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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

3456 KBB

H van der Stoep

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(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 13 November 2020 from Messrs Plan Active Town and Regional Planners on behalf of FA van Rensburg & G Turck on Erf 3456, Betty's Bay for the following:

- ❖ Removal of Restrictive Title Deed Conditions in terms of Section 16.(2)(f) of the By-Law for the removal of restrictive title deed condition I.C.B.(e) as contained in Title Deed T24463/2020 to permit the proposed application.

The restrictive title deed condition I.C.B.(e) read as follows:

"That this erf be not subdivided except with the consent in writing of the Administrator"

- ❖ Subdivision in terms of Section 16.(2)(d) of the By-Law to subdivide the property into two (2) portions, namely Portion A ($\pm 1225\text{m}^2$) and the Remainder ($\pm 1458\text{m}^2$).

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

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The erf is located in Betty's Bay Proper established 10 February 1938. During 1968 Erven 2947 and 2946 were consolidated to form Erf 3456. The property is located on the corner of Aristeia Road and Straight Street. In 2006, the Department of Environmental Affairs and Development Planning upheld an appeal against the subdivision of the aforementioned erf into two (2) portions measuring 1225m^2 and 1446m^2 , respectively, with the condition that the residential dwelling or any structure on proposed Portion A (1225m^2 in extent) be single storey. The erf is zoned Residential Zone 1 and surrounded by Residential Zone 1 erven.

4. SUMMARY OF APPLICANT'S MOTIVATION

The proposed removal of restrictive conditions is motivated as follows:

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

The removal of the condition will allow the property to be developed and subdivided according to the future plans and policies. The removal will enable the subdivision for the owner to utilise the property optimally.

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

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

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

The purchaser will be able to derive an income from the approval and implementation of this proposal.

The social benefit of the restrictive condition remaining in place.

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

The social benefit of the removal of the restrictive condition.

Employment will be created during the construction phase; and additional residential opportunities will be created which will benefit prospective property buyers.

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

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

The proposed subdivision is motivated as follows:

The proposed subdivision follows the same configuration as the residential erven in the same residential block and would off similarly size. Erf 3456 is much larger in extent as the surrounding areas in the area. The proposed subdivision is still in line with the property sizes in the area. Property sizes in the vicinity varies from 1174m² to 1784m².

The proposed subdivision will have a positive impact on the economy of the area. By allowing the subdivision, one additional residential property will be created from the municipality can obtained bulk services levies a well as monthly rates and taxes and create temporary employment during the construction phase.

Services:

Access will be obtained from Straight Street. Services will be provided to the newly created erven as stipulated by the Municipality and the capacity is availability.

Forward Planning:

- Spatial development Framework (2020)

The erf is located in an area earmarked for residential development and the zoning will remain intact.

- Overstrand Growth Management Strategy (2010)

The erf is located in Planning Unit 7 which prescribed density of dwelling 2,6 units per hectare, with no densification proposed. The application erf is double the erf size of an average residential erf in the area. The proposed subdivision will still be compatible with the areas of the residential erven in the vicinity and can be supported.

Heritage Value:

The property is not located in the Heritage Overlay.

Biophysical Environment:

The application does not trigger any listed activities in terms of the Environmental Management Act, 1998.

Planning Principles:Spatial Justice

The subdivision will create an opportunity for future landowners to obtain land and is in line with current erf sizes.

Spatial Sustainability

The subdivision will have no impact on agricultural land, environmentally sensitive areas of biodiversity rich areas and is in line with the current character of the area.

Efficiency

The application entails the optimal use of space on the property while conforming to the residential character of the surroundings.

Spatial Resilience

The principle is not applicable to the application.

Good Administration

The process and a public participation process as prescribed by the Municipality will be followed.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Gazette	Yes	29 January 2021	5 March 2021
Local newspaper	Yes	28 January 2021	5 March 2021
Registered notices	Yes	28 January 2021	5 March 2021
Ward councillor	Yes	28 January 2021	5 March 2021
Total comments	8 (EIGHT)		
Total letters of support	1 (ONE)		
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 (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

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

Name	Date received	Summary of comments
Building Control	29/01/2021	No objection. All building plan applications to comply with all applicable law.
Fire Department	28/01/2021	No objection.
Engineering Services	03/11/2020	See Annexure G.
Telkom	08/02/2021	See Annexure H.
Eskom	01/02/2021	See Annexure I.
Environmental Management Services	10/03/2021	See Annexure J.

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

Objections were received from the following eight (8) individuals:

- **GP Dall (Late)**
- **CM Jacobs**
- **MJ Dall**
- **EM Muller**

- MD Familie Trust
- JA Nesor
- R Gericke
- GJ Smit

One (1) support letter was received from the Betty's Bay Ratepayers' Association.

The objections and comments will be grouped as per issue raised, since many were similar. (See Annexure E.) The applicant's response to the objections is attached as Annexure F.

OBJECTION 1

There are already a large number of vacant erven in High Level Road and that the proposed subdivision of Erf 3456, Betty's Bay is not necessary. It is also mentioned that the proposal is merely a money-making scheme as a portion of Erf 3456, Betty's Bay is already advertised as for sale, prior to the subdivision being approved

Applicant's response

As mentioned in the motivational report, that accompanied this application, the proposed subdivision of Erf 3456, Betty's Bay follows the same erf configuration as the residential erven in the same residential block and would also be of a similar size. The proposed application should be evaluated on its own merits as the owners of Erf 3456, Betty's Bay only own the subject property and no other vacant property in the area. The fact that a portion of the subject property is already advertised to be sold is at the risk of the property owners and does not have any impact on the decision to be made by the Overstrand Municipality with regards to the outcome of the proposed application. We, as the applicant, and the objectors should trust that the Overstrand Municipality will be impartial and that the proposed application will be evaluated according to the facts at hand.

As per the statistics provided by the Building Control Department at the Overstrand Municipality it is clear that Betty's Bay is one of the towns which is developing the fastest in the Overstrand region with regards to approved building plans. As per the table below the only other areas that have more approved building plans are the Hermanus and Gansbaai areas.

APPROVED BUILDING PLANS	
TOWN	PERIOD 1 MAY 2020 TO 30 APRIL 2021
Betty's Bay	61
Hangklip Kleinhoewe	1
Kleinmond	12
Pringle Bay	14
Rooiels	3
Gansbaai	100
Hermanus	80
Stanford	16

Town Planner's response

Betty's Bay has seen an unprecedented development pattern since COVID-19, taking into consideration the amount of building plans submitted in the town. The property was depicted as one erf in 1938 and in 2007 the subdivision of the property was approved by the Department of Environmental Affairs and Development Planning. The application is to reinstate the aforementioned.

It is noted that there are vacant erven in Betty's Bay, but that is not the determining factor in evaluating the application. In terms of the Overstrand Land Use Scheme subdivisions are evaluated taking the surrounding erf sizes into consideration. Betty's Bay Proper residential erf sizes vary considerably from 800m² to 6000m². The objectors' erven sizes are depicted below:

- **GP Dall: 2240m²**
- **CM Jacob: 1546m²**
- **MJ Dall: 3830m²**
- **EM Muller: 1320m²**
- **Michael Dall Family Trust - 2 erven: 1579m² and 1594m² respectively**
- **JA Neser: 1784m²**
- **R Gericke: 1174m²**
- **GJ Smit : 1281m²**

The proposed subdivision is similar in size as the objectors' erf sizes.

