

# **SUPPLEMENTARY A G E N D A**

## **MUNICIPAL PLANNING TRIBUNAL**

**1 November 2018**

### **ITEM 4.3**

**PLEASE            ADD            THE            ATTACHED  
SUPPLEMENTARY ITEM 4.3    TO YOUR  
ABOVE-MENTIONED AGENDA**

**SECRETARIAT  
19/10/2018**

## 4.3

**ERF 1, 148 KUSWEG, SANDBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE, OVERSTRAND MUNICIPAL AREA: MESSRS PLAN ACTIVE ON BEHALF OF THE TRUSTEES FOR THE TIME BEING OF THE SANDBAAI TRUST**

**1 HSB (3875)**

**S van der Merwe  
14 August 2018**

**(028) 313 8900**

**Hermanus Administration**

## **1. EXECUTIVE SUMMARY**

An application applicable to Erf 1, Sandbaai has been received on 11 December 2017 from Messrs Plan Active Town- and Regional Planners on behalf of the Trustees for the time being of The Sandbaai Trust for the following:

### ➤ **Removal of restrictive title deed conditions**

Application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for:

the removal of restrictive title deed conditions B.2.(a), (c) and (d) as contained in Title Deed T22749/1996 applicable to the above erf in order to be in line with the relevant development rules and primary rights as contained in the Overstrand Municipality Zoning Scheme; and

### ➤ **Departure**

Application in terms of Section 16(2)(b) of the above By-law in order to:

- partially relax the south-eastern lateral building line from 2m to  $\pm 1,030\text{m}$  to accommodate a lounge at ground floor level, and a viewing deck and open braai directly above the lounge;
- partially relax the south-western street building line from 4m to  $\pm 2,325\text{m}$  in order to accommodate the lounge at ground floor level and viewing deck directly above the lounge; and
- partially relax the south-western street building line from 4m to  $\pm 0,484\text{m}$  to accommodate a pergola.

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

## **2. DECISION AUTHORITY**

Municipal Planning Tribunal

## **3. BACKGROUND / SITE HISTORY**

The erf is zoned Residential Zone 1: Single Residential, measures 709m<sup>2</sup> in extent and is located at the most southern end of Sandbaai in Kusweg. The property is a corner erf and is developed with a dwelling unit, a double garage and a swimming pool. The dwelling was built 58 years ago.

#### 4. SUMMARY OF APPLICANT'S MOTIVATION

Only the main points of motivation are summarised as follows (the detailed report is attached as Annexure B):

- ❖ The existing dwelling was designed to function as a holiday home and the owner intends to extend the dwelling to have the functionality of a permanent residence, but the existing dwelling makes it extremely difficult to make the alterations and additions with the current building lines.
- ❖ The house was built 58 years ago and has outlived its original purpose. Given the original architectural design of the house and its position on the property, it is impossible to achieve the much needed upgrades without encroaching onto the building lines.
- ❖ Due to the erf being a corner erf, the 3m north-western street building line will not be encroached.
- ❖ It is proposed that the existing carport be expanded and changed into a lounge with a concrete roof that will also serve as the viewing deck. It was decided to make use of a concrete roof deck structure, because it allows a roofline and the profile of the roof of the existing building to be retained. The concrete roof deck allows for the lowest possible roofline over the extension with the intention to maximize the neighbours' views. Letters of supporting the application were obtained from the owners of Erven 2 and 4, Sandbaai.
- ❖ Only a small corner of the new lounge and viewing deck will be constructed over the building lines and not the full length of the proposed lounge and viewing deck.
- ❖ The area of the proposed lounge and viewing deck that encroaches over the building line is  $\pm 3\text{m}^2$  and will also not be the full width of the proposed lounge that will encroach onto the building line.
- ❖ The proposed patio that is less than 1m high with the open wooden pergola has very little impact due to the fact that it faces the western corner of the site facing the coast. There are no residential erven in a south-western and western direction from the property.
- ❖ The reasons to have conditions (2)(a) and (c) removed from the Tile Deed are to give the owner the opportunity to utilize the property to its fullest potential in terms of the primary rights under the current zoning.
- ❖ It is not proposed to depart from any other land use restrictions as prescribed in the Zoning Scheme.
- ❖ The existing access from Kusweg will be retained.
- ❖ The proposal will have no impact on services.
- ❖ The property is earmarked for residential purposes and the single residential zoning of the property will be retained.
- ❖ The property is developed and is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Notices	Yes	27/02/2018	06/04/2018
Ward councillor	Yes	27/02/2018	06/04/2018
Total comments	<b>None</b>		

Total letters of support	<b>Two (2)</b>
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft By-Law on Municipal Land Use Planning?	<b>Yes</b>
Was the application processed correctly (if no, elaborate below):	<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	<b>Yes</b>

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

Name	Date received	Summary of comments	Recommendation
Building Control	6/03/2018	The elevation is on a sensitive site that will impact at 1 <sup>st</sup> floor level – therefore not supported.	Negative
Local Aesthetics	6/03/2018	If a first floor is proposed (balcony and braai), the structure must be located within the 4m street building line.	Negative
Operational Services	14/03/2018	No objection.	Positive
Electro Technical Services	20/03/2018	In view of the fact that no services will be altered there are no comments on the proposal.	Positive
Engineering Services	22/03/2018	Attached as Annexure E.	Positive
Environmental	4/04/2018	No objection.	Positive
Fire Department	22/05/2018	No objection – application does not impact on National Fire Protection Regulations SANS10400T:2011.	Positive

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

With submission of the application, the applicant submitted letters from the owners of the abutting Erven 4 and 1438, Sandbaai in support of the application (attached as Annexure F).

