



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

**DATE:
VENUE:
TIME:**

**27 OCTOBER 2021
VIRTUAL / GLASKAS
10:00**

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

18 October 2021

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that, due to the Covid-19 lockdown, a meeting of the **Municipal Planning Tribunal (MPT)** will go into session by means of a virtual platform on **Wednesday, 27 October 2021 at 10:00**, to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Mr P Roux (Town Planner)
11. Secretariat

**MUNICIPAL PLANNING TRIBUNAL
(MPT)**

27 October 2021

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1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 30 September 2021

4. ITEMS FOR CONSIDERATION

4.1 ERF 45, 8 ONSE BAAI, VAN DYKSBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF WEBB ELLIS HUIS (PTY) LTD

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4.2 ERF 1132, HAWSTON, OVERSTRAND MUNICIPAL AREA: PROPOSED CONSENT USE AND DEPARTURES: MESSRS HIGHWAVE CONSULTANTS ON BEHALF OF HAWSTON SECONDARY SCHOOL FOR PROVINCIAL GOVERNMENT: WESTERN CAPE

Report attached.

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Report attached.

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Report attached.

- 4.5 ERF 3456, 4 STRAIGHT STREET, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND SUBDIVISION: MESSRS PLAN ACTIVE ON BEHALF OF FA VAN RENSBURG AND G TURCK**

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- 4.6 PORTION 8 OF THE FARM DE DRAAY NO 563, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND EXEMPTION OF SUBDIVISION (REGISTRATION OF SERVITUDE RIGHT-OF-WAY) : MESSRS PLAN ACTIVE ON BEHALF OF THE EXECUTOR OF THE ESTATE OF LATE WJC MITCHELL**

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Report attached.

4.1**ERF 45, 8 ONSE BAAI, VAN DYKSBAAI: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF WEBB ELLIS HUIS (PTY) LTD****45 GKB****SW van der Merwe
20 September 2021****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 21 September 2020 from Messrs WRAP Project Office on behalf of Webb Ellis Huis (Pty) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 45, Van Dyksbaai for the following:

- ❖ application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions C.(2)(b) and C.(2)(d) as contained in the Title Deed T19705/2020;
- ❖ application for departure in terms of Section 16(2)(b) of the By-Law for the following:
 - relaxation of the south-western street building line from 4m to 0,269m and 0,533m respectively to accommodate the existing dwelling and stoep as well as a proposed enclosed patio/braai room.
 - relaxation of the south-western street building line from 4m to 3,749m to accommodate a proposed balcony overhang;
 - relaxation of the south-eastern lateral building line from 2m to 1,253m and 1,088m respectively to accommodate an existing bathroom, and
 - relaxation of the south-eastern lateral building line from 2m to 1,204m to accommodate the proposed fireplace/braai and enclosed stoep;
- ❖ application for determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law to accommodate the existing building.

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 Site Development Plan is attached as Annexure C. Title Deed T19705/2020 is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The subject property is zoned for single residential purposes, measures 972m² in extent and is developed with a dwelling house dating back to 1969. The dwelling is constructed towards the south of the erf on the 4m building line. The erf has a steep slope increasing from 11,50m at the south-eastern street boundary to 20,5m along the northern rear boundary. The rear half of the property is also covered with Milkwood trees and forms part of the frontal dune expanding towards the east and west over several properties. The property is situated within the Heritage Protection Overlay Zone (HPOZ) and the Coastal Protection Zone Environmental Management Overlay Zone (EMOZ).

Historic approved plans for additions to the main dwelling dating back to 2002 and 1973, indicates a 7,5m set back from the street boundary, retaining wall within the property boundary as well as a 2m lateral building line. The retaining wall referred to above was constructed outside the property boundary on public open space, whilst the stoep of the dwelling is situated almost on the property boundary, whilst the dwelling encroaches the 2m eastern lateral building line.

The application seeks condonation of the existing dwelling in accordance with the provisions of the Overstrand Municipal Amendment By-Law on Land Use Planning, 2020. The application therefore entails determination of an administrative penalty, removal of restrictive title conditions and building line departures for existing and proposed additions as per the executive summary above.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- The topography of the subject property is very steep towards the rear boundary, rendering almost 50% of the property not feasible/impractical.
- As a result of the above topographic site constraints the property owner to establish an alternative area for a covered stoep, garage, balcony, fireplace and braai.
- The applicant proposes the removal of restrictive title deed conditions with reference to conditions C.(2)(b) and C.(2)(d) of Title Deed T19705/2020 in terms of Section 16(2)(f) of the By-Law to enable legalisation of the historic encroachments in accordance with the provisions of the Scheme Regulations.
- The covered stoep will be used for normal activities such as sitting with family and friends, braaiing and not for human habitation purposes due to the fact that the covered stoep will not have walls around it as only security shutters will be installed.
- The location of the proposed garage is the only feasible location as a result of the topography.
- The proposal is consistent with the applicable forward planning and policy documents.
- The property is already connected to municipal services.
- The proposed improvements will contribute to increased rates and taxes resulting in improved service delivery which is in the public's interest.
- The proposal will not adversely impact vested rights of adjoining property owners.
- The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.
- The property is situated within the Coastal HPOZ. The application will therefore be referred to the Heritage Committee to evaluate compliance with the regulations pertaining to the HPOZ.
- The property is situated within the Coastal Protection Zone EMOZ and will be referred to Environmental Management Services for comment

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Newspaper	Yes	27 January 2021	5 March 2021

Gazette	Yes	29 January 2021	5 March 2021
Notices (<i>possibly affected property owners</i>)	Yes	28 January 2021	5 March 2021
Notices (<i>persons mentioned in title deed</i>)	Yes	24 June 2021	30 July 2021
Ward councillor	Yes	27 January 2021	6 March 2021
Total comments	THREE (3)		
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
In case of application for removal, amendment or suspension of restrictive title conditions if notices in accordance with Section 35(3)(d) of the By-Law on Municipal Land Use Planning was served on all persons mentioned in the title deed for whose benefit the restriction applies?			Yes

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

Name	Date received	Summary of comments
Fire Services	26/01/2021	Annexure G.
Building Department	27/01/2021	No objection. Building plan application to comply with all applicable law. HPOZ Coastal Strip was taken into account with this comment.
Heritage Committee	02/02/2021	No objection. HPOZ included.
Telkom	03/02/2021	Annexure H.
Traffic	04/02/2021	No objection.
Waste Management	11/02/2021	No objection.
District Health	05/03/2021	No comment.
Department of Environmental Affairs and Development Planning: <i>Component Environmental</i>	19/07/2021	Annexure I.

Engineering Services	09/03/2021	Annexure J.
Property Administration	24/03/2021	Annexure K.
Environmental Section	28/09/2021	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One (1) letter of objection was received from MP Bouwer on behalf of Paolo Publishing Co, owner of Erf 570, Van Dyksbaai. The letter of objection was not accompanied by a resolution from the company authorising MP Bouwer to comment on their behalf. The objection will therefore be dealt with as a personal objection from MP Bouwer.

Two (2) letters of comment were received from HF Fourie, on behalf of the Andries Fourie Family trust, the owner of Erf 42, Van Dyksbaai and BE Blackbeard on behalf BE and K Blackbeard, the owners of Erf 568, van Dyksbaai.

HF Fourie is in support of the proposal, whilst the letter from BE Blackbeard is not directed towards the desirability of the application but relates to concerns about the impact of the proposed development with regards to excavation on the adjoining property. The letter of objection and comment are attached as Annexure E and the applicant's response thereto as Annexure F.

COMMENT FROM MP BOUWER

- 1. The objector did not receive a registered notice and only became beware of the application following notification by a neighbour who received a registered notice.***

Response from applicant

No response received.

Response from town planner

Registered notices were served onto all property owners within Van Dyksbaai in accordance with the provisions of the By-Law, including Paolo Publishing Co, the owner of Erf 570, Van Dyksbaai. The application had also been advertised.

- 2. The objector objects to the application for removal of restrictive title conditions and departure as the future development of the erf comprising second dwellings will impact upon views and privacy. The objector is further of the opinion that the demolition of the existing structures will have the effect that the applications are not required thus render the applicant a blank canvas and a more viable development proposition.***

Response from applicant

The applicant advise that the application is submitted to ensure compliance with the Land Use Scheme since the original owner did not built the dwelling in the

position indicated on the building plans. Thus, the current owner proposes to rectify the historic transgressions, thus requiring removal of certain restrictive building line conditions and departure in terms of the Land Use Scheme.

Although it is not the immediate intention to build a second dwelling, the land use scheme permits a second dwelling as a primary right and the applicant may in future want to use this right.

Response from town planner

The applicant's comment is noted and agreed with. In addition to the above the property contains a bedroom that is not interleading and deemed a second dwelling, hence the application for removal of restrictive title conditions C(2)(b).

3. According to the objector's attorney there is no examples of two dwellings per erf.

Response from applicant

Whilst the applicant has no immediate intention to construct a second dwelling, it is permitted in terms of the Land Use Scheme.

Response from town planner

The applicant's comment is noted and agreed with. Further, the application should be considered on merit. Having had regard to the objector's statement that the construction of a second dwelling may impact upon views and privacy of the objector, the same could be true if the primary dwelling is extended onto the rear building line. Further, the application property has a 9m fall between the rear- and street property boundary, thus limiting development to the coastal section at the bottom of the property. It is therefore highly unlikely that the development and upgrading of the application property will have a significant impact onto the objector. Lastly the construction of a second dwelling is permitted as a primary right in terms of the Land Use Scheme.

4. The applicant assume that no objections will be received, whilst the points of motivation is considered poor.

Response from applicant

The objector's comment is noted. The applicant states that the application has been motivated in accordance with the By-Law.

Response from town planner

The applicant's comment is noted and agreed with.

COMMENT FROM BE BLACKBEARD

- 1. The relaxation of the south-western lateral building line and accommodation of the proposed garage must take cognisance of the location of the septic tank on Erf 568 situated near the common boundary with the application property.**

Response from applicant

The garage does not exceed the south-western lateral building line. Excavation on the subject property would therefore not affect the septic tank, provided that the septic tank does not encroach the property boundary.

Response from town planner

The proposed garage will adhere to the 4m street- and 2m lateral building line as per the proposed Site Development Plan. The proposed garage roof will have a concrete slab, the overhang of which encroach the 4m street building line with 0,25m. Therefore, it is highly unlikely that the proposed development will impact the septic tank on the adjacent property.

- 2. Excavation on the application property below ground level to provide for the proposed garage may impact upon the septic tank, as such the municipality or property owner need to make provision to make good any failure or loss to the septic tank because of the above.**

Response from applicant

The garage does not encroach the building lines, excavation is therefore not projected to impact upon the septic tank. The applicant is only liable for construction work on the application property. Provided that the septic tank does not exceed the building line the applicant is of the view that damage to the septic tank is unlikely.

Response from town planner

It is agreed that the proposed development is not likely to impact the adjoining property provided that the property owner ensure the necessary safety measures are implemented. Failing that, contrary to the applicant's comment, the property owner may be liable to make good any damage to the adjoining property. This is regarded a civil legal matter between the respective property owners and not relevant to the merit of the application under consideration.

- 3. The septic tank on Erf 45 is located in the area where the garage is proposed, and excavation are planned. As such appropriate health and safety measures should be implemented.**

Response from applicant

A conservancy tank is proposed in an alternative location. The applicant agreed to the implementation of the necessary measures to prevent the spillage of sewage when the existing tank is removed.

Response from town planner

The applicant's comment is noted and agreed with. The Site Development Plan indicates a new proposed septic tank located in front of the garage.

- 4. A portion of the retaining wall on Erf 68 was removed to provide for access to the proposed garage. The remainder of the retaining wall therefore**

needs to be stabilised/restored to prevent the remaining retaining wall from collapsing.

Response from applicant

The applicant states that the architectural drawings indicate proposed construction work that address the concern raised and that it be carried out with consent from Overstrand Municipality.

Response from town planner

The applicant's response is noted and agreed with. Further, approval had been obtained from the Municipal Manager for the retention of the retaining wall outside the application property as well as alterations in order to obtain access to the proposed garage on the property.

COMMENT FROM HF FOURIE

1. ***Mr Fourie is in support of the application and of the view that the application should be concluded to ensure building work is completed which will eliminate the eyesore of the current half-built building on the property.***

Response from the applicant

The applicant notes that the objector is in support of the proposal and advise that building works will commence following completion of the application, thereby eliminating the current eyesore.

Response from town planner

The applicant's response is noted.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All relevant departments provided positive comments.

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

The proposed development will not further perpetuate historic spatial imbalances since it will create employment opportunities, mostly to the benefit of the historic marginalised and will ensure upward socio-economic mobility.