OBJECTION 2

According to the objector Bettys Bay is not a city or ordinary town but it is situated in a biosphere nature reserve. It is mentioned that by allowing subdivisions in the area more houses will be built and it will destroy nature. It is also mentioned that there will be more pollution in the area.

Applicant's response

According to the Overstrand Municipal Land Use Scheme, 2020, properties with a Residential Zone 1 zoning have potentially a primary right to erect a second dwelling. In this instance the owners can still extend the existing footprint of the existing dwelling without a land use application. As mentioned in our motivation report the proposed application does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

Town Planner's response

Betty's Bay is defined as a settlement within the Biosphere Framework Plan. The town has been established in 1938 before any Biosphere and thus has rights attached to the property. The Biosphere is a guideline document which is taken into consideration, which was incorporated in the environmental overlay zone. This property does not fall within the environmental overlay zone, and it is unclear how the subdivision will destroy nature. The property without the proposed subdivision can built up to 50% and associated outbuildings of which the latter includes staff quarters without transgressing the Title Deed Conditions.

The property is restricted with three street building line boundaries of 4,72m that restricts development on the property.

OBJECTION 3

The proposed application should have been circulated via email or by registered mail as not all residents are permanently residing in Betty's Bay.

Applicant's response

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

The neighbouring property owners do have an interest in the restrictions, but the restrictions do not vest them with any private rights to the property within the contents of Section 25 of the Constitution of the Republic of South Africa. Section 25(1) of the Constitution permits the deprivation of property rights if it is done in terms of a law of general application and is not arbitrary. As a result, the removal of a restrictive title deed condition is permitted and empowered by the relevant planning laws namely Section 47 of the Spatial Planning and Land Use Management Act, 16 of 2013, Section 39 of the Western Cape Land Use Planning Act, 3 of 2014, and Overstrand Municipality's Amended Municipal Planning Bylaw (2020). In addition, the Title Deed condition does not stipulate that the condition was registered in favour of all or every property owner in Betty's Bay.

Town Planner's response

The application was distributed to surrounding owners via registered post, advertised in the local newspaper and Government Gazette, as well as a site notice. Owners who do not reside in the Overstrand but have property should if they were concerned about what is happening in the Overstrand make the necessary arrangements to receive post. The contact details of every owner in the Overstrand area are captured on the municipal financial system, and potentially affected property owners are notified accordingly. If contact details have changed it is the responsibility of the owner to ensure that it is corrected/updated at the Municipality.

The application was distributed and advertised as per the By-Law on Municipal Planning.

OBJECTION 4

The original dwelling on the property belonged to Denys Heesom. Mr Heesom was South Africa's principal cricket statistician as well as editor of the South African Cricket Annual. It is said that he was the first chairman of the Flora Conservation Committee of the Botanical Society. Mr Heesom was also the first Mayor of Betty's Bay and the Denys Heesom memorial trail was created in his honour.

"Heesom Cottage", as the original dwelling on Erf 3456 used to be known, is an unappreciated structure that should have been respected and preserved in its current form, if only for its great historic significance and value — not only to Betty's Bay, but the Overstrand as a whole. According to the objector no effort to preserve Heesom's legacy was made and is of the opinion that should the

above-mentioned application be approved; it will invariably result in another dwelling being constructed on Erf 3456.

Applicant's response

The subject property, Erf 3456, Betty's Bay, is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

It should be noted that an application for the subdivision of Erf 3456, Betty's Bay was submitted in 2004 and approved in 2007, while the property was still owned by the Heesom Trust.

Town Planner's response

Agree with the Applicant.

OBJECTION 5

A Memorandum of Preliminary objection was compiled by Ludolph Gericke on behalf of Ms. Rhona Gericke. According to the writer of the comments, the town planning application process is (and has always been) slanted in favour of applicants. The objector states that, "the unfortunate reality is that if the applicant is a consultant acting on behalf of a landowner all that his/her client is generally concerned with is a positive result as speedily as possible, which means that if the applicant somehow manages to take shortcuts during the process it will be to his/her advantage. He/she will 'look good' in the eyes of the development community and will gain a reputation as someone who 'can get the job done'".

It is also mentioned that an applicant has the opportunity to comment on objections received and is therefore in a position to say virtually anything at that stage, whether it is correct or not, with little fear that his/her comments on an objection would be challenged. He/she can then be paid for services delivered and move on to the next application. The writer is of the opinion that applications are very often substandard, littered with incorrect and/or misleading information. However, the applicants 'get away' with it as the officials do not have the time or inclination to require amendments while the applicants are not always challenged by reasonably well-informed objectors, and the circle of approval of sub-standard applications perpetuates itself.

Applicant's response

The writer is of the opinion that the planning process is corrupt and that we, as the applicant, manipulate the planning process to secure results in our favour. These are very serious accusations made by the writer as the proposed application has been submitted in accordance with the regulations of the Overstrand Municipality's Amendment By-Law on Municipal Land Use Planning, 2020.

With the above statements, not only does the writer accuse the applicant of unlawfulness but he also accuses the Overstrand Municipality accordingly. The Overstrand Municipality evaluated the proposed application prior to the public participation process. We, as the applicant motivated our application to the best of

our ability with the information at hand and we are of the opinion that the proposed application has merit. It should also be noted that the writer questions the ability of the Overstrand Municipality to make decisions.

It is mentioned that the “applicant has the opportunity to comment on objections received and is therefore in a position to say virtually anything at that stage, whether it is correct or not, with little fear that his/her comments on an objection would be challenged”. We as the applicant are forwarded the objections, that were received during the public participation process, and have to provide our comments to the objections. The planning official at the Overstrand Municipality will thereafter be in a position to make recommendations once all the comments are received. It is clear that the writer of the memorandum does not have any confidence in the planning process nor the discretion of the Overstrand municipal officials, as are clearly indicated in the comments made.

Chapter 8, Section 78.(2) of the Overstrand Municipality’s Amendment By-Law on Municipal Land Use Planning, 2020, read as follows:

“A person whose rights are affected by a decision of the Municipal Planning Tribunal or an Authorised Official or by the failure of the Municipal Planning Tribunal or an Authorised Official to take a decision within the period contemplated in Sections 59 and 61 may appeal in writing to the Appeal Authority within 21 days of the decision”.

The writer of the memorandum is in no position to state that the applicant has an advantage in the planning process, as the affected parties are given the opportunity to comment on the proposed application and can also appeal once the decision letter has been issued. The content of the memorandum is based purely on speculation and is not relevant to the application at hand as it does not comment on the merit of the application.

Town Planner’s response

Land Use applications are submitted in terms of the By-Law on Municipal Planning and the application was submitted as per the requirements. The objector seems to have a problem with legislative requirements, procedures, etc. With the inception of the National, Provincial and Municipal Planning legislation, this vote of no confidence should have been raised. The application in hand followed the requirements as stipulated in the By-Law on Planning that is in line with the Provincial and National requirements.

The objections and the comment on the objections are evaluated and compiled to the Municipal Planning Tribunal with a recommendation, thus all parties’ views are there to be evaluated and decided upon by the MPT.