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

N/A

## 9. MUNICIPAL ASSESSMENT OF COMMENTS

### Building Department

The Building Department's comment is supported. The proposed additions at the south western street building line will indeed be situated at a sensitive position on the property as it is a corner erf regardless of the support of the adjacent property owners. In addition other factors also need to be taken into consideration. Successors in title may eventually experience privacy or issues alike with regard to the activities on the viewing deck. The dwellings on the erven situated in a south easterly direction of the property are practically all aligned with each other when viewed from a north westerly direction. Although the majority of these dwellings' frontages face towards the south-west, it also allows for views towards the north-west in the direction of the proposed position of the lounge, viewing deck and pergola. The proposed lounge, viewing deck and pergola of which sections will be situated  $\pm 2,235\text{m}$  and  $\pm 0,480\text{m}$  from the south-western street boundary will then be closer to the street boundary of the subject property than the dwellings of those erven towards the south-east. This will result in a partial blockage of the view line towards the north east for these property owners, thus impacting negatively on these property owners and the existing built character of the area.

The application was also circulated to the Traffic Department, but no response was received. It can also be debated that these structures can impact on the view-lines of motorists using the street in both directions, especially at the corner of the street where the subject property is situated, regardless whether the street is a busy street or not.

### Local Aesthetics

No comment is presented on the aesthetical appearance of the proposed structure or any heritage concerns. The comments that were presented do not relate to aesthetical or heritage concerns at all. The above comments of the Municipality on the comment of the Building Department should be read as supplementary comments of the Municipality on the comments of Local Aesthetics.

## 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)

Whether approved or partially approved, the application will be in line with the planning objectives applicable to this application as set out hereunder.

The objectives relating to:

#### Spatial Justice

The application will not perpetuate spatial injustices.

#### Spatial sustainability

The application is located within the urban edge and thus will not lead to urban sprawl. No natural habitat is impacted upon and will have no negative influence on the environment.

**Efficiency**

The application will optimize the use of property in terms of municipal services and infrastructure.

**Spatial resilience**

The application will ensure that the existing resource (land) is used to its maximum in an affordable manner and in line with the Overstrand Municipality's forward planning documents.

**Good administration**

The application follows the required planning procedures and a good public participation 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.

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

Inconsistent with the Zoning Scheme, but consistent with the Spatial Development Framework.

**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 and have been viewed positively by the Engineering Department.

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

N/A

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

The application is in line with the Overstrand Spatial documents.

**10.9 Additional Planning Motivation For Removal of Restrictive Condition**

Due to the essence of the application, the aspects considering financial or other value of rights, personal benefits, social benefit of the restrictive conditions remaining in place and/or being removed, and the rights to be enjoyed by the beneficiaries or only some of those by removal of the restrictive conditions are not regarded as significant in this case as it will not have any mentionable impacts.

## 10.10 THE DESIRABILITY OF THE PROPOSAL

### Removal of Restrictive Title Deed Conditions

The owners of the subject property wishes to have the relevant restrictive conditions removed from the Title Deed in order to be in line with the applicable development parameters i.e. the less restrictive street building lines, as well as to obtain the additional primary rights as set out in the Zoning Scheme. Various such applications have been approved by the Municipality in Sandbaai and other areas already.

Cognisance must be taken of the fact that the title deed restrictions date back to before the establishment of the Overstrand Municipality and the relevant Zoning Scheme Regulations. As such the constraints in the Title Deeds of the single residential properties in Sandbaai were used as a tool to limit the development of such properties. The removal of the restrictive conditions will enable the owners to utilise the property more efficiently. Development control will still be in place (Zoning Scheme) and the removal of the restrictive title deed conditions can thus be supported.

### Departure

It is proposed to extend the existing carport and convert it into a lounge with a flat concrete slab roof, which roof area will also serve as a viewing deck with a braai. Access to this area will be from the second storey of the existing dwelling via a suspended outside staircase. In the latter regard it is proposed to partially encroach the south-eastern 2m lateral building line with 0,970m and the south-western 4m street building line partially with 1,675m. Refer to the layout plans (attached as Annexure C). Only corner sections of the proposed lounge with viewing deck and the pergola will encroach the relevant building lines and not the full lengths thereof. Although it may seem insignificant in nature, the Municipal comments on the Building Department's comments as set out in paragraph 9 of this submission are on the other hand indeed significant factors with regard to desirability of the encroachments. It can be observed from the layout plan that ample space exists on the property to design the proposed alterations and additions in such a manner that the building lines can be maintained whilst still guaranteeing the landowners the enjoyment of excellent views. The statement made by the applicant in paragraph 3.4.1 of the motivation report that "*....the original architectural design of the house and its position on the subject erf it is impossible to achieve the much needed upgrades without encroaching into the building lines.*", is thus arguably unsubstantiated. Further, in view of the fact that the removal of the restrictive title deed conditions are supported, a 3m north-western street building line in lieu of 4,72m, and a 4m south western street building line in lieu of 4,72m will be obtained in terms of the Zoning Scheme. The latter will result in an increase of approximately 70m<sup>2</sup> of developable area on the property. The proposed sections of the structures that encroach the building lines are not excessive and can therefore easily be incorporated within the total developable area of the property post the removal of the restrictive street building lines.

