED

As previously mentioned title deed no. T35804/2015 has restrictive title deed conditions that need to be removed in order for this application to be approved. Please refer to the conveyancer's certificate compiled by H.L. van Zyl from VZK Attorneys dated 25 August 2016. For detail pertaining to the removal of the restrictive title deed conditions application refer to Section 3.4 of this report.

There is a bond registered against the subject property. The bondholder's consent was requested and will follow.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 678 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). The subject property is also not earmarked for heritage conservation purposes.

The existing structures on the subject property are not older than 60 years. Furthermore the existing structures will remain unchanged, except for a few minor alterations and additions to the existing structures. 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 the light of the abovementioned it is evident that the proposed departure and removal of restrictive title deed conditions will not have a negative impact on the heritage value of the Sandbaai area.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure and removal of restrictive title deed conditions do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2006)* earmarks the area where erf 678 Sandbaai is situated, for residential purposes. Please refer to the Spatial Development Framework Plan (2006) attached. The zoning of the subject property will remain unchanged (Residential Zone I: Single Residential) and therefore the proposed application falls within the existing planning for the Greater Hermanus area.

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 678 Sandbaai forms part of Planning Unit no. 3. The aforementioned policy states that the status quo should be kept for this planning unit and therefore does not allow for an increase in this planning unit's density. However, the existence of a second dwelling unit is a primary right in terms of the Overstrand Municipality's Bylaw on Municipal Land Use Planning (2016) and therefore the proposal can be motivated. The impact on the density of the area will be minimal. Therefore, although the proposal is not quite in line with the densification policy for the area, the existence of the second dwelling will not have a great impact on the overall density of the area and it can be argued that the densification policy did not take the primary right of the residence into consideration when no increase in density for this area was proposed.

The proposed removal of the restrictive title deed conditions and departure of erf 678 Sandbaai therefore adheres to the latest spatial planning policies for the Sandbaai area.

3.11 PLANNING PRINCIPLES

The planning principles of spatial justice and spatial resilience do not apply to this application.

Spatial sustainability: The proposed departure (street building line relaxations) is to accommodate the existing as built dwelling to allow the conversion of the existing dwelling into a second dwelling. Therefore the proposed departure will have no impact on the visual elements of the subject property and surroundings since the structure (with additions as shown on the Site and Floor Plan) already exist. The proposed new main dwelling is a primary right for SR1 zoned properties and will be constructed within the land use parameters of the Overstrand Zoning Scheme Regulations.

The existing and proposed structures are compatible with the character of the area and do not impact negatively on the rights of anyone else. The impact on the biophysical environment will also be kept to a minimum. Furthermore the extent of the subject property, low impact on the privacy of neighbours, compliance with the land use restrictions applicable concerning parking, coverage, height, lateral building lines, etc. allows for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area.

Efficiency: The subject property is easily accessible and conveniently located close to Hermanus, the beach and other tourist attractions. Keeping the existing dwelling with encroachments proof to be efficient as it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development. It is anticipated that the existing dwelling (proposes second dwelling) and proposed new main dwelling will have a low impact on the surrounding properties.

Good administration: Our firm 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.

4. RECOMMENDATION

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

- The condition in the title deed that refers to “only one dwelling unit” is more restrictive than the primary land uses specified in the Overstrand Zoning Scheme for Residential Zone 1: Single Residential properties and therefore it is proposed to remove the condition to be in line with the property’s existing zoning and the land use restrictions applicable to the zoning;
- The zoning and land use will remain unchanged;
- All services on the subject property already exist. Additional services, if required, will be provided to the satisfaction of the Overstrand Municipality;
- The access will remain from Jan van Riebeek Street and since only one additional dwelling is proposed the impact on the traffic to the area will remain unchanged;
- Sufficient parking bays are provided for on site;
- The existing structures are compatible with the character of the area and do not impact negatively on the rights of anyone else;
- The proposed departure only intends to address the existing dwelling (proposed second dwelling) that encroaches the title deed and scheme regulations’ street building lines on the subject property;
- The proposed new main dwelling will be positioned and constructed in line with the Overstrand Zoning Scheme Regulations;
- The proposed departure and removal of restrictive title deed conditions is in line with the spatial planning policies of the area;
- The proposed departure and removal of restrictive title deed conditions will not have a negative impact on the current character and land values of the surrounding erven.

With regards to the above mentioned it would be appreciated if the delegated authority / the municipal planning tribunal would approve the departure and removal of restrictions of erf 678 Sandbaai.

ANNEXURE D 1/8
172

TRATHENT
(H Olivier)

Loretta Gillion - Objection to removal of restrictions of erf678 sandbaai

From: pfmitchell55 <pfmitchell55@gmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 19/10/2016 09:50 AM
Subject: Objection to removal of restrictions of erf678 sandbaai



My objection is there is already another dwelling on the property in the form of a wendy/wooden cabin at the bottom of the property which is being occupied. Therefore if another dwelling is erected there will be 3 three dwelling units not the two that the owner has applied for. The densification of the area would therefore not be in line with surrounding densities and the residential character of the area and could even be considered a potential fire hazard. There fore the owner must be instructed to remove the wendy/wooden house before construction of any further unit on said property.
Mrs P.Mitchell erf 680 sandbaai.

Sent from my Samsung Galaxy smartphone.