OBJECTION 6

It is stated by the writer of the memorandum that although the total extent of Erf 3456 is 2671m² the applicant somehow manages to increase this size to 2683m² in his actual subdivision proposal (see paragraph 4.4.1 of the Motivation Report, where it is stated that the sizes of the proposed new erven would be ±1458m² and ±1225m²). It is understandable that the exact size of the individually proposed erven may well only be determined at survey stage, but their combined size can surely not exceed the size of the original Erf 3456.

Applicant's response

The motivation report does not contain a paragraph 4.4.1. It should be noted that the precise extent of the subdivided portion is determined by a Professional Land Surveyor. The discrepancy of the extent of the remainder will have no impact on the application at hand.

Town Planner's response

The objector is correct, there is a difference of 12 m². The applicant motivated that the intention is to reinstate the approval of 2006, which has given the subdivision portions as follows: Remainder of erf 3456 as 1446 m². and proposed Portion A as 1225 m². The proposed subdivision thus can only be evaluated against the 2006 subdivision approval of the Remainder of erf 3456 as 1446 m² and Portion A as 1225 m².

OBJECTION 7

According to the writer of the memorandum the manner in which the restrictive conditions of title that apply to Erf 3456 have been treated by the applicant is somewhat disturbing, to say the least. It is mentioned that the proposed application already caused considerable confusion to potential stakeholders and will continue to do so unless the application is corrected, and the potentially affected persons granted a fair opportunity to comment on the basis of a correct application. According to the writer, Section 39.(1)(l) of the Planning By-Law allows the Municipality to request a conveyancer's certificate "indicating that no restrictive condition in respect of the application is contained in such title deeds".

As application was in this instance made by a professional consultant for the removal of a certain (allegedly relevant) restrictive condition it was understandably not deemed necessary by the Municipality to require such a conveyancer's certificate. It is not clear whether either the applicant or the landowner has consulted with a conveyancer before the application was lodged. On the basis of the information currently available it has to be assumed that it did not happen. According to the writer, the applicant was clearly aware that when the previous approval (of which he had not provided any detail, as mentioned in paragraph 2.2 above) was granted it "was for a subdivision only and did not include the removal of a restrictive Title Deed condition" (see paragraph 1 of the Motivation Report). According to the writer, it appears that the applicant simply assumed (and incorrectly so) that both the Municipality and the applicant at the time have erred, and that "the Title Deed applicable ... contains a restriction that needs to be (or should have been) addressed in order for the proposed application to be approved"(see paragraph 1 of the Motivation Report). The writer states that the applicant was wrong in his assumption (for the reasons that will be explained below), but he also arrived at the inexplicable conclusion that only the restrictive condition contained on "Page 4, paragraph B(e)"(see paragraph 3.4.3 of the Motivation Report) needs to be removed and failed to mention the similar restrictive condition contained on Page 3, paragraph B(e) of the Title Deed. According to the writer, based on the version of the applicant of what was required, the application was incomplete. The writer states that the reality is that Erf 3456 is a consolidation of the original Erven 2946 and 2947, as clearly shown on the Surveyor-General Diagram 2513/68 provided by the applicant. The original

Erf 2946 is denoted by the figure xBCy shown on the Surveyor-General Diagram, while the original Erf 2947 is denoted by the figure AxyD. Even a superficial reading of the Title Deed in respect of Erf 3456 makes it clear the restrictive conditions on page 2 paragraph I (A — D) apply to only the original Erf 2947, and that the restrictive conditions on page 3 paragraph II (A — D) apply to only the original Erf 2946.

The writer states that the restriction on subdivision therefore applies to the further subdivision of any of the original component erven of Erf 3456, but not to the re-subdivision of the consolidated Erf 3456 into its original components. This is the reason why it was not previously necessary for any of these restrictive conditions of title to be removed.

In summary, if the purpose of the current application is to re-create the original component erven of Erf 3456 there is no need for the removal of any restrictive conditions of title. On the other hand, if the objective is to subdivide Erf 3456 into two portions that do not follow the boundaries of the original component erven the detail (and reasons) for this has to be explained and motivated, while the application then also has to include the removal of the restrictive conditions that apply to both of the original component erven (and not only for the removal of only the restriction that applies only to the original Erf 2946).

According to the writer it will also be necessary for the applicant to motivate why it is considered necessary to remove the relevant condition rather than to only amend it. According to the writer, the applicant has to also clearly address the conditions referred to in paragraphs I (A) (page 2) and II (A) (page 4) of the Title Deed (which he has to date conveniently failed to mention) before any meaningful comment can be made on the application.

Applicant's response

As mentioned earlier in our comments the writer questions the planning process followed by the Overstrand Municipality and it is also clear that there is a personal vendetta towards town planning consultants. It should be noted that nowhere in the ±9-page memorandum there is a comment on the merit of the application at hand.

The writer questions the fact if a conveyancer was consulted. We can confirm that we consulted with a conveyancer at the firm STBB Attorneys and that a conveyancer certificate was submitted stating the removal of restriction Page 4, paragraph (B)(e) of the Title Deed, T24463/2020. The writer of the memorandum did not make the effort to verify the attachments submitted with the application documentation, if he did, it would be clear that we as the applicant indeed submitted a conveyancing certificate.

As indicated in the conveyancer's certificate provided by Hendrik Johannes Mouton on behalf of Messrs STBB Attorneys only Page 4, paragraph (B)(e) of the Title Deed needs to be addressed. Taking the comments from the writer in consideration it would be expedient to remove both conditions I.B(e) on Page 2 and II(B)(e) on Page 4 of Title Deed No. T24463/2020.

The matter at hand regarding the removal of the restrictive Title Deed conditions was referred back to the conveyancer at Messrs STBB Attorneys and the following comments were received:

“As discussed during our telephone call yesterday you confirmed that the intention is to subdivide the property into the original 2 components. The Title Deed does not prohibit the subdivision of the consolidated property as a whole, but rather prohibits the original 2 components from being further subdivided. As such, there is no need for the restrictive conditions to be removed”.

It should also be noted that the proposed application was made in terms of the Overstrand Municipality’s Amendment By-Law on Municipal Land Use Planning, 2020 and not as per the Overstrand Municipality’s By-law on Municipal Land Use Planning, 2015 as mentioned throughout the memorandum.

Town Planner’s response

The objector has gone to some extent to indicate that the removal was not necessary, therefore it is unclear why the objection or the fact that the applicant have to deal with the original conditions of title, since it is superfluous.

Should the objector argue that no subdivision is necessary, then it is not necessary to address I.A and II.A.

A Conveyancer certificate was submitted with the application and since the officials are not conveyancers, the certificate is accepted as correct. The Conveyancer indicated that 1.B(e) and II.B(e) be removed and on the basis of the certificate, the application was submitted for the removal of restrictive condition. In the response on the objection, the Conveyancer agree with the objector’s interpretation.

The objector indicated that the reason for removal is not relevant, since it was not necessary to apply for the removal of the restrictive condition. In the same breath indicated that the applicant has not motivated the removal of the restrictive condition. The motivation does address the reason for the removal, and it is unclear precisely the objector refers to. However due to the forementioned, the removal of the restrictive condition is not necessary and thus has no relevance to the application and should only the desirability of the subdivision per se be addressed.