In view of the above the relaxation of the building lines can therefore not be supported from a town planning perspective and the application can only be partially supported in the manner as set out in the recommendation of this submission.

## 11. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the removal of restrictive title deed conditions B.2(a), (c), and (d) as contained in Title Deed T22749/1996 applicable to Erf 1, Sandbaai in order to be in line with the development parameters and primary rights applicable to single residential properties as set out in the Overstrand Zoning Scheme, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section (16)(2)(b) of the By-Law for departure, applicable to Erf 1, Sandbaai, in order to:
  - relax the south-eastern lateral building line from 2m to  $\pm 1,030\text{m}$  to accommodate a section of the lounge at ground floor level, and a section of the viewing deck and open braai directly above the lounge;
  - relax the south-western street building line from 4m to  $\pm 2,325\text{m}$  in order to accommodate the lounge at ground floor level and viewing deck directly above the lounge; and
  - to relax the south-western street building line from 4m to  $\pm 0,484\text{m}$  to accommodate a section of the pergola;

**be refused** in terms of the provisions of Section 61 of the By-Law; and
3. that the applicant be notified of its appeal right in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the decision in paragraph 2. above.

## 12. REASONS FOR RECOMMENDATIONS

### Application for removal of restrictions

- ❖ The application has followed due procedure.
- ❖ No objections were received from the public.
- ❖ The removal of the restrictive conditions will enable the owner to utilise the property more efficiently by being aligned with the development rules and primary uses as set out in the Zoning Scheme.
- ❖ Is not regarded as being undesirable from a town planning point of view.

### Application for departure

- ❖ It will impact negatively on the built character of the area.
- ❖ It will impact on views of property owners in a south-eastern direction of the property.
- ❖ Ample space will occur on the property for alterations and additions without encroaching building lines that will ensure that the landowners will still enjoy optimal views from the property.
- ❖ Successors in title of the adjacent properties may experience privacy issues at some stage in future with regard to the viewing deck.
- ❖ The view-lines of motorists can be affected.
- ❖ It is regarded as being undesirable from a town planning point of view.

**13. Annexures**

Annexure A: Locality Plan  
Annexure B: Motivation Report  
Annexure C: Site Development Plans  
Annexure D: Title Deed T22749/1996  
Annexure E: Engineering Services Report  
Annexure F: Support from adjacent property owners  
Annexure G: Aerial Photo

**SIGNATURES****REGISTERED PLANNER:**

Name : **S VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

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

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

ANNEXURE A1/1



**Plan Active**  
Stads- en Streeksbeplanners  
Town & Regional Planners

All distances approximate  
and subject to survey.

Property Description:  
**ERF 1  
SANDBAAI**

Plan Description:  
**LOCALITY MAP**

Scale: **NTS**  
Drawing Nr: **Sand1L.drw**  
Date: **11/2017**



COPY RIGHT RESERVED

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

**ERF 1 SANDBAAI**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

The owner of Erf 1 Sandbaai, The Sandbaai Trust, has instructed the company Plan Active to apply for building line departures of Erf 1 Sandbaai and the removal of restrictive Title Deed conditions.

The owner intends to extend the existing dwelling situated on Erf 1 Sandbaai and subsequently the proposed alterations and additions encroach onto existing building lines prescribed in the Overstrand Municipality Zoning Scheme and the subject property's Title Deed. The Title Deed applicable to Erf 1 Sandbaai contains restrictions such as building lines that will have to be addressed.

Erf 1 Sandbaai is 709m<sup>2</sup> in extent and is held by title deed number T22749/96.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure from the building lines applicable to Erf 1 Sandbaai.
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

## **3. DESIRABILITY**

### **3.1 PROPERTY DESCRIPTION**

The subject property is situated at 148 Kusweg, Sandbaai. Please refer to the enclosed locality plan. Erf 1 Sandbaai is 709m<sup>2</sup> in extent and it is situated in a predominantly single residential area.

### **3.2 ZONING**

Erf 1 Sandbaai is zoned Residential Zone I and is currently being used for single residential purposes. Surrounding properties are also zoned for single residential purposes.

### **3.3 LAND USE**

Erf 1 Sandbaai is currently developed and being used for single residential purposes. A dwelling with an associated outbuilding, a double garage, is located on-site.

Land uses that surround erf 1 Sandbaai are single dwellings, public roads and public open spaces. It is therefore evident that erf 1 Sandbaai is within a predominantly residential area.

### 3.4 **PROPOSAL**

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the departure from the building lines applicable to Erf 1 Sandbaai.
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

The existing dwelling was designed to function as a holiday home and not a permanent residence. The owner intends to extend the existing dwelling situated on Erf 1 Sandbaai to have the functionality of a permanent residence and the position of the existing dwelling makes it extremely difficult to make the necessary alterations and additions within the current applicable building lines. The proposed alterations and additions encroach onto existing building lines prescribed in the Overstrand Municipality Zoning Scheme and the subject property's Title Deed.

