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ERF 1828, 21 BOUNDARY ROAD, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: DIESEL & MUNNS INC. ON BEHALF OF BC & C ANDERSON

1828 KPRB (3717/2021)

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6 September 2022

1. EXECUTIVE SUMMARY

An application has been received on 21 June 2021 from Diesel & Munns Inc. on behalf of BC & C Anderson applicable to Erf 1828, Pringle Bay for the following:

- ❖ **Removal of Restrictive Title Deed Conditions** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed conditions with reference to Clauses 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f) of Title Deed T14369/2020.

The restrictive title conditions read as follows:

“V. SUBJECT to the conditions contained in Deed of Transfer T11452/1957, imposed by the Administrator when approving of the subdivision of a portion of the township in terms of the terms of Ordinance 33 of 1934:

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*
 - (c) *Only one dwelling together with such outbuildings are ordinarily required to be used therewith shall be erected thereon.*
 - (d) *Not more than half the area thereof shall be built upon.*
 - (e) *No building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres of the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that, with the consent of the Local Authority, an outbuilding exceeding 3,05 metres in height measured from the floor.*
 - (f) *Pending the establishment of a local authority for this township, the sewage of this erf shall not be disposed of otherwise than by means of properly constructed septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation remove the septic or vacuum tank after three month's written notice served upon him by such local authority.*

- ❖ **Subdivision** in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 1828, Pringle Bay into 2 portions, namely Portion A ($\pm 2369\text{m}^2$) and a Remainder ($\pm 2336\text{m}^2$).

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 1828 is located in the residential area of Pringle Bay. The property measure approximately 4705m^2 in extent and is the result of the consolidation of two (2) erven (Erven 538 and 539). The property consists of a main dwelling sited on the south-western side of the property with the existing garage on the eastern side of it.

The owner intends to subdivide Erf 1828 Pringle Bay to create two (2) erven of similar sizes to the original erven namely: Portion 1 ($\pm 2369\text{m}^2$) and Remainder Erf 1828 ($\pm 2336\text{m}^2$). The Title Deed applicable to Erf 1828 Pringle Bay contains restrictions that need to be addressed in order for the proposed application to be approved.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

ZONING

- Erf 1828 is zoned Residential Zone 1 and is utilized as such.
- The surrounding properties are zoned Residential Zone 1.

LAND USE

- Erf 1828 will be used for residential purposes.
- The proposed utilisation will remain for single residential purposes.
- No alteration to the existing zoning is being proposed as a result of this application.

PROPOSED SUBDIVISION

- Erf 1828 Pringle Bay (previously consolidated erven 538 & 539) is to be subdivided into two (2) equally sized erven Namely: Portion 1 & the Remainder Erf 1828.
- Portion 1 will be $\pm 2369\text{m}^2$ in size will remain undeveloped for the purposes of this application.
- The Remainder Erf 1828 will be $\pm 2336\text{m}^2$ in size and consists of the existing dwelling house.

PROPOSED REMOVAL OF TITLE DEED RESTRICTIONS

- Erf 1828 Pringle Bay is subject to title deed conditions. These conditions namely: Conditions 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f) of the Title Deed T14369/2020 were imposed by the Administrator during the approval of the extension of the subdivision of a portion of the township.
- These development parameters are now governed by the various forward planning policy documents and zoning schemes. This application for the deletion of restrictive title deed conditions 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f) of the Title Deed T14369/2020 is submitted as part of this application.

ACCESS

- It is proposed that a 16m wide service servitude and right-of-way servitude will be registered over Portion 1 in favour of Remainder Erf 1828 in order to allow access to the property.
- The existing gate will be retained within the servitude and will require a slight adjustment thereof.

SERVICES

- No problems are foreseen regarding the provision of services to the proposed development, as the property/proposed properties are already serviced for single dwelling residential use. The creation of only one (1) additional single residential property will not place much strain on the existing surrounding service network.
- It is envisaged that the Remainder property will utilise the proposed 16m service servitude to gain access as well as to connect to the services that run along Boundary Road.
- All the services that traverse the proposed portion will be relocated to be within this servitude.

OVERSTRAND MUNICIPAL SPATIAL DEVELOPMENT FRAMEWORK (2020)

- The proposal is merely for the subdivision of the property and will therefore retain the existing Single Residential 1 zoning. No alteration of the existing rights is being applied for and can therefore be seen to be in line with the Overstrand Municipal Spatial Development Framework (2020).
- The proposed portions will be similar in size to the original properties that were previously consolidated (with a slightly different orientation).
- The proposal will therefore not impact on the role of Pringle Bay as a retirement village.

OVERSTRAND GROWTH MANAGEMENT STRATEGY (2010)

- The GMS states that there are very limited densification opportunities in Pringle Bay. Although no densification proposal is made within the planning unit within which the property is located, the subdivision of the consolidated property will essentially be returning the proposed portions to their originally planned densities.
- The subdivisions can therefore be viewed to be in line with the above-mentioned policy.

PLANNING PRINCIPLES***Spatial Justice***

- The subdivision of the property will allow for the creation of a wider variety of residential options in the area, which will not contribute further to any spatial injustice. By increasing the number of residential opportunities in the area, the proposal will, to a degree, aid in redressing past spatial injustices through the generation of increased rates and taxes, which can be utilised by the Local Authority in the provision of services to previously disadvantaged areas.

Spatial Sustainability

- The proposal is for the subdivision of a large property into two (2) single residential erven. As this property is also a previous consolidation of two (2) erven, the proposal will propose a more sustainable utilisation of the land without impacting the existing (intended) residential character of the neighbourhood. This proposal will allow for the creation of additional residential opportunities that would fulfil a demand within the existing urban footprint. This would ensure that the need for such opportunities is met within the existing urban footprint, thus negating the need for such developments to be located in the surrounding sensitive countryside and up visually and environmentally sensitive mountain slopes. Such a development would easily be able to achieve this without impacting on the existing village character of Pringle Bay.

Efficiency

- The proposed subdivision of the property would allow for a more appropriate intensification of the land use on the property by returning the erf to its original components. This would increase the efficiency of the property in that the proposed urban typology (located within an established residential area) would be far more efficient to service. Placing such a development within an existing urban residential area will also serve to minimise negative financial, social, economic and environmental impacts through the efficient geographical location of such facilities to prevent urban sprawl and excessive travel distances.

Spatial Resilience

- The provision of additional housing opportunities within the established urban residential area of Pringle Bay will serve to facilitate the promotion of the development of sustainable livelihoods for the poor. The proposal would generate additional rates and taxes which can be utilised by the Local Authority to uplift the living conditions of the poorer communities through service delivery. The provision of additional housing opportunities would also increase employment opportunities for domestic staff. By obtaining employment, the poor are able to uplift their current socio-economic situation and will also be more resilient to the impacts of economic and environmental shocks.

Good Administration

- Although the owner of the property is not responsible for the administration of the planning practices of the Local Authority, the proposal will help the Local Authority facilitate this through the approval of an application that would help with good governance through the facilitation of a development that would also serve the broader community as discussed above.

MOTIVATION FOR THE REMOVAL OF THE RESTRICTIVE CONDITIONS***The financial or other value of the rights***

- The proposal is for the subdivision of the property with the removal of a restrictive title condition that prohibits this proposal (although it does make provision for a relaxation of the condition should it be deemed to be acceptable). As the proposal is for the subdivision of a consolidated property into its original portions (albeit with a slightly different orientation), it cannot be seen to have any negative impacts on any surrounding property or their existing rights. The original intention of this condition would have been to protect the low-density residential character of the area. They were introduced as a planning management mechanism at a time when no other such systems existed. The subsequent introduction of various spatial policies and municipal zoning schemes has negated the need to duplicate such management systems in the title deeds of the properties.
- No person or entity can argue that they will suffer any financial loss (value) as a result of the removal of these restrictions as they are not in favour of any property and/or individual. They are development restrictions that will still be governed by the parameters as set out within the various forward planning policies applicable to the area and the Overstrand Municipality Zoning Scheme, which is similarly applicable to all of the properties within the Overstrand municipal area. Thus, it can be argued that these restrictions hold no financial value to any surrounding property. They also do not pose a financial or other right implication on the person or entity which imposed the condition.

The personal benefit which accrue to the holder of rights

- As these restrictions are not for the benefit for any specific property or person, and the development parameters will still be governed by the applicable spatial planning policies and zoning schemes, the deletion of these conditions will not negatively impact on the personal benefits of any surrounding property owner. Thus, the deletion of these conditions will not be removing any benefits to the holder of these rights in terms of the restrictive conditions.

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

- The proposed removal of the restrictive title conditions will allow the owner of the property to develop the property further and apply the parameters as set out within the applicable spatial planning policies and zoning scheme. This will allow for the owner to maximise the value of the property and hence obtain some personal financial benefit. Any further development of the property will be subject to the submission of a Land Use application to the Local Authority. Furthermore, this personal financial gain will not lead to any loss in value (loss of benefits) of any of the surrounding properties.

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

- These restrictive conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. These conditions were aimed at protecting a certain character and guiding the further development of the properties in a certain direction. The need for such conditions to be placed within title deed has been replaced by the drafting of forward planning policies and zoning schemes. Thus, these development restrictions no longer need to be duplicated within the title deeds of individual

erven. Sufficient land use controls now exist so as to ensure that the property will not be developed to an inappropriate scale and density in the local context. Furthermore, the proposal (that requires the removal of these restrictive title conditions) is not seen to be out of character to that what exists within the surrounding urban framework. Thus, it can be argued that there would be no social benefit if the restrictive conditions were to remain in place.

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

- As discussed above, there are many benefits associated with the proposed land use intensification of the property, ranging from a more efficient urban structure to increased rates and taxes revenue for the Local Authority which can be utilised to meet a variety of social needs. These are also being achieved in this instance by merely returning a consolidated property to its original components. All of these benefits of residential densification will essentially lead to a social benefit to the municipal area as a whole through the more efficient utilisation of the surrounding bulk municipal services infrastructure and the provision of additional housing opportunities within the urban area.
- These conditions are also seen to be outdated in terms of both the character of the area and the various forward planning policies that have now been promulgated, which are now seen to be more appropriate land use management mechanisms. The introductions of such conditions into title deeds are no longer seen to be necessary in managing land use developments. Although the owners of the property will initially obtain the initial financial benefit of the proposed subdivision of the property, the social benefits associated with the densification of the property will be in the interests of the wider community.

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

- The proposed removal of the restrictive title conditions will not remove any development rights as enjoyed by any other property, as the relevant forward planning policies will govern any further development of the property and surrounding urban area. Thus, the property would be subject to the same development parameters to all of the adjoining properties (beneficiary of these restrictions) and will hence have no real impact on their rights at all.

REASONS FOR THE REMOVAL OF THE RESTRICTIVE TITLE DEED CONDITIONS

Condition 1.V.(4)(a)

- This condition states that the property may not be subdivided, and thus will have to be removed in order to be able to subdivide the property as proposed. The reasons (motivation) for this subdivision, and hence the removal of the restrictive condition, has been discussed further elsewhere in this motivation report.

Condition 1.V.(4)(b)

- This condition states that the property may only be used for residential purposes. As discussed above, these conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 erven that include some business uses (i.e., home occupation, guest house and day care centre) as primary uses. Thus, this restriction will have to be removed to allow the property

to have access to the primary uses of SR1 erven as applied to the entire Overstrand Municipal area. The removal of the restriction will also allow for the properties to make application for the applicable Consent Uses that are permitted with the approval from Council on the properties as well.

Condition 1.V.(4)(c)

- This condition states that only one dwelling may be erected on the property. Once again, these conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 erven that includes a second dwelling unit as a primary use. Thus, this restriction will have to be removed to allow the properties to have access to the primary uses of SR1 erven as applied to the entire Overstrand Municipal area, including the construction of a second dwelling thereon (should the owners choose to do so).

Condition 1.V.(4)(d)

- This condition states that only half the area of the property may be built upon. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 that state that the maximum coverage on erven larger than 400m² is 50%. As stated above, this development control now exists within the Overstrand Zoning Scheme Regulations and there is no need to duplicate this in the title deed of the property. Any deviation of this will be subject to the submission of the necessary Land Use applications.

Condition 1.V.(4)(e)

- This condition prescribes building lines that have to be adhered to. Once again, the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 that prescribe minimum street and side and rear building lines for SR1 erven. Also, the zoning scheme does make allowance for certain structures to be constructed within the building lines of SR1 erven. The removal of this restriction will allow the properties to have access to these development parameters without having to make application for the removal and/or relaxation of these restrictions.

Condition 1.V.(4)(f)

- This condition relates to the discharge of sewerage from the property. This condition was inserted to ensure that the development of dwellings would discharge sewerage in a certain manner. The development of the proposed portion will be governed through the approval of a building plan and the necessary sewerage reticulation will have to be dealt with during this process. The municipal engineering department will ensure that any approvals (of dwellings) will meet the most recent municipal standards with regard to sewerage reticulation/discharge from the property. This condition was also imposed as a control mechanism pending the establishment of a Local Authority for Pringle Bay. Such a Local Authority now exists and will be responsible for the management of sewerage reticulation in the area. Once again, there is no need to duplicate the management responsibilities of the Local Authority within the title deeds of individual erven.

5. ADMINISTRATIVE COMPLIANCE

| Methods of advertising | | Date published | Closing date for comments |
|---|----------------|-------------------|---------------------------|
| Notices | Yes | 16 September 2021 | 22 October 2021 |
| Ward councillor | Yes | 16 September 2021 | 22 October 2021 |
| Total comments | TWO (2) | | |
| Total letters of support | NONE | | |
| Was public participation undertaken in accordance with section 46- 50 of the By-law on Municipal Land Use Planning? | | | Yes |
| Was the application processed correctly? | | | Yes |
| Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? | | | Yes |

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

| Name | Date received | Summary of comments |
|-----------------------------------|---------------|--|
| Building Department | 16/09/2021 | No objection, any proposed structure of building including boundary walls, will require a building plan application to comply with all applicable law. |
| Fire Department | 22/09/2021 | No objection. |
| Engineering Services | 17/09/2021 | See Annexure G. |
| Environmental Management Services | 22/10/2021 | See Annexure H. |

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

During the public participation process two (2) letters were received. Comments/objections were received from the Pringle Bay Ratepayers' Association and J Spencer (Erf 540). (See Annexure E.)

The applicant was also provided with an opportunity to respond to the objections. (See Annexure F.)

The objections, applicant's response and Municipal Town Planner's response can be summarized as follows:

OBJECTION 1

No confirmation that proper notice was given to each of the erf owners in the small township extension of which Erf 1828 forms part of. We consequently submit that any decision by the Municipal Planning Tribunal will be unlawful. The applicant is under mistaken impression that the title deed restrictions do not confer praedial rights on the other erf owners in the township extension. It even goes as far as to state that the protection of Section 25 of the Constitution is not applicable.