OBJECTION 8

As per the writer of the memorandum, Section 42(b) of the Planning By-Law requires the Municipality to in writing verify whether the application complies with Section 39. The writer states that he has no knowledge as to whether or not such verification occurred in this instance, but as the application process has been commenced with, it has to be assumed that it was done. It is said by the writer that 'Verification' by the Municipality for the purposes of Section 42 (b) does not warrant that the documentation and information submitted by the applicant in support of the proposal is complete and correct. It merely implies that it was verified that the application fee has been paid, that the Application Form was completed and signed, and that, importantly, the applicant has confirmed the requirements mentioned earlier in the objection. In particular, this 'verification' cannot be used by an applicant in default as an 'excuse' to suggest that the correctness of the information provided by him should have been 'checked' by the Municipality. T24463/2020 needed to be addressed with the proposed application.

Applicant's response

We can confirm that the proposed application was indeed verified by the Overstrand Municipality as additional information was requested on 17 November 2020. We submitted the additional information as requested by the town planning official, Mrs H van der Stoep prior to the commencement of the public participation process.

As can be noted from the above details the writer of the memorandum based his speculations on the presumption that errors were made in the application which we understand is important, as application documentation should contain accurate information. The writer however never acted professionally by "verifying" the documents available.

The writer cannot be excused for not verifying and scrutinising all the application documentation as it was freely available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus and at the Betty's Bay Library, Clarence Drive, Betty's Bay as indicated in three languages (Afrikaans, English and isiXhosa) in the public notice as seen below.

According to the writer the applicant has the option to take responsibility in recognition thereof that he is in default and that his application was fundamentally flawed and take the initiative to withdraw the application. The writer also states that another alternative, should the applicant not withdraw the application, is for the Municipality to, as a result of this comment and in terms of Section 53(1)(b) of the Planning By-Law, instruct the applicant to amend the application in such a manner that it complies with all prescribed requirements, or for the applicant to do so in terms of Section 53(1)(a).

We believe that it will not be necessary to withdraw the proposed application in terms of Chapter 5, Section 45.(1) of the Overstrand Municipal Amended By-Law, 2020 nor do we find it necessary for the Overstrand Municipality to give instruction to amend the proposed application in terms of Chapter 5, Section 45.(4)(c) of the Overstrand Municipal Amended By-Law, 2020. The reason being that the proposed application is deemed to be complete and has followed due process. It should also be noted that the sections mentioned by the writer are incorrect as the Overstrand Municipal By-Law, 2015 has been replaced by the Overstrand Municipal Amended By-Law, 2020. This is a clear indication that the writer of the memorandum, appointed by the owner of Erf 2948, Betty's Bay did not conduct a detailed investigation and was thus never in a position to comment on the detail of the proposed application.

Town Planner's response

The Town Planning Department requested information with regard to the previous subdivision application, which was not attached as part of the application. The application after receiving the information was deemed complete and circulated. The application was available at the offices for inspection and information could have been requested via e-mail and would have been forwarded as with all applications.

OBJECTION 9

The writer further states that it should be placed on record that should the application be amended in terms of Section 53(1) to address the various shortcomings that have been identified, the owners of Erf 2948 would regard such amendments as material for the purposes of Section 53(2) and would

expect to receive notice thereof as well as an opportunity to comment on such amended application. Their rights in these regards are and remain reserved. Bearing in mind the numerous discrepancies and inaccuracies in the documentation submitted by the applicant, as outlined, it is impossible for any stakeholder to at this stage constructively comment on the merits of the development proposal on an accurate and informed basis. According to the objector it should respectfully pointed out that the actions of an applicant who submits incorrect and/or misleading and/or incomplete application documentation inevitably places the other stakeholders at a disadvantage. This is particularly the case where a concerned neighbour takes the time and effort to evaluate and comment on an application, and then, through no fault of his/her own, has to repeat that same process when an amended application is submitted. This is patently unfair and would not happen if an applicant complies with his/her duties at the outset. It is exactly for this reason suggested that, based on the "Good Administration" development principle mentioned by the applicant (see the middle of page of the Motivation Report), the Municipality should take Section 84.(1)(e) of the Planning By-Law, which makes the submission of false, incorrect, or misleading information by an applicant an offence, seriously, in particular as an applicant confirms on the application form that he is aware of that provision. Minor errors are obviously not a source of concern, but where an applicant submits incorrect information/documentation to the extent that it requires an amended application in terms of Section 53 (1) it becomes a different matter.

Applicant's response

As previously commented, we believe the application at hand to be complete. It should again be reiterated that the sections referred to by the objector are that of the Overstrand Municipal By-Law, 2015, which was replaced by the Overstrand Municipal Amended By-Law, 2020. As mentioned by the writer the intention was never to comment on the merit of the application but to highlight the "errors" in the application. We have pointed out as per our above comments that the writer's accusations are incorrect, and that the contents of the memorandum were purely based on assumptions and speculations.

It should be respectfully pointed out that the content of the memorandum was based on the wrong information. It should be noted that the amendments that were requested by the municipality were indeed submitted prior to the commencement of the public participation process. The writer questions the planning process, commented on the application procedure with reference to the wrong Municipal By-law and clearly did not scrutinise all of the application documentation.

Town Planner's response

The application form did indicate that there are no restrictive conditions, but rest of the form did indicate a removal of restrictive conditions as was paid for. The removal was also addressed in the motivating memorandum, thus the one incorrect mark on the application form is seen as an obvious administrative error.

It has no impact on the motivating memorandum, which clearly addresses the application.

OBJECTION 10

The objector states that Betty's Bay is not a modern city, but a rural seaside village within a Biosphere Reserve which contains a rich diversity of Fynbos and fauna. To allow densification and "the land to be utilised to its fullest potential" as is stated in the application will lead to further destruction of the natural habitat of the fauna and flora that flourish here.

Applicant's response

The proposed application makes provision to subdivide the subject property. The owners still have the right to extend the existing footprint of the existing dwelling without any land use application. The owners have the option to extend the existing footprint on the subject property within their rights.

The proposed subdivision will allow for new building lines on both portions (common building line) which will result in more open space (vision lines) on the subject property. The application is also circulated to the relevant environmental department, who will also apply their expertise and will provide their professional comments on the proposed application.

Town Planner's response

The Spatial Development Framework, 2020 proposes no densification in the Planning Unit 7, but should be read with the criteria of the Land Use Scheme that stipulates that subdivision will be considered with planning policies and the average size and density of the surrounding residential properties. The surrounding nett density varies from 5 units to 7,5units per ha.

The residential area (Erven 2940 -2945 and 3456) in which the erf is located, the smallest erf measure 1409m², with the average erf size of 1745m², including the application erf. The residential area northwest of the application area (Erven 2948 - 2952, 2954 and 2955) of which the smallest erf measure 1174m², with an average size of 1291m². The residential area west of the application erf (Erven 2990 - 2995) of which the smallest erf measures 1166m², with an average size of 1369m². The area towards the south (Erven 2817 - 28261 and Erven 3010 - 3017), the smallest erf measures 723m² with an average of 1745m².

The proposed sizes of the application are Portion A (±1225m²) and the Remainder (±1458 m²), which co-inside with the existing sizes within the surrounding area.

Betty's Bay proper does not have a conform minimum erf size, it varies from 700m² to 6000m², thus indicating the varied erf sizes.