The detail of the application can be described as follows:

#### **3.4.1 Proposed Building Line Relaxation**

Erf 1 Sandbaai is 719m<sup>2</sup> in extent. The house was built 58 years ago and has outlived its original purpose and is in need to be upgraded to modern standards and requirements. Given the original architectural design of the house and its position on the subject erf it is impossible to achieve the much needed upgrades without encroaching into the building lines. The proposed additions and alterations to upgrade the dwelling from a holiday home to a permanent residence can be summarised as follow:

- A new bathroom;
- Existing scullery to be enlarged;
- A new lounge.

The proposed bathroom as indicated on the site plan will be located  $\pm 4.362\text{m}$  from the street boundary and will only encroach the  $4.72\text{m}$  building line prescribed in the Title Deed by  $0.358\text{m}$ . This application also constitutes the removal of restrictive Title Deed conditions that will be dealt with in paragraph 3.4.2 below. Due to the fact that the erf is a corner erf the building line applicable to the north western street boundary is  $3\text{m}$  and will not be encroached. The proposed extension of the existing scullery will also not encroach into the  $2\text{m}$  south-eastern lateral building line.

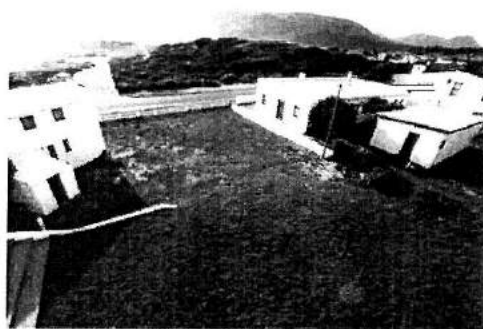
With reference to the enclosed set of building plans it is proposed that the existing carport be expanded and changed into a lounge. The proposed lounge was designed with a concrete roof which will also serve as a viewing deck. It was decided to make use of a concrete roof / viewing deck structure because it allows the roof line and profile of the roof of the existing building to be retained. The concrete roof / viewing deck allows for the lowest possible roofline over the extension with the intention to maximize the neighbours views. As it is designed now, it has no impact on the neighbour's view from either their lounge or upstairs balcony. We have enclosed letters from the owners of erven 2 and 4 Sandbaai supporting the proposed building line relaxation and removal of restrictive Title Deed conditions.

The proposed lounge and viewing deck encroaches the  $2\text{m}$  south-eastern lateral building line by  $\pm 0.97\text{m}$  and is therefore  $\pm 1.030\text{m}$  from the lateral boundary. Please take note that it is only a small corner of the new lounge and viewing deck that will be constructed over the building line and not the full length of the proposed lounge and viewing deck.

The proposed lounge will also encroach the south western  $4\text{m}$  street building line. The corner of the proposed lounge protrudes the building line by  $\pm 1.675\text{m}$  and will be  $\pm 2.325\text{m}$  from the street boundary. The area of the proposed lounge / viewing deck that encroaches onto the building line is  $\pm 3\text{m}^2$  in extent and will also not be the full width of the proposed lounge that will encroach onto the building line.

A patio and pergola are proposed on the western side of the new lounge. The patio and pergola will encroach the south western street building line by  $\pm 3.516\text{m}$  and is situated  $\pm 0.484\text{m}$  from the road boundary. The proposed patio that is less than  $1\text{m}$  high with the open wooden pergola has very little impact on view due to the fact that it faces the western corner of the site facing the coast. There are no residential erven in a south-western and western direction from the site. South-west and west offers

spectacular un-obscured views over the Atlantic Ocean. As with the proposed lounge,  $\pm 40\%$  of the patio and pergola encroach the building line, and not the whole patio and pergola. Please refer to the enclosed set of building plans for easy reference. As mentioned earlier in this document, the property owners on which the application have an impact on have provided their letters of support for the proposal which we have enclosed for easy reference. Please also refer to the photographs below:



Photograph taken from neighbour's balcony. Will look down on our proposed patio deck.



### 3.4.2 Proposed Removal of Restrictions

The enclosed Title Deed, T22749/96 contains the following Title Deed restriction that has to be addressed:

- Page 5, paragraph (2)(d): "That no building be erected on the above erf or erven within 4.72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts, such space may be used as gardens but shall not be built upon."

The proposed bathroom, lounge, patio and pergola encroach the above mentioned street building line that is 4.72m and will therefore have to be removed. The detail of the encroachments have been dealt with in paragraph 3.4.1 above. In addition to the last mentioned encroachment the Title Deed restriction, paragraph 2(d) as mentioned above prescribes a 4.72m street building line that is more restrictive than the prescribed building lines in terms of the Overstrand Municipality Zoning Scheme under a zoning of Residential Zone 1. With the removal of the restrictive Title Deed condition our client will at least gain an additional 0.72m to 1.72m to build.

Due to the costly exercise to have Title Deed restrictions removed we are also applying for the removal of the following Title Deed restrictions that is more restrictive than the primary rights prescribed under a zoning of Residential Zone 1 that reads as follows:

- Page 4, paragraph (2)(a): "That the above erf or erven be used for residential purposes only."
- Page 5, paragraph (2)(c): "That no more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half the area of any one of the above erven be built upon."

The reasons to have the above mentioned Title Deed restrictions removed are mainly to give the owner the opportunity to utilise the property to its fullest potential in terms of the primary land use rights under the current zoning of Residential Zone 1. The primary rights referred to are as follow:

**6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)****Use of the property**

6.1.1 The following use restrictions apply to property in this zone:

- (a) **Primary uses** are: day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;

If paragraphs 2(a) and 2(c) of the above mentioned Title Deed are not removed the owner will be restricted to only use the property for single residential purposes and will not have the possibilities to exploit his other primary land use rights.