Applicant's response

The Pringle Bay Ratepayers' Association (PBRA) show a clear lack of understanding of the application process. The applicant does not choose themselves how or to whom the application is advertised to. This is determined by the Local Authority. The application also in no way states that Section 25 of the Constitution of South Africa is not applicable as insinuated in the objection, but it does however state that the proposed removal of restrictions will not deprive any person of property as contemplated in said Section 25.

Town Planner's response

The Municipality does determine the distribution of an application. The property is located in Pringle Extension 3 and was submitted in 2021. The interpretation of the Title Deed was that should the deed not make specific reference to all owners that only the surrounding owners be notified as in this case. Subsequently in 2022, the Municipality obtain a legal opinion that stipulates that should the condition be part of the Township Establishment conditions that the all-owner rule would prevail even if it were not specifically stipulated.

Thus, in effect the application should have been distributed to all the owners, but in this case, there is no prejudice, since the conditions to be removed is not supported, except **Condition 1.v.(4)(a) and Condition 1.v.(4)(f), which do not require a removal of condition.**

It will therefore serve no purpose for to delay the application.

OBJECTION 2

In order not to have to repeat in this objection to the Municipal Planning Tribunal the legal history of title deed restrictions, we attached as an annexure hereto an appeal to the OM Appeal Authority we are aware of, on this point.

Applicant's response

In the appeal attached to the PBRA objection/comment it clearly states that, even though such applications should not be taken lightly, some of the restrictions in the title deed of the property concerned have become outdated and were hence removed from the title deed. Such is the case with the restrictions contained within the title deed of Erf 1828 Pringle Bay (the property).

Town Planner's response

It is duly noted, the application was submitted before the Legal Opinion was obtained and the interpretation was as indicated in the above response.

OBJECTION 3

There is in our opinion that there is no need for the complete removal of this restriction or the removal of any of the other title deed restrictions that are sought. The blanket removal of title deed conditions is not allowed. Provided that there is no objection, especially from a neighbour, we submit that removal of the subdivision restriction and re-instating it again to restore the two erven to their previous state is a pro-forma exercise that does not require the permanent removal of the title deed conditions. Why ask for the complete removal of the title deed conditions if the status quo is to be retained?

Applicant's response

These restrictions were placed within the title deeds of the erven within this portion of the township by the Administrator when approving the development in 1947. These were imposed as development controls at a time when no other such controls existed.

The Local Authority is now seen to be the custodians of these restrictive conditions. Section 39 of the Western Cape Land Use Planning Act (LUPA), 2014 now delegates the decision-making process with regard to the removal/amendment of Title Deed conditions to municipalities. It is stated in Section 39.(4) that "any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restriction in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval of the relevant municipality". As these restrictions were imposed by the Administrator, LUPA now delegates the decision-making authority in relation to such restrictive title conditions to the relevant municipality. These restrictions are now in conflict with the municipality's applicable development controls and forward planning policies and can thus be seen to be outdated.

The restriction relating to the prohibition of the subdivision of the property has to be removed from the title deed as the proposed subdivision is not taking place along the original cadastral boundary that separated the two (2) properties that were consolidated. The Local Authority is now the controlling Authority for these restrictions, and they are in direct conflict to their more recent Zoning Scheme and forward planning policies. The Zoning Scheme allows for certain business uses (home occupation) to be conducted from Single Residential (SR1) erven as a primary right. This is in conflict with the title deed restriction relating to the use of the property. With more people working remotely due to the COVID-19 pandemic the need to set up home offices to be able to work and/or conduct a business from home is becoming ever more prevalent / necessary. While the Local Authority acknowledges this need in their zoning scheme as gazetted in 2013, the title deed restriction as imposed in 1947 does not. The zoning scheme also allows for a second dwelling to be constructed on SR1 erven as a primary right. These are clear examples where such title deed restrictions that were imposed decades ago, that are in conflict to the municipality's development controls, have become severely outdated and have been replaced by other more relevant controls (i.e., zoning schemes).

Condition 1.V.(4)(f) has now become redundant as it was only applicable pending the establishment of a local authority. The owner of the property is making application for the removal of these restrictions in order for the property to have access to the primary rights according to its SR1 zoning.

Town Planner's response

The Ratepayers indicate that all owners need to be notified, but also indicated if the adjacent owners do not object – the subdivision can be viewed positively. The adjacent owner did object to the subdivision.

The Ratepayers indicated that an application for a subdivision is not necessary and can be restored by the original erven as per the General Plan of Extension 3. The reason being, that this practice was in place until 2013 with the inception of the Land Use Scheme. It is now a requirement to submit an application due to the fact that subdivision/consolidation took place without addressing the zoning and has led to split zonings not necessarily within the character of the area.

OBJECTION 4

The subdivision will not revert back to its original shape due to the orientation of the proposed subdivision.

Applicant's response

It should also be noted that the removal of these title deed restrictions will in no way infer other development rights on the land other than what is currently being applied for, and what is accommodated as primary rights under its SR1 zoning. This application will in no way absolve the owner of the property from compliance with any other relevant legislation, and any development rights not permitted within these legislations will be subject to the necessary land use application procedures. Any such applications will be evaluated by the relevant authorities in relation to their approved policies and/or legislations.

Town Planner's response

The objector is correct, but it was addressed in the application. The subdivision orientation is not similar, but the area in extent remains in place. Thus, the density as per the original layout of the township remains in place.

OBJECTION 5

The houses on the southern side along boundary road (from Freida Road to Central Road) have all been built to the rear of the properties. This is partially due to the northern portion of those properties being waterlogged. The proposed subdivision means that the new house will be built at the front of the property which will change the original intention.

Applicant's response

The proposal is for the subdivision of a consolidated property into two portions. This will be essentially returning the land to its two original components with the only difference being the orientation of the proposed properties. The subdivision is being proposed in this manner as the dwelling on the property has been constructed in such a position so as to make the subdivision along the original component line impossible. The only way that the property can be subdivided into two equal portions with similar dimensions is to orientate the subdivision line as proposed. The owner of adjoining Erf 540 states that all the erven has constructed their dwellings to the rear of their properties. While this may be true for many of the erven along Boundary Road, this is not the case with her own property at all. She has constructed a large double storey structure towards the front of her property that can be clearly seen on the subdivision plan and photo 1 below, thus negating any validity to her objection regarding the positioning of the future dwelling on the proposed portion. As there will be a 16m wide servitude (right of way and services) located along the common boundary with her property, the dwelling on the proposed portion will be located some distance from her boundary.

Town Planner's response

The assumption that the orientation of the proposed subdivision will change the character since most of the homes are built to the rear of the properties is not correct. Irrespective of the orientation of the erven, the owners can build anywhere on the erf in compliance with the building lines.

OBJECTION 6

Pringle Bay is known to have a very high-water table especially during the winter rains. The water will therefore be displaced due to the new building, causing the road to be even more flooded than usual and making it more difficult to travel on. Because there is water, the proposed new house will probably be higher than originally intended, obstructing views.

Applicant's response

This dwelling, as stated previously, will be subject to the NEMA regulations and will have to be constructed according to an Environmental Authorisation. It will also be subject to the height restrictions applicable to SR1 erven and will thus not significantly impact on her views at all.

Town Planner's response

The interpretation is not correct. There is no restriction on the locality of a house on the erven except the building lines and height restrictions.

OBJECTION 7

Should be noted that the electric fence installed on Erf 540 (my property), was placed 0.5m within the boundary line of the property to allow access for repairs and to keep the fence clear of trees etc. the electric fence is therefore not on the boundary. The proposed gate on Erf 1828 Pringle Bay goes right up to my fence and therefore partially built on my property blocking access. Any servitude granted cannot therefore go up to my fence and the gate structure will need to be moved.

Applicant's response

The proposed application will in no way infer any other development rights on the property, and any proposed extension to these rights will be subject to the relevant applications to the Local Authority. As can also be seen in Photo 1 below, the existing gate to The Property is located some distance away from the common boundary between the properties. The proposed servitude is relatively wide in order to be able to accommodate the existing gate and driveway as they are currently situated on the property. Thus, the gate structure is not located on the objector's property, and the servitude will only be registered up to the cadastral boundary of Erf 1828 as indicated on the subdivision plan.



Photo 1

Town Planner's response

It is unclear why this issue was raised since the so-called gate on Erf 540 was never reported or disputed. However, the applicant disagrees therefore it is proposed that the applicant appoint a land surveyor to establish the correct locality of the gate and should it transgress on Erf 540, the situation be rectified.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

See Paragraph 7 above.

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

10.1 Background

N/A

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

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

Spatial Justice

This principle does not apply to the proposed development as it will neither aid nor reduce spatial injustice.

Spatial sustainability

Erf 1828 Pringle Bay is the result of the consolidation of two (2) erven. The proposal to subdivide the land into two (2) erven once again will allow for the creation of an additional residential opportunity that promotes the sustainable utilisation of land without impacting on the surrounding residential character of the Pringle Bay neighbourhood.

Efficiency

Due to the property being a result of the consolidation of two erven, the site already has the capacity to service two single residential properties with regards to engineering services. Developing the site for two residential erven will therefore promote the efficient utilisation of land and services that are available. The subdivision will have a low impact on the surrounding property owners. The proposal will have no effect on municipal services and infrastructure.

Spatial Resilience

The proposal is aligned with the spatial resilience principals contained in the Provincial Spatial Development Framework, Spatial Development Framework and Overstrand Municipal Growth Management Strategy.

Good administration

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

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

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies**Overstrand Municipality Spatial Development Framework, 2020 (SDF)**

- The potential to increase the density of Pringle Bay is very limited due to the landscape setting, existing nature heritage and environment of Pringle Bay and remains residential.
- The proposal is a result of two consolidated erven; the site therefore has the capacity to service two single residential properties.
- The residential zoning of the subject property will be retained after subdivision thereof.

Overstrand Municipal Growth Management Strategy, 2010 (GMS)

- The erf falls within Planning Unit 1 of the Pringle Bay Area.
- There are no densification proposals for this planning unit however the site is a result of the consolidation of two erven. Subdividing the property once again into two erven will not increase the density and revert similarly to what it once was, with a different orientation.
- Due to the property being a result of the consolidation of two erven, the upgrading of civil services is not required as the site already has the capacity to service two single residential properties.

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

N/A

10.6 Impact on Municipal engineering services

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

A 16m wide servitude in favour of Remainder Erf 1828 is to be registered at the Deeds Office. See Annexure C.

10.7 Outcomes of investigations/applications i.t.o other legislation**Overstrand Municipality - Environmental Management Services**

- Erf 1828 contains a floodplain wetland (watercourse) and endangered Hangklip Sand Fynbos.
- Overstrand Municipality: Environmental Management Section – has no objection to the proposal however NEMA EIA Listed Activities will be triggered by any future development on the proposed subdivision. See Annexure H.

10.8 Existing and proposed zoning comparisons and considerations

The zoning of the proposed subdivided properties will remain Residential Zone 1.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Restrictive Title Deed conditions to be removed are as follows:

Clauses 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f). of Title Deed T14369/2020.

The applicant seeks to remove all conditions related to the development of the property and future properties.

It should therefore be noted that while the applicant requests that the majority of restrictive conditions to be removed, only the conditions that affect the current proposal shall be considered to be removed. Therefore, the evaluation will only deal with conditions 1.V.(4)(a) and 1.V.(4)(f).

The financial or other value of the rights:

There is no financial value attached to the rights. The Municipality has similarly approved the removal of such conditions in the past.

The personal benefit which accrue to the holder of rights in terms of the restrictive conditions:

The Municipality gains will not benefit personally should the conditions remains in place.

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

By removing the restrictive conditions, the applicant will be able to develop the property as per the Land Use Scheme.

The social benefit of the removal, suspension or amendment of the restrictive conditions remaining in place:

No changes will take place on the property and the owner will not be allowed to utilize the property in line with the land use parameters.

There will be no social benefit, should the restrictive conditions remain in place.

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

The social benefit for removing the restrictive title deed conditions to allow for the creation of an additional erf is positive. In addition, the property was the result of a consolidation, subdividing the property into two erven reverts the property to its original approximate sizes with a different orientation.

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

The removing of the restrictive conditions will not remove any other additional rights. The owner still has to comply with the Land Use Scheme.

12. THE DESIRABILITY OF THE PROPOSAL

The erf is located in a residential area in the town of Pringle Bay. Erf 1828 measure approximately 4705m² in extent and is the result of the consolidation of two (2) erven (538 and 539). The properties were consolidated in 1994. The property consists of a main dwelling sited on the south-western (rear) side of the property with the existing garage on the eastern side of it.

The application is for the following and will be addressed as follows:

SUBDIVISION

The owner intends to subdivide Erf 1828 Pringle Bay to create two (2) erven of similar sizes to the original erven namely: Portion 1 ($\pm 2369\text{m}^2$), Remainder Erf 1828 ($\pm 2336\text{m}^2$) and a 16m wide service servitude in order to permit access to Remainder Erf 1828. The owner intends to revert the properties back to two (2) separate erven albeit with a different orientation.

Proposing that the properties be subdivided back to its original two (2) erven is not possible due to the location of the existing structures located on the current property. It was therefore that the applicant proposed that the property be subdivided in the above-mentioned manner.

Remainder Erf 1828 will measure $\pm 2336\text{m}^2$ in extent and consist of the existing structures which are located on the current Erf 1828. Portion 1 is to measure $\pm 2369\text{m}^2$ in extent which is for the creation of an additional residential property. The 16m wide service servitude is to allow for access to Remainder Erf 1828 from Boundary Road.

The re-instatement of two (2) subdivided erven cannot be done as in the past as per application at the Land Surveyor General. The Land Use Scheme has made it mandatory that an application for re-instatement and consolidation be submitted to ensure compliance.

Although the built structures are located to the rear of the erven in the area due to erven being waterlogged, this may be correct, but nothing prohibits any owner to build towards the street. It is a personal choice and has nothing to do with original intention. This is an assumption and not determined in the title deed and/or the Land Use Scheme.

The intention is to subdivide the property into two (2) portions with similar sizes to the original properties with a different orientation. Although the strategic documents (GMS & SDF) do not propose any densification in this area, the proposed subdivision will return the density back to the original state.

From a town planning perspective, the proposed subdivision is acceptable for the following reasons:

- The positioning of the existing structures makes it impossible to revert the subdivision into its original size and orientation without demolishing the structures. In addition, a servitude is also required for the Remainder Erf 1828 for access purposes.
- The proposed additional residential property will not drastically change the character of the area and streetscape, due to neighbouring properties (Erf 540 and Erf 535) having buildings positioned closer to Boundary Road.
- Future development on Portion 1 is subject to compliance with the Land Use Scheme parameters and any other relevant legislation. Taking note that the Environmental Management Services Department has no objection to the proposed subdivision, however future development of Portion 1 will trigger NEMA EIA listed activities. See Annexure H.

Further recommendation is that the proposed driveway leading to Remainder Erf 1828 be repositioned as it encroaches onto the proposed new Portion 1.

REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

The application also entails the removal of restrictive title deed conditions in terms of Section 16.(2)(f) of the aforementioned By-Law with reference to the conditions 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f). of Title Deed T14369/2020 to accommodate the proposed application.

Restrictive conditions to be removed:

Condition 1.v.(4)(a) states that the property cannot be subdivided. The property in its current state was a result of the consolidation of two erven (Erf 538 & Erf 539). The subdivision of Erf 1828 will create two (2) residential erven with similar sizes to the original properties with a different orientation.

The application for the condition is not necessarily due to the fact that Title Deed Condition I. described the property incorrectly in relation to the Land Surveyor's Diagram 10654/1994. This may be viewed as a typing error.

The Title Deed describes the conditions of the two original properties under Condition I. and II., respectively. However, the conditions were not transferred to the consolidated erf and are thus only applicable to the separate erven as established with the township establishment of Pringle Bay 3, 1947, re numbering in 1973.

The no-subdivision restrictive condition is only applicable on the two original erven and serves no purpose in this application due to the different configuration of the proposed subdivision. The condition of no-subdivision will however be made applicable to the newly created portions to ensure that no densification takes place in the area.

The Title Deed of the consolidated erf does not have the following condition e.g “On consolidation of this erf or any portion thereof with any abutting erf which is subject to the same conditions as herein set forth, these conditions shall apply to the consolidated holding as it was one erf”

The removal of the condition is supported since it does not restrict a subdivision. Furthermore, is the subdivision condition only applicable if the configuration was the same as per the original general plan

Restrictive conditions to not be removed:

Condition 1.v.(4)(f) relates to the discharge of sewerage from the property. The Engineering Services Department of Overstrand Municipality have certain minimum conditions that are to be met (refer to the Annexure E).

The removal of the condition is not required, since the applicant has to comply with the Municipality's rules and regulations pertaining sewerage.

Condition 1.v.(4)(b) relates to the use of the property being used only for residential purposes. No proposal is made to utilise portion of the properties for any other uses other than for residential purposes.

Therefore, the removal of the restrictive condition is not supported.

Condition 1.v.(4)(c) relates to the applicable structures that are permitted on the property. The proposal does not make reference to any additional dwelling or structure other than the existing dwelling and garage (such outbuilding or structure ordinarily used for residential purposes).

Therefore, the removal of the restrictive condition is not supported.

Condition 1.v.(4)(d) relates to the allowable coverage that the property may be built upon. The proposal does not make any notion of new dwellings, structures or additions. The existing structures on the proposed Remainder Erf 1828 are within the permissible coverage.

Therefore, the removal of the restrictive condition is not supported.

Condition 1.v.(4)(e) relates to the prescribed building line restrictions. The existing structures on the proposed Remainder Erf 1828 do not traverse the prescribed boundary lines of either the title deed or land use scheme parameters and there are no structures proposed on the proposed new Portion 1.

Therefore, the removal of the restrictive condition is not supported.

Considering the above-mentioned proposed application can be considered desirable.

CONCLUSION:

Notwithstanding the above-mentioned reasons given for Conditions I(V)(4)(b) to I(V)(4)(f) and II(V), are the conditions not applicable to Erf 1828 and the Scheme Regulations are applicable since it was not made applicable to the consolidated erf.

13. RECOMMENDATION

1. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1828, Pringle Bay for the removal of restrictive title conditions 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e) and 1.V.(4)(f) of Title Deed T14369/2020, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
2. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 1828, Pringle Bay for the removal of restrictive title conditions 1.V.(4)(a) of Title Deed T14369/2020 to accommodate the proposed application, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
3. that the application in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 1828, Pringle Bay into two (2) portions, namely Portion A ($\pm 2369\text{m}^2$) and a Remainder ($\pm 2336\text{m}^2$) with a 16m wide servitude (registered in favour of Remainder Erf 1828 to allow for access), **be approved** in terms of Section 61 of the By-Law;

that the approval of Points 2 & 3 above in terms of Section 61 of the By-Law be subject to the following conditions:

- (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan No. C6129/Sub2 dated June 2021 as submitted with the application;
 - (b) that a land surveyor be appointed to proof that the driveway does not transgress onto Erf 540, and submitted to the Municipality before the SG diagram be approved;
 - (c) that subject to the outcome of Point (b) above, the driveway of Remainder Erf 1828 be relocated, if necessary, to not traverse the newly created Portion 1 boundary;
 - (d) that any future development of Portion 1 be subject to compliance with Environmental Authorisation (attached as Annexure H);
 - (e) that none of the buildings or structures may be utilized for any usage on Portion 1 until such time it has been registered and a building plan has been approved and built according to plan;
 - (f) the applicant is required to submit a building plan that correctly indicates the layout and new developments taking place on Portion 1;
 - (g) that the conditions in the Services Report (attached as Annexure G), be complied with;
 - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
 - (i) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
4. that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

POINT 1 and 2

- ❖ The application for a blanket approval is not justified.
- ❖ The proposed application is only for the subdivision of the property into two (2) portions and does not propose any building and or structure on the proposed new additional residential erf.
- ❖ The applicant does not propose anything that would warrant the need for the removal of conditions 1.V.(4)(a) 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e) and 1.V.(4)(f)

- ❖ Removal of Condition 1.V(4)(a) is not required, since it makes reference to the original erven 538 and 539 (renumbered in 1973) and the condition of subdivision applicable should the erven be consolidated was not transferred to the consolidated Title Deed. The subdivision condition is also not applicable to reconfiguration of erven, but relates to the original configuration of the erven before consolidation.

POINT 3

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ The proposed application fits in with the character of the surrounding area and is desirable.
- ❖ The proposed development will not negatively impact the surrounding property owners.
- ❖ The proposed subdivision will revert to the original approval of Pringle Bay Extension 3 in terms of density with no additional erven be created.
- ❖ Although the configuration is different, no densification takes place since it is in line with the original extent of erven in the area.

15. ANNEXURES

| | |
|-------------|---|
| Annexure A: | Locality Plan |
| Annexure B: | Motivation Report |
| Annexure C: | Subdivisional Plan |
| Annexure D: | Title Deed T14369/2020 |
| Annexure E: | Objections received |
| Annexure F: | Applicant's response to objections received |
| Annexure G: | Services Report |
| Annexure H: | Environmental Management Services |

SIGNATURES

REGISTERED PLANNER

Name: **H VAN DER STOEP**

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

Signature: _____

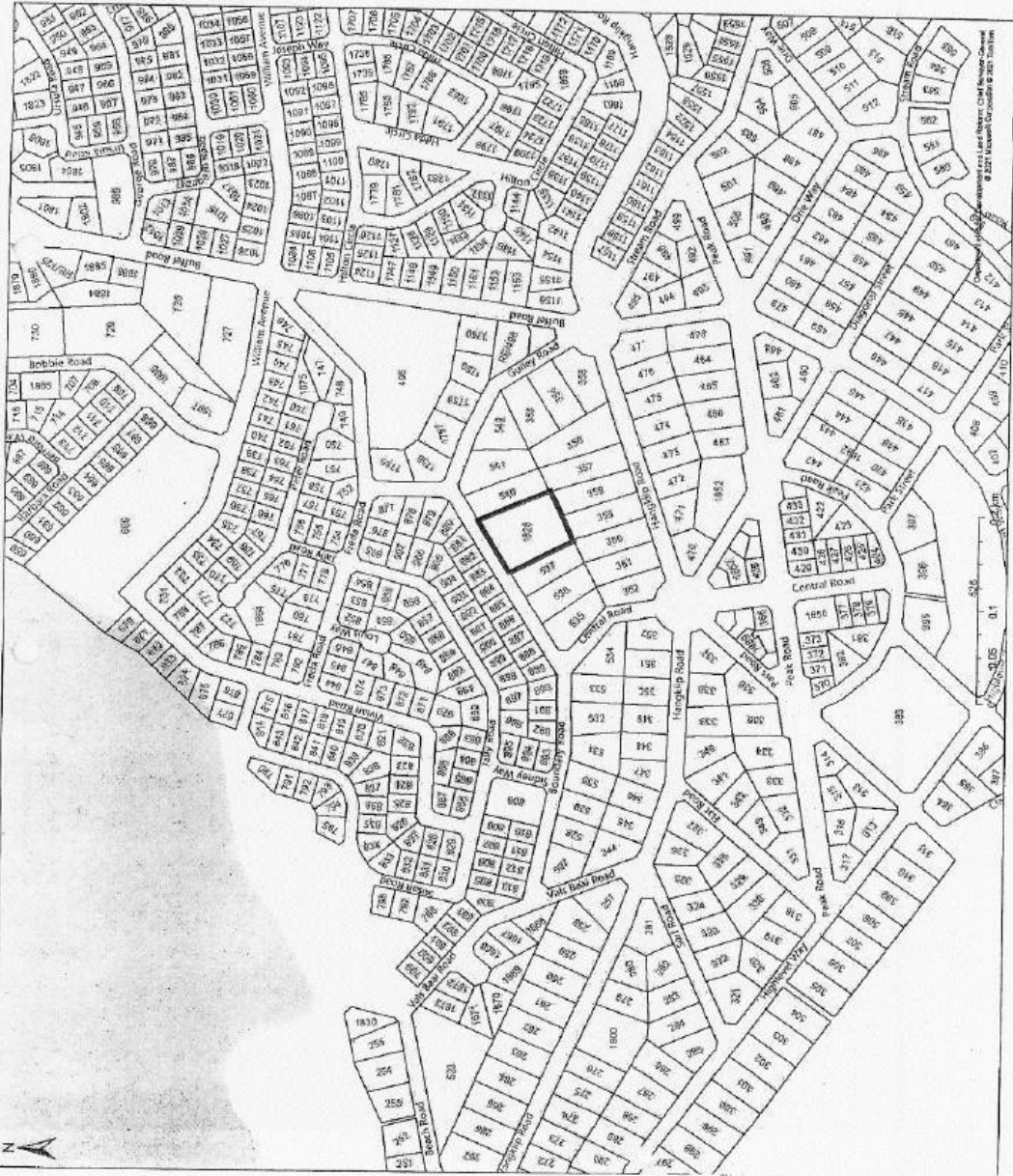
Date: _____

ERF 1828 PRINGLE DAN:
LOCALITY PLAN

Legend
□ Erf
▣ The Property

Annexure A

Scale: 1:4 514
Date created: April 7, 2021



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Annexure B 1/18

Proposed Removal of Restrictions and Subdivision of Erf 1828, Pringle Bay, Overstrand Municipality, Administrative District of Caledon.

MOTIVATION REPORT

PROPOSED REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND SUBDIVISION OF ERF 1828, PRINGLE BAY, OVERSTRAND MUNICIPALITY, ADMINISTRATIVE DISTRICT OF CALEDON

1 PROPERTY DESCRIPTION

The property in question is Erf 1828, Pringle Bay, situate in the Overstrand Municipality, Division of Caledon, Western Cape Province (Hereafter referred to as **The Properties**).

2 REGISTRATION DETAILS

Registered Owner: Brooke Collis and Cindy Anderson

Area: 4 705 square meters.

Title Deed: T14369/2020

Existing Zoning: Residential Zone 1

3 THE APPLICATION

Application is hereby made on behalf of the registered owner for the following:

- i) The removal of restrictive title conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) from deed number T14369/2020 in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- ii) The subdivision of Erf 1828 Pringle Bay in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.



4 LOCALITY

The property is located within the urban area of Pringle Bay along Boundary Road. It is located on the southern side of Boundary Road, and is bordered on the eastern side by Erf 540 on the western side by Erf 537 and on the southern side by Erven 358 and 359. The locality plan indicating the location of the properties in relation to the surrounding properties has been attached in **Annexure 1**. Photo 1 below is an aerial image of the location of the properties.

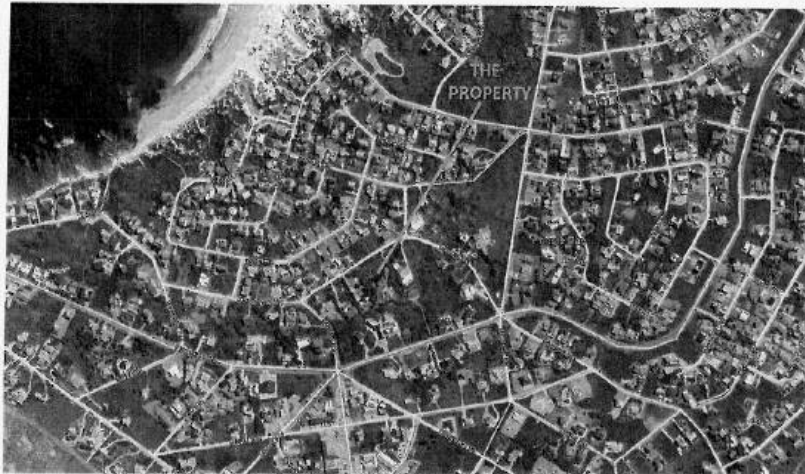


Photo 1: Aerial image of the property.

5. LAND USE AND ZONING

The property is zoned as Residential Zone 1 and is currently being utilised according to its zoning as a single residential property containing one dwelling unit. All of the surrounding properties within the surrounding neighbourhood are also zoned for single residential purposes purposes, and the majority of them have been developed and are utilised according to their zoning. No alteration to the existing zoning of the property is being proposed as a result of this application.

6. FORWARD PLANNING

6.1 The Spatial Planning and Land Use Management Act, 2013 (SPLUMA).

Generally SPLUMA seeks to create a uniform and effective spatial planning and land development regime for the whole of the country. The details of the objectives of SPLUMA are set out in section 3 of the Act and include:

- to provide a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;
- to ensure that the system of spatial planning and land use management promotes social and economic inclusion;
- to provide for development principles and norms and standards;
- to provide for the sustainable and efficient use of land;
- to provide for cooperative government and intergovernmental relations amongst the national, provincial and local spheres of government; and
- to redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems.

In order to realise these objectives, SPLUMA requires that Spatial Development Frameworks be prepared and adopted by the national, provincial and municipal spheres of government. SPLUMA sets out numerous development principles, norms and standards that are to guide spatial planning, land use management and land development. These principles include:

- spatial justice, which includes a commitment to redress past spatial and other development imbalances;
- spatial sustainability, which requires land development to be aligned with fiscal and Institutional means;
- efficiency, requiring land development to optimally use existing resources and infrastructure;
- spatial resilience, which provides that flexibility in spatial plans, policies and land use management systems must be provided for specifically so that sustainable livelihoods is ensured in communities affected by development; and
- good administration.

The proposed subdivision of the property to provide for a denser neighbourhood that provides for a wider variety of residential options can be seen to be compliant to these policy criteria.

6.2 Provincial Spatial Development Framework (PSDF)

The WCPSDF was adopted in 2005 and is aimed at guiding development within the Western Cape province, and is a broad spatial policy that will inform more detailed district and local Spatial Development Frameworks.