In terms of the Growth Management Strategy, Planning Unit 7 - densification of 2,6 units per ha, which entails that the average size of the present erven is 3600m², which is not the case. The proposed subdivision is in line with the surrounding erf sizes as indicated above.

OBJECTION 11

The objector states that for every new residence built in the area, there is a conservancy tank to be pumped out regularly, which necessitates the tanker to attach and detach, with the attending noise, pollution and dust that comes with

it. According to the objector this does not add to the visual or residential appeal of the area. It is also mentioned that the Municipality struggles at times to provide sufficient services to the existing residences (water pressure is often low, water pipes often break and take many hours to repair - depriving homes of water, gravel roads are in a very poor condition, runaway fires are a fact of life and as recently as 2019 destroyed many homes in Betty's Bay, during the holiday periods the available septic tankers struggle to keep up with the demand for pumping out conservancy tanks).

Applicant's response

It should be noted that a conservancy tank does not need to be pumped every day. The proposed application is also circulated to the relevant service delivery departments whereby they will provide their professional comments on whether they have capacity or not to provide the additional required services. The objector provides no statistics with reference to service delivery and is thus in no position to provide any comments on the capacity of services in the area. The owners of Erf 3456, Betty's Bay are also well aware of the bulk services contribution payable, which can contribute to the upgrading of services in the area.

Town Planner's response

The application was distributed to the Operational Department, which indicated that the capacity is sufficient.

OBJECTION 12

According to the objector the Application states "by denying the removal of the Title Deed restriction, additional people will be deprived from owning property in the area". In fact, there are currently about 1500 vacant plots in Betty's Bay and about 30 properties for sale here.

Applicant's response

The owners of Erf 3456, Betty's Bay do not own any of the 1500 vacant plots nor the 30 plots that are currently for sale. The owners of Erf 3456, Betty's Bay however own the subject property and therefore an application is made on the subject property. The subject property is also much larger in extent than the surrounding properties and therefore will the proposed subdivision be in line with the erf size of the properties in the vicinity.

Town Planner's response

The objection is noted.

The fact that there are 30 properties for sale cannot hold the residents of Betty's Bay ransom to deal with their properties. It should be noted that an objector in the aforementioned comment indicate that the removal of the restrictive condition was not necessary, thus both the objection and reply on the objection is not relevant anymore.

OBJECTION 13

According to the objector, Erf 3456 is situated in a very strategic spot where five roads come together i.e., High Level Road, Aristeia Road, Straight Street,

and two unnamed access lanes (between Erven 2949 and 2948 and Erven 2996 and 2997). It is said that the situation is very dangerous where traffic has to negotiate a hairpin bend to get from Straight Street into High Level Road (turning right). Another entrance and a building blocking the view will increase the danger in this area.

Applicant's response

The proposed application will not have any impact on the traffic as the roads mentioned by the objector will remain unchanged whether the application is approved or not and no building plans are available whereby the access points are indicated. It should be noted that the proposed application is circulated to various departments who will provide their expert opinion with regards to access points as soon as such plans are available for submission.

Town Planner's response

Firstly, the engineering standard for residential erven is that access to the erf must be located at least 5m from the intersection. It should be noted that there is 30m from the intersection to the western boundary of the erf, therefore the possible conflict is very little. With regard to the view lines, the erf is not subject to any condition safeguarding any view corridor. The erf subdivided or not will still be restricted to 4,72m street building lines and will have no impact on views within the existing development rights applicable to the erf.

OBJECTION 14

According to the objector the intersection of Straight Street and Aristeia Road is one they use to access their home. Like most of the intersections in the village it is an uncontrolled intersection on a gravel road. It is however also a switch-back intersection and any construction on the proposed subdivision on the corner of Straight Street and Aristeia Road would make line of site practically impossible and make the intersection extremely dangerous.

Applicant's response

The proposed subdivision will not have any additional impact on the corner where Erf 3456, Betty's Bay is situated as the same building lines that are applicable on Erf 3456, Betty's Bay will also apply to the new proposed portion. Any building line departures in future will have to be applied for and the affected parties will be given an opportunity to provide their comments.

Town Planner's response

The engineering standard for residential erven is that access to the erf must be located at least 5m from the intersection. It should be noted that there is 30m from the intersection to the western boundary of the erf, therefore the possible conflict is very little.

The erf undivided already have two possible access points to the erf, Aristeia Road and Straight Street, and it still remains the responsibility of the developer to ensure safety measures if construction takes place. The same concern would have been applicable of all the houses built in the area.

OBJECTION 15

According to the objector the position of Betty's Bay in the Kogelberg Biosphere Reserve is of great significance. The Kogelberg Nature Reserve Complex includes the Betty's Bay Marine Protected Area (MPA), which covers 3km of coastline and the inshore marine environment from just east of Jock's Bay and Stony Point in the west. It is also said that the open spaces, including undeveloped erven, and absence of boundary fences in the vicinity of Erf 3456 in this eastern part of Betty's Bay between the Harold Porter Botanical Gardens and Jock's Bay provide a vital corridor between the Kogelberg and the Marine Reserve. It should be noted that a very long-term previous resident of the property in question was a keen champion of the Fynbos and propagated rare and threatened Fynbos plants in her garden. An environmental survey of the grounds may reveal plants that will require protection.

Applicant's response

As previously commented the proposed application was circulated to the various departments in the Overstrand Municipality for their expert comments. During this process, the various departments will provide their comments. The environmental department will request an environmental study if they deem it necessary to do so before they will provide their final comment. The residents of Betty's Bay can be rest assured that any environmental issue, if any, will be addressed in the prescribed manner. It should also be noted that the application at hand does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act No. 107 of 1998).

Town Planner's response

The town has been established in 1938, before any environmental legislation and cannot therefore not be made applicable to the erf.

Betty's Bay is a settlement in the Kogelberg Biosphere and residents have existing rights attached to their properties. The sensitivity of settlements within the Kogelberg Biosphere has been taken into consideration with the establishment of the Heritage and Environmental Management Overlay Zones. In evaluating applications, the aforementioned is taken into consideration.

OBJECTION 16

The objector refers to the devastating fires of January 1st to 11th, just two years ago when in one night the Catholic Church and some forty houses in the village were completely destroyed and many others badly damaged. It is mentioned that had the houses been more densely situated it would have made it even more difficult and dangerous for fire fighters and many more homes would have been lost. According to the objector the home of the previous owners of Erf 3456 Betty's Bay was one of the thirty-odd houses severely damaged. It is said that many of those properties have been sold at enormous loss simply to salvage something. In the process speculators were able to purchase them for bargains and they have been able to rebuild on existing foundations quickly and cheaply, thus avoiding NHBRC registration etc., quickly "flipping" houses in the hope of making a very good return often with no intention of ever being part of the community. The title deed transfer number for this property would indicate that this purchase was probably at

such a discount and the proposed subdivision might simply suggest greed. There are many vacant stands and stands with existing homes available in Betty's Bay in general and in this part of Betty's Bay in particular, to meet the needs of prospective residents.

Applicant's response

We, as the applicant and the owners of Erf 3456, Betty's Bay remember the devastating fire that is mentioned by the objector, we however feel that the proposed application should be evaluated on its own merit. The objector speculates that had the houses been more densely situated it would have made it even more difficult and dangerous for fire fighters and many more homes would have been lost. The subject property is very accessible and therefore the two proposed portions can be easily accessed. It is easy for the objectors to speculate on what would have happened, but the merit of the application should still be first priority.