Please take note that the proposed removal of the restrictive Title Deed conditions is mainly because they are more restrictive than the land use restrictions under the current zoning of the property that is Residential Zone 1. It is not proposed that we depart from any land use restrictions as prescribed in the Overstrand Municipality Zoning Scheme, Residential Zone 1.

**3.5 ACCESS**

The property is situated at 148 Kusweg, Sandbaai. The main access to the property is via Kusweg as indicated on the enclosed site development plan. This is an existing access that will be retained.

**3.6 SERVICES**

Due to the fact that Erf 1 Sandbaai is already developed within an already developed residential area municipal services already exist to which the dwelling is connected to. This application constitutes the removal of restrictive Title Deed conditions and a departure from the building lines. The proposals have no impact on services such as water, electricity, sewage and refuse removal.

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### 3.7 TITLE DEED

The title deed T22749/96 has restrictions that need to be removed in order for this application for building line departures to be approved.

The Title Deed restrictions that we are applying for to have them removed are:

- Page 4, paragraph (2)(a): "That the above erf or erven be used for residential purposes only."
- Page 5, paragraph (2)(c): "That no more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half the area of any one of the above erven be built upon."
- Page 5, paragraph (2)(d): "That no building be erected on the above erf or erven within 4.72 metres of any boundary line between the said erf or erven and any street, road or avenue on which such erf or erven abuts, such space may be used as gardens but shall not be built upon."

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.2 above.

### 3.8 FORWARD PLANNING

#### **Overstrand Municipal Wide Spatial Development Framework**

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject erf will be retained and we are only applying for the removal of restrictive Title Deed conditions and a departure from the building lines.

### **Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 that consists mainly of Sandbaai's single residential erven. No densification of this planning unit is proposed.

In this instance we are not applying for a subdivision. The density of the subject erf would remain as is. We are applying for the removal of restrictive Title Deed conditions and a departure from the building lines.

It is our opinion that the above mentioned Spatial Development Framework and Growth Management strategy is not applicable to this application.

### **3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.9.1 HERITAGE VALUE**

Erf 1 Sandbaai is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is developed and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

In the light of the above mentioned it is evident that the proposed removal of restrictive Title Deed conditions and building line relaxations will not have a negative impact on the heritage value of the subject property or the Greater Sandbaai area.

### 3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

### 3.10 PLANNING PRINCIPLES

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

Spatial Justice: The proposed removal of restrictive Title Deed conditions and departure from the building lines will be in line with the current built character of erven in the vicinity. The owners of surrounding erven on which the application impacts on have giving their written consent for the proposal. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribe in the Title Deed.

Spatial sustainability: The proposed removal of restrictive Title Deed conditions and departure from the building lines are in line with the current character of the established residential area. The proposed applications will have no impact on the conservation worthy areas of Sandbaai. Spatially the land use of Erf 1 Sandbaai will be in line with the residential character of the area.

Efficiency: Given the original architectural design and its position on the subject erf it is impossible to achieve the much needed upgrades without encroaching into the building lines.

With reference to the enclosed set of building plans it is proposed that the existing carport be expanded and changed into a lounge that expands onto a patio and pergola. The proposed lounge was designed with a concrete roof which will also serve as a viewing deck. It was decided to make use of a concrete roof / viewing deck structure because it allows the roof line and profile of the roof of the existing building to be retained.

The concrete roof / viewing deck allows for the lowest possible roofline over the extension with the intention to maximize the neighbours views. As it is designed now, it has no impact on the neighbours view from either their lounge or upstairs balcony. We have enclosed letters from the owners of erven 2 and 4 Sandbaai supporting the proposed building line relaxation and removal of restrictive Title Deed conditions.

From the above information it is clear that the owner did his utmost best to minimise the impact of the proposed alterations and additions on the surrounding land owners.

Spatial Resilience: Spatial resilience is not applicable to this application.

Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process.