The Provincial Spatial Development Framework (PSDF) also identifies an appropriateness for increased densities through urban restructuring which would allow (denser) urban areas to function in a more efficient manner (the PSDF identifies an average of 25 dwelling units per hectare as a density above which an urban area will perform adequately). The establishment of the Urban Edge supports this need for the increased densification of the existing urban areas, which in turn would facilitate the protection of the natural mountain slopes of the area from further development. The subdivision of the property will serve to facilitate this desired increase in urban densities within the Urban Edge whilst at the same time allowing the area to retain its existing (and originally intended) single residential character and sense of place, as the proposal is still generally in line with all the relevant forward planning policies for the area.

The main objective of the PSDF in promoting increased densities within the urban areas is to halt the phenomenon of urban sprawl into the surrounding environmentally sensitive areas (such as up mountain slopes and onto agricultural land). The proposed subdivision of the property is in line with this principle of halting the further erosion of the scenic beauty of the area by creating increased housing opportunities within the Urban Edge. This will help to prevent the further need for future peripheral housing located outside the established urban boundaries, by providing such housing options within the existing Urban Edge boundary. The PSDF promotes the utilisation of subdivisions as a means to achieve the increased (appropriate) densification of the urban areas.

The property is a previous consolidation of two erven and is thus substantially larger than all of the surrounding residential properties in the neighbourhood. Thus the property is in a position where it can accommodate the desired increased densification of the urban fabric, whilst at the same time having no significant impacts on the existing single residential character of the surrounding neighbourhood. It is proposed that the property be subdivided into one portion and a remainder as indicated on the subdivision plan that has been attached hereto (Plan No. C6129/Sub2).

As the PSDF places a strong emphasis on the prevention of the phenomenon of urban sprawl, the subdivision of the property to allow for increased housing opportunities can be seen to be in line with this proposal, as it is providing for an essential need in a manner that will help to integrate land-use and transport and infrastructure planning, which in turn will ensure that the provision of essential services will be more affordable and sustainable. This can be seen as the main reason why the PSDF calls for the increase in the densities of the existing low density urban areas, as the provision of services to these urban areas becomes more cost effective the higher the densities.

There are aspects to urban restructuring other than densification that have also been identified, such as the efficient geographical location of activities in order to minimise the need for vehicular transportation. The location of additional housing stock in close proximity to essential services and infrastructure within an urban area is extremely important with regard to the delivery of services. The subdivision of the property will generate housing that is located within the existing urban framework situated in close proximity to many essential services (main roads, open spaces, town centre, etc.) This densification and development of the urban areas should also occur with due regard for the environmental and heritage concerns of the specific area. Policy UR2 of the PSDF makes the short to medium term achievement of this urban densification target (25 dwelling units per hectare) mandatory.

6.3 Overstrand Spatial Development Framework (SDF)

The property has been reserved for urban development within the Overstrand Spatial Development Framework (SDF). The SDF aims to ensure that development is confined within the urban edge and ensure the protection of the existing coastal village character of Pringle Bay. The SDF also calls for the protection of the natural environment within which Pringle Bay located. Ensuring that all development takes place within the established urban footprint will serve to meet these criteria.

As this proposal is merely for the subdivision of the property (which is actually a previous consolidation of Erven 538 and 539), and no alteration to the existing zoning rights is being applied for, this proposal can be seen to be in line with these policy criteria. The proposed portions will be similar in size to the original properties that were consolidated (albeit with a slightly different orientation), and will thus not impact on the role of Pringle Bay as a retirement village at all. Illustration 1 below is an extract from the SDF indicating the location of the properties.

Proposed Removal of Restrictions and Subdivision of Erf 1828, Pringle Bay, Overstrand Municipality, Administrative District of Caledon.



Illustration 1: Extract from the Overstrand SDF.

6.4 Overstrand Growth Management Strategy (OGMS)

The OGMS is a draft technical document that is intended to inform the finalisation of a growth management strategy that will promote the longer term sustainability of the Overstrand municipal area. The document highlights the importance of densification as an important tool in achieving a growth management plan for the municipal area. The OGMS states that there are very limited densification opportunities in Pringle Bay with the strategy calling for the provision of a prominent green structuring element that will provide visual prominence and legibility to the suburban environment. Although no densification proposals are made within the Planning Unit within which the property is located, the subdivision of the consolidated property will essentially be returning the proposed portions to their originally planned densities. Thus the proposed subdivision of the property can be viewed to be in line with these policy criteria.

7. RESTRICTIVE CONDITIONS OF TITLE

There are restrictive conditions of title contained within the Title Deed that would impact on the proposed subdivision of the property. This is confirmed in the copy of the title deed which has been attached in **Annexure 2** of this application. Conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) were imposed by the Administrator when approving of the extension of the subdivision of a

portion of the township. A copy of the General Plan of the subdivision has been attached in **Annexure 1**. These development parameters are now governed by the various forward planning policy documents and zoning schemes. Thus an application for the deletion of restrictive title conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) contained within Title Deed T14369/2020 is being submitted as part of this application.

As is expanded in more detail below, the proposed removal of the restrictive condition of title can be seen to be in the public interest due to the proposal aiding in achieving the goals of residential densification as set out within the forward planning policies applicable to the area. This proposal will be beneficial in that it will help allow for a more efficient and cost effective bulk municipal services network that can be seen to be beneficial to the community as a whole. The application is also proposing a development that can be seen to be compatible with the surrounding uses that will in no way affect the existing rights of the surrounding residential properties. The proposal is also in line with the applicable SDF.

8. MOTIVATION

8.1 Physical characteristics of the site

The property is approximately 4705m² in extent and is a consolidation of two erven (538 and 539) and is thus far larger than the majority of the surrounding single residential properties within the area. The property consists of one residential dwelling that is located adjacent to the southern boundary of the property with the majority of the property either being utilised as garden area or standing vacant. The property slopes very gently towards the north (towards Boundary Road) and will not pose any problems with respect to the construction of a dwelling unit on the proposed portion.

8.2 Subdivision

All of the surrounding properties that have been developed have been done so according to their single residential zonings. It is proposed that the property be subdivided into one portion (measuring approximately 2369m² in extent), and a remainder (measuring approximately 2336m² in extent). The main dwelling will be located on the remaining extent and will continue to function as a single residential property as no alterations to the zoning of the property is proposed as a result of this application. The proposed portion will also function as a single residential property according to its zoning. The dimensions of the proposed portions would be more than adequate for an erf in an exclusive residential neighbourhood, and the proposed areas of around 2350m²

are more than generous by today's standards, where the care and maintenance of large gardens is becoming prohibitively expensive (not to mention socially irresponsible in light of water shortages).

The proposed subdivision will be done according to the subdivision plan (Plan No.: C6129/Sub2) as attached in **Annexure 1**. The proposed remaining extent will gain access onto Boundary Road via a 16m wide servitude right of way panhandle adjacent to the eastern boundary of the property. It is proposed that this servitude will accommodate both the access and services to the remaining extent. The proposed portion will then gain access directly onto Boundary Road. Thus the proposed subdivision will create two properties that are similar in size to the original two properties that were consolidated to form Erf 1828. The only difference being that they will be orientated differently with one property being located behind the other (instead of next to each other as Erven 538 and 539 were).

The property is located within a well established urban residential neighbourhood, and is considerably larger than all of the surrounding single residential erven. A copy of the Surveyor General Noting Sheet and Locality Plan have been attached in **Annexure 1**, which indicate the extent of the surrounding properties. Although the proposed subdivision of the property will accommodate a slight increase in the existing residential densities, it will not provide any more erven than what were originally planned for as it will essentially only be returning the property to its original components. As the proposal will lead to the creation of only one additional single residential property (that was actually originally planned for), the proposal can also be seen to be in line with the established single residential character of the area.

8.3 Character of the surrounding area

Although this subdivision will lead to a slight increase in the residential densities of the area, the proposed properties that will be generated as a result of this application will not be totally out of character with what already exists within the surrounding residential neighbourhood at all. This proposal is seen to be in line with the SDF in that it is only re-subdividing a property that was previously consolidated

The proposed development of the property can thus be seen as a prime example where the development potential of underutilised residential land located within the urban fabric will be utilised/developed to its fullest potential, whilst at the same time not being entirely contrary to any forward planning policy applicable to the area.

All of the surrounding properties are still currently zoned for single residential purposes, and their uses (those that have been developed) are in line with their zonings. It is being proposed that the property be subdivided into two single residential properties that have the same land use zone as all of the adjoining properties. A copy of the proposed subdivision plan (Plan No.: C6129/Sub2) has been attached in **Annexure 1** which indicates the location of the proposed subdivided portions, as well as the existing structures located thereon.

The proposed subdivision of the property into two single residential properties will not detract from the quality of the surrounding environment, as the proposed properties will measure $\pm 2389\text{m}^2$ and $\pm 2336\text{m}^2$ in extent. The existing dwelling unit will be retained on the remaining extent, thus ensuring that the existing visual character of the property is largely maintained. The property can thus be subdivided into two large erven without compromising the integrity of the existing dwellings/structures or the character of the surrounding neighbourhood. The subdivision of the property will lead to the productive use of residential land as a scarce urban resource that will provide for additional housing opportunities within the urban edge by returning a consolidated property to its original components. The proposal is thus compliant with the various applicable forward planning policies.

The proposed development will also have a minimal impact on the existing streetscape as there will only be one additional entrance created onto Boundary Road. This proposal will also only lead to the creation of one additional single residential property and a change of zoning will not be required. This will thus not lead to a substantial alteration to the existing streetscapes along the adjoining road.

The inherent high value of the land (and hence the individual portions) will ensure that any future development of the proposed portion will be done in such a manner so as to provide for a high quality product that will not detract from the surrounding property values. The recent trend of owners of larger properties wishing to economise on the sizes of their properties due to escalating maintenance costs will also ensure that the smaller properties will not be seen to be an inferior product, but rather the inherent value of a more economically sized property located within the neighbourhood is readily acknowledged. This holds especially true for properties that have been recently consolidated and are far larger than any of the surrounding erven. The proposal will also lead to the creation of a new residential property that will introduce inhabitants to the area with a similar socio-economic profile to the existing residents. It is not being proposed to change the use of the property, but merely to introduce incremental residential densification which is not out of context with the surrounding neighbourhood.

8.4 Removal of Restrictive Title Conditions

As stated previously, the title deed for the property does contain restrictive conditions that will impact on the subdivision of the property, and will have to be removed in order to be able to accommodate the proposed development of the property. It is thus being proposed that conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) be deleted from deed number T14369/2020 as contemplated in Section 39 of the Land Use Planning Act (LUPA) No. 3 of 2014, as well as Section 35 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. In order to be able to subdivide the property, conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) need to be removed from the title deed.

The proposal will also not deprive any person of property as contemplated in Section 25 of the Constitution of South Africa. The proposed removal of the restrictive condition will in no way lead to any degradation of the social benefits as currently enjoyed by the surrounding property owners, as the application proposes a development that is seen to be compatible with the surrounding land uses. The proposed removal of the restrictive condition will also not lead to any loss of development rights by adjoining owners.

As stated in Section 39(5) of LUPA, when a municipality considers the removal, suspension or amendment of a restrictive condition, it must give due regard to the following:

8.4.1 The financial or other value of the rights.

The proposal is for the subdivision of the property with the removal of a restrictive title condition that prohibits this proposal (although it does make provision for a relaxation of the condition should it be deemed to be acceptable). As the proposal is for the subdivision of a consolidated property into its original portions (albeit with a slightly different orientation), it cannot be seen to have any negative impacts on any surrounding property or their existing rights. The original intention of this condition would have been to protect the low density residential character of the area. They were introduced as a planning management mechanism at a time when no other such systems existed. The subsequent introduction of various spatial policies and municipal zoning schemes has negated the need to duplicate such management systems in the title deeds of the properties.

No person or entity can argue that they will suffer any financial loss (value) as a result of the removal of these restrictions as they are not in favour of any property and/or individual. They are development restrictions that will still be governed by the parameters as set out within the various forward planning policies applicable to the area and the

Overstrand Municipality Zoning Scheme, which is similarly applicable to all of the properties within the Overstrand municipal area. Thus it can be argued that these restrictions hold no financial value to any surrounding property. They also do not pose a financial or other right implication on the person or entity which imposed the condition.

8.4.2 The personal benefits which accrue to the holder of the rights.

As these restrictions are not for the benefit for any specific property or person, and the development parameters will still be governed by the applicable spatial planning policies and zoning schemes, the deletion of these conditions will not negatively impact on the personal benefits of any surrounding property owner. Thus the deletion of these conditions will not be removing any benefits to the holder of these rights in terms of the restrictive conditions.

8.4.3 The personal benefits which will accrue to the owner removing the conditions.

The proposed removal of the restrictive title conditions will allow the owner of the property to develop the property further and apply the parameters as set out within the applicable spatial planning policies and zoning scheme. This will allow for the owner to maximise the value of the property and hence obtain some personal financial benefit. Any further development of the property will be subject to the submission of a Land Use application to the Local Authority. Furthermore, this personal financial gain will not lead to any loss in value (loss of benefits) of any of the surrounding properties.

8.4.4 The social benefit of the restrictive conditions remaining in place.

These restrictive conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. These conditions were aimed at protecting a certain character and guiding the further development of the properties in a certain direction. The need for such conditions to be placed within title deed has been replaced by the drafting of forward planning policies and zoning schemes. Thus these development restrictions no longer need to be duplicated within the title deeds of individual erven. Sufficient land use controls now exist so as to ensure that the property will not be developed to an inappropriate scale and density in the local context. Furthermore, the proposal (that requires the removal of these restrictive title conditions) is not seen to be out of character to that what exists within the surrounding urban framework. Thus it can be argued that there would be no social benefit if the restrictive conditions were to remain in place.

8.4.5 Social benefit of the removal of the restrictive conditions.

As discussed above, there are many benefits associated with the proposed land use intensification of the property, ranging from a more efficient urban structure to increased rates and taxes revenue for the Local Authority which can be utilised to meet a variety of social needs. These are also being achieved in this instance by merely returning a consolidated property to its original components. All of these benefits of residential densification will essentially lead to a social benefit to the municipal area as a whole through the more efficient utilisation of the surrounding bulk municipal services infrastructure and the provision of additional housing opportunities within the urban area.

These conditions are also seen to be outdated in terms of both the character of the area and the various forward planning policies that have now been promulgated, which are now seen to be more appropriate land use use management mechanisms. The introduction of such conditions into title deeds are no longer seen to be necessary in managing land use developments. Although the owners of the property will initially obtain the initial financial benefit of the proposed subdivision of the property, the social benefits associated with the densification of the property will be in the interests of the wider community.

8.4.6 Whether the removal of the restrictive conditions will completely remove all rights enjoyed by the beneficiary, or only some of these rights.

The proposed removal of the restrictive title conditions will not remove any development rights as enjoyed by any other property, as the relevant forward planning policies will govern any further development of the property and surrounding urban area. Thus the property would be subject to the same development parameters to all of the adjoining properties (beneficiary of these restrictions), and will hence have no real impact on their rights at all.