It is also speculated that the owners of Erf 3456, Betty's Bay bought the property to gain financial benefit. This is merely speculation, but if this is the case the owners saw a business opportunity as we are currently in a very difficult economic situation. The proposed subdivision is in line with the current erf sizes within the vicinity and this is also an opportunity for the Municipality to obtain bulk services levies and obtain rates and taxes monthly which can contribute to the upgrading of the area.

Town Planner's response

The objection is noted. It is correct that there are vacant erven available in Betty's Bay, however it is unclear why they are vacant or why they are not sold. One cannot stop an application based on the fact that there are erven on the market, this application is not a change of land use and is similar in size of the surrounding erven and not out of character. Property owners do buy houses as a financial investment and is unclear why this should pose a problem for the objector, since it is generally accepted as a means to secure a viable asset. This has led to the fact that many houses or properties in Betty's Bay have owners not residing in the Overstrand, but either in Cape Town and or other Provinces.

All houses, even the houses destroyed in the fire, needs to submit building plans to be approved before construction.

OBJECTION 17

According to the objector, the applicants have scant knowledge of the village. It is said that the applicant asserts that "Removing the condition will enable the better utilization of the property in terms of modern city development and will contribute to the prevention of urban sprawl". According to the objector any reference to "city planning" and preventing "urban sprawl" in the context of Betty's Bay is absurd. Betty's Bay is known as the longest village in South Africa and its over 13km sprawl between sea and mountain along Clarence Drive is its very nature. According to the objector the proposal will not increase the market value of the area and attract investment. It is said that over the many years that the objector has been a homeowner in Betty's Bay many similar applications for removal of restrictive title deed conditions and subdivision have been successfully objected to and the applicant's assertion to the contrary is not honest. Removal of the restrictive condition could however set a precedent that could well open a flood gate of similar applications.

Applicant's response

It should be noted that the applicant does have sound knowledge of the area as we have been actively involved in the Overstrand area for the past 20 years. The objector states that there are many open plots in the area that are for sale. The subdivision of Erf 3456, Betty's Bay will create a similar portion in extent as the properties in the vicinity and therefore the proposal will not be anything out of the ordinary.

The objector mentions that Betty's Bay has 13km of sprawl between sea and mountain along Clarence Drive, which means that urban sprawl needs to be curbed. It is important to create higher density areas which will also contribute to better control of resources. As mentioned earlier the proposal will also allow the municipality to obtain bulk services levies which can contribute to the upgrading of the existing area. It should be noted that the proposal should be evaluated on its own merit as the benefits outweighs the so-called negative impacts of the proposed application.

Town Planner's response

The fact that the Overstrand has extensive urban sprawl with the establishment of towns in a linear manner have resulted in costly provision of services. In order to curb the financial burden, the new trend in all planning legislation is to densify where possible, but still retain the character of the area. The application is in line with the character of the area in terms of the proposed erf sizes.

OBJECTION 18

According to the objector, to retain the character of Betty's Bay in general, and the area in particular, they have invested a considerable amount of capital in purchasing vacant erven. It is also stated by the objector that the services the Municipality provides are stretched to the limit and do not need to be burdened by additional erven.

Applicant's response

As commented previously, the general public cannot comment on the capacity of services as the proposed application is circulated to the relevant departments for their expert opinions. The proposed application will not have any impact on the character of Betty's Bay as mentioned in the motivational report.

Town Planner's response

The character of the area remains in place should any subdivision be in line with the surrounding erven.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)

See Paragraph 7 above.

Internal and External Departments

The application was supported by all internal municipal departments.

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

10.1 Background

N/A

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

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

N/A

Spatial Sustainability

The application is within the urban edge and will not impact on agricultural land or environmental areas. The application is in line with the promoting of compaction and infill urban environments.

Efficiency

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

Spatial Resilience

The application is in line with local policies which promote optimal use of an erf to limit urban sprawl. All structures will comply with the National Building regulations and SANS, thus promoting energy efficiency.

Good Administration

Administrative procedure was followed as prescribed by the Municipality.

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

Same as Point 10.2 above.

10.4 Consistency with the IDP/Various levels of SDF's/Applicable policies

The application does address the Growth Management Strategy Framework with regard to the deviation of the density for Planning Unit 7, Betty's Bay.

10.5 Consistency with guidelines prepared by the Provincial Minister

The guiding principle of curbing sprawl and densification as per the Land Use Planning Act, 2014.

10.6 Impact on Municipal Engineering Services

Existing services will be used.

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

N/A

10.8 Existing and proposed zoning comparisons and considerations

The Overstrand Municipality Zoning Scheme Regulations is applicable to this area. The existing zoning is Residential Zone 1 and the applications is for a subdivision and removal of restrictive condition with the proposed erven to remain Residential Zone 1.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

Please note that it became clear during the course of the application that the subdivision restriction is only applicable to the separate erven, which were not transferred to the consolidated erf. Therefore, the removal of the restrictive condition was not necessary. This became evident in the response of the Conveyancer on its own Conveyancer Certificate. (page 11/20).

12. THE DESIRABILITY OF THE PROPOSAL

The objections have been addressed extensively under Paragraph 7., however a few aspects need to be addressed in more detail. They are as follows:

Density**Overstrand Growth Management Strategy, 2010**

The application erf is located in Planning Unit 7, with a density of 2,6 units per ha. In the density table depicted on map H: Proposal Plan, Betty's Bay West, the densification proposed is status quo. No additional densification proposed; however the densification concept should be read with Section B and C of the Strategy. The proposed application falls into the category of incremental densification, thus providing the guidance of a subdivision which is in line with the present status quo of the area.

The Overstrand Land Use Scheme, 2020, Chapter 18, Section 18.1.2: Subdivision of Residential Properties states as follows: "Subdivision in an area will generally be allowed if it is consistent with the planning policies and the average size and density of surrounding residential properties are being considered."

In order to establish whether the application falls within the above-mentioned, the following were determined.

Erf 3456 is located in Betty's Bay's Proper. The township was established in 1938 and the present nett density varies between 5 to 7 units per ha. The average size of Betty's Bay Proper is 1470m² of which the smallest erf measure 495m² and the biggest erf measuring 6000m² in extent.

However, in the direct vicinity of the application erf, the following erf sizes are depicted below:

The residential area (Erven 2940 - 2945 and 3456) in which the erf is located, the smallest erf measure 1409m², with the average erf size of 1745m², including the application erf. The residential area northwest of the application area (Erven 2948 - 2952, 2954 and 2955) of which the smallest erf measures 1174m², with an average size of 1291m². The residential area west of the application erf (Erven 2990 - 2995) of which the smallest erf measures 1166m², with an average size of 1369m². The area towards the south (Erven 2817 - 28261 and Erven 3010 - 3017), the smallest erf measures 723m² with an average of 1745m².

The proposed sizes of the application are Portion A (±1225m²) and the Remainder (±1458 m²), which co-inside with the existing sizes within the surrounding area.