Spatial sustainability

The application property is in an existing approved town and does not impact on environmentally sensitive areas or agricultural land.

Efficiency

The proposed development intends to make optimal use of space on the property which is constrained by the topography limiting development to the southern portion of the property as well as the dense milkwood trees situated rear of the house.

Spatial Resilience

The development of the property will be in synchrony with the relevant spatial planning policies that adhere to the principle of spatial sustainability in terms of the Spatial Development Framework and the 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 a public participation process had 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 10.2 above.

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

The application is consistent with the SDF and OMGMS.

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

N/a

10.6 Impact on Municipal engineering services

The proposed additions will not have a significant impact upon existing services and is supported by the Engineering Services Department.

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

The subject property was established with the development of Van Dyksbaai. DEA&DP confirmed that the proposal does not trigger any listed activities in terms of NEMA subject to compliance with the ad-hoc development set-back line as determined by DEA&DP (refer to Annexure I).

The proposed development does not trigger the provisions of Section 38 of the National Heritage Resources Act.

10.8 Existing and proposed zoning comparisons and considerations

The zoning of the subject property will remain Residential Zone 1, therefore 4m street and 2m lateral- and rear building lines apply.

The property is situated within the HPOZ as well as the Coastal Protection EMOZ. No objections were received from the Overstrand Heritage and Aesthetics Committee or Environmental Management Services pertaining to the impact of the proposal on the HPOZ and Coastal Protection EMOZ.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Title Deed T19705/2020 applicable to Erf 45, Van Dyksbaai contains the following restrictive conditions:

“Condition C.(2)(b) that only one dwelling, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.”

“C.(2)(d) that no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line or public place which forms a boundary to this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf. This condition shall not apply to the existing building on Erf No. 15 until such time as building is demolished.”

The applicant motivates that the title deed conditions were inserted in 1935 due in response to the development trends/pressures at the time. Current development trends together with constraints of the subject property necessitates the removal of restrictive title conditions. In view of the above being stated the following directly relates to Section 39(5) of LUPA, 2014 (Act 3 of 2014):

The financial or other value of the rights:

There is no financial value to holder of the rights (municipality).

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

There is no personal benefit for the holder of the rights.

The personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended:

The personal benefit would be that the removal will facilitate the development/upgrade of the property in accordance with the provisions of the Scheme Regulations, thus increased property value that will benefit the applicant.

The social benefit of the restrictive condition remaining in place in its existing form and the social benefit of the removal, suspension or amendment of the restrictive condition:

There is no social benefit for the condition to remain in place or to be removed.

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

Application is only made for removal of restrictive conditions (b) limiting development to one dwelling unit only and condition (d) pertaining to title deed building lines. Title deed conditions (a) and (c) that limits development to residential purposes only and 50% coverage remains.

The removal of the above restrictive title conditions will enable the property owner to develop a second dwelling in future should the need arise, in accordance with the primary rights conferred to him via the Zoning Scheme. Further, there is also a non-interleading bedroom on the property that is considered to be a second dwelling, hence the removal application. The removal of the restrictive building line clauses will also ensure that the existing building encroachment could be accommodated, in accordance with the provisions of the Overstrand Municipal Land Use Planning By-Law as a response to the topographic challenges of the subject property.

Given the above the opinion is further held that the proposal is sufficiently evaluated in terms of Section 39 (5) of LUPA, 2014 (Act 3 of 2014).

12. THE DESIRABILITY OF THE PROPOSAL

The application property is situated in a cul-de-sac comprising eleven (11) properties and contains a dwelling situated towards the southern property boundary due to topographical site constraints, namely the steep topography climbing from 11,5m in the south-east of the property to 20,5m towards the rear property boundary. The rear half of the property forms part of a frontal dune extending across several adjoining properties covered with milkwood trees.

The dwelling had been constructed in 1969 according to the date on the gable. An open stoep higher than 1m above natural ground level had been constructed which stoep is situated between 0,269m and 0,533m from the street boundary. The existing house also contains an en-suite situated between 1,088m and 1,253m from the eastern lateral property boundary. It is not clear whether these additions were built at the same time as the house, or thereafter. A retaining wall and entrance steps leading to the stoep had also been constructed outside the property boundary which retaining wall/steps is evident on photographs dating back to 1984.

The current owner bought the property with the aforesaid and is now desirous to rectify the historic contraventions. Application is also made for a proposed enclosed canopy/braai room and will encroach the street and lateral building lines as per the executive summary above.

Removal of restrictive title conditions

The application for removal of the restrictive title conditions pertaining to building lines and the one dwelling unit restriction will facilitate the development in accordance with the provisions of the Scheme Regulations and enable condonation of the historic street- and lateral building line encroachments and not considered to adversely affect the amenity of the surrounding area or vested rights of adjoining property owners.

Existing departures (stoep and en-suite)

The existing stoep is situated between 0,269m and 0,533m from the street boundary. Part of the stoep slightly exceeds 1m above natural ground level. Due to the limited nature of the encroachment the opinion is held that it will not have a significant impact on the character of the area and the retention thereof is supported.

The portion of the existing en-suite bathroom that encroach the 2m lateral building line amounts to 1,7m² and is situated between 1,088m and 1,253m from the lateral building line. The en-suite does not have windows facing towards the lateral boundary and therefore regarded not to detract from the character of the area or amenity of the adjoining property owners. The encroachment is insignificant and does not adversely impact on the character of the area or amenity of adjoining properties.

Proposed departure (enclosed patio / braai room)

The applicant proposes to construct an enclosed patio with a fireplace, the openings of which will be fitted with security shutters. Having had regard to the applicable definitions of a building and structure the proposed enclosed patio constitutes a braai room.

The proposed fireplace measures 3,823m wide and extend to the front edge of the stoep and will be situated 0,533m from the street boundary. The proposed fireplace will be situated 1,207m from the lateral property boundary.

The application property is situated in a cul-de sac with eleven (11) properties. The majority of these properties adheres to the street building line. The street building line encroachments on Erf 39 (existing house) and Erf 568 (open stoep and pergola) is unauthorised. Erf 43 had historic building plan approval for a garage with access over the erf near the street boundary, whilst departure approval was granted for a roof terrace above the garage with a 2,36m setback from the street boundary.

Having had regard to the character of the cul-de-sac as described above it is evident that although there are structures that encroach the 4m street building line none of these extend onto the property boundaries, save for the unauthorised pergola on the adjoining property. The proposed braai room situated varying between 0,269m and 0,533m from the street boundary is therefore not in line with the character and morphology of existing development in the surrounding area and considered to detract from the visual amenity of the locality.

Although the topography limits development to the bottom portion of the property adjacent the street building line, approval of the proposed braai room almost onto the street boundary will create an unacceptable precedent, the cumulative impact of which will detract from the visual amenity of the locality.

Further, the cul-de-sac is accessed by a narrow 4m gravel road without formal sidewalks. The proposed encroachment in close proximity of the street boundary will therefore appear visually imposing in the street scape which is not desirable.

The proposed fireplace will have a 3,82m wide chimney, the majority of which will encroach the 4m street building line up to 0,533m from the street boundary and the 2m lateral building line up to 1,207m. The width of the chimney is considered

excessive and considered to contribute to the adverse impact on the character of the streetscape and is therefore not supported. The fireplace could easily be reduced to achieve a 2m setback from the street boundary, still leaving a generous fireplace in excess of 2m which will significantly minimise the visual impact onto the street scape/character of the area.

Having had regard to the evaluation above, the construction of the proposed braai room is not desirable. The opinion is however held that an open canopy and fireplace set back 2m from the street building line could be supported since it will have less impact and will not detract from the amenity of the adjoining properties and will be dealt with in the recommendation and approval conditions.

Proposed departure (garage)

The proposed garage will be situated towards the eastern side of the dwelling and maintain the street- and lateral building lines. The garage will be provided with a flat roof and be used as a roof terrace, the front edge of which marginally encroach the street building line. The encroachment of the 4m street building line by 0,25m is insignificant and will not adversely impact the visual amenity of the area or residential amenity of the occupants of adjoining properties and is therefore supported.

Heritage Protection Overlay Zone (HPOZ)

Due to its location within the HPOZ the application was referred to the Overstrand Heritage and Aesthetic Committee (OHAC) for comment who did not object to the proposal.

Environmental Management Overlay Zone (EMOZ)

The subject property is situated within the Coastal Protection Zone (EMOZ). The application was circulated to Environmental Management Services for comment who did not raised any objections.

Determination of Administrative Penalty

In terms of the By-law the applicant must provide the following in terms of Section 90(3) of the By-Law, namely:

(a) nature, duration, gravity and extent of the contravention

The building was constructed during 1969 and the stoep and the encroachments occurred on that date or thereafter.

(b) the conduct of the person (allegedly) involved in the contravention

The current owner purchased the property during 2020. The sale was informed by the historic approved building plans (attached as Annexure L) and only became aware of the encroachments after Johan Gericke was appointed to prepare drawings for the upgrade of the property.

(c) a report by a quantity surveyor in matters of unauthorised building/construction

The applicant motivates that the small nature of the encroachments does not warrant the appointment of a quantity surveyor.

(d) whether the unlawful conduct was stopped and

The owners are in process of rectifying the contravention via an application for determination of an administrative penalty, departure and removal of restrictive title conditions.

(e) whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law.

The applicant advised that the landowners' did not previously contravened the By-law.

The property owner bought the property from the developer with the dwelling as is and took transfer in 2020. Following building plan submissions for renovations and proposed additions it became clear that the dwelling has not been constructed in accordance with the approved plans. The owner then appointed Messrs WRAP Project Office to submit the necessary land use applications. It is clear the deviations from the former property owner(s) and that the current owner is not responsible therefore. The opinion is therefore held that the property owner cannot be held liable for the payment of an administrative penalty in respect of the historic unauthorised encroachment of the property. It is therefore recommended that an administrative penalty in respect of Erf 45, van Dyksbaai not be imposed.

Conclusion

Having had regard to the evaluation above, the opinion is held that the application for removal of restrictive title conditions and departure is desirable and supported in accordance with the recommendation below, save for the enclosed patio/braai room situated between 0,269m and 0,533m from the street boundary. The current owner inherited the historic encroachments/deviations from the approved building plans when transfer of the property was taken during 2020 and therefore cannot be held liable for the payment of an administrative penalty.

13. RECOMMENDATION

1. that the letters of objection and comment received be noted;
2. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment Bylaw on Land Use Planning, 2020 (By-Law) received from Messrs WRAP Project Office on behalf of Webb Ellis Huis (Pty) Ltd applicable to Erf 45, Van Dyksbaai for the removal of restrictive title deed conditions C.(2)(b) and C.(2)(d) as contained in Title Deed T19705/2020, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law for the encroachment of the south western street building line from 4m to 0,269m and 0,533m and the south eastern lateral building line from 2m to 1,253 and 1,088m to accommodate the existing dwelling (stoep and en-suite), **be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the application for departure in terms of Section 16(2)(b) of the By-Law for the encroachment of the south western street building line from 4m to 3,749m to accommodate the proposed balcony overhang, **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application for departure in terms of Section 16(2)(b) of the By-Law for the encroachment of the street building line from 4m to 0,269m and 0,533m and the 2m lateral building line to 1,204m to accommodate a proposed enclosed patio/braai room, **be partially approved** in terms of the provisions of Section 61 of the By-Law;
6. that the applicant **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law pertaining to the existing street- and lateral building line encroachments applicable to Erf 45, Van Dyksbaai;
7. that the decisions in paragraphs 2. to 5. above be subject to the following conditions:
 - (a) that a revised Site Development Plan be submitted for approval by the Authorised Official under delegated authority, indicating a reduced open canopy and fireplace which canopy and fireplace encroach the street- and lateral building lines with 2m and 0,80m respectively;
 - (b) that the canopy and fireplace shall remain open and may not be enclosed;
 - (c) 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
 - (d) that all the conditions in the Services Report (attached as Annexure J), be complied with.
 - (e) that all the conditions from Telkom (attached as Annexure H), be complied with
 - (f) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
 - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
8. that the applicant and objector/persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above conditions of approval.

14. REASONS FOR RECOMMENDATION

Reasons for approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.