FILE NO:	EL 678SB
SCAN NO:	
COLLABORATOR NO:	962156

TP

19 OCT 2016

20 OCT 2016



ANNEXURE D 3/8 174

Loretta Gillion - Objection to erf 678 sandbaai

From: pfmitchell55 <pfmitchell55@gmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 19/10/2016 10:18 AM
Subject: Objection to erf 678 sandbaai
Attachments: 20160920_114652.jpg

Fire hazard being occupied .
Mrs P.Mitchell erf 680
Sent from my Samsung Galaxy smartphone



Loretta Gillion - Objection erf 678

From: pfmitchell55 <pfmitchell55@gmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 19/10/2016 10:09 AM
Subject: Objection erf 678
Attachments: 20160920_114716.jpg

Wooden house already on property Mrs Mitchell erf 280

Sent from my Samsung Galaxy smartphone.

Loretta Gillion - Objection to erf 678

From: pfmitchell55 <pfmitchell55@gmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 19/10/2016 10:13 AM
Subject: Objection to erf 678

potential fire hazard Mrs Mitchell erf 280.not in line with houses in area .

Sent from my Samsung Galaxy smartphone.

TR A Theart
C Holivis

Loretta Gillion - Application for removal of restriction and departure of ERF 678
SANDBAAI



From: pfmitchell55 <pfmitchell55@gmail.com>
To: <loretta@overstrand.gov.za>
Date: 12/10/2016 10:35 AM
Subject: Application for removal of restriction and departure of ERF 678 SANDBAAI

My objection is to PARAGRAPH 3.5 CHARACTER OF THE ENVIRONMENT-DENSIFICATION. There is a 3rd dwelling on the said property in the form of a wendy/cabin .I believe this is being occupied therefore my concern is that if a further dwelling is erected as applied for there will be three 3 dwelling units on the said property. ALL with the potential to be rented out. The densification of the area would therefore not be in line with surrounding densities and the character of the area and could even be considered a potential fire hazard. I would have no objection to the proposed building IF THE WOODEN/CABIN IS REMOVED BEFORE ANY FURTHER CONSTRUCTION TAKES PLACE.

Sent from my Samsung Galaxy smartphone.

FILE NO:	EL 678 SB
SCAN NO:	
COLLABORATOR NO:	947 303

TP

14 OCT 2016

17 OCT 2016

ANNEXURE D 8/8 179

Loretta Gillion - Application for removal of restrictions on ERF 678 .

From: pfmitchell55 <pfmitchell55@gmail.com>
To: "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>
Date: 12/10/2016 10:49 AM
Subject: Application for removal of restrictions on ERF 678 .

Just a follow up to the objection i just e-mailed .My erf no. Is 280 Sandbaai Mrs P.Mitchell

Sent from my Samsung Galaxy smartphone.



PLAN Town & Regional Planners
Stads-en Streeksbeplanners
Active

TP-A Theart
(H Boshoff)

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200

Tel: (028) 313 1673
Fax / Faks: (028) 312 1351

Email: planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA16039/ML
Your reference: 678 HSB (3424)

3 NOVEMBER 2016

THE MUNICIPAL MANAGER
OVERSTRAND MUNICIPALITY
P.O. BOX 20
HERMANUS
7200

FOR ATTENTION: MR HELGAARDT BOSHOFF

FILE NO: EL 678 - HSB
SCAN NO:
COLLABORATOR NO:
966937

Sir

PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE: ERF 678 SANDBAAI

- **RED CHAIR PROPERTIES PTY LTD**

Reference is made to our application dated 30 August 2016 as well as your letter dated 26 October 2016 with one objection attached.

Here follows our response to the objection:

- **Mrs P. Mitchell stipulates that there is already a second dwelling unit (Wendy House) on the subject property. By approving this application there will be three dwelling units on the property. The proposed density (three units) will not be in line with the density of the area and will have a negative impact on the character of the area. Furthermore the existing Wendy House is a potential fire hazard. She insists that the Wendy house be removed before the construction of the new unit commences.**

It is important to note that erf 680 Sandbaai only links to erf 678 Sandbaai with one corner. The direct adjacent neighbours (erven 679 and 681 Sandbaai) did not object to the application.

Our client contacted Mrs Mitchell and explained to her that the existing Wendy House will revert back to a garden shed once the construction on site is complete. Currently the Wendy House is a temporary sleeping quarters for the guard while the building process is in progress. It is not the intention to use the Wendy House as an additional unit on the property since this will have a negative impact on the look and feel of the two dwelling units once it is completed. There will only be two habitable units (main dwelling and second dwelling) on the subject property.

Furthermore the height of the fence wall on Mrs. Mitchell's side (erf 680 Sandbaai) will be extended to ensure that the visual impact from her side is kept to a minimum. In addition all fire hazard material will be removed. Nevertheless, even in the light of all the aforementioned Mrs Mitchell does

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Vat. No. 4770250340

John Mc Lachlan: Ndip (Town Planning) Tech Witwatersrand; MSAPI
Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)
Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW: SACTRP

10/11/16

not want to withdraw her objection – she is adamant that the garden shed must be removed instead of converting it back for use as a garden shed. Mrs Mitchell's unwillingness to meet with our client is perhaps indicative of a possible other motive for objecting to the proposed second dwelling unit.

The proposed new dwelling unit and renovations to the existing dwelling will enhance the subject property and the surrounding area in a positive way. The densification of the area by allowing an additional dwelling unit will be in line with the surrounding densities and residential character of the area.

We trust that you find our response to the objection in order and that you will be able to proceed with the finalization of the application.

Yours faithfully




M. LERM Pr. Pln. (A/158/2009)
PLAN ACTIVE

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE CONDITIONS &
DEPARTURE: ERF 678, SANDBAAI (32248)**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that stormwater be allowed to discharge through Erf 678, Sandbaai, unobstructed;
4. that no on-street parking be allowed.



**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

13/10/2016

DATE