It is being proposed that conditions 1.V.(4) (a), (b), (c), (d), (e) and (f) be deleted from deed number T14369/2020. The reasons for the removal of each of these conditions will be discussed below.

8.4.7 Condition 1.V.(4) (a)

This condition states that the property may not be subdivided, and thus will have to be removed in order to be able to subdivide the property as proposed. The reasons (motivation) for this subdivision, and hence the removal of the restrictive condition, has been discussed further elsewhere in this motivation report.

8.4.8 Condition 1.V.(4) (b)

This condition states that the property may only be used for residential purposes. As discussed above, these conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 erven that include some business uses (i.e. home occupation, guest house and day care centre) as primary uses. Thus this restriction will have to be removed to allow the property to have access to the primary uses of SR1 erven as applied to the entire Overstrand Municipal area. The removal of the restriction will also allow for the properties to make application for the applicable Consent Uses that are permitted with the approval from Council on the properties as well.

8.4.9 Condition 1.V.(4) (c)

This condition states that only one dwelling may be erected on the property. Once again, these conditions were typically placed within title deeds of properties in order to place development controls within newly established townships in the past. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 erven that includes a second dwelling unit as a primary use. Thus this restriction will have to be removed to allow the properties to have access to the primary uses of SR1 erven as applied to the entire Overstrand Municipal area, including the construction of a second dwelling thereon (should the owners choose to do so).

8.4.10 Condition 1.V.(4) (d)

This condition states that only half the area of the property may be built upon. The introduction of the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 that state that the maximum coverage on erven larger than 400m² is 50%. As stated above, this development control now exists within the Overstrand Zoning Scheme Regulations and there is no need to duplicate this in the title deed of the property. Any deviation of this will be subject to the submission of the necessary Land Use applications.

8.4.11 Condition 1.V.(4) (e)

This condition prescribes building lines that have to be adhered to. Once again, the Overstrand Zoning Scheme Regulations has introduced development controls to SR1 that prescribe minimum street and side and rear building lines for SR1 erven. Also the zoning scheme does make allowance for certain structures to be constructed within the building lines of SR1 erven. The removal of this restriction will allow the properties to have access

to these development parameters without having to make application for the removal and/or relaxation of these restrictions.

8.4.12 Condition 1.V.(4) (f)

This condition relates to the discharge of sewerage from the property. This condition was inserted to ensure that the development of dwellings would discharge sewerage in a certain manner. The development of the proposed portion will be governed through the approval of a building plan and the necessary sewerage reticulation will have to be dealt with during this process. The municipal engineering department will ensure that any approvals (of dwellings) will meet the most recent municipal standards with regard to sewerage reticulation/discharge from the property. This condition was also imposed as a control mechanism pending the establishment of a Local Authority for Pringle Bay. Such a Local Authority now exists and will be responsible for the management of sewerage reticulation in the area. Once again, there is no need to duplicate the management responsibilities of the Local Authority within the title deeds of individual erven.

8.5 Planning Principles

As part of the motivation for this application the following criteria as set out within Section 42 of the Spatial Planning and Land Use Management Act, 2013 (ACT 16 of 2013) and Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014) were regarded.

Spatial Justice

The subdivision of the property will allow for the creation of a wider variety of residential options in the area, which will not contribute further to any spatial injustice. By increasing the number of residential opportunities in the area, the proposal will, to a degree, aid in redressing past spatial injustices through the generation of increased rates and taxes, which can be utilised by the Local Authority in the provision of services to previously disadvantaged areas.

Spatial Sustainability

The proposal is for the subdivision of a large property into two single residential erven. As this property is also a previous consolidation of two erven, the proposal will propose a more sustainable utilisation of the land without impacting the existing (intended) residential character of the neighbourhood. This proposal will allow for the creation of additional residential opportunities that would fulfil a demand within the existing urban footprint. This would ensure that the need for such opportunities are met within the existing urban footprint, thus negating the need for such developments to be located in

the surrounding sensitive countryside and up visually and environmentally sensitive mountain slopes. Such a development would easily be able to achieve this without impacting on the existing village character of Pringle Bay.

Efficiency

The proposed subdivision of the property would allow for a more appropriate intensification of the land use on the property by returning the erf to its original components. This would increase the efficiency of the property in that the proposed urban typology (located within an established residential area) would be far more efficient to service. Placing such a development within an existing urban residential area will also serve to minimise negative financial, social, economic and environmental impacts through the efficient geographical location of such facilities to prevent urban sprawl and excessive travel distances.

Spatial Resilience

The provision of additional housing opportunities within the established urban residential area of Pringle Bay will serve to facilitate the promotion of the development of sustainable livelihoods for the poor. The proposal would generate additional rates and taxes which can be utilised by the Local Authority to uplift the living conditions of the poorer communities through service delivery. The provision of additional housing opportunities would also increase employment opportunities for domestic staff. By obtaining employment, the poor are able to uplift their current socio-economic situation and will also be more resilient to the impacts of economic and environmental shocks.

Good Administration

Although the owner of the property is not responsible for the administration of the planning practices of the Local Authority, the proposal will help the Local Authority facilitate this through the approval of an application that would help with good governance through the facilitation of a development that would also serve the broader community as discussed above.

8.6 Services

No problems are foreseen with regard to the provision of services to the proposed development, as the property is already serviced (as a single residential unit) and located within a well established urban area. The proposal is for the creation of only one additional single residential property which would not place any undue strain on the surrounding services network.

16/18

Proposed Removal of Restrictions and Subdivision of Erf 1828, Fringie Bay, Overstrand Municipality, Administrative District of Caledon

It is envisaged that the remaining extent will utilise the proposed 16m services and right of way servitude to both gain access to the property and to connect to the services that run along Boundary Road. Any internal services that traverse the proposed portion will be relocated to be located within this servitude.

As the proposed portion already has a dwelling (and outbuildings) located on it, the total nett area of hard surfacing will not be substantially increased. Thus there should not be any substantial increase in the stormwater run-off from the property either. The topographical attributes of the property are also seen to be suitable for the proposed subdivision as there are no concerns regarding the slopes and geotechnical stability of the proposed portion and the existing dwelling that has been constructed thereon.

8.7 Access and Traffic

It is being proposed that a 16m wide services and right of way servitude will be registered over Portion 1 in order to allow for access (and services) to the remaining extent of the property (existing dwelling). The existing gate will be retained within this servitude and this will only require a slight adjustment of the location of the existing driveway on the property. The location of the driveway can be seen on the attached subdivision plan (Plan No: C6129/Sub2) that has been superimposed onto the aerial photograph of the property. The proposed portion will gain access directly onto Boundary Road from its street frontage. Photo 2 below indicates the location of the existing gate.

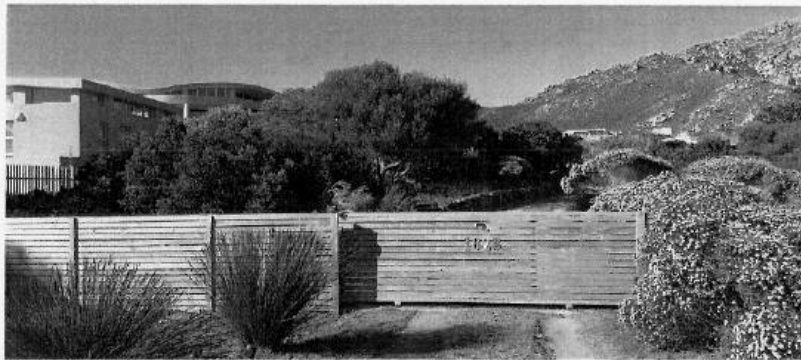


Photo 2: Existing gate that will be utilised to give access to the proposed remaining extent.

The adjoining street reserve, combined with the relatively substantial street frontages of the proposed portion, as well as the ample sight distances will allow for the creation of a suitably safe vehicular access point onto the proposed Portion 1. The vertical and horizontal road alignments will also pose no problems with respect to these vehicular access points.

It is also envisaged that the additional traffic that will be generated as a result of this proposal will not lead to any unacceptable levels of traffic congestion on the surrounding road network as only one additional single residential property is being created. The surrounding roads are not seen to be overly busy roadways, and are wide enough to be able to adequately accommodate the additional access points and traffic that will be generated as a result of this proposal.

8.7 Other Applications

The the National Heritage Resources Act (Act No. 25, 1999) states that any development or activity that will change the character of a site exceeding 5 000 m² in extent will require the submission of an application in terms of the act. As the property is only ±4705m² in extent the proposal does not constitute a listed activity in terms of this act, and therefore a Notification of Intent to Develop application in terms of Section 38 of the National Heritage Resources Act (Act No. 25, 1999) will be not required.

9. EVALUATION CRITERIA

Section 66(1) of The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 sets out certain general criteria for consideration of applications which determine the desirability of a proposed development. These criteria include, inter alia, the following:

- desirability of the proposal;
- impact on municipal plans and policies;
- applicable provisions of the zoning scheme;
- other investigations/applications required by other legislation;
- compatibility with surrounding uses;
- impact on the external engineering services;

Taking into account all of the above it is clear that the proposed development will have no impact on the surrounding environment which can be construed to be undesirable in respect of the safety, welfare and amenity value of the specific site conditions and the preservation of the

surrounding built and natural environment. The proposal will also in no way impact on any existing rights.

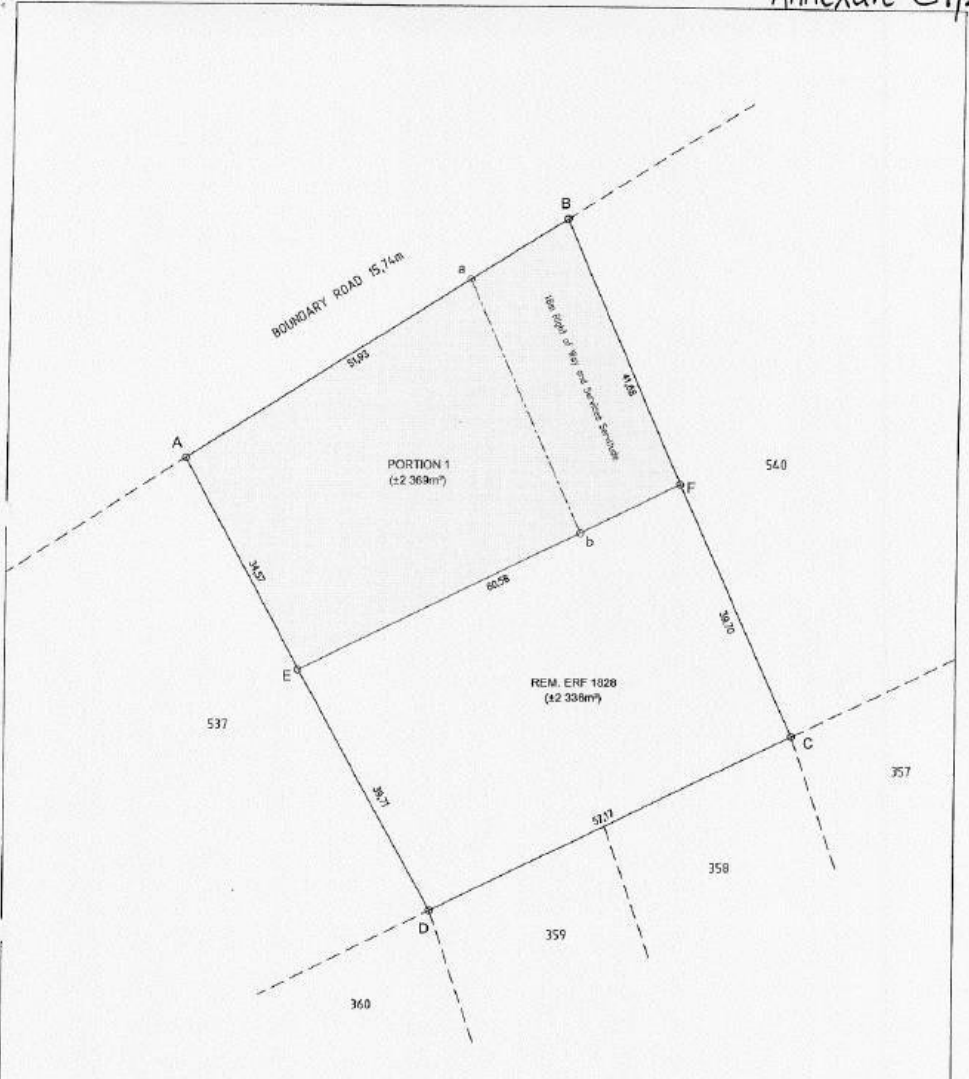
The proposal can be seen to be compliant with these evaluation criteria for the following reasons:

- The proposal complies with the guidelines as set out in the higher order spatial planning policies which promote socio-economic integration.
- The proposed development is of an appropriate scale and form that relates to the surrounding urban fabric, development pattern and land use character of the adjoining residential erven.
- The proposal will relate directly to the existing built form of the adjoining residential properties and will thus fit into the surrounding urban context.
- The placement of the proposal within an existing residential district is seen to be compatible with the existing character and represents an acceptable land use intensification in the area.
- The proposed development will not detract from any existing rights of the surrounding erven.
- Increased human activity will help ensure increased passive surveillance of the adjoining public realm (street).
- There is adequate servicing capacity to accommodate the proposed development and adequate on-site parking can be provided for.
- The application will not undermine the public interest.

10. CONCLUSION

The proposed deletion of restrictive title conditions and subdivision of Erf 1828 Pringle Bay is considered to be a compatible use in the specific area and it will result in the optimal utilisation of the property. It will thus constitute a desirable development in terms of The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. With this in mind, it is therefore honourably considered that the proposed application will be endorsed with Council's consent.

Annexure C1/2



LEGEND:

| | | |
|------|---|----------------------|
| ABCD | — | ERF 1828 PRINGLE BAY |
| EFCD | — | REMAINDER ERF 1828 |
| ABFE | — | PROPOSED PORTION 1 |



**SUBDIVISION PLAN OF
ERF 1828 PRINGLE BAY**

Overstrand Municipality
Administrative District of Caledon
Province Western Cape.

- NOTES:**
- 1) ALL AREAS AND DIMENSIONS ARE APPROXIMATE
 - 2) COMPILATION SHEET: AH-48C/X43 (355)
 - 3) ZONING: RESIDENTIAL ZONE 1
 - 4) 10m INDICATES A 10m WIDE SERVICES AND RIGHT OF WAY SERVITUDE AS SHOWN

SCALE 1/750
DATE : JUNE 2021
PLAN NO: C6120/Sub2

DIESEL & MUNNS Inc.
PROFESSIONAL LAND SURVEYORS : TOWN AND REGIONAL PLANNERS
PROFESSIONAL LANDMEASUREMENTS : STAKES - ON-STREET REPLACEMENTS
SECTORIAL SITE CONSULTANTS : ENGINEERING AND TOPOGRAPHICAL SURVEYING
DISTRICT CONSULTANTS : WORKINGS ON TOPOGRAPHICAL CHARTERS

20 ST. JAMES STREET/STRAAT - P. O. BOX/POSBUS 475 - SOMERSET WEST 7120
TEL : (021) 952-3600/852-3769



LEGEND:

- ABCD — ERF 1828 PRINGLE BAY
- EFGD — REMAINDER ERF 1828
- ABFE — PROPOSED PORTION 1



**SUBDIVISION PLAN OF
ERF 1828 PRINGLE BAY**

Overstrand Municipality
Administrative District of Caledon
Province Western Cape.