- ❖ The Overstrand Zoning Scheme Regulations have sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.
- ❖ The proposal is considered in line with the Municipality's SDF.
- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

Reasons for partial approval of the enclosed patio/braai room

- ❖ The enclosed patio and braai room as proposed is not in line with the character and morphology of existing development within the cul-de-sac and considered to adversely impact the character and visual amenity of the locality.
- ❖ An open canopy and fireplace encroaching the street- and lateral building lines with 2m and 0,8m respectively will have less visual impact and not considered to unacceptably detract from the character of the street scape.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T19705/2020
Annexure E:	Letters of comment/objection
Annexure F:	Response from applicant
Annexure G:	Comment: Fire Services
Annexure H:	Comment: Telkom
Annexure I:	Comment: Department of Environmental Affairs and Development Planning: <i>Component Environmental</i>
Annexure J:	Services Report
Annexure K:	Comment: Property Administration
Annexure L:	Approved Building Plan

SIGNATURES

AUTHOR

Name : **SW VAN DER MERWE**


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

Signature : _____

Date: _____

Plan 1: Locality Plan Erf 45 Van Dyksbaai

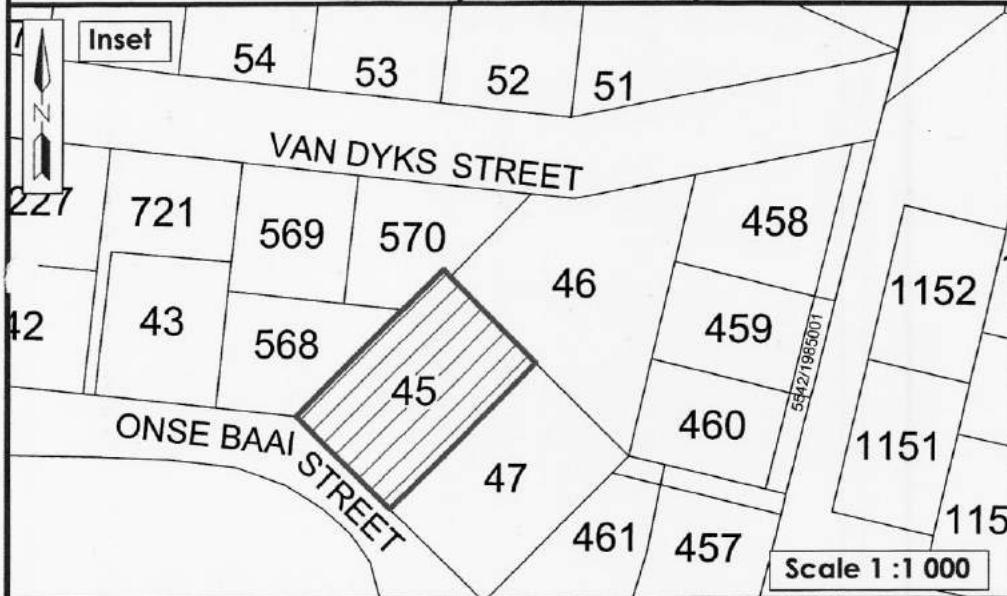
ANNEXURE A

 Erf 45 Van Dyksbaai (991m²)

Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Plan 1.1
Unit 8, Corner of Royal and Dikie Lys
Street Hermanus, 7200
Plan prepared by: Reetiehile Jankie
All distances are approximate
and subject to a survey



Project Office
Town Planning & Project Management





EXECUTIVE SUMMARY

1. ABBREVIATIONS

1.1	OMLUS	Overstrand Municipality Land Use Scheme, 2020
1.2	SDF	Overstrand Municipality Spatial Development Framework, 2020
1.3	OM	Overstrand Municipality
1.4	OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended
1.5	OMGMS	Overstrand Municipal Growth Management Strategy, 2010
1.6	SPLUMA	Spatial Planning and Land Use Management Act, 2013
1.7	LUPA	Land Use Planning Act, 2014
1.8	DEADP	Western Cape Department of Environmental Affairs and Development Planning
1.9	SDP	Site Development Plan
1.10	SR1	Residential Zone 1: Single Residential

2. SUMMARY OF STATUS QUO PROPERTY DETAILS

2.1	Property description	Erf 45 Van Dyksbaai
2.2	Registered owner and applicant	Webb Ellis Huis Proprietary Limited
2.3	Consultant	WRAP Project Office
2.4	Restrictive title deed conditions	C.(2) (b) and C.(2) (d)
2.5	Property extent	991m ²
2.6	Current zoning	Zoning: Residential Zone 1: Single Residential Primary use: crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.

3. BACKGROUND AND APPLICATION FOR ADMINISTRATIVE PENALTY

This application firstly entails the application for the determination of an administrative penalty as the existing building encroaches on the title deed and zoning scheme building lines. Section 90 (3) of the By-Law imposes specific requirements which are related to an administrative penalty which will herewith be discussed.

3.1 "the nature, duration, gravity and extent of the contravention."

3.1.1 A portion of the existing bathroom is located 1,088m from the south eastern boundary line and a portion of the existing dwelling is located 3,749m from the street boundary line. A portion of the existing steps which lead to the dwelling house and the retaining wall are located on Erf 68 Van Dyksbaai which is in the ownership of the OM.

3.1.2 According to the date on the subject building, it was constructed in 1969 and the encroachments occurred on that date and thereafter.

3.2 (b) "the conduct of the person (allegedly) involved in the contravention."

3.2.1 The applicant purchased the subject property earlier this year and the plan which was made available to inform the purchase was the approved site development plan (refer



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Annexure C which illustrates that the existing building does not encroach on the street and side title deed and OMLUS building lines.

- 3.2.2** Before moving into the property, the owner wanted to do some renovations and Johan Gericke Architecture was appointed to do the architectural drawings and it was discovered that the location of the building is not as per the approved building plans.
- 3.2.3** As the architect was unable to ascertain the exact location of the building, a land surveyor, Ralph O Middleton, Professional Land Surveyor was appointed to conduct a survey to establish the location of the existing building in relation to the erf boundaries. It was discovered that the building encroaches on the street- and side title deed- and zoning scheme building lines. This was contrary to what was shown on the building plans that informed the purchase.
- 3.2.4** The applicant is therefore not responsible for the building work which contravene the title deed and zoning scheme building lines and the previous property owner did not reveal this information.

3.3 (c) "a report by a quantity surveyor in matters of unauthorised building/construction."

A small portion of the existing dwelling which encroaches on the street building line measures 1,2m² and the portion of the dwelling which encroaches on the side building line measures 1,7m². The portion of the steps which encroach on Erf 68 Van Dyksbaai which belongs to the OM measures 11,4m². These encroachments which were constructed by the previous property owner are relatively minor and the scale thereof does not warrant the appointment of a quantity surveyor.

3.4 (d) "whether the unlawful conduct was stopped."

The unlawful location of small portions of the existing building have not been demolished. This planning application entails the legalisation of the existing building and a demolition would be unnecessary should this planning application be approved.

3.5 (e) "whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law."

The owner of the subject property has not previously contravened the OM By-Law and the existing building work on the property was constructed by previous property owners and is technically not the guilty party in this.

- 3.6** As stated earlier, all the building work which encroach on the street and side title deed and OMLUS building lines are not related to the actions of the current property owner but the previous owners. Considering that the current owner is attempting to correct the contraventions constructed by the previous property owner, it is requested that the current property owner be exempted from paying an administrative penalty.

4. PROPERTY OWNERS INTENT

- 4.1** The applicant envisages covering the existing open stoep with a roof which would function as a braai room with open sides which can be closed at night with shutters for safety puposes, constructing a garage with a balcony on top of it and constructing a fireplace/braai. The existing building and proposed alterations and expansions encroach on the title deed and zoning scheme building lines.



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- 4.2 The topography on the subject property is very steep towards the rear boundary which results in half of the property not being feasible for the construction of the proposed covered stoep, garage with a balcony or the establishment of a fireplace/braai room. Levelling half of the property towards the rear to be on the same topographic height as the half of the property towards the street frontage would be expensive and would change the topographic character of the site which the property owner wishes to avert.

5. PROCEDURE TO ACHIEVE THE DEVELOPERS INTENT

The land use rights required for the implementation of this proposal to be feasible are the following:

5.1 **Removal of restrictive title deed conditions C.(2)(b) and C.(2)(d) in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.**

- 5.1.1 The restrictive title deed conditions are proposed for removal as there are building lines which restrict the existing building and proposed expansions. The title deed restrictions were inserted in 1935 in response to the prevailing development trends and pressures of the time. The current development trends coupled with the constraints which the subject site has, necessitate the removal of this restrictive title deed condition to provide the property owner with rights to attain the immediate intent highlighted in Section 4 and to have flexibility to exercise all the primary land use rights highlighted in column 3 of Section 2.6.

- 5.1.2 The detailed rationale for the removal of the restrictive title deed condition will be covered in Section 8 of this report, but can be summarised as follow:

- 5.1.3 C.(2)(b) "That only one dwelling, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf."

The existing bedroom located next to the open courtyard is not interleading with the main dwelling (refer **Plan 3**) but was approved as such (outside bedroom) (refer **Annexure C**). The bedroom cannot be regarded as a second dwelling unit as it does not have a kitchen. As such, it is accepted that the proposal only has one dwelling house (refer **Plan 3**). The property owner envisages the removal of the restrictive title deed condition to allow the flexibility of constructing a second dwelling unit in the future if deemed necessary as a result of unforeseen circumstances such as the growth of the family or accommodation of a family member. This would be aligned with the primary rights conferred by the SR1 zoning.

- 5.1.4 C.(2)(d) "That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line or public place which forms a boundary to this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf. This condition shall not apply to the existing building on Erf No. 15 until such time as building is demolished."

The existing dwelling, covered stoep and garage with balcony encroach on the 15 feet (4,52m) street building line. The existing dwelling, proposed garage and balcony, proposed fireplace/braai and proposed covered stoep encroach on the 5 feet (1,52m) side building lines. These encroachments (refer **Plan 3**) necessitate the removal the restrictive title deed condition.

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- 5.1.5 The removal of the restrictive conditions can be summarised as allowing the following:
- 5.1.5.1 To remedy the existing encroachments which contravene the title deed building line restrictions; and
 - 5.1.5.2 To allow the proposed building expansions and alterations.
- 5.2 **Departure from the 4m south western street building line to 0,269m to accommodate the existing dwelling and stoep which are proposed to be converted into a covered patio/braai room in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;**
Departure from the 4m south western street building line to 3,749m to accommodate the proposed garage, balcony and balustrades in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
Departure from the 2m south eastern side building line to 1,088m to accommodate the bathroom of the existing dwelling in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
Departure from the 2m south eastern side building line to 1,204m to accommodate the proposed fireplace/braai and covered stoep in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.
- 5.2.1 The proposed covering over the existing stoep is located 0,269m from the street boundary line which necessitates a departure from the building line.
 - 5.2.2 The covered stoep will primarily be used for normal activities such as sitting with family and friends or braaiing which are not for human habitation (accommodation) purposes.
 - 5.2.3 The covered stoep will have a roof, but no wall will be constructed around it as only shutters will be installed.
 - 5.2.4 The proposed garage with the patio and balustrades which is located 3,749m from the street boundary marginally encroaches on the street building line and constitutes an outbuilding as this will not be used for habitable purposes.
 - 5.2.5 The proposed location of the garage/balustrades is the only feasible location where the building/land use can be established on the subject premises as the site is too steep towards the rear and the existing building is located almost up to the erf boundary.
 - 5.2.6 A small portion of the existing dwelling measuring 1,2m², which is attached to the stoep encroaches on the 4m street building line. Although the dwelling is used for habitable purposes, the portion of the dwelling which encroaches on the street building line is only a portion of the wall. This is regarded as an insignificant encroachment.
 - 5.2.7 A portion of the proposed covered roof area of the stoep and fireplace/braai encroaches on the south eastern side building line. The portion of the dwelling which encroaches on the side building line measures 1,7m² which mostly consists of a wall and can be regarded as insignificant although the building itself is used for habitable purposes.
 - 5.2.8 The rationale for applying for the buildings/land uses over the building lines is due to the topography of the site that is very steep on half of the site towards the rear which makes the expansion of the buildings into that direction impractical. The process of altering the topography of the site would be expensive, particularly if the site is rocky which would make the expansion of the building/land uses outside of the building lines unfeasible.