Kogelberg Biosphere Framework

The Kogelberg Biosphere Framework was compiled in 2012, giving guidelines on the activities within the Biosphere. Towns within the Biosphere are acknowledged and promoted to form part of the economic and environmental sustainability and viability of the Biosphere. The erf is located in the area depicted as a settlement in terms of the Biosphere Framework, which acknowledges existing rights applicable to erven within the settlement category. Due cognisance is taken of the Kogelberg Biosphere by the Municipality which has led to the Heritage and Environmental Management Overlay Zones. However, it should be noted that the Kogelberg Biosphere cannot give or take away rights of the settlements within the Biosphere area.

The Western Cape Biodiversity Spatial Plan Handbook, 2017, clearly stipulate that urban extension be controlled by the Urban Edge and promote compact urban settlements. The application serves as infill development within the urban edge.

Conditions of Title

The condition to be removed to enable the subdivision is deemed not necessary since the condition prohibiting subdivision was never transferred to the consolidated title.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the removal of restrictive title deed condition I.C.B.(e) as contained in Title Deed T24463/2020 to permit the proposed application, **not be approved** in terms of the provisions of Section 61,

2. that the application in terms of Section 16(2)(d) of the By-Law to subdivide Erf 3456, Betty's Bay into two (2) portions, namely Portion A ($\pm 1225\text{m}^2$ in extent) and the Remainder ($\pm 1458\text{m}^2$ in extent), **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the approvals in Point 2 be subject to the following conditions:
 - (a) that subdivision be in line with Drawing Nr. 3456subdivision.drw dated October 2020 submitted with this application;
 - (b) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (d) that all the conditions in the Services Report (attached as Annexure G), be complied with;
 - (e) that all the conditions imposed by Telkom (attached as Annexure H), be complied with, and
 - (f) that all the conditions imposed by Eskom (attached as Annexure I), be complied with.
4. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

Reasons for approval

- ❖ The application is in line with forward planning documents.
- ❖ The creation of two (2) residential erven is in line with the surrounding erven sizes and will not be to the detriment of the character of the area.

Reason for non-approval

The application for the removal of the restrictive condition is not necessary a. since it was not transferred to the consolidated Title Deed.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Title Deed T24463/2020
Annexure E:	Objections received
Annexure F:	Applicant's response to the objections received
Annexure G:	Services Report
Annexure H:	Comment : Telkom

Annexure I: Comment : Eskom
Annexure J: Comment : Environmental Management Services

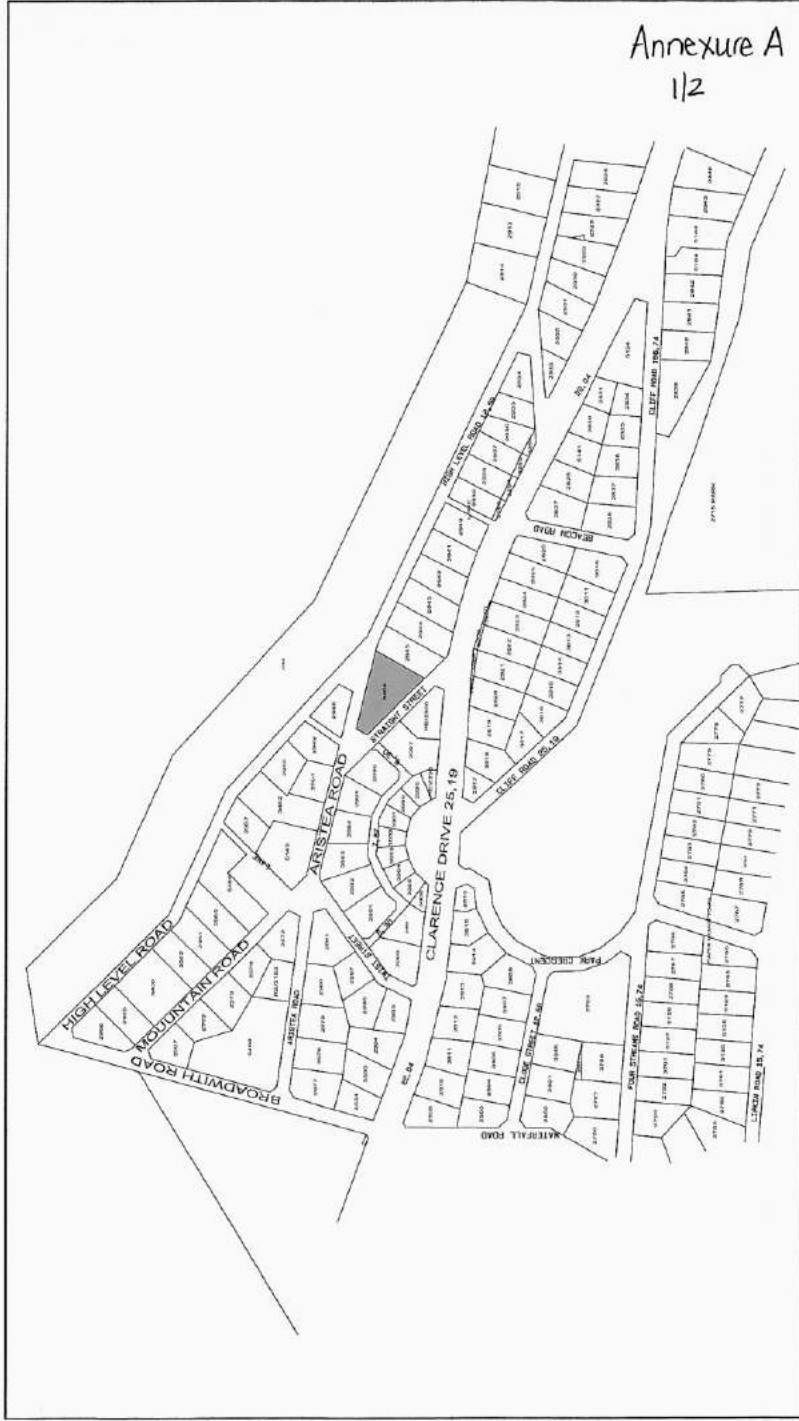
SIGNATURE**REGISTERED PLANNER**

Name : **H VAN DER STOEP**

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

Signature : _____

Date: _____



Annexure A
1/2

	Stads- en Streeksbeplanners Town & Regional Planners		All distances approximate and subject to survey.		Property Description: ERF 3456 BETTYS BAY		Plan Description: LOCALITY MAP		Scale: NTS Drawing Nr: basemap.dwg Date: OCTOBER 2020	
	COPY RIGHT RESERVED									



NOTES	
REMAINDER ERF 3456:	±1458m ²
PORTION A:	±1225m ²
EXISTING BOUNDARIES	<input type="checkbox"/>
SUBDIVISION LINE	—

Plan
Active
 Stads- en Streeksbeplanners
 Town & Regional Planners

All distances approximate
 and subject to survey.
 COPYRIGHT RESERVED

ERF 3456
 BETTYS BAY

Plan Description:
 AERIAL
 PHOTOGRAPH

Scale: 1:700
 Drawing Nr: 3456photograph.dwg
 Date: OCTOBER 2020



**PROPOSED SUBDIVISION AND THE
REMOVAL OF A RESTRICTIVE TITLE
DEED CONDITION**

ERF 3456 BETTY'S BAY

DIVISION: CALEDON
OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. **BACKGROUND**

The owners of Erf 3456 Bettys Bay, Mr. F.A. Van Rensburg & Mr. G. Turck, have instructed the company Plan Active to apply for the subdivision and removal of a restrictive Title Deed condition of Erf 3456 Betty's Bay. A similar application was approved but not registered. We have noted that the previous approval was for a subdivision only and did not include the removal of a restrictive Title Deed condition.