#### 4. RECOMMENDATION

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

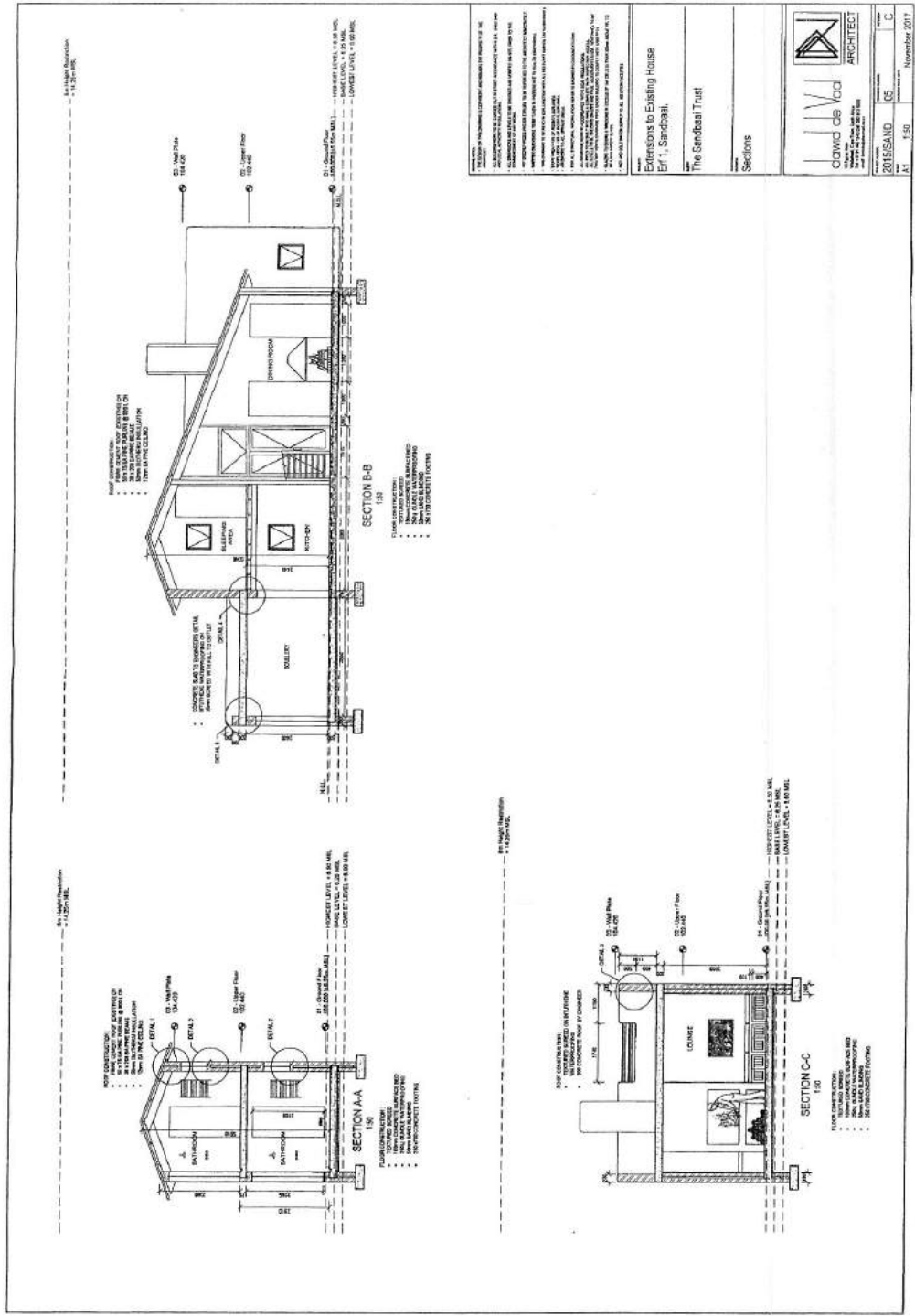
- The proposed removal of restrictive Title deed conditions of Erf 1 Sandbaai and departure from the building lines falls within the existing land use tendencies in the area;
- The proposal is compatible with the existing erf sizes in the area;
- There will be no impact on services and no additional services will be required;

- The removal of restrictive Title Deed conditions and departure from the building lines will not have a negative impact on the current character and land values of the surrounding erven.
- The owners on which the proposed application for the removal of restrictive Title Deed conditions and departure from the building lines have an impact on have provided their letters of support.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of restrictive Title Deed conditions and departure from the building lines of Erf 1 Sandbaai.










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STEYL-VOSLOO

ANNEXURE D 1/7

PREPARED BY ME,

SEELREG DUTY	R.
FOOI FEE	R. 75,00

  
 CONVEYANCER  
 STEYL J E

3/4 Adg

**DEED OF TRANSFER NO. T. 22749196**

**KNOW ALL MEN WHOM IT MAY CONCERN :**

THAT JACQUES ETTIENNE STEYL appeared before me, Registrar of Deeds, at Cape Town, he, the said Appearer, being duly authorised thereto by a Power of Attorney, granted to him by:

**PHILIPPUS JACOB CONRADIE**  
 Identity Number 270205 5105 001  
 Married out of community of property

dated the 29th NOVEMBER 1995

at CAPE TOWN

and witnessed in accordance with law which Power has been lodged with me;

*Handwritten mark*

And the said Appearer declared that the transferor had on the  
**29 November 1995**

truly and legally sold to, and that he, in his capacity as attorney aforesaid, did by virtue of these presents cede and transfer in full and free property to and on behalf of:

**THE TRUSTEES FOR THE TIME BEING  
OF THE SANDBAAI TRUST**

No IT5756/95

or its Assigns

**ERF 1 SANDBAAI, in the area of the Local Transitional  
Council of Greater Hermanns, Division of Caledon  
Province of the Western Cape**

**IN EXTENT: 709 (SEVEN HUNDRED AND NINE) square metres**

**FIRST TRANSFERRED** by Deed of Transfer No 14369/1945 with Diagram No 4020/1945 relating thereto and held by Deed of Transfer No 12960/1957.

- A. SUBJECT** to the conditions referred to in Deed of Transfer No 5209/1915; and being land which is owned by virtue of a Title reference originating from a Deed of Grant (Swellendam Quitrents Volume 2 (1) No 1 dated 15 May 1834, described herein in terms of Section 19(1) of Act No 47 of 1937 as granted with the reservation in favour of the State to the mining rights for gold, silver and precious stones mentioned in Section 4 of the Proclamation of Sir John Cradock dated 6 August 1813.