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6. APPLICATION

Considering the applicant's intent highlighted in Section 4 the following is applied for:

- 6.1 Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.
- 6.2 Removal of restrictive title deed conditions** C.(2)(b) and C.(2)(d) in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended;
- 6.3 Departure** from the 4m south western street building line to 3,749m to accommodate the proposed garage, balcony and balustrades in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 6.4 Departure** from the 4m south western street building line to 0,269m to accommodate the existing dwelling and covered stoep to function as a covered patio/braai room in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 6.5 Departure** from the 2m south eastern side building line to 1,088m to accommodate the bathroom of the existing dwelling in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 6.6 Departure** from the 2m south eastern side building line to 1,204m to accommodate the proposed fireplace/braai and covered in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

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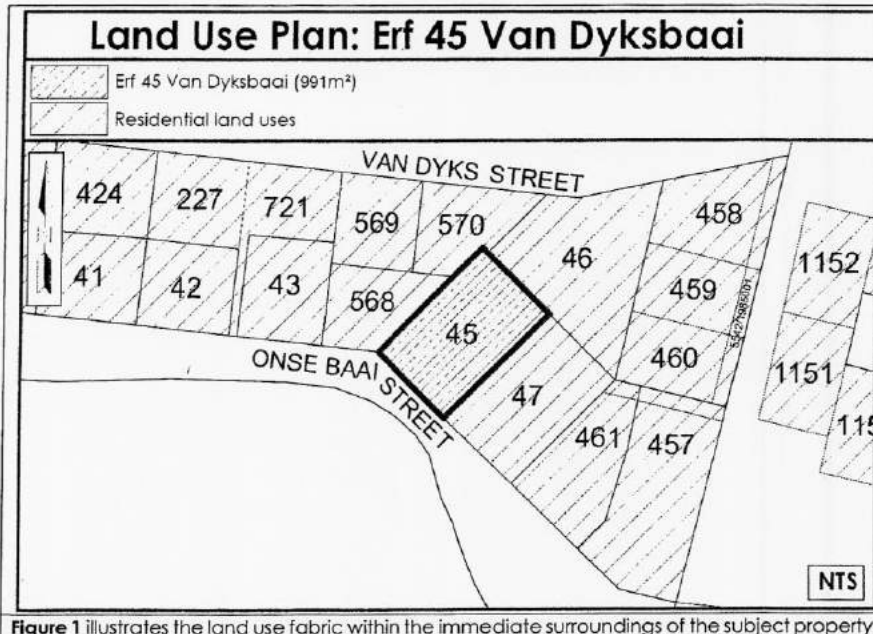
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7. LAND USE FABRIC

The land use fabric surrounding the subject property is illustrated below.



All the proposed buildings/land use expansions are either outbuildings or buildings that will not be used for permanent human habitation, which are subservient to the dominant use of the subject property, being a dwelling. The proposed removal of restrictive title deed conditions will therefore not alter the residential compatibility of the subject property with the surroundings illustrated in figure 1.

8. TITLE DEED

Title deed was perused (refer **Annexure C**), and the following restrictive title deed conditions are proposed for removal as it prohibits the land use rights which are applied for in this application.

8.1 Title deed restriction

C.(2)(b) "That only one dwelling, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf."

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Motivation

Rationale for the proposed removal

The proposal only entails one dwelling, but the property owner envisages having the flexibility to establish a second dwelling unit in the future if the need arises due to the growth of the family or any other unforeseen circumstances. This is to align the primary rights applicable on the property with the land uses permitted in the SR1 zoning which is highlighted in column 3 of Section 2.6.

Background

The restrictive title deed condition which limits one dwelling was inserted in 1935 in an era when planning promoted urban sprawl in response to the low population growth and low-density development.

Status quo

All current planning legislation and spatial planning policies promote densification which includes second dwelling units. This is in response to urbanisation which is coupled with a growing urban population growth which necessitates the unlocking of residential opportunities in existing settlements to reduce urban expansion pressures which exacerbate urban sprawl. The removal of this restrictive title deed condition will therefore provide the owner of the subject property with the flexibility to establish a second dwelling unit when it is deemed necessary. This will cumulatively contribute towards reducing the pressures for urban sprawl and the well documented negative consequences associated with that.

8.2 Title deed restriction

C.(2)(d) "That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line or public place which forms a boundary to this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf. This condition shall not apply to the existing building on Erf No. 15 until such time as building is demolished."

Motivation

Rationale for the proposed removal

The existing buildings/land uses, and proposed alterations all encroach on the title deed building lines. The proposed removal of this restrictive title deed condition is intended to be in a position to apply for a departure for the building line encroachments which are prevalent on the subject property. The steepness of half of the subject property towards the rear makes it impossible for any further expansion of the property and therefore necessitates the removal of this restrictive title deed condition.

Background

These title deed conditions were inserted in 1935 in an era where people preferred to have longer offset distances from the street which created a peculiar suburban look and feel.

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Status quo

The current development trend in Van Dyksbaai is informed by pressures for densification which necessitates the removal of building line title deed restrictions. This unlocks additional space for the owner of the subject property to have a greater variety of choice in terms of where buildings can be located on the subject property. The removal of this restriction would also provide the owner of the subject property with the ability to respond to the topographic challenges which the subject site presents which have been highlighted in this report. The approval of this proposal will result in the proposed conversion of the open stoep into a covered patio being located close to the street boundary line but the steepness of the topography on the site makes it impractical to accommodate the building/land uses on an alternative location on the subject property.

9. AMENDMENT, SUSPENSION OR REMOVAL OF RESTRICTIVE CONDITIONS

The compliance of this proposal was assessed in conjunction with considerations for the removal restrictive title deed conditions which is a relevant consideration in terms of Section 35(4) of the By-Law:

9.1 The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement.

It is unlikely that the existing restrictive title deed conditions add any value to the owners of erven in Van Dyksbaai for the following reasons:

- 9.1.1 Title deed condition C.(2)(b) was intended to prevent Van Dyksbaai from having second dwelling units as that was seen to have the potential of altering the single residential look and feel which the neighbourhood has. Although the owner of the subject property has no immediate intention of establishing a second dwelling unit, the general practice in Van Dyksbaai is for second dwelling units to be attached to the main dwelling which appears like a single dwelling from outside. The other practice is for second dwellings to be located close to the rear boundary behind the main dwelling which blocks visibility from the street. These practical trends in Van Dyksbaai would not result in the removal of this restrictive title deed condition altering the character of the area or reducing any property values. Considering this, no financial value vests in retaining this restrictive condition.
- 9.1.2 Title deed condition C.(2)(d) was inserted to have minimum space distances from side boundaries to have a peculiar suburban look and feel. That look and feel has already been undermined by the location of several buildings along Onse Baai Street near the street boundary line which encroaches on the title deed restriction. The removal of the title deed condition to permit the existing buildings/land uses and proposed alterations is not in conflict with actual historic trends along where the subject property is located.
- 9.1.3 The approval and implementation of this proposal will enable the property owner to make renovations and improvements to the subject property which will enhance the architectural integrity of the site. Home improvements on individual sites tend to

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encourage neighbours and other owners in the neighbourhood to also make renovations which incrementally increases the architectural integrity of the neighbourhood over time. This also invariably contributes to the collective property value increases in the neighbourhood. The approval and implementation of this proposal should therefore be evaluated in the context of how it can contribute towards the increase in the property values in Van Dyksbaai.

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

No personal benefit would be lost to the holders of the rights in Van Dyksbaai if the title deed restrictions are removed.

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

The new property owner wishes to make renovations and building expansions on the subject property which will increase the comfort in the occupancy of the subject property which will be a huge benefit. The property owner has opted to apply for the proposed renovations and expansion to be able to increase the value of the subject property.

9.4 The social benefit of the restrictive condition remaining in place in its existing form.

There are no social benefits which will accrue from retaining the restrictive title deed conditions. If the title deed conditions are not removed, an opportunity for the property owner to make architectural and visual improvements to the home will be lost and disincentivise any future attempts to make property improvements. This would consequently hamstring the ability of the owner from being one of the catalysers who actively seek to contribute towards the continual improvement of a home which is hallmark of good neighbourhood transformation.

9.5 The social benefit of the removal or amendment of the restrictive condition.

The removal of the restrictive title deed conditions will have social benefits as it will enable surrounding property owners to draw inspiration from the improvements which would be brought about on the subject property and encourage renovations on respective properties. The removal of the restrictive title deed conditions would contribute to increasing the culture of property maintenance in Van Dyksbaai which is a great social benefit.

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

The removal of the restrictive title deed conditions will not completely remove the residential rights enjoyed by surrounding property owners as the SR1 zoning regulates the permissible residential land uses, permissible envelope which makes the retention of the title deed conditions superfluous.

10. ZONING

This proposal was assessed in conjunction with the SR1 zoning as this is a relevant consideration in terms of Section 66 (1) (a) of the OM By-Law.

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Residential Zone 1: Single Residential				
		Parameters	Proposal	Deviate or comply
10.1	(a) Primary use	crèche, dwelling house, guest rooms, home occupation, second dwelling unit and self-catering.	Dwelling house	Comply
10.2	(b) Consent use (which may be applied for)	day care centre, green house, guest house, house shop, institution, place of instruction, place of worship, residential building and intensive horticulture	N/A	Comply
Development rules				
10.3	Coverage	50%	23,26%	Comply
10.4	Street building line	4m	Departure from the 4m south western street building line to 0,269m to accommodate the existing dwelling and covered stoep to function as a covered patio and braai room. Departure from the 4m south western street building line to 3,749m to accommodate the proposed garage, balcony and balustrades.	Departure motivated
10.5	Side building line	2m	Departure from the 2m south eastern side building line to 1,088m to accommodate the bathroom of the existing dwelling; and Departure from the 2m south eastern side building line to 1,204m to accommodate proposed fireplace/braai and covered stoep.	Departure motivated
10.6	Height	8m	4,204m	Comply
10.7	Parking	Dwelling house Two on-site parking bays per dwelling unit, provided that on erven less than 400 m ² ,	There is space for the parking of 2 vehicles on the property.	Comply

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	only 1 on-site parking bay needs to be provided.		
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11. HERITAGE PROTECTION OVERLAY ZONE, 2020

11.1 Objective of the regulation

- 11.1.1** The HPOZ provides a mechanism for land use management which are additional to the existing land use planning controls. The regulation gives effect to specific guidelines in the spatial development framework to address specific management issues which may arise.
- 11.1.2** The subject property is designated as a coastal strip in the spatial proposal plan. This designation prescribes that building plans be submitted to the Overstrand Heritage Aesthetics Committee for an evaluation for compliance with the prescribed guidelines which has been done. The decision letter will be forwarded to the Town Planning Department upon availability.
- 11.1.3** The subject property is not listed on the Overstrand Municipality Heritage register but the building is older than 60 years and a Notice of Intent to Develop has been submitted to Heritage Western Cape by Lomay Environmental Consulting and the record of decision will be forwarded to the Town Planning Department upon availability.

12. ENVIRONMENTAL MANAGEMENT OVERLAY ZONE, 2020

- 12.1** The purpose of this regulation is to provide a mechanism for additional land use management, additional to existing statutory land use controls, whereby Council may give effect to specific guidelines in a spatial development framework or policy plan or address a specific management issue.
- 12.2** Lomay Environmental Consulting has applied for an ad hoc setback line in terms of the National Environmental Management Act (NEMA) Act 107 of 1998 and the Environmental Impact Assessment Regulations, 2014 as amended to DEADP and will circulate all feedback to the OM in this regarding this.
- 12.3** Notwithstanding the above, the subject property is designated as a Coastal Protection Zone which entail the OM managing the integrity of coastal ecosystems, ecosystem services, coastal dynamic processes, and biodiversity within Coastal Reserves. This section will therefore motivate this application conjunction with the prescripts of the regulation.

The application was evaluated in terms of the prohibited activities of the EMOZ and except for the activities listed in the table below, no other activities are present.

Prohibited Activity	Motivation
Staying overnight.	The existing building on the subject property has been approved as a dwelling and used for staying overnight. Although this activity is prohibited in terms of this regulation, the Residential Zone 1: Single Residential land use rights which are conferred by the OMLUS allow this.

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Submitted in September and amended in October and November 2020

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Activities Only Permitted with Council Consent	Motivation
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	The proposed garage will entail some excavations, but Lornay Environmental Consulting has applied for an adhoc setback line at DEADP due to the excavations which the proposed garage will trigger.
Activities Only Permitted with Council Consent Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Motivation
Encroachment of private buildings, structures, infrastructure, access routes.	Although the application which was initially circulated illustrated encroachments of private structures into the coastal reserve, the amended plan has removed this proposal which no longer constitutes an encroachment.
Commercial harvesting/collection and removal of any natural resource.	Not applicable
Construction or placement of any permanent object, building, shelter, pathway or structure.	No permanent structures are proposed outside the cadastral boundaries of the subject property.
Coastal Buffer Areas:	Motivation
Residential properties, gardens and infrastructure may not encroach on coastal public open space and the Municipality may issue notices for the restoration/rehabilitation of any such encroachment in coastal public open space;	Although the application which was initially circulated illustrated a coastal encroachment on public open space, the amended plan removed this and no longer constitutes an encroachment.
Council may prohibit the relaxation of building lines or the placement of buildings, structures and infrastructure within building lines on properties located adjacent to coastal reserves or coastal development nodes.	This is for the Municipality to consider.

13. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated:

13.1 Solid waste

Solid waste is collected from the premises by the OM on a weekly basis.

13.2 Electricity

The existing building is connected to the electricity network available in Van Dyksbaai.

13.3 Water

The existing building is connected to the reliable water network supplied by the OM.

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13.4 Sewage

The existing building is connected to a conservancy tank which is located on the subject property.

13.5 Access and egress

Access to the subject property is gained from Onse Baai Street (refer **Annexure E**).

14. SPLUMA MOTIVATION REQUIREMENTS

The following are relevant considerations in terms of Section 42 (c) of SPLUMA and is motivated as follows:

14.1 Public Interest

The approval and implementation of the proposed renovations are likely to increase the value of the subject property. This will consequently lead to the rates collected by the OM from the owner of the subject property being increased which will contribute towards service delivery and is in the public interest.

14.2 Opportunity costs

Opportunity cost in the context of land use planning refers to the devaluation or foregoing a valued land use right of interested and affected parties when an application is approved. The approval and implementation of this proposal will enable the property owner to make substantial architectural improvements on the subject property. This will consequently improve the visual look and feel of the subject property which will not be an opportunity cost for neighbours.

14.3 Respective rights and obligations of all those affected

The building/land use renovations and proposed expansions sought will not lead to the surrounding property owners occupying respective properties in discomfort for the following reasons:

- 14.3.1 The buildings which encroach on the building line are outbuildings which do not attract noise generating activities;
- 14.3.2 The structures conform to the height restrictions and will not be visually imposing;
- 14.3.3 The proposed covering of the existing stoep, garage and balcony and fireplace/braai are intended to further increase the architectural integrity of the subject property which will not be a visual annoyance to the neighbours; and
- 14.3.4 The removal of restrictive title deed conditions and departure from the zoning scheme building lines which are sought in this application have been carefully thought through by the property owner. This is to avoid the rights of surrounding property owners being deprived or impacted upon. This will maintain cordial neighbourly relations among the owner of the subject property and neighbours which is highly valued.

15. POLICY FRAMEWORK

- 15.1 The compliance of this proposal with the applicable spatial development policies was assessed. These policies are instrumental in guiding spatial development and providing prescripts of what constitutes sound town planning development patterns. The compliance

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MOTIVATION

of this proposal in conjunction with provincial and local policies which are key development informants will be illustrated.

Applicable policy	Administrative authority
Western Cape Provincial Spatial Development Framework, 2014 (PSDF)	Provincial
Overstrand Municipality Spatial Development Framework, 2020 (SDF)	Municipal
Overstrand Municipal Growth Management Strategy, 2010 (OMGMS)	Municipal

15.2 PSDF

15.2.1 Policy preface

The PSDF is a product of a provincial inter departmental and inter-governmental collaboration under the guidance of the interdepartmental steering committee with the private sector, academia, and non-governmental organisations. This broad participatory process has created a shared spatial vision which is intended to inform spatial development patterns of urban areas in the province.

15.2.2 Broad policy objectives

The objective of the policy is to promote liveable settlements with quality infrastructure and high architectural integrity. The development principles in the PSDF are informed by other spatial planning policies which are aimed at creating a policy alignment between different spheres of government. The intent is to ensure that spatial development is uniformly guided according to spatial development principles which have been agreed upon by the relevant stakeholders.

15.2.3 Consistency of the proposal with the policy

15.2.3.1 The PSDF promotes the preservation of the unique local built form and typologies. The proposed covered stoep, garage and balcony which constitute renovations does not derogate from the unique architectural residential built form which is prevalent in Van Dyksbaai as prescribed by the PSDF.

15.2.3.2 The PSDF promotes progressive housing improvements and incremental development through private finance. This proposal entails an incremental improvement of the existing dwelling through private finance as promoted by the PSDF.

15.2.3.3 The PSDF promotes contained settlement footprints which incrementally transition into contextually appropriate higher density neighbourhoods. This proposal entails the removal of a restrictive title deed condition which would enable the property owner to establish a second dwelling unit in the future when deemed necessary. This will contribute towards the containment of settlement footprints as the pressure for urban expansion on settlement edges will be reduced.

15.3 SDF

15.3.1 Policy preface

The SDF's intention is to ensure compliance with national, provincial and district legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development land uses and

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Submitted in September and amended in October and November 2020

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direction within the urban edge. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which development proposal should ideally attempt to synchronise with.

15.3.2 Broad policy objectives

The broad policy objectives of the SDF include enhancing the image of the Overstrand as a liveable urban and rural area which accommodates a variety of life. Development proposals should also capitalise on the unique sense of place which settlements and urban areas in the Overstrand are renowned for. The SDF promotes developments which enhance the visual quality and attraction of the built environments while preserving the social and cultural attributes which are valued by inhabitants.

15.3.3 Consistency of the proposal with the policy

15.3.3.1 The SDF highlights that the quality and attraction of the built environments is enhanced as result of a commitment on prioritising aesthetics. The rationale for this proposal is for the owner of the subject property to be allowed to prioritise improving the aesthetics of the existing building which contributes towards creating an attractive built environment.

15.3.3.2 The policy cites that foreign and unsympathetic buildings should be discouraged in urban settlements to strengthen the local sense of place. The proposed covering of the existing stoep and proposed fireplace/braci are in harmony with the architectural style of the existing dwelling which contributes to the existing sense of place as prescribed by the PSDF.

15.3.3.3 The spatial proposal plan designates the subject property as part of the EMOZ and the HPOZ which has been addressed earlier in this report.

15.4 OMGMS

15.4.1 Policy preface

The policy was created to manage the urban growth of the OM where densification would play a pivotal role in the effective implementation of infrastructure and community facilities provision. The policy carefully considered market cycles, municipal budgeting and capital spending.

15.4.2 Broad policy objectives

The policy acknowledges that low densities are expensive and inefficient and that certain economic activities can only be attained once densities reach a certain threshold. The policy therefore promotes densification through instruments such as second dwelling units (dual occupancy) and subdivisions. The overall rationale for the document is to create an enabling environment for residents in the OM to attain an enhanced quality of life.

15.4.3 Consistency of the proposal with the policy

15.4.3.1 The policy highlights that the built environment of the OM needs to be enhanced. The proposal primarily entails the renovation of the existing building which will contribute towards enhancing the built environment as prescribed by the policy.

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15.4.3.2 The spatial proposal plan designates the subject property for residential purposes and the proposed removal of restrictive title deed conditions and building line departures sought to allow the existing stoep to be covered and the construction of a fireplace/braai are in harmony with the land use designation for the subject property.

16. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains planning principles which each development application must be guided by. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

16.1 Spatial Justice

Spatial justice in the context of land use planning refers to addressing spatial development imbalances caused by apartheid planning. The approval and construction of the proposed covered stoep and fireplace/braai will lead to the creation of employment opportunities which will primarily benefit the historically marginalised. The incomes which the employees will earn will be used to access housing and services and ensure upward socio-economic mobility which is a hallmark of spatial justice.

16.2 Spatial Sustainability

Spatial sustainability refers to land use management systems which result in communities which are viable. Viability in the context of land use planning means a regulatory and policy framework which enables property owners to continually improve the aesthetics of properties to make the properties more liveable. This proposal is in harmony with the principles of spatial sustainability.

16.3 Efficiency

Efficiency in the context of land use planning refers to the need for urban settlements to optimally make use of space, land and resources. The proposed building expansions are intended to optimally make use of space on the subject property in light of the steep topographic constraints which the subject site presents which is a hallmark of efficiency.

16.4 Spatial Resilience

Spatial resilience in the context of land use planning refers to spatial plans, policies and land use management systems that should enable the communities to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner. This proposal is aligned with the spatial resilience principles contained in the PSDF, OMGMS and SDF.

16.5 Good administration

The OM is the organ of state which is responsible for good administration by means of public participation and complying with the prescribed time frames in the By Law. The OM has a credible history of upholding the principles of good administration.

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17. NEED AND DESIRABILITY

The need and desirability for the approval and implementation of this proposal will be illustrated in accordance with Section 66 (1) (c) of the OM By-Law and DEADP Provincial Support Document on Relevant Considerations, 2015.

17.1 Need and desirability

Desirability, amongst others, refers to two components where need refers to "time" and desirability refers to "place". In other words, is it the right time and is it the right place for locating the proposed type of land use/activity? The property owner recently purchased the subject property and intends to do renovations to suit personal preferences which is proposed at the right time. The proposed covering of the stoep, garage, balcony and proposed fireplace/braai are proposed at the right place due to the compatibility thereof with the prevailing surrounding residential land use fabric.

17.2 Impact on views, sunlight and character of the area

The proposed covering of the stoep and fireplace/braai are of a lower height than the existing dwelling and will therefore not impair the neighbour's enjoyment of views, sunlight or adversely alter the character of the area.

17.3 Impact on safety and wellbeing

The proposed covered stoep, braai room, balcony and proposed fireplace/braai will make the space attractive for the property owner and the family to relax in and enjoy the ocean view which will serve as additional surveillance. The surveillance will be an additional crime reduction mechanism which will be in the interest of the safety and wellbeing of surrounding property owners.

17.4 Social impact

The proposed covered stoep, garage, balcony and fireplace/braai will be a space which will encourage social interaction between friends and family which constitutes a positive social impact.



RECOMMENDATION

18. EVALUATION

- 18.1** This motivation report has illustrated that the topographic site constraints prevent the property owner to establish an alternative area for the establishment of a covered stoep, garage, balcony and fireplace/braai.
- 18.2** The motivation has also illustrated that the land use intent of the property owner was carefully considered by ensuring that the proposal is aligned with relevant planning policies, statutory legal requirements contained in SPLUMA and general principles of what constitutes desirability. The approval and implementation of the proposal can therefore be regarded as an appropriate course of action.

19. RECOMMENDATION

It is recommended that the following is approved:

- 19.1 Determination of an administrative penalty** in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 19.2 Departure** from the 4m south western street building line to 3,749m to accommodate the proposed garage, balcony and balustrades in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 19.3 Removal of restrictive title deed conditions** C.(2)(b) and C.(2)(d) in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 19.4 Departure** from the 4m south western street building line to 0,269m to accommodate the existing dwelling and covered stoep to be used as a covered patio/braai room in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 19.5 Departure** from the 2m south eastern side building line to 1,088m to accommodate the bathroom of the existing dwelling in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 19.6 Departure** from the 2m south eastern side building line to 1,204m to accommodate the proposed fireplace/braai and covered stoep in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

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GENERAL:
 ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
 1. All dimensions are levels to the indicated site before any work commences.
 2. All work to be carried out in accordance with local authority requirements.
 3. All work to be carried out in accordance with local authority requirements.
 4. All work to be carried out in accordance with local authority requirements.
 5. All work to be carried out in accordance with local authority requirements.
 6. All work to be carried out in accordance with local authority requirements.
 7. All work to be carried out in accordance with local authority requirements.
 8. All work to be carried out in accordance with local authority requirements.

LEGEND:
 New Brickwork
 New Timberwork - Plan View & Section
 New Steel Elements
 New Foundations/Concrete work
 Existing building/structures
 New Plasterwork - Elevations
 New Timberwork - Sections & Elevations
 New Fire Protection Elements
 New Sumpings line - 110mm PVC
 New Mastic Lin - Storm PVC
 New Stormwater Line

IMPORTANT NOTE:
 THE FOLLOWING WORK IS TO BE INSTALLED BEFORE BACKFILL OF EXISTING
 1. ALL BRICKING ACCORDING TO FINISH LINE CALCULATIONS
 2. EXISTING INSULATION IN ROOF VOID
 3. EXISTING GUTTERING

PROJECT:
 PROPOSED ADDITIONS ON ERF 45, HILL STREET
 45, KLEINBAAI, OVERstrand FOR WEBB ELLIS
 PLUS (PTY) LTD.