NOTES:

- 1) ALL AREAS AND DIMENSIONS ARE APPROXIMATE.
- 2) COMPILATION SHEET AH-4BC/M43 (355)
- 3) ZONING: RESIDENTIAL ZONE 1
- 4) BFBs INDICATES A 15m WIDE SERVICES AND RIGHT OF WAY SERVITUDE AS SHOWN

SCALE 1/750

DATE: JUNE 2021

PLAN NO: C6128/Sub2



DIESEL & MUNNS Inc.
PROFESSIONAL LAND SURVEYORS : TOWN AND REGIONAL PLANNERS
PROFESSIONAL LANDMETERS : STADS- EN STREEK BEPLANNERS
SOUTHERN TITLE CONSULTANTS : ENGINEERING AND TOPOGRAPHICAL SURVEYORS
DIESEL, KONSULTANTE : INGENIEUR EN TOPOGRAFIEKONTORE

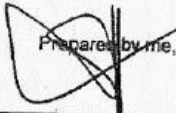
20 ST. JAMES STREET (STRAAT) - P. O. BOX/POSBUS 475 - SOMERSET WEST 7120
TEL : (021) 851-5000/852-3758

Annexure D 1/5


11

STBB
1st Floor, Titanium Ridge
19 Gardner Williams Avenue
Paardevelde
Somerset West,
7130
Docax 15, Somerset West

| Deed of Substitution | |
|----------------------|---------------|
| Purchase price/Value | Office fee |
| 3 050 000-00 | 1 811-00 |
| Reason for exemption | Exempt L.A. 0 |
| | |
| | |
| | |

Prepared by me, 

CONVEYANCER
HEIN-DYSEL
HEIN CONRAD NAUSCHUTZ

| | |
|--------------------------|---|
| VERBIND MORTGAGED | |
| VR FOR R 2 800 000-00 | |
| 0008485 / 2020 |  |
| 07 JUL 2020 | |

| |
|--------------------|
| T 000014369 / 2020 |
|--------------------|

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

MARYKE CARINE HENNIG

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

SHELLEY ROBERT DE LACEY BODLEY
Identity Number 550630 5031 08 1
Married out of community of property

signed at Pringle Bay dated 6 March 2020



DATA / CAPTURE
19-06-2020
ELIZABETH VAN JOY
DATA / VERIFY
17-06-2020
BELINDA GONCALVES

2/5



AND the said Appearer declared that his/her principal had on 4 February 2020 truly and legally sold by private treaty and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

BROOKE COLLIS ANDERSON
 Born on 01 November 1977
 and
CINDY ANDERSON
 Identity Number 870113 0171 08 0
 Married in community of property to each other

their heirs, executors, administrators or assigns in full and free property:

ERF 1828 PRINGLE BAY
IN THE MUNICIPALITY OVERSTRAND
DIVISION CALEDON
WESTERN CAPE PROVINCE

IN EXTENT: 4705 (FOUR THOUSAND SEVEN HUNDRED AND FIVE) SQUARE METRES

FIRST REGISTERED by Certificate of Consolidated Title T18841/1995 with Diagram 10654/1994 relating thereto and held by Deed of Transfer Number T20173/2017

i. IN SO FAR as the figure E.e.f.C. on diagram LG 10654/1994 is concerned:

ii. SUBJECT to the conditions referred to in Deed of Transfer Number T20173/2017

iii.

iv. ENTITLED to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title T3720/1937, 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."

v. ENTITLED on the benefit of the conditions referred to in the Servitude Endorsement dated 12 April 1944 on Certificate of Registered Township Title T12278/1941. Which endorsement reads as follows:

"By Notarial Deed No 109/44 dated 24/2/44 the owners of the land held by Certificate of Consolidated Title No 3720/1937 (remainder) have granted to and in favour of the land held hereunder certain water rights and certain other rights ancillary thereto."

Subject to conditions as will more fully appear on reference to said Notarial Deed. Vide copy annexed hereto.

3/5

Which servitude has been varied as will appear from an endorsement dated 27/7/1951 on Certificate of Township Title No T1227B/1941 and reads as follows:

"By Not. Deed No 363 d/d 1/6/51 the Not. Deed No 363/51 the Not. Deed 109/44 has been varied to the extent as set out in the said Not. Deed 363/51 by reason of the excision from the Township of Pringle Bay Erf No 452 as will more fully appear from the said Deed No 363/51."

SUBJECT to the conditions contained in Deed of Transfer T 11452/1957, imposed by the Administrator when approving of the subdivision of a portion of the township in terms of the terms of Ordinance 33 of 1934:

- (1) Any words and expressions used in the following conditions shall have the same meaning as have been assigned to them by the regulations published under Provincial Administration Notice No 401 dated 17th October 1935, and in the memorandum which accompanied the said regulations.
- (2) The owner of this erf shall without compensation be obliged to allow 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.
- (3) The owner of this erf shall be obliged without compensation to receive material or permit such excavation on the erf as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank, unless he elects to build retaining walls to the satisfaction of 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
 - (c) Only one dwelling together with such outbuildings as are ordinarily required to be used therewith shall be erected thereon.
 - (d) Not more than half the area thereof shall be built upon
 - (e) No building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres of the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that, with the consent of the Local Authority, an outbuilding not exceeding 3,05 metres in height measured from the floor.
 - (f) Pending the establishment of a local authority for this township, the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation to remove the septic or vacuum tank after three month's written notice served upon him by such local authority.

A

4/5



VII. SUBJECT to the following conditions contained in ~~Deed~~ of Transfer T11452/1957 imposed by Hangklip Beach Estates Limited in favour of the registered owner of any erf in the township

- (a) no wood and/or iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes.
- (b) No slaughter poles, cattle kraais, pigsties or cowsheds shall be erected or carried on by any person whomsoever on this erf.
- (d) Save with the consent in writing of the Company and of any Local Authority, the owner shall not have the right to make or cause to be made upon the erf for any purposes whatsoever and bricks, tiles or earthenware pipes or other articles of such nature nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or other stone thereon.
- (e) No building shall be erected on this erf at a cost of less than R800.00 exclusive of the cost of the land.
- (f) ~~No Noxious~~ trade noxious business shall be carried on, on the land hereby conveyed.
- (g) The Transferee shall not camp overnight or light fires on the erf save with the written consent of the company.
- (h) No garage or service station may be erected or carried on, on the land hereby conveyed.

III. IN SO FAR as the figure A.B.f.e. on diagram SG 10654/94 is concerned

- I. SUBJECT to the conditions referred to in Deed of Transfer No T20173/2017.
- II.
- III. ENTITLED to the benefit of the conditions referred to in the servitude Endorsement dated 24 June 1940, on Certificate of Consolidated Title T3720/1937, as will more fully described in Para I.III above.
- IV. ENTITLED to the benefit of the conditions referred to in the Servitude Endorsement dated 12 April 1944 on Certificate of Registered Township Title T12278/1941, as more fully set out in Para I.IV above.
- V. SUBJECT to the conditions contained in Deed of Transfer T11452/1957, imposed by the Administrator when approving of the subdivision of a portion of the township in terms of the terms of Ordinance 33 of 1934, as more fully set out in Para I.V. above.
- VI. SUBJECT to the following conditions contained in Deed of Transfer T11452/1957 imposed by Hangklip Beach Estates Limited in favour of the registered owner of any erf in the township, as more fully set out in Para I.VI above.

5/5



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

SHELLEY ROBERT DE LACEY BODLEY, Married as aforesaid

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

BROOKE COLLIS ANDERSON and CINDY ANDERSON, Married as aforesaid

their heirs, executors, administrators or assigns

now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of R3 050 000,00 (THREE MILLION FIFTY THOUSAND RAND).

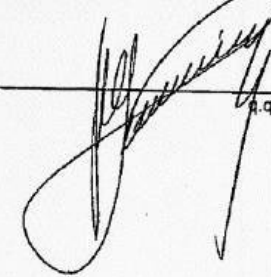
IN WITNESS WHEREOF I, the said Registrar of Deeds together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 07/07/2020.

~~In my presence:~~



Registrar of Deeds


a.g.



L Gillion

Annexure E 1/14

From: Jeanette Spencer <
 Sent: Monday, 27 September 2021 10:32
 To: L Gillion
 Subject: Proposed subdivision of Erf 1828



To whom it may concern

As the owner of Erf 540 Pringle Bay, and as adjacent neighbour to Erf 1828, I would like to object to the proposed subdivision of Erf 1828:

1. The subdivision of Erf 1828 will not revert to its original shape because the original Erf was two properties divided longways before it was consolidated. The proposed subdivision is to be across the property so that the orientation will be different.
2. All along Boundary road on my side, from Freida Road to Central Road, the houses have been built at the end of the properties, furthest from the road, partially because the areas next to Boundary Road are in many cases waterlogged. The proposed subdivision means that the new house will be built at the front of the property, which changes the original intention, and it will be the only house at the front in that section of road.
3. Pringle Bay is known to have a very high water table especially during the winter rains, therefore much water will be displaced by a building there, causing the road to be even more flooded than it already is, making it very difficult to travel on.
4. Further, because the area is waterlogged the house will probably be higher than originally intended, obstructing views.

Relating to changes to the clauses of the Title Deed, I further object that:

5. The clauses referred to as being obsolete should not be deleted just because they are covered by other Acts. I am concerned that deleting clauses may make a change that has unintended consequences, such as allowing a commercial activity that is currently not allowed.

Furthermore it should be noted that:

6. When the electric fence was installed on my Erf 540, it was placed 0.5 meters within the boundary line of my property to allow access for repairs and to keep the fence clear of trees etc. The electric fence is not therefore the boundary line. The gate structure which has currently been built on Erf 1828 goes right up to my fence, and is therefore partially built on my property blocking access. Any servitude granted cannot therefore go up to my fence and the gate structure will need to be moved.

Please confirm receipt of my objection.

Yours faithfully

Mrs. Jeanette Spencer

SA I.D.:

Tel:

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| FILE NO: | SA 1828 ✓ |
| | Pringle Bay |
| SCAN NO: | KPRB 1828 |
| COLLABORATOR NO: | 1593161 |

TP 14 OCT 2021



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PRINGLE BAY RATEPAYERS' ASSOCIATION
PRINGLEBAAI BELASTINGBETALERSVERENIGING

SARS Reg. 9101/138/16/3
NPO Reg. 214-205
www.pringlebayratepayers.co.za
P O Box 409, Pringle Bay, 7196 / Posbus 409, Pringlebaai, 7196
Chairman / Voorsitter: chairman@pringlebayratepayers.co.za / Tel: 083 556 3345

The Municipal Manager

OVERSTRAND MUNICIPALITY
HERMANUS
7200



11 OCTOBER 2021

TP-N. Theerk
(H. Ud Groep)

PER EMAIL: loretta@overstrand.gov.za

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| FILE NO: | ERF 1828 r |
| | Pringle Bay |
| SCAN NO: | KPRB 1828 |
| COLLABORATOR NO: | 1593176 |

Dear Sir

MUNICIPAL NOTICE 135/2021: ERF 1828 PRINGLE BAY: PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION

1. ORGANISATION

The Pringle Bay Ratepayers' Association (PBRA) was started in the late 1960s by the first residents of Pringle Bay to represent the interests of ratepayers and residents. Today it is a registered Non-profit, Public Benefit Organisation.

Our primary functions are, amongst others, to liaise with the Overstrand Municipality, with whom we enjoy a close relationship and to support local environmental conservation. We represent the community on the local Ward Committee and other consultative bodies. We maintain close contact with local authorities and service providers, particularly on matters affecting ratepayers and residents.

The PBRA represents the rate payers within the declared Urban Edge. This currently constitutes approximately 1,800 properties (erfs) of which approximately 1,000 are developed (thus having a habitable structure erected on it either for residential or business purposes).

Having considered the subject Application, we hereby submit our comments for consideration.

14 OCT 2021



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2. COMMENTS

2.1. PRO FORMA EXERCISE

Subject to proper notice being given, we submit that the restoration of the presently consolidated erf 1828 into its two previous constituents erven, is a *pro forma* exercise. It entails a *pro forma* removal of the restriction against subdivision in the consolidated title deed, to enable restoration, and subsequently the re-instatement afterwards in the two subdivided title deeds.

There is in our opinion thus no need for the complete removal of this restriction or the removal of any of the other title deed restrictions that are sought.

2.2. SUBJECT TO PROPER NOTICE BEING GIVEN

There would appear to be no confirmation in the application documentation that proper notice had been given to each of the other erf owners in the small township extension of which erf 1828 forms part.

We submit that, consequently, any decision by the Municipal Planning Tribunal will be unlawful.

Based **ONLY** hereupon, we sincerely request that the application be referred back to the applicant.

It is matter of great concern that the applicant has been allowed to advertise the application without proper notice apparently having been given.

The applicant is under the mistaken impression that the title deed restrictions do not confer praedial rights on the other erf owners in the township extension. It even goes so far as to state that the protection of section 25 of the Constitution is not applicable.

In order not to have to repeat in this objection to the Municipal Planning Tribunal the legal history of title deed restrictions, we attach as an annexure hereto an appeal to the OM Appeal Authority we are aware of, on this point. (Please refer to the attached



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document titled "*Notice of appeal against the decision of the MPT: re application for removal of title deed condition erf 80 Gnidia Road, Rooiels, dated 29 July 2021.pdf*")

2.3. THE BLANKET REMOVAL OF TITLE DEED CONDITIONS IS NOT ALLOWED

The present application would appear to be for a blanket removal of all the title deed conditions set by the Administrator, and for them to be replaced by the OM Zoning Scheme Regulations.

We trust that the relevant municipal officials must by now be familiar with the well-known *Van Rensburg* cases in which our courts have confirmed that title deed conditions and zoning scheme regulations fulfill different functions, and that a blanket removal of title deed conditions, such as are sought in the subject application, is not allowed.

The application, that all the title deed conditions set by the Administrator have to be removed in order to effect the restoration of the two erven to its former status, is furthermore without foundation.

Provided there is no objection from especially a neighbor, we submit that removal of the subdivision restriction and re-instating it again to restore the two erven to their previous state, is a pro forma exercise that does not require the permanent removal of the title deed conditions.

2.4. RECENT DECISION BY THE APPEAL AUTHORITY IN THE APPEAL AGAINST THE REMOVAL OF TITLE DEED CONDITIONS IN PORTION 47 THE FARM HANGKLIP 559.