**B. FURTHER SUBJECT** to the following special conditions:

(1) Imposed in Deed of Transfer No 14369/1945 in favour of the SANDBAAI SEASIDE ESTATE COMPANY (PROPRIETARY) LIMITED as owner of the remainder of Portion No 3 of the Farm Onrust Rivier, as held by Deed of Transfer No 11466/1929 and the owner of lots in the said township already transferred under similar conditions, namely:

- "(a) Die Maatskappy behou vir homself en sy opvolgers in regte die alleenreg tot alle hotelle, en dranklisensies, en die Transportnemer/s en sy/hulle opvolgers in regte sal die reg nie he om enige hotel op te rig of om enige dranklisensie te besit, sonder om eers die skriftelike toestemming van die Direkteure van die Maatskappy of sy opvolgers in regte te verkry.
- (b) Die Maatskappy en sy opvolgers sal nie geregtig wees om die grond liggende tussen die erwe verkoop as seefronterwe en die see, in erwe te verdeel en/of te verkoop nie.
- (c) Dat geen gebou opgerig sal word op die hierbokeskrewe eiendom voordat die planne van sulke geboue nie voorgele is aan en goedgekeur is deur die Direkteure van die gesegde Maatskappy of sy opvolgers in regte.
- (d) Die Transportnemer/s of sy/hulle opvolgers in regte van die hierbokeskrywe eiendom sal die reg he om enige stroom water wat oor die eiendom loop, af te keer langs enige van die lane of strate soos aangewys op die algemene plan van die dorp.
- (e) Die Maatskappy behou vir homself en sy opvolgers in regte die vrye en onbelemmerde oorgang van elektriese, telegraaf- of

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telefoonlyne, te enige tyd hierna oor en op enige gedeelte van die hierbokeskrywe eiendom, met die verder reg om hulle aan enige gebou van watter aard ook te laat vassit, nie minder dan 3,15 meter van die grond af, met reg van toegang tot sulke lyne vir die doel om hulle te verwyder of in order te hou.

- (f) Die Maatskappy behou die reg vir homself en sy opvolgers in regte, om enige tyd hierna pype te lê en in order te hou onder enige gedeelte van die hierbokeskrywe grond of op enige ander plek, en ten alle tye reg van toegang te he na sulke pype, vir verwydering, in order hou of uitbreiding daarvan of vir enige ander doel en om alles te laat doen as nodig mag blyk vir die gerief van die inwoners van die dorpsgebied in verband met die verskaffing van water aan hulle.
- (g) .....
- (h) Die Maatskappy behou vir homself die alleenreg tot alle water wat ontstaan of vloei oor die eiendom van die Maatskappy. Daar sal egter van hierdie voorbehoud uitgesluit word enige water verkry deur 'n eienaar van die hierbokeskrywe grond deur middel van putte of boorgate op sulke grond gegrawe of geboor."
- (2) Imposed by the Administrator when approving the formation of the township and contained in said Deed of Transfer No 14369/1945, viz.:
- "(a) That the above erf or erven be used for residential purposes only.
- (b) That the above erf or erven be not subdivided.

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- (c) That not more than one dwelling together with the necessary outbuildings and accessories be erected on any one of the above erven and that not more than one-half the area of any one of the above erven be built upon.
- (d) That no building shall be erected on the above erf or erven within 4,72 metres of any boundary between the said erf or erven and any street, road, or avenue on which such erf or erven abuts; such space may be used as gardens but shall not be built upon."



WHEREFORE the Appearer, renouncing all the right and title the said transferor heretofore had to the premises, did, in consequence, also acknowledge the transferor to be entirely dispossessed of, and disentitled to the same; and that by virtue of these presents the said transferee, heirs, executors, administrators or assigns, now and henceforth shall be entitled thereto, conformably to local custom;

The State, however, reserving its rights; and finally acknowledging the whole of the purchase price amounting to

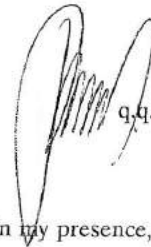
**R150 000,00 (ONE HUNDRED AND FIFTY THOUSAND RAND)**

to have been duly paid or secured.

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


THUS DONE AND EXECUTED at the Office of the Registrar of Deeds, at CAPE TOWN

on the 28 day of MARCH 1996



q.q.

In my presence,



REGISTRAR OF DEEDS

REPUBLIC OF SOUTH AFRICA INLAND REVENUE  
 DEPARTMENT OF FINANCE

ANNEXURE D.7/7  
 REV 684

TRANSFER DUTY - FORM B  
 DECLARATION BY PURCHASER

PART I

TRANSFEROR (SELLER):-  
 PHILIPPUS JACOB CONRADIE

TRANSFeree (PURCHASER) :  
 THE TRUSTEES FOR THE TIME BEING  
 OF THE SANDBAAI TRUST

DESCRIPTION OF PROPERTY :  
 ERF 1 SANDBAAI, in the area of the Local Transitional  
 Council of Greater Hermanus, Division of Caledon  
 Province of the Western Cape  
 IN EXTENT : 709 SQUARE METRES

POSTAL CODE OF DISTRICT IN WHICH PROPERTY IS SITUATED

DATE OF TRANSACTION: 29 November 1995

CONSIDERATION : R150 000,00

TRANSFER DUTY PAID BY : STEYL-VOSLOO  
 POSTAL ADDRESS : 2nd Floor, Equity House, 107 St George's Mall, CAPE TOWN

1953

FOR OFFICIAL USE

TRANSFER DUTY PAID ON R. 150 000

BEING *Purchase Price*

ACT UNDER WHICH DUTY CHARGED

Steel defacing stamp of office of issue



*D. van der Merwe*  
 RECEIVER OF REVENUE

11/11/95  
 11/11/95

CASH REGISTER RECEIPT

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED  
CONDITIONS & DEPARTURE: ERF 1, SANDBAAI (3875)**

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

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
4. that stormwater be allowed to discharge through Erf 1, Sandbaai, unobstructed;
5. that no on-street parking be allowed.