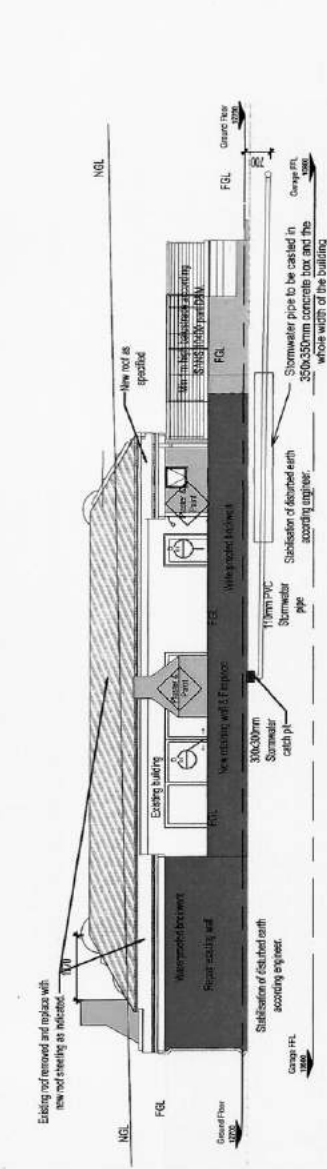
DESCRIPTION:
 ELEVATIONS 2

SHEET FORMAT:
 A3
OCCUPATION:
 H4
DRAWING #:
 45/PK/2017

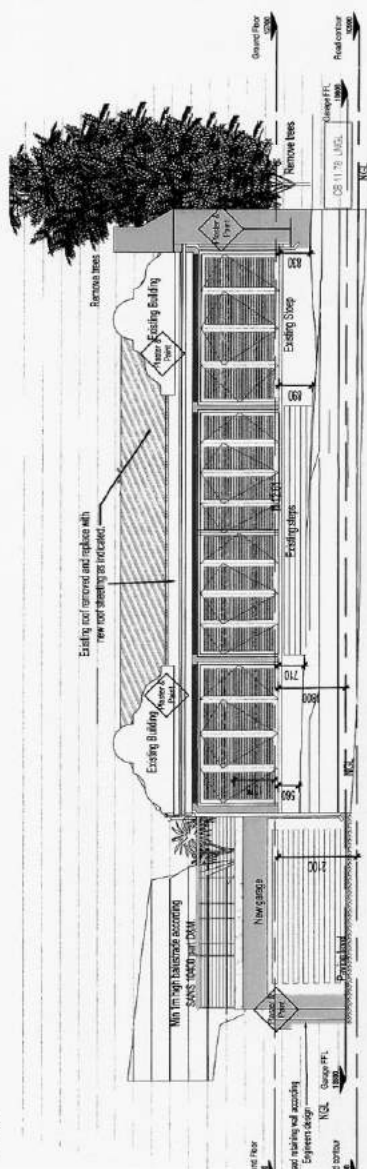
SCALE:
 As indicated
DRAWING DATE:
 29 Sept 2020

SIGNATURE:
 Author: [Signature]
 Checked: [Signature]
 Plot Date: 30-Oct-20 2:02:08 PM

CONTACT:
 www.gericke-architecture.co.za
 gericke@gericke-arch.com
 Tel: 029 304 8559 Fax: 029 499 8554
 BRANCH: DEBES PRO Arch Drought



North Elevation
 1 : 100



South Elevation
 1 : 100

ENGINEERS APPROVAL
 REF NUMBER: 4
 OWNER: PRINCE OF WESSEX (Pty) Ltd
 DATE: 29/09/2020
 SIGNATURE: [Signature]

ENGINEERS DETAILS
 SIGNATURE: [Signature]
 CHECKED: [Signature]
 PLOT DATE: 30-Oct-20 2:02:08 PM
 www.gericke-architecture.co.za
 gericke@gericke-arch.com
 Tel: 029 304 8559 Fax: 029 499 8554
 BRANCH: DEBES PRO Arch Drought

CTN 273
NIPOR 1610
05 AUG 2020

TO: DEPT. OF SURVEY
PLEASE EXPEDITE FOR REGISTRATION

REGISTERED
LODGED
17 AUG 2020

Order/No.	Commodities / Examiners	Names / Rooms	Showing / Linking	Viewed / Report	Progress
1	USIKHONZA	12.1, 12.2, 12.3	J		
2	C. MUNDLBERG	12.1			
3					

T 000019705 / 2020

6 1 of batch

Handed in for execution

A. VIR AKTERESORGEN SE GEBRUIK / FOR CONVEYANCERS USE.

(a) Deeltydige en/andere registrasieaanvragers/overlappers: Simulas with other registries (actional files):

Mode	Firma/Firm	Binnestroom/Property	Kantoor/Office
1			
2			
3			
4			

(b) Kopies alreeds van afdien verskaf in Akterresor registrasie kantoor.
Copies already of afdien had permanently in Deeds Office.

(c) Natural Notes:

B. VIR AKTERESORGEN SE GEBRUIK / FOR DEEDS OFFICE USE.

(1) Deel tydige/overlappers (proklameer) /
Township approved/proclaimed

(2) Begreep/ingevang /
Embodiment even

(3) Begreep/ingevang /
Embodiment even

(4) Voorwaardes /
Conditions

(5) Mikro /
Micro

(6) Oorname van Plan /
Takeover of Plan

(7) Tuisdele /
Towns

(8) Verpand teen derdens /
Bonds against third parties

(9) Oorname van plan /
Takeover of plan

24.07.2020

BLACKBURN

Kantoor / Office: 13-08-2020
Sisaar / Section: VOLANDER

07 AUG 2020

R. KERSHAW

16 1037 / 2006 to be purged

Balgon Miller Henkon
0197579

Erfs van Dytsooi

REGISTRASIE / REGISTER DEEDS OFFICE
REGISTRATION REQUEST
DATE: 11 AUG 2020
080007200721

65

Avenant Rappoport Inc Attorneys
21 Pasita Str
10 Pasita Park
Belville
Tel: +27219142720

Prepared by me

[Signature]
CONVEYANCER
LOUIS PAUL VAN SCHALKWYK

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 4 000 000,00	R. 1691,00
Reason for Exemption	Category Exemption	Exemption I I o. Sec/Reg. Act/Proc.

DATA / CAPTURE
18-09-2020
LITHA VUYO MADAMA

T 000019705 / 2020

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

ANTON LUTHER POSTHUMUS

ANTON LUTHER POSTHUMUS
[Signature]

appeared before me, the Registrar of Deeds at Cape Town, the said appearer, being duly authorised thereto by a power of attorney granted to her by

PURPLE DOT INVESTMENTS 15 PROPRIETARY LIMITED
Registration Number 2001/014657/07

signed at Simonstown on 8 April 2020

DATA / VERIFY
23-09-2020
FATGEYAH LARNEY

Page 1 of 3

[Handwritten mark]

And the appearer declared that:

Whereas the Transferor had truly and legally sold the undermentioned property on 6 April 2020 by Private Treaty

Now therefore the Appearer on behalf of the Transferor, did by these presents, cede and transfer to and on behalf of

WEBB ELLIS HUIS PROPRIETARY LIMITED
Registration Number 1999/014589/07

its successors in title or assigns, in full and free property

ERF 45 VAN DYKSBAAI
IN THE OVERSTRAND MUNICIPALITY
CALEDON DIVISION
PROVINCE OF THE WESTERN CAPE

IN EXTENT 991 (NINE HUNDRED AND NINETY ONE) SQUARE METRES

FIRST TRANSFERRED by Deed of Transfer No T16039/1951 with Diagram No 3591/1951 annexed hereto and HELD by Deed of Transfer No T31403/2002

- A. SUBJECT to the conditions referred to in Deed of Transfer No T5131/1935 dated 25 June 1935.
- B. ...
- C. SUBJECT as stated in Certificate of Township Title No. 1249 dated 11th of February, 1939, subject to the provisions of Ordinance No. 33 of 1934, which conditions read as follows (said conditions having been imposed by the Administrator when approving of the Township):-
- (1) That words and expressions used in these conditions shall have the meanings assigned to them in the Regulations published under Provincial Notice No. 401, dated 17th October, 1935.
 - (2) As being in favour of the registered owner of any Erf in the township and subject to amendment or alteration by the Administrator of the Cape Province under the provisions of Section 18(3) of Ordinance No. 33 of 1934:-
 - (a) That this erf be used for residential purposes only.
 - (b) That only one dwelling, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.
 - (c) That not more than half the area of this erf be built upon.
 - (d) That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line or public place which forms a boundary to this erf. No such building or structure shall be situated within 5 feet of the lateral boundary common to any adjoining erf. This condition shall not apply to the existing building on Erf No. 15 until such time as building is demolished.

As being in favour of the Administrator:-

8 17

- (e) That the erf be not subdivided except with the consent in writing of the Administrator.

As being in favour of the Local Authority:-

- (f) That the owner of this erf shall be obliged to allow the drainage or sewerage of any other erf to be conveyed over the erf if deemed necessary by the Local Authority and in such manner and in such position as may from time to time be reasonably required by the said Local Authority.

WHEREFORE the appearer, renouncing all the right and title the said

PURPLE DOT INVESTMENTS 15 PROPRIETARY LIMITED

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

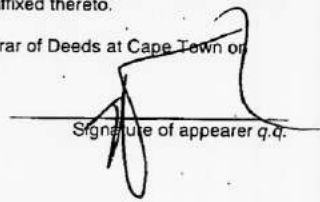
WEBB ELLIS HUIS PROPRIETARY LIMITED

its successors in title or assigns, now is and henceforth shall be entitled thereto, conformably to local customs; the State, however, reserving its rights, and finally acknowledging that the purchase price is the amount of R4 000 000,00 (Four Million Rand).

IN WITNESS WHEREOF I, the said Registrar, together with the appearer, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds at Cape Town on

14 AUG 2020



 Signature of appearer q.q.

In my presence



 Registrar of Deeds



A Conradie

From: Andries Fourie - Astra Brokers
Sent: Monday, 26 July 2021 11:39
To: A Conradie
Cc: Louis Fourie - Astra Brokers
Subject: Onsebaai nr. 8 (Kroon) : Magtiging van voltooiing van bouwerk op woonerf (moontlik erf 45)

Beste Alida,

Ek verwys na geregistreerde skrywes wat uitgestuur is deur Overberg Munisipaliteit na familie van ons wat heelwat verder in die pad af bly.

Dit handel oor die versoek om te reageer op voortgaan met bouwerk van die woning wat bekend staan as "Die Constantia huis" drie huise van ons huis af.

Die huis se straatnommer is seker 8 (ons is nr. 5) en die erfnummer is moontlik nr.45 (ons is erf 42) ek verbeel my die Constantia huis is in 'n Mpy of Bk se naam geregistreer wat beheer word deur die Kroon-familie.

Terwyl eienaars baie verder in die straat af hierdie geregistreerde skrywes van julle ontvang het, het ons egter dit nie ontvang nie.

Soos ek verstaan uit die inhoud van die skrywe wat aan my voorgelees is, word goedkeuring verlang van huiseienaars in die straat, dat hulle mag voortgaan met bouwerk, inaggenome van sekere oorskrydings van boulyne en erfgrense.

As eienaar van erf 42 Kleinbaai gee ek hiermee toestemming in soverre van toepassing of benodig dat hulle kan voortgaan met verdere bouwerk, met of sonder die gewels aan die voorkant en met die bestaande en beplande oorskreidings.

Indien hierdie epos nie aan julle vereistes voldoen nie, stuur dan gerus spoedeisende vir my die vereiste vorms aan. Dit kan aan my ge-epos word, aangesien via die poskantoor dalk meebring dat die ke-erdatum van 31 Julie 2021 gemis sal word.

Ek kan dit dan terug epos of per courier terugstuur volgens julle keuse.

Die "bouval" wat nou al lank so staan is onooglik en ons gun ook vir die nuwe eienaars om te kan klaarmaak met hul bouwerk en vertrou dat julle hulle tegemoet sal kpm om dit moontlik te maak. Ons sal graag wil sien dat hulle nog hierdie jaar kan intrek.

Groete

Andries Fourie.

Namens Andries Fourie Family Trust.



A Conradie

From: Brian Blackbeard <bb@atlantiscorp.co.za>
Sent: Thursday, 04 March 2021 11:57
To: A Conradie
Cc: Karin Blackbeard
Subject: ERF 45: 8 ONSE BAAI, VAN DYKSBAAI, KLEINBAAI: AFFECTED PERSONS COMMENT ON REMOVAL OF RESTRICTIVE TILE DEED CONDITIONS AND DEPARTURE: 4 MARCH 2021

TP. n. / theaal
 (S. J. d. K. N. a. n. c.)

To: Overstrand Municipality
 Town Planning Department

Att: Director: Infrastructure and Planning

File Reference ERF 45 GKB

Dear Sir/Madam,

FILE NO:	OF 45 ✓
	Kleinbaai
SCAN NO:	GKB 45
COLLABORATOR NO:	1514839

RE: ERF 45: 8 ONSE BAAI, VAN DYKSBAAI, KLEINBAAI: AFFECTED PERSONS COMMENT ON REMOVAL OF RESTRICTIVE TILE DEED CONDITIONS AND DEPARTURE: 4 MARCH 2021

Your Notice to Affected Persons under File Ref ERF 45 GKB, dated 27 January 2021 refers.