We attach the decision letter as an annexure (refer to attached document titled "*Portion 47 Appeal decision letter.pdf*")

Therein the Appeal Authority confirms: "**Restrictive conditions on a title deed are placed there for a specific reason and removal of these conditions should not be considered lightly**"



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The letter also states that the applicant's description of developing the property was too broad to justify the removal of the restrictive condition.

HENCE, we submit that in the subject application the motivation of fulfilling the OM densification policies, as to requiring the removal of the title deed conditions, is also too broad to justify the removal of the title deed conditions.

In fact, the applicant confirms that it wishes to restore the erven to their previous state and that it wishes to retain the single residential position (your recent notice to us on the subdivision of Erf 1891 also in Pringle Bay serves as relevant example (refer to our submission to you in this regard dated 11 October 2021)).

Why then ask for the complete removal of the title deed conditions if the status quo is to be retained?

3. REQUEST

We sincerely request that the application be referred back to the applicant for proper notice to the other erf owners, and, provided no objection is received, that the application for the deconsolidation (sub-division) and re-instatement of the title deed conditions into the two erven be approved as a pro forma exercise.

Your kind attention to the above-mentioned will be appreciated and we are looking forward to receiving your reply in this regard.

Kind Regards

Bertie Vorster
Vice Chair: PBRA

Attachments:

- Notice of appeal against the decision of the MPT: re application for removal of title deed condition erf 80 Gnidia Road, Rooiels, dated 29 July 2021
- Portion 47 of the farm Hangklip 559: Appeal decision letter, dated 16 September 20221

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The Executive Mayor
Overstrand Municipality

loretta@overstrand.gov.za

E Brink
PO Box 12772
Mill Street
Cape Town
8010

29 July 2021

NOTICE OF APPEAL AGAINST THE DECISION OF THE MPT: RE APPLICATION FOR REMOVAL OF TITLE DEED CONDITION ERF 80 GNIDIA ROAD, ROOIELS

Your reference : 134/2020: Application for removal of title deed restrictions.

I am an objector, with the Rooiels Ratepayers' Association and two neighbours of erf 80, who have commented or objected, in the above application.

1. BACKGROUND

1.1 On 21 June 2021 I addressed the following request to your Municipal Manager:

"ERF 80 GNIDIA ROAD, ROOIELS: REQUEST FOR LEGAL OPINION

I am addressing this letter to you as this not an objection, but simply a request of a procedural nature, for which there is no time limitation.

1. REQUEST PLEASE

I request please that the Planning Department's recommendations to the coming Municipal Planning Tribunal meeting of 1 July 2021 be referred back for a legal opinion on the correctness of the legal views expressed by your Town Planning Department in the report to the MPT."

1.2 The Municipal Manager thereupon referred the request to your legal department for a legal opinion.

1.3 It would now appear as if my request did not reach the Municipal Planning Tribunal prior to their meeting of 1 July 2021.

2. APPEAL

2.1 I again request please that the Planning Department's recommendations, which were apparently accepted at the Municipal Planning Tribunal meeting of 1 July 2021, be referred back for a legal opinion on the correctness of the legal views expressed by your Town Planning Department in the report to the MPT.

2.2 It appears to be based on an error of law. As you are no doubt aware, a decision by the Appeal Court constitutes the final and conclusive interpretation of law, and Overstrand's Town Planning Department is not empowered to adopt its own interpretation contrary to the interpretation of the Appeal Court.

2.3 I now appeal to you that, in the absence of proper notice to all erf owners in Rooiels, the approval by the MPT of the removal of a certain title deed condition on erf 80 was unlawful.

2.4 I submit that the decision of the MPT will reasonably be set aside by the High Court on my application.

2.5 I do not appeal against the decision by the MPT for the demolition of certain illegal structures on erf 80, as that was not, for its lawfulness, subject to proper notice to the other erf owners of Rooiels.

3. SUBMISSION

In my objection I submitted that all the other erf owners of Rooiels have, as dominant tenements, praedial servitude rights in respect of erf 80 and that they should therefore have received notice of the application.

Both the town planner of the applicant and your Town Planning Department deny it. In the process they express certain legal views in support of their stance.

I submit that the expressed views of the applicant's town planner as well as your Town Planning Department are in direct conflict with:

- 3.1 The provisions of Section 39 of the Land Use Planning Act 2015 (LUPA)
- 3.2 Public professional knowledge on the legal nature of restrictive title deed conditions.
- 3.3 The specific principles of South African property law as enunciated in the leading Appeal Court precedent of *Malan v Ardconnel* (Attached).

4. VIEWS THAT ARE APPEALED

The recommendation to the MPT read as follows:

*❖ OBJECTION 10

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 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 request an all owner circulation if the third-party conditions do not stipulate a restriction on the building lines.

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 **[exact copy-and-paste from applicant's response]** 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."

5. CONFLICT WITH SECTION 39(2) OF THE LAND USE PLANNING ACT 2015 (LUPA)

5.1 Section 39 (2) of LUPA reads as follows:

"(2) Notice of the application must be served in accordance with section 44 on at least the following persons:

- (a) any person mentioned in the title deed for whose benefit the restrictive condition applies; and
- (b) any other person whose rights or legitimate expectations will be affected by the approval of the application".

5.2 In the leading Appeal Court case of *Malan v Ardconnel*, discussed below, it is enunciated that title deed conditions, on the servient erf, confer property rights in the form of praedial servitude rights on the other dominant tenements of the same township development.

5.3 Per the history of township property rights as explained by the Appeal Court, these rights are conferred in a twofold manner:

5.3.1 By the township developer itself, through imposing conditions in favour of itself and its successors in title.

These would be the conditions set out in Section G of the title deed of erf 80.

They are the restrictive conditions referred to in sec 39(2) (a) of LUPA above.

5.3.2 By the Administrator through title deed conditions in establishing the township. The Appeal Court points out that these praedial servitude title deed conditions are established by the Administrator in favour of the other erf owners through the act of registration in the title deed of the servient erf (in this case erf 80), without any mention of the person or the dominant erf or erven (in this case the rest of Rooiels) in whose favour they are constituted.

These would be the persons mentioned in 39(2) (b) of LUPA.

These would be the conditions set out in Section F.4 of the title deed of erf 80.

5.4 Contrary to the views expressed by the town planner and the Town Planning Department to Objection 10 in para 3 above, the title deed conditions in Section F.4 of the title deed presently in question, confer praedial servitude rights on all the other erven in Rooiels.

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6. CONFLICT WITH SECTION 39(4) OF THE LAND USE PLANNING ACT 2015 (LUPA)

6.1 Section 39 (4) of LUPA reads as follows:

"(4) Any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restrictive condition in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval by the relevant municipality."

6.2 A reference to a mechanism which would enable the removal of restrictive title deed conditions was apparently provided for in older title deed conditions, such as for erf 80, prior to the later legislation which enabled the Administrator to remove title deed restrictions.

6.3 The express reference to such title deed conditions in section 39(4) has the effect of incorporating by reference such title deed conditions within the operation of section 39.

6.4 The views expressed by the town planner and the Town Planning Department, that applications for conditions that they name Administrator's conditions, may be approved in another way from the rest of the restrictive conditions, are therefore in conflict with section 39(4).

7. CONFLICT WITH PUBLIC PROFESSIONAL KNOWLEDGE ON RESTRICTIVE TITLE DEED CONDITIONS.

7.1 The town planner comments as follows in par 3 above, and the Town Planning Department agrees with him:

"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"

7.2 The above is in conflict with public professional knowledge: Appeal Judge Navsa in the leading case of *Van Rensburg v Naidoo* says:

"[37] Restrictive conditions of the kind in question enure for the benefit of all other erven in a township, unless there are indications to the contrary. They are inserted for the public benefit and in general terms, to preserve the essential character of a township. In this regard see *Malan v Ardconnel* at 38B-C and 39F-G. If landowners across the length and breadth of South Africa, who presently enjoy the benefits of restrictive conditions, were to be told that their rights, flowing from these conditions, could be removed at the whim of a repository of power, without hearing them or providing an opportunity for them to object, they would rightly be in a state of shock."

7.3 Both the applicant's town planner and the Town Planning Department apparently have an incorrect understanding of the legal nature of title deed restrictions. (Presently the town planning

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department of City of Cape Town is being challenged by at least three ratepayers' associations on these title deed issues).

8. CONFLICT WITH THE SPECIFIC PRINCIPLES OF SOUTH AFRICAN PROPERTY LAW AS ENUNCIATED PER THE LEADING APPEAL COURT PRECEDENT OF MALAN V ARDCONNEL (ATTACHED).

I have already referred above to the two types of title deed restrictions, as explained in *Malan v Ardconnel*, that confer praedial rights on all the other erf owners of Rooiels.

This case dealt with conditions set by the Administrator. The decision confirmed that the conditions set by the Administrator had conferred praedial servitude rights. The title deed conditions relating to erf 80 Rooiels are the same type of conditions.

The law report, which is attached, makes for clear reading and understanding in support of my present request that the recommendations by the Town Planning Department please be referred back for legal opinion.

Yours faithfully,

E Brink

Attachment:

Law report of *Malan v Ardconnel*

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

NAVRAE | ENQUIRIES: Ms. H van der Stoep
LEËRVERWYSING: | FILE REFERENCE: KHANG 47/559
DATUM | DATE: 16 September 2021



Friends of Rooiels
D Esterhuise
PO Box 420
PRINGLE BAY
7196

friendsofrooiels@gmail.com

REGISTERED MAIL

Dear Sir

APPEAL DECISION LETTER TO APPELLANT

**APPEAL : PORTION 47 OF FARM HANGKLIP NO.559, HANGKLIP, OVERSTRAND MUNICIPAL AREA:
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS: MESSRS PLAN ACTIVE TOWN AND REGIONAL
PLANNERS ON BEHALF OF MR J DE JAGER ON BEHALF OF THE TRIO DATA SECURITY SERVICES BK**

Your appeal letter dated 7 April 2021 refers.

The Appeal Authority on 7 September 2021 **partially upheld** the appeal and **varied** from the decision of the Municipal Planning Tribunal dated 25 February 2021.

Reasons for the above decision are as follows:

"The appeal was received within the 21-day time period and the required fee was lodged by the two appellants.

An application was considered by the Municipal Planning Tribunal (MPT) who supported the removal of certain title deed conditions on portion 47 of the farm Hangklip no. 559. After considering the application the MPT approved the removal of the restrictive Title conditions to clauses D.(d), D.(f), D.(n), D(o), E.(i), E.(ii), and E.(iii) of Title Deed T3920/2017, applicable to this property.

The restrictive conditions contained in Title Deed T3920/2017 to be removed, read as follows:

Clause D:

- (d) *All buildings and other constructional works, including all fences and garden or other gates, shall be of good design and sound construction and plans thereof must be approved by the Seller before construction is commenced. In the event of a breach of this Clause the Seller shall have the right to require the Purchaser to demolish such unauthorised buildings or works and/or shall have the opinion to re-purchase the land upon payment of the cost price thereof without compensation for improvements".*
- (i) *"No Person other than the registered owner and his immediate family shall camp overnight or light open fires on the said land save with the written consent of the Seller which shall have the right to refuse such consent without assigning any reason therefore or to give such consent subject to such conditions as it thinks fit".*

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12/14



- (n) "The land shall be used only for agricultural purposes and the breeding and keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept except with the special written consent of the Seller".
- (o) "Only buildings and structures to be used as dwellings and farm buildings shall be erected on the land".

The MPT also amended conditions D.(b), D.(e) and D.(r) as follows:

Condition D.(b) which reads as follows:

"No wood and iron buildings or works of any description shall be erected nor shall corrugated iron be used for roofing purposes. Was amended to remove "corrugated iron for roofing purposes".

Condition D.(e) which reads as follows:

"No signs, advertisements, advertisement hoardings or other lettering shall be erected on the land hereby sold and purchased, nor shall any advertisements, signs or lettering be painted on any buildings, walls or fence erected or to be erected on the said land save and except with the written approval of the Seller. Was amended to replace "the word Seller with Local Authority".

Condition D.(r) which reads as follows:

"No boarding houses, flats, maisonettes, hotel, shops, public garage or filling station, business premises, canteen, restaurant, bioscope, factory, or industrial buildings shall be erected on the land nor shall any such business or entertainment be conducted on the land". Was amended to add "with the exception of a home occupation and guest rooms".

Condition E.(l) reads as follows:

17th December 1959:

"By D.T. No 18344/59dd. This day Portion 59 thereby conveyed is subject to conditions relating to (a) buildings (b) restriction against trade (d) prohibition against making of bricks, tiles, and pipes (e) prohibition against deposit of debris, scrap, etc. (g) camping (h) access (i) sewerage (j) water (k) sub-division, and (use of land l.f.s. the remainder of within portion 45 meas. 250, 8309 hectares held hereunder. As will more fully appear on reference to the said D.T.".

Condition E.(ll) reads as follows:

Dated 10th May 1960:

"By Deed of Transfer No. 6799/1960 dated this day Portion 62 = 9,2831 hectares thereby conveyed as is (A) not entitled to conditions referred to in certain endorsements and (B). Subject to conditions relating to (a), (b), (c) and (d) buildings and design (e) advertising (f) trade (g) and (h) building materials and scrap (j) camping (k) access to roads (l) sewage (m) use of water (n) subdivision (o), (p), (q), (r) & (s) use of land and buildings in favour of the remainder of Portion 45 = 242,1473 hectares held hereunder, as will more fully appear on reference to the said Deed of Transfer."

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Condition E.(iii) reads as follows:

Dated 20th of November 1961:

"By Deed of Transfer No. 16184/1961 dd. This day, Portion 58 meas. 9,6944 hectares thereby conveyed is (A) Not entitled to conditions referred to in certain endorsements and (B) Subject to conditions relating to (a), (b), (c) and (d) buildings and design (e) advertising (f) trade (g) & (h) building materials and scrap (j) camping (k) access to roads (l) sewage (m) use of water (n) sub-division (o), (p), (q), (r) & (s) use of land and buildings held hereunder as will more fully appear on reference to the said Deed of Transfer."

Two appeals were received against the decision by the MPT, from Messrs. Raymond McCreath Inc. on behalf of H Claassens and from Friends of Rooiels. The appeals are very similar and at times reference each other. Two objections of a technical nature were raised, firstly that the MPT was not properly constituted, this point of appeal is dismissed, as a quorum required consists of a majority of the MPT members. In this case four of the five members were present and thus the MPT was legally constituted and quorate.

The second technical point, the appellant claimed that a notice should have been erected on the property, indicating the appellant's proposal, this point of appeal is dismissed, as the notice on the property was displayed in excess of the time required.

Restrictive conditions on a Title Deed are placed there for a specific reason and the removal of these conditions should not be considered lightly. Having said that, some of the restrictions included on Title Deed T3920/2017 have become outdated.