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

22/3/2018  
**DATE**

**LETTER OF NO OBJECTION**

**DECLARATION BY AFFECTED PARTY(S)/PROPERTY OWNER**

**1. SUBJECT**

This letter of no objection relates to the proposed additions and alterations to the existing residential building on Erf No 1, 148 Kusweg, Sandbaai.

**2. DECLARATION**

I/We Willie Pienaar being the registered owner(s)/authorised representative of the owner of the under-mentioned premises, and having been shown the proposed layout plan/building alteration plan/proposal drawings with reference Plan No's:

2015/SAND/01 Rev A – Site Layout;  
2015/SAND/02 Rev A – Ground Floor Plan;  
2015/SAND/03 Rev A – Upper Floor Plan;  
2015/SAND/04 Rev A – Elevations;  
2015/SAND/05 Rev A – Sections;  
2015/SAND/08 Rev A – New Stone Boundary Wall

prepared by Dawid de Vaal Architects in respect of this local authority plan approval application, and having signed and dated the abovementioned plans, herewith confirm that I/We:

- 2.1 Understand that the proposal requires a departure from the zoning scheme as indicated on the above drawings;  
2.2 Confirm that I/we will not be adversely affected by the proposal and therefore have no objection thereto.

Signature: Owner/Authorised Representative				Date	2. 16. 2017
Full Name(s)	Willie van Niekerk Pienaar		Company	Pienaar Familie Trust	
Erf No	Erf No 2		Street Address	150 Marine Drive, Sandbaai	
Postal Address					Postal Code
Contact No	Office	(021) 422-4635	Home	(021) 685-7487	Cell
					082 490 2664

**LETTER OF NO OBJECTION****DECLARATION BY AFFECTED PARTY(S)/PROPERTY OWNER****1. SUBJECT**

This letter of no objection relates to the proposed additions and alterations to the existing residential building on Erf No 1, 148 Kusweg, Sandbaai.

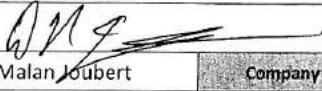
**2. DECLARATION**

I/We Daniël Malan Joubert being the registered owner(s)/authorised representative of the owner of the under-mentioned premises, and having been shown the proposed layout plan/building alteration plan/proposal drawings with reference Plan No's:

2015/SAND/01 Rev A – Site Layout;  
2015/SAND/02 Rev A – Ground Floor Plan;  
2015/SAND/03 Rev A – Upper Floor Plan;  
2015/SAND/04 Rev A – Elevations;  
2015/SAND/05 Rev A – Sections;  
2015/SAND/08 Rev A – New Stone Boundary Wall

prepared by Dawid de Vaal Architects in respect of this local authority plan approval application, and having signed and dated the abovementioned plans, herewith confirm that I/We:

- 2.1 Understand that the proposal requires a departure from the zoning scheme as indicated on the above drawings;  
2.2 Confirm that I/we will not be adversely affected by the proposal and therefore have no objection thereto.

Signature: Owner/Authorised Representative				Date	28/09/17
Full Name(s)	Daniël Malan Joubert		Company	Sandbaai Standhuis Trust	
Erf No	Erf No 4	Street Address	146 Kusweg, Sandbaai		
Postal Address	Posbus 17 KLAPMUTS			Postal Code	7625
Contact No	Office	-	Home	-	Cell 082 877 0717

SANDBAAI STRANDHUIS TRUST  
(IT 100/97)

ANNEXURE F 3/3

MEETING OF TRUSTEES HELD ON  
11 November 2015 AT PAARL.

**PRESENT:**



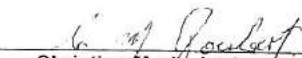
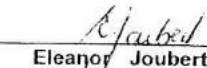
Daniel Malan Joubert Jnr  
Executor of Daniel Malan Joubert Snr  
Christine Marie Joubert  
Eleanor Joubert

**PROPOSAL**

It is proposed that the trustees decide on a trustee to act on behalf of the trust with regards to building plans for neighbouring Franco Conradie at kusweg Sandbaai

**RESOLVED THAT**

It is resolved that the trustees decided that DM Joubert Jnr can sign off building plans for neighbouring Franco Conradie at kusweg Sandbaai on behalf of the Sandbaai Strandhuis Trust

 Daniel Malan Joubert Jnr	<u>11/11/2015</u> DATE
 Executor of Daniel Malan Joubert Snr	<u>11/11/2015</u> DATE
 Christine Marie Joubert	<u>11/11/2015</u> DATE
 Eleanor Joubert	<u>11/11/2015</u> DATE



G1/1

Date: 2016-06-19

Aerial Erf 1, Sandbaai