We, the owners of Erf 568 (7 Onse Baai, Van Dyksbaai) being registered Affected Persons in this matter hereby wish to make the following comments:

1. The relaxation of the south western side boundary and/or accommodation of the proposed garage as planned on Erf 45, which borders on our side boundary, must take cognisance of the location of the ERF 568 septic tank near this common boundary.

Excavation in this area, especially the planned 2,1m excavation below the existing ground level, to accommodate the Erf 45 garage, may disturb the retaining ground and cause fracturing or collapse of the Erf 568 septic tank.

Provision must be made by either the Overberg Municipality or Webb Ellis Huis Pty Ltd to make good any failure or loss of the Erf 568 existing septic tank system caused by this excavation.

It must also be noted that the existing dwelling on Erf 45 also has its' own septic tank located in the same area where the planned garage is to be excavated for and therefore appropriate health and safety measures must be implemented to prevent the degradation of the neighbourhood and our occupation of our property during the removal of the existing Erf 45 septic tank.

2. The Onse Baai street retaining wall on Erf 68, being Municipal property, that was partially removed by the earlier excavations on Erf 45, to create access for the proposed garage, must be stabilised or restored to prevent the collapse of the remaining wall section in front of our property, which if not, will lead to the wall eventually falling over into the street.

Your kind attention to these comments are respectfully requested.

Please confirm receipt of this communication.

- 4 MAR 2021

Kind regards,

Brian Blackbeard
For: BE & K Blackbeard
ERF 568 Onse Baai
Van Dyksbaai

Tel: 083 626 4611

A Conradie

From: Cilla Bouwer <
Sent: Friday, 30 July 2021 21:15
To: A Conradie
Subject: MUNISIPALITEIT OVERSTRAND ERF 45,ONSEBAAI 8: AANSOEK OM OPHEFFING VAN BEPERKENDE TITELAKTEVOORWAARDES EN AFWYKING: MNRE WRAP PROJECT OFFICE NAMENS WEBB ELLIS HUIS(PTY) LTD

1. Hiermee, aan wie dit mag behaag.
2. Erf 570, 66 Van Dyk Straat, Van Dyksbaai, Kleinbaai, direk aangrensend aan die noordwestelike grens van erf. 45, 8 Onse Baai, Kleinbaai,
3. Word hiermee met leedwese aangedui dat geen geregistreerde pos kennisgewing ontvang is nie.
4. Die kantoor met al sy verteenwoordigers van die departement van beplanning en ontwikkeling, nadat Paolo Publishing van 'n buurvrou, M. Davin, verwitting is van die geregistreerde dokument wat sy ontvang het, het MP Bouwer ondersoek ingestel en bevestig dat geen dokumentasie vir die afhaal van hierdie dokument per pos ontvang is nie, haar genoop om, 'n oproep omstreeks 14:00 op die 29 ste Julie 2021, te maak en aanvraag vanaf MP Bouwer, verteenwoordiger van Paolo Publishing om per epos die betrokke dokument te ontvang, GEEN epos is tot op hede en tyd ontvang soos aangevra nie.
5. Na insae met ons prokureur, is daar besluit om alle opheffings van die beperkende titelakte voorwaardes en afwykings waarvoor aansoek gedoen word, teen te staan.
6. Na insae en oorweging deur ons prokureur, is daar spesifieke problematiese verwysings in die dokument, in verskeie paragrawe, na die toekomstige ontwikkeling en bou van 'n tweede wooneenheid agter op die erf 45, 8 Onse Baai, Kleinbaai, wat 'n direkte uitsig en privaatheid probleem gaan skep.
7. Die afbreek van bestaande mure en strukture van die wooneenheid, soos aangedui en gekoop deur die betrokke party, sal al die oorskrygings en beperkinge van die tafel vee en sal in teendeel vir die nuwe eienaar, baie meer vryheid bied om sy stempel op die eiendom af te druk sowel as ekonomies meer haalbaar wees as die bestaande roete wat die maatskappy volg.
8. Volgens ons prokureur se navorsing is daar ook geen voorbeelde van twee wooneenhede op 'n erf wat volgens die betrokke party, 'n algemene praktyk in hierdie area is nie.
9. Die Maatskappy, MNRE WRAP PROJECT OFFICE NAMENS WEBB ELLIS (PTY) LTD is besig om van 'n veronderstelling hierdie aansoek te rig dat geen ander eienaars kopsie gaan maak nie en die punte wat deur hulle aangehaal is ter verslapping is in die kleinste graad, swak redes.
10. Hierdie aansoek word dus deur ons in al sy vorme en aanhegels, verwerp.

Dit is met skok dat ons aan die ontvangkant vanaf die OVERSTRAND MUNISIPALITEIT se patetiese publieke betrokkenheid is wat hierdie aangeleentheid betref.

MP Bouwer namens PAOLO PUBLISHING (PTY)LTD

File reference:	Erf 45 GKB
Admin	MM
Date:	27 January 2021



INTERNAL MEMORANDUM

From	: Town Planning Department
Town Planner	: SW van der Merwe (Senior Town Planner)

TO:

<u>Area Manager</u>	<u>Building Department</u>	<u>District Health</u>	<u>Electrical Department</u>
<u>Environmental Officer</u>	<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local Heritage Committee</u>
<u>Operational Services</u>	<u>Traffic Department</u>	<u>Ward Councillor (Riana de Coning)</u>	<u>Waste Management</u>

Applicant	Messrs Wrap Project Office on behalf of Webb Ellis Huis (Pty) Ltd
Property Details	Erf 45, 8 Onse Baai, Van Dyksbaai
Application Description	REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE

ATTACHMENTS :

1. Notice	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.
2. Locality Plan	
3. Site & Ground Floor Plans	
4. Motivation	

YOUR DEPARTMENT'S COMMENTS:

The fire department have no objection subjected to compliance with provision of SANS 10400-									
A 2016, SANS-T 2020 § By Law Relating to Community Fire Safety									
<table border="1"> <tr> <td colspan="2" style="text-align: center;">ASSISTANT CHIEF</td> </tr> <tr> <td colspan="2" style="text-align: center;">Enrico Sel</td> </tr> <tr> <td style="text-align: center;">PO Box 26</td> <td style="text-align: center;">Tel: 025 315 1975</td> </tr> <tr> <td style="text-align: center;">7308</td> <td style="text-align: center;">Fax: 025 315 1919</td> </tr> </table>		ASSISTANT CHIEF		Enrico Sel		PO Box 26	Tel: 025 315 1975	7308	Fax: 025 315 1919
ASSISTANT CHIEF									
Enrico Sel									
PO Box 26	Tel: 025 315 1975								
7308	Fax: 025 315 1919								
Signature: <i>E. Sel</i>	Date: 26 JAN 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 are in accordance with the approved building plans.

COMMENTS REQUIRED BY: 5 MARCH 2021



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

Wayleave Office Western Region
Tel: 021 414 5707
Email: WayleavesWR@telkom.co.za

03 February 2021

Our Ref.: WWIP_WGNB0318_21
Your Ref.: ERF 45 GKB

Attention: SW van der Merwe
Overstrand Municipality

PLANT AFFECTED – COPPER

APPLICATION FOR OPENSERVE WAYLEAVE: ERF 45, 8 ONSE BAAI, VAN DYKSBAAI – APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF WEBB ELLIS HUIS (PTY) LTD.

With reference to your application received 27 January 2021.

As important cables and other infrastructure are affected, please contact our representative Melt van As on 021 852 1717/081 363 7873/MeltVA@openserve.co.za 48 hours prior to commencement of construction work.

I hereby inform you that Openserve approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Openserve infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

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

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

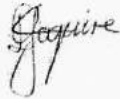
Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should Openseve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Openseve rights remain reserved.

Yours faithfully



For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region



Project Office

Town Planning & Project Management

TP - A Theart
(Suid merwe)



Our Reference: 20/101
Your reference: Erf 45 GKB

5 August 2021

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr SW van der Merwe

ERF 45 VAN DYKSBAAI: RESPONSE TO OBJECTIONS TO THE APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY, REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE

Your correspondence dated 3 August 2021, refers.

Due to the implementation of the provisions the Protection of Personal Information Act, 4 of 2013 (POPIA) by the Overstrand Municipality, it is impossible to verify if the objections comply with the requirements set out in Section 52 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Regardless thereof, two comments/objections were received and are addressed to ensure comprehensiveness.

Although some comments were received in Afrikaans, the application was submitted in English and the response will therefore also be in English.

FILE NO:	EL 45 - GKB ✓
SCAN NO:	GKB 45
COLLABORATOR NO:	1569573

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing
 Wright Approach Investments Unit B, Standard House, Tel: +27 (0)28 313 1411 Email: admin@wrapgroup.co.za
 134 CC Cnr Royal and Dirkie Uys Street Web: www.wrapgroup.co.za
 (Reg No. 2002/060745/23) Hermanus, 7200

Established 2002

 06 AUG 2021

Response to comments pertaining to the public participation process.

Comment	Response to comment
<p>"Ek verwys na geregistreerde skrywes wat uitgestuur is deur Overberg Munisipaliteit na familie van ons wat heelwat verder in die pad af bly.</p> <p>Dit handel oor die versoek om te reageer op voortgaan met bouwerk van die woning wat bekend staan as "Die Constantia huis" drie huise van ons huis af.</p> <p>Die huis se straatnommer is seker 8 (ons is nr. 5) en die erfnummer is moontlik nr.45 (ons is erf 42).</p> <p>Ek verbeel my die Constantia huis is in 'n Mpy of Bk se naam geregistreer wat beheer word deur die Kroon-familie.</p> <p>Terwyl eienaars baie verder in die straat af hierdie geregistreerde skrywes van julle ontvang het, het ons egter dit nie ontvang nie."</p> <p>"3. Word hiermee met leedwese aangedui dat geen geregistreerde pos kennisgewing ontvang is nie."</p> <p>"4. Die kantoor met al sy verteenwoordigers van die departement van beplanning en ontwikkeling, nadat Paolo Publishing van 'n buurvrou, M. Davin, verwitting is van die geregistreerde dokument wat sy ontvang het, het MP Bouwer ondersoek ingestel en bevestig dat geen dokumentasie vir die afhaal van hierdie dokument per pos ontvang is nie, haar genoop om, 'n oproep omstreeks 14:00 op die 29 ste Julie 2021, te maak en aanvraag vanaf MP Bouwer, verteenwoordiger van Paolo Publishing om per epos die betrokke dokument te ontvang. GEEN epos is tot op hede en tyd ontvang soos aangevra nie."</p> <p>"Dit is met skok dat ons aan die ontvangkant vanaf die OVERSTRAND MUNISIPALITEIT se patetiese publieke betrokkenheid is wat hierdie angeleentheid betref."</p>	<p>The standard public participation process was followed in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.</p>

ANNEXURE G

Response to comments pertaining to the timeframe of the completion of the building work.

Comment	Response to comment
<p>"As eienaar van erf 42 Kleinbaai gee ek hiermee toestemming in soverre van toepassing of benodig dat hulle kan voortgaan met verdere bouwerk, met of sander die gewels aan die voorkant en met die bestaande en beplande oorskrydings.</p> <p>Indien hierdie epos nie aan julle vereistes voldoen nie, stuur dan gerus spoedeisend vir my die vereiste vorms aan.</p> <p>Dit kan aan my ge-epos word, aangesien via die poskantoor dalk meebring dat die keurdatum van 31 Julie 2021 gemis sal word.</p> <p>Ek kan dit dan terug epos of per courier terugstuur volgens julle keuse.</p> <p>Die "bouwal" wat nou al lank so staan is onooglik en ons gun ook vir die nuwe eienaars om te kan klaarmaak met hul bouwerk en vertrou dat julle hulle tegemoet sal kom om dit moontlik te maak. Ons sal graag wil sien dat hulle nog hierdie jaar kan intrek."</p>	<p>It is noted that the objector is in support of the application and would like the application process to be concluded.</p> <p>Once the application process is concluded and a decision is made the building works will be completed and the 'eye sore' will be cleaned up.</p> <p>This will reduce the visual impact that the current half built structures have on the area.</p>

Response to comments pertaining to the removal of title deed restrictions.