For this reason, the decision by die MPT to support the removal of restrictive condition D.(d), D.(j), D.(n) as well as E.(i), E.(ii) and E.(iii), subject to the following conditions:

- (a) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department be complied with at that stage
- (b) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with, and
- (c) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.

is supported and the appeal against the removal of these restrictive conditions fails.

The amendments proposed by the MPT to Title Deed restrictions D.(b), D.(e) and D.(r) are similarly supported and the appeal against these amendments fails.

The proposed removal of restrictive Title Condition D.(o) by the MPT is **not supported**.

The applicant states that a dwelling with a double garage is located on the property and further states that it is the intention of the owners of Portion 47 of the Farm Hangklip no. 559 to have the options available to them to develop the farm portion within the current land use rights as prescribed in the Overstrand Municipal Zoning Scheme Regulations, under the zoning, Rural Zone 2: Conservation Usage (R2).

In order to do this, the applicant claims that they need to apply for the removal of Title Deed conditions that are more restrictive than the Overstrand Municipal Zoning Scheme Regulations.

The applicant, however, does not state what developments they plan for this property and the description of developing the property to the full potential of Conservation Usage (R2) is too broad to justify the removal of restrictive condition D.(o).

The appeal against the proposed removal of restrictive condition D.(o) is **upheld** and the decision by the MPT to support the removal of restrictive condition D.(o) is set aside.

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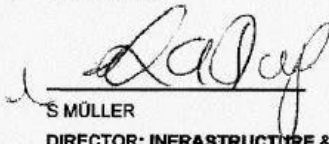
In summary, the Appeal against restrictive title conditions D.(d), D.(f), D.(n), E.(i), E.(ii) and E.(iii) of Title Deed T3920/2017 applicable to Portion 47 of the Farm Hangklip no. 559 fails and the decision by the MPT is upheld, with the sub conditions a, b and c, proposed by the MPT.

The appeal against the amendments proposed by the MPT against restrictive conditions D.(b), D.(e) and D.(r) also fails and decision of the MPT is upheld.

The appeal against the proposed removal of restrictive condition D.(o) succeeds and the decision by the MPT in respect of this restrictive condition is set aside.

The appeals submitted are partially successful and consequently 50% of each Appellants' deposit is to be refunded."

Yours faithfully



S MÜLLER

DIRECTOR: INFRASTRUCTURE & PLANNING


DIESEL & MUNNS INC.

Professional Land Surveyors • Town and Regional Planners
 Professionele Landmeters • Stads- en Streekbeplanners
 Sectional Title Consultants and Topographical Surveyors
 Deeltitle Konsultante en Topografiese Opmeters

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Tel: (021) 852-3800/852-3759
 E-mail: admin@dieselandmunns.co.za

Annexure F1/4

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 (1 d. ud Stoop)



11 November 2021

The Administrator: Town and Spatial Planning
 Overstrand Municipality

Our Ref: C6129

P O Box 20
HERMANUS
 7200

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| FILE NO: | CF 1828 ✓ |
| | Pringle Bay |
| SCAN NO: | KPRB 1828 |
| COLLABORATOR NO: | 1620377 |

Attention: Loretta Gillon

Your Ref: 1828 KPRB

Dear Loretta

**PROPOSED REMOVAL OF RESTRICTIONS AND SUBDIVISION OF ERF 1828 PRINGLE BAY,
 OVERSTRAND MUNICIPALITY**

Your letter dated 28 October 2021 regarding the three objections/comments received against the above proposal refers.

We hereby offer our comments on the objection received against the above proposal within the prescribed period. All the issues that were raised within the objections will be dealt with below.

The owner of the property acknowledges the comment received from the municipal Environmental Management Services Department and understands that any further development of the proposed portion will be subject to an application being submitted to the Department of Environmental Affairs and Development Planning for Environmental Authorisation.

The Pringle Bay Ratepayers' Association (PBRA) show a clear lack of understanding of the application process and how land use applications are advertised. Applicants do not themselves choose how and to whom their applications are advertised. This is determined by the Local Authority and the applicant is then instructed to send the notices out on their behalf. Thus it is wholly incorrect to state that the applicant implemented the advertising of the application under the impression that these restrictions do not confer praedial rights on other erf owners. The application also in no way states that Section 25 of the Constitution of South Africa is not applicable as insinuated in the objection, but does, however, state that the proposed removal of restrictions will not deprive any person of property as contemplated in said Section 25.

Directors: J. LAKE B.Sc. (Eng), Pr.L.(S.A.), M.I.P.L.S. D.W. LAMBERT B.Sc. (Eng), Pr.L.(S.A.), M.I.P.L.S. B.N. BLOUNT T.R.P. (S.A.) B.Sc. (TRP)
 Office Manager: D.M. HENDRICKS

30 DEC 2021

In the appeal attached to the PBRA objection/comment it clearly states that, even though such applications should not be taken lightly, some of the restrictions in the title deed of the property concerned have become outdated, and were hence removed from the title deed. Such is the case with the restrictions contained within the title deed of Erf 1828 Pringle Bay (The Property).

These restrictions were placed within the title deeds of the erven within this portion of the township by the Administrator when approving the development in 1947. These were imposed as development controls at a time when no other such controls existed. The Local Authority is now seen to be the custodians of these restrictive conditions. Section 39 of the Western Cape Land Use Planning Act (LUPA), 2014 now delegates the decision making process with regard to the removal/amendment of Title Deed conditions to municipalities. It is stated in Section 39(4) that "any reference to the approval by the Administrator or Townships Board in a restrictive condition, excluding a restriction in terms of which the Provincial Government acquires private law rights, is regarded as a reference to the approval of the relevant municipality".

As these restrictions were imposed by the Administrator, LUPA now delegates the decision making authority in relation to such restrictive title conditions to the relevant municipality. These restrictions are now in conflict with the municipality's applicable development controls and forward planning policies and can thus be seen to be outdated. The restriction relating to the prohibition of the subdivision of the property has to be removed from the title deed as the proposed subdivision is not taking place along the original cadastral boundary that separated the two properties that were consolidated.

As stated above, the Local Authority is now the controlling authority for these restrictions and they are in direct conflict to their more recent zoning scheme and forward planning policies. The zoning scheme allows for certain business uses (home occupation) to be conducted from Single Residential (SR1) erven as a primary right. This is in conflict with the title deed restriction relating to the use of the property. With more people working remotely due to the COVID-19 pandemic the need to set up home offices to be able to work and/or conduct a business from home is becoming ever more prevalent/necessary. While the Local Authority acknowledges this need in their zoning scheme as gazetted in 2013, the title deed restriction as imposed in 1947 does not. The zoning scheme also allows for a second dwellings to be constructed on SR1 erven as a primary right. These are clear examples where such title deed restrictions that were imposed decades ago, that are in conflict to the municipality's development controls, have become severely outdated and have been replaced by other more relevant controls (i.e. zoning schemes). Condition 1.V.(4),(f) has now become redundant as it was only applicable pending the establishment of a local authority. The owner of the property is making application for the removal of these restrictions in order for the property to have access to the primary rights according to its SR1 zoning.

It should also be noted that the removal of these title deed restrictions will in no way infer other development rights on the land other than what is currently being applied for, and what is accommodated as primary rights under its SR1 zoning. This application will in no way absolve the owner of the property from compliance with any other relevant legislation, and any development rights not permitted within these legislations will be subject to the necessary land use application procedures. Any such applications will be evaluated by the relevant authorities in relation to their approved policies and/or legislations.

The proposal is for the subdivision of a consolidated property into two portions. This will be essentially returning the land to its two original components with the only difference being the orientation of the

proposed properties. The subdivision is being proposed in this manner as the dwelling on the property has been constructed in such a position so as to make the subdivision long the original component line impossible. The only way that the property can be subdivided into two equal portions with similar dimensions is to orientate the subdivision line as proposed. The owner of adjoining Erf 540 states that all the erven have constructed their dwellings to the rear of their properties. While this may be true for many of the erven along Boundary Road, this is not the case with her own property at all. She has constructed a large double storey structure towards the front of her property that can be clearly seen on the subdivision plan and photo 1 below, thus negating any validity to her objection regarding the positioning of the future dwelling on the proposed portion. As there will be a 16m wide servitude (right of way and services) located along the common boundary with her property, the dwelling on the proposed portion will be located some distance from her boundary. This dwelling, as stated previously, will be subject to the NEMA regulations and will have to be constructed according to an Environmental Authorisation. It will also be subject to the height restrictions applicable to SR1 erven and will thus not significantly impact on her views at all.

As has been stated above, the proposed application will in no way infer any other development rights on the property, and any proposed extension to these rights will be subject to the relevant applications to the Local Authority. As can also be seen in photo 1 below, the existing gate to The Property is located some distance away from the common boundary between the properties. The proposed servitude is relatively wide in order to be able to accommodate the existing gate and driveway as they are currently situated on the property. Thus the gate structure is not located on the objector's property, and the servitude will only be registered up to the cadastral boundary of Erf 1828 as indicated on the subdivision plan.

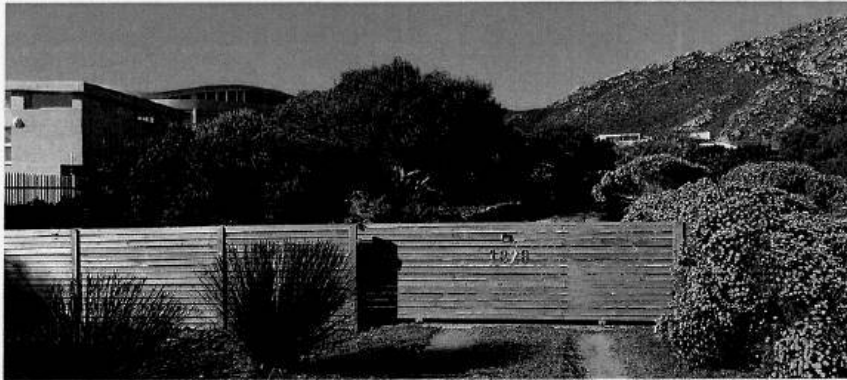


Photo 1: Photo showing existing gate structure in relation to the boundary, as well as the built structures on adjoining Erf 540.

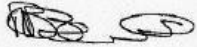
Taking into account all of the above it is clear that the proposed development will have no impact on the surrounding environment which can be construed to be undesirable in respect of the safety, welfare and amenity value of the specific site conditions and the preservation of the surrounding built and natural environment. The proposal will also in no way impact on any existing rights of adjoining properties.

4/4

The proposed removal of restrictive title conditions and subdivision of Erf 1828 Pringle Bay is considered to be a compatible use in the specific area and it will result in the optimal utilisation of the property. It will thus constitute a desirable development in terms of The Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. With this in mind, it is therefore honourably considered that the proposed application will be endorsed with Council's consent.

We trust that you will find the above in order.

Yours faithfully



Barry Blount
Town Planner
DIESEL & MUNNS INC.

Annexure G 1/2

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS &
SUBDIVISION: ERF 1828, PRINGLE BAY**

| | | |
|-------------------|---|------------|
| Stormwater (SW) | : | In Order |
| Electricity | : | Eskom Area |
| Water | : | In Order |
| Sewer | : | In Order |
| Roads and traffic | : | In Order |

Conditions:

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

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

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

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

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

The contribution according to the current policy (2021/2022) is as follows:

Freehold erven:

| | | | |
|---------------------------------|-----------------|----------|--------------------|
| Water | R 24 915.00 x 1 | = | R 24 915.00 |
| Sewerage | R 16 799.12 x 1 | = | R 16 799.12 |
| Roads | R 7 532.72 x 1 | = | R 7 532.72 |
| Stormwater | R 8 691.28 x 1 | = | R 8 691.28 |
| Solid Waste | R 1 505.92 x 1 | = | <u>R 1 505.92</u> |
| TOTAL (inclusive of VAT) | | = | R 59 444.04 |

Note:

- 1.3 **The above figures are estimates**
- 1.4 **The above figures do not include evaluation/investigation levies and connection fees**
2. that each property to have their own water connection, the cost of connection and / or any upgrade for any of these services be required, will be at the owner's cost;

3. that each property to have their own conservancy tank to Municipal specification;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 - P: 2010: Drainage*;
4. that, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Kleinmond) for written approval;
5. that any additional and / or extended vehicle entrance will be for the owner's account;
6. that stormwater be allowed to discharge through the proposed Erven, Pringle Bay, unobstructed;
7. that no on-street parking be allowed.



DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

17/09/2021
DATE



| | |
|-----------------|-----------------------|
| File reference: | 1828 KPRB (3713/2021) |
| Date: | 16 September 2021 |

INTERNAL MEMORANDUM

| | |
|--------------|----------------------------|
| From | : Town Planning Department |
| Town Planner | : Hanneen van der Stoep |

TO:

| | | | |
|------------------------------|------------------------------------|------------------------------------|------------------------------|
| <u>Area Manager</u> | <u>Building Control Department</u> | District Health | <u>Electrical Department</u> |
| <u>Environmental Officer</u> | <u>Fire Department</u> | <u>Infrastructure and Planning</u> | Local Heritage Committee |
| <u>Operational Services</u> | Traffic Department | <u>Ward Councillor</u> | <u>Waste Management</u> |

| | |
|-------------------------|--|
| Applicant | DIESEL & MUNNS INC. (obo BC & C ANDERSON) |
| Property Details | ERF 1828, 21 BOUNDARY ROAD, PRINGLE BAY |
| Application Description | APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION |

ATTACHMENTS :

| | | |
|----|-----------------------|--|
| 1. | Notice | <i>Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.</i> |
| 2. | Locality Plan | |
| 3. | Motivation | |
| 4. | Site Development Plan | |

YOUR DEPARTMENT'S COMMENTS:

The EMS has no objection to the application; however, the following should be noted for future development on the proposed subdivision:

Although the area is within the Overstrand Urban Edge, subdivision and therefore amendment to the Pringle Bay Town Plan Allotment SG Diagram after the commencement of the National Environmental Management Act (1998) (NEMA) Environmental Impact Assessment (EIA) Regulations (2014 as amended) requires that the development applications are submitted to the Department of Environmental Affairs and Development Planning (DEA DP) for Environmental Authorisation .

Erf 1828 contains a floodplain wetland (watercourse) and is mEndangered Hangklip Sand Fynbos.

The following NEMA EIA Listed Activities will be triggered by development on the proposed subdivision:

GNR327. Listing Notice 1.


Activity 12.

Activity 19.

The infilling or depositing of any material of more than 10 cubic meters into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic meters from a watercourse;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- a) *will occur behind a development setback,*
- b) *is for maintenance purposes undertaken in accordance with a maintenance management plan;*
- c) *falls within the ambit of activity 21 in this Notice, in which case that activity applies;*

| | |
|--|---|
| d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or | |
| e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies. | |
| Signature: |  |
| Date: | 22 October 2021 |

Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo **by not later than the date stipulated below**. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

- *Building Control Department to confirm that all structures on the property/ies are in accordance with the approved building plans.*

COMMENTS REQUIRED BY:

22 October 2021