Comment	Response to comment
<p>"5. Na insae met ons prokureur, is daar besluit om alle opheffings van die beperkende titelakte voorwaardes en afwykings waarvoor aansoek gedoen word, teen te staan.</p> <p>6. Na insae en oorweging deur ons prokureur, is daar spesifieke problematiese verwysings in die dokument, in verskeie paragrawe, na die toekomstige ontwikkeling en bou van 'n tweede wooneenheid agter op die erf 45, 8 Onse Baai, Kleinbaai, wat 'n direkte uitsig en privaatheid probleem gaan skep.</p> <p>7. Die afbreek van bestaande mure en strukture van die wooneenheid, soos aangedui en gekoop deur die betrokke party, sal al die oorskrygings en beperkinge van die tafel vee en sal in teendeel vir die</p>	<p>The application was submitted to ensure compliance with the Overstrand Municipality Land Use Scheme, 2020. This includes the removal of the restrictive title deed conditions.</p> <p>As motivated in the application, the original owner of the property did not build the dwelling in the position as indicated on the building plans. The current owner (applicant) wants to rectify the past transgressions that have occurred. In order to achieve this, certain restrictive building line conditions require removal.</p> <p>In addition to this, the restrictive title deed conditions are more restrictive than the development parameters of the Overstrand Municipality Land Use Scheme, 2020 (OMLUS) and the removal of the restrictive title deed conditions will bring the development</p>

ANNEXURE H 1/2

<p><i>nuwe eienaar, baie meer vryheid bied om sy stempel op die eiendom af te druk sowel as ekonomies meer haalbaar wees as die bestaande roete wat die maatskappy volg.</i></p>	<p>parameters applicable to the erf in line with the development parameters of the OMLUS.</p> <p>The current zoning of the property (Residential Zone 1: Single Residential) allows for a second dwelling unit to be constructed on the property as a primary use.</p> <p>The applicant does not have an immediate intention to build a second dwelling on the property, but if such a need arise in future, he may be able to do so.</p>
--	---

Response to comments pertaining to the second dwelling unit.

Comment	Response to comment
<p><i>"8. Volgens ons prokureur se navorsing is daar ook geen voorbeelde van twee wooneenhede op 'n erf wat volgens die betrokke party, 'n algemene praktyk in hierdie area is nie."</i></p>	<p>The current zoning of the property (Residential Zone 1: Single Residential) allows for a second dwelling unit to be constructed on the property as a primary use.</p> <p>The applicant does not have an immediate intention to build a second dwelling on the property, but if such a need arise in future, he may be able to do so.</p>

Response to comments pertaining to the motivational report.

Comment	Response to comment
<p><i>"Die Maatskappy, MNRE WRAP PROJECT OFFICE NAMENS WEBB ELLIS (PTY) LTD is besig om van 'n veronderstelling hierdie aansoek te rig dat geen ander eienaars kopsie gaan maak nie en die punte wat deur hulle aangehaal is ter verslapping is in die kleinste graad, swak redes."</i></p>	<p>This comment is noted. The application was motivated in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.</p>

Conclusion

In the one comment received, the commentor would like the application to be concluded to ensure the building work are completed which will eliminate the eye sore of a half-built building on the property.

In the second comment, concerns are raised regarding their wellbeing and rights that may be infringed upon. Our submitted application and the response to the comments above however indicate that the proposed application will not affect these aspects.

The applicant has no intention to intentionally impact on the rights of any person or property and the application is in line with the development parameters of the land use scheme.

Considering that this response has adequately addressed all the comments raised, it is recommended that the planning application be approved as submitted.

Yours faithfully



T JANSEN
PROFESSIONAL TOWN PLANNER (A/2858/2019)

ANNEXURE I I/5



Department of Environmental Affairs and Development Planning
Ayesha Hamdulay
 Development Management
Ayesha.Hamdulay@westerncape.gov.za | Tel.: 021 483 0756



REFERENCE: 16/3/3/6/2/E2/17/1122/21

DATE: 15 July 2021

The Board of Directors
 Webb Ellis Huis (Pty) Ltd.
 P. O. Box 4433
DURBANVILLE
 7551

FILE NO:	16/3/3/6/2/E2/17/1122/21
SCAN NO:	Ayesha
COLLABORATOR NO:	1561385

TR N. Aheal
 (S. ud n. Rand)

Attention: Mr. Pieter Kroon

Cell: 083 627 2091

Issued via E-mail: kroon@belmet.co.za

Dear Sir

DEFINITION/ADOPTION OF AN AD HOC DEVELOPMENT SETBACK LINE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998), AS AMENDED ("NEMA") AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) WITH RESPECT TO THE PROPOSED ADDITIONS AND ALTERATIONS TO AN EXISTING RESIDENTIAL DWELLING AND THE DEVELOPMENT OF A GARAGE ON ERF 45, KLEINBAAI AND THE DEVELOPMENT OF A DRIVEWAY AND THE REPLACEMENT OF THE EXISTING RETAINING WALL ON ERF 68, KLEINBAAI

- The request for the adoption of an *ad hoc* development setback line received by the Department via electronic mail correspondence on 20 April 2021, the acknowledgement thereof dated 23 April 2021, the proof of having undertaken a Public Participation Process ("PPP") received by the Department via electronic mail correspondence on 5 June 2021, the acknowledgement thereof dated 8 June 2021, the request for the submission of comment from the local authority dated 10 June 2021, the comment from the Overstrand Municipality dated 15 June 2021 and received by the Department via electronic mail correspondence on 21 June 2021, and the acknowledgement thereof dated 1 July 2021, refer.

- Based on the information submitted to the Department, it is confirmed that the proposed development triggers the following Listed Activity:

Listing Notice 1 of the EIA Regulations, 2014 (as amended)

Activity Number: 19A

Activity Description:

"The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- the seashore;
 - the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or
- the sea; —

1202 701 014

TR

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

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."

3. A Public Participation Process ("PPP") was conducted. The PPP entailed the following:
 - 3.1 Written notification was sent on 29 April 2021 to the following Interested and Affected Parties ("I&APs"):
 - 3.1.1 The Local Authority (Overstrand Municipality);
 - 3.1.2 CapeNature;
 - 3.1.3 Heritage Western Cape; and
 - 3.1.4 The adjacent landowners.
 - 3.2 The Department is satisfied that the PPP that was followed met the minimum legal requirements for public participation for an *ad hoc* development setback line.
4. The concerns raised by I&APs were responded to and adequately addressed during the PPP.
5. The comment from Heritage Western Cape dated 20 May 2021 makes reference to the minutes from the Built Environment and Landscape Permit Committee ("BelCOM") meeting of Heritage Western Cape held on 24 February 2021, which confirms that no further action in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) is required.
6. In terms of the EIA Regulations, 2014 (as amended), "development setback" is defined as a line "defined or adopted by the competent authority".
7. In this regard, the Competent Authority hereby defines/adopts the *ad hoc* development setback line for the development on Erven 45 and 68, Kleinbaai, as the northern edge of the public road Onse Baai (blue line as depicted in **Appendix A**). The *ad hoc* development setback line is defined for the purpose of the proposed additions and alterations to an existing residential dwelling and the development of a garage on Erf 45, Kleinbaai and the development of a driveway and the replacement of the existing retaining wall on Erf 68, Kleinbaai.
8. With regards to this *ad hoc* development setback line, please note that:
 - 8.1 The *ad hoc* development setback line is defined/adopted in terms of the EIA Regulations, 2014 (as amended) and only relates to the Listed Activity mentioned above and to the determination of whether or not Environmental Authorisation in terms of the NEMA is required before undertaking the Listed Activity;
 - 8.2 The *ad hoc* development setback line is not defined/adopted in terms of the National Environmental Management Act: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("NEM: ICMA") / National Water Act, 1998 (Act No. 36 of 1998) or any other legislation, and

notwithstanding the location of the *ad hoc* development setback line, any other statutory requirements that may be applicable to the undertaking of the development must be adhered to;

- 8.3 The *ad hoc* development setback line does not imply that the area inland of the line will not be exposed to risks arising from dynamic processes, including the risk of flooding, sedimentation or erosion; and
- 8.4 The fact that the development proposal will be undertaken behind (inland of) the *ad hoc* development setback line does not absolve you from your general "duty of care" set out in Section 28(1) of the NEMA which states that "Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment." (Note: When interpreting the "duty of care" responsibility, cognisance must be taken of the principles of sustainability as contained in Section 2 of the NEMA.)
9. Seeing as the proposed activities will be undertaken behind the abovementioned *ad hoc* development setback line, Environmental Authorisation will not be required in terms of the NEMA.
10. It is, however, reiterated that the *ad hoc* development setback line only relates to the Listed Activity mentioned above for the proposed additions and alterations to an existing residential dwelling and the development of a garage on Erf 45, Kleinbaai and the development of a driveway and the replacement of the existing retaining wall on Erf 68, Kleinbaai. If the development proposal is in any way amended, such that one or more of the other Listed Activities are triggered, Environmental Authorisation will have to be obtained in terms of the EIA Regulations, 2014 (as amended) prior to construction work being commenced with on the site. It remains the responsibility of the proponent to determine if Listed Activities are triggered and to ensure that the necessary Environmental Authorisation is obtained.
11. Appeals must comply with the provisions contained in the National Appeal Regulations, 2014 (as amended).
- 11.1 An appellant (if the holder of the decision) must, within twenty (20) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
- 11.1.1 Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
- 11.1.2 Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker, i.e., the Competent Authority that issued the decision.
- 11.2 An appellant (if NOT the holder of the decision) must, within twenty (20) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
- 11.2.1 Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
- 11.2.2 Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker, i.e., the Competent Authority that issued the decision.

11.3 The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within twenty (20) calendar days from the date of receipt of the appeal submission.

11.4 The appeal and the responding statement must be submitted to the address listed below:

By post: Western Cape Ministry of Local Government, Environmental Affairs and Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel.: 021 483 2659)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority at the address listed above and/or via e-mail to DEADP.Appeals@westerncape.gov.za.

11.5 A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Authority at: Tel.: (021) 483 3721, E-mail: DEADP.Appeals@westerncape.gov.za or URL: <http://www.westerncape.gov.za/eadp>.

12. The Department will not be held liable for any loss or damage to property or person as a consequence of any development within the *ad hoc* development setback area adopted by the Department.

13. The Department reserves the right to revise or withdraw its previous comments or request further information from you based on any information received

Your interest in the future of the environmental is greatly appreciated.

Yours faithfully

Zaahir
Toefy

Digitally signed by
Zaahir Toefy
Date: 2021.07.15
12:22:40 +02'00'

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Cc: (1) Ms. Michelle Naylor (Lomay Environmental Consulting (Pty) Ltd)
(2) Mr. Benjamin Kondoktor (Overstrand Municipality: Gansbaai Administration)
(3) Ms. Liezl De Villiers (Overstrand Municipality: Gansbaai Administration)

E-mail: michelle@lomay.co.za
E-mail: bkondoktor@overstrand.gov.za
E-mail: ldevilliers@overstrand.gov.za

APPENDIX A

Approved *ad hoc* Development Setback Line (blue line)



ANNEXURE J

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS & DEPARTURE: ERF 45, VAN DYKSBAAI**

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 and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing, standard electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. that on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services;
5. that any additional and / or extended vehicle entrances will be for the developer's account;
6. that stormwater be allowed to discharge through Erf 45, Van Dyksbaai, unobstructed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE

ANNEXURE K



File reference:	Erf 45 GKB
Admin	MM
Date:	27 January 2021

INTERNAL MEMORANDUM

From	:	Town Planning Department
Town Planner	:	SW van der Merwe (Senior Town Planner)

TO:


<u>Area Manager</u>	<u>Building Department</u>	<u>District Health</u>	<u>Electrical Department</u>
<u>Environmental Officer</u>	<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local Heritage Committee</u>
<u>Operational Services</u>	<u>Traffic Department</u>	<u>Property Admin (Anja Le Roux)</u>	<u>Waste Management</u>

Applicant	Messrs Wrap Project Office on behalf of Webb Ellis Huis (Pty) Ltd
Property Details	Erf 45, 8 Onse Baai, Van Dyksbaai
Application Description	REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE

ATTACHMENTS :

1. Notice	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.
2. Locality Plan	
3. Site & Ground Floor Plans	
4. Motivation	

YOUR DEPARTMENT'S COMMENTS:

<p>The owner of Erf 45 Van Dyksbaai applied for the following approvals:</p> <ol style="list-style-type: none"> for the encroachment of the steps on Erf 68 Van Dyksbaai (municipal owned); for the encroachment of the retaining wall on Erf 68 Van Dyksbaai; for alterations to the retaining wall on Erf 68 Van Dyksbaai to construct a driveway giving vehicular and pedestrian access to the proposed new garage on Erf 45 Van Dyksbaai (at the cost of the Applicant); for repairs to the existing retaining wall on Erf 68 Van Dyksbaai to make it stable and safe (at the cost of the Applicant); <p>which approvals must be obtained before any Town Planning and Building Plan approvals can be given.</p> <p>A memorandum was sent to the Director: Infrastructure and Planning, the Municipal Manager and the Executive Mayor today for approval. If approved, a consent letter with conditions will be sent to the Applicant for acceptance.</p>	<p>Signature: </p>	<p>Date: 24 March 2021</p>
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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: 5 MARCH 2021