The owners intend to subdivide Erf 3456 Betty's Bay in a similar way than what was previously approved to create one additional erf and a remainder. The Title Deed applicable to Erf 3456 Bettys Bay contains a restriction that needs to be addressed in order for the proposed application to be approved.

Erf 3456 Betty's Bay is 2671m² in extent and is held by Title Deed Number T24463/2020.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition;
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 3456 Betty's Bay.

3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 3456 Betty's Bay is located on the corner of Aristea Road and Straight Street. Erf 3456 Betty's Bay is 2671m² in extent. Please refer to the enclosed locality plan.

3.2 ZONING

Erf 3456 Betty's Bay is zoned Residential Zone 1 and is utilized as such. The surrounding properties are zoned for single residential purposes, public roads and public open space.

3.3 LAND USE

Erf 3456 Betty's Bay is used for residential purposes. A dwelling and garage are established on the subject property. Access to Erf 3456 Betty's Bay is obtained from Straight Street, Betty's Bay.

Land uses that surround Erf 3456 Betty's Bay are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 3456 Betty's Bay is situated within a predominantly single residential area.

3.4 **PROPOSAL**

The following are proposed:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 3456 Betty's Bay.

Erf 3456 Betty's Bay is 2671m² in extent. The intention of the owners of the subject property is to subdivide Erf 3456 Betty's Bay into two portions, Portion A, and the remainder, and to simultaneously apply for the removal of a restrictive Title Deed condition.

3.4.1. Proposed Subdivision

The detail of the subdivision can be described as follows:

Subdivision of Erf 3456 Betty's Bay			
Proposed Portions	Size	Land use	Zoning
Remainder Erf 3456	±1458m ²	Dwelling and garage	Residential Zone 1
Portion A (Erf 5572)	±1225m ²	vacant	Residential Zone 1

The proposed subdivision of Erf 3456 Betty's Bay follows the same configuration as the residential erven in the same residential block and would also be of a similar size.

Erf 3456 Betty's Bay is larger in extent as the surrounding properties in the vicinity.

Proposed Portion A and the remainder portion are $\pm 1225\text{m}^2$ and $\pm 1458\text{m}^2$ in extent, respectively. The proposed portions are still in line with the property sizes in the area. Property sizes in the vicinity varies from 1174m^2 to 1784m^2 .

The proposed subdivision will have a positive impact on the economy of the area. By allowing the subdivision, one additional residential property will be created from which the municipality can attain bulk services levies as well as monthly rates and taxes. Future possible plans to develop the newly created portion will create temporary employment during the construction phase thereof.

3.4.3. Proposed Removal of a Title Deed restriction

The enclosed Title Deed, T24463/2020 contains the following Title Deed restriction that has to be addressed:

- **Page 4, paragraph (B)(e): "That this erf be not subdivided except with the consent writing of the Administrator"**

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

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

The removal of the Title Deed restriction will allow the property to be developed and subdivided according to future plans and policies. The removal will also provide an opportunity for the large open space on the subject property to be utilised better after the Title Deed restriction is removed and the subject property has been subdivided. This will increase the market value of the area and attract investment

opportunities as future owners will be able to develop according to the primary uses as set out in the Zoning Scheme Regulations of the Overstrand Municipal Area.

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

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township will gain anything personally by having the restriction removed, which prevents the subdivision of the subject property. The proposal will have an impact on the existing built form in the area however such change is supported in the future planning documents of the area (**Overstrand Growth Management Strategy**). Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of the restrictive Title Deed condition will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

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

The property owner will benefit from the removal of the mentioned Title Deed restriction as it will create a new portion to be sold in future.

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

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

The retention of the restriction will add another layer to be enforced by the

Overstrand Municipality, in addition to the Zoning Scheme Regulations requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for an additional erf will be positive. Appropriate densification should be encouraged in all areas. Removing the condition will enable the better utilization of the property in terms of modern city development, contribute to the prevention of urban sprawl and align with various policies which require a more efficient use of land and appropriate densification of land and will allow additional residents in the area.

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

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

The removal of the restriction will not remove the rights completely, as the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 provides a certain level of control that will guide the manner in which the property will be both used and developed. The mentioned Title Deed also consists of other development restrictions that provides a certain level of control in the specific area of Betty's Bay.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of a restrictive Title Deed restriction will not deprive any person in the subject area of Betty's Bay as contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restriction, additional people will be deprived from owning property in the

area. By creating an additional property in the area, the opportunity will be created for new owners to own property and will also allow land to be utilised to its fullest potential.

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

3.5 ACCESS

Vehicular and pedestrian access to Remainder Erf 3456 Betty's Bay and the existing dwelling are gained from Straight Street, Betty's Bay. The access to the Remainder Erf 3456 Betty's Bay will be retained after the subdivision has been concluded.

The exact position of the access point to Portion A, a portion of Erf 3456 Betty's Bay will be confirmed with a building plan submission, when the new owners intend to build.

3.6 SERVICES

Erf 3456 Betty's Bay is situated in an already developed residential area, municipal services already exist to which the newly created Erf, could connect to. It is our opinion that there are enough services capacity to service the proposed additional single residential erf. All required services will be installed according to the specifications of the Overstrand Municipality.

3.7 TITLE DEED

The Title Deed T24463/2020 has a restriction that needs to be removed in order for the owners to subdivide the subject property into Portion A and a remainder.

The enclosed Title Deed, T24463/2020 contains the following Title Deed restriction that has to be addressed:

- **Page 4, paragraph (B)(e): "That this erf be not subdivided except with the consent writing of the Administrator"**

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

There is no bond registered against Erf 3456 Betty's Bay.

3.8 FORWARD PLANNING

Overstrand Municipal Spatial Development Framework (2020).

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



Overstrand Growth Management Strategy (2010)

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 7 that consists of the existing residential area located on the eastern side of Betty's Bay. No densification proposals are made for this planning unit.

Each subdivision application should be dealt with on its own merit. Erf 3456 Betty's Bay is one of the larger erven in this residential block and 2 times the size of an average residential erf in the area. The newly created erf and the remainder will still be compatible with the areas of the residential erven in the vicinity and can therefore be supported.

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

Erf 3456 Betty's Bay is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

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

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

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

3.10 PLANNING PRINCIPLES

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

Spatial Justice: The proposed subdivision and removal of a Title Deed restriction are in line with the current erf sizes and land use tendencies in the vicinity within the Betty's Bay area. The proposed subdivision will create an opportunity for future landowners to obtain land.

Spatial sustainability: The proposed subdivision and removal of a Title Deed restriction are in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Betty's Bay. Spatially the land use and erf size of the created portion and remainder will be in line with the residential character of the Betty's Bay area.

Efficiency: The proposed application for the subdivision of Erf 3456 Betty's Bay, and removal of a restrictive Title Deed condition will promote the optimisation of the use of space within a developed residential area. The subject property is also situated close to the CBD of Betty's Bay.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience

also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

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

4. **RECOMMENDATION**

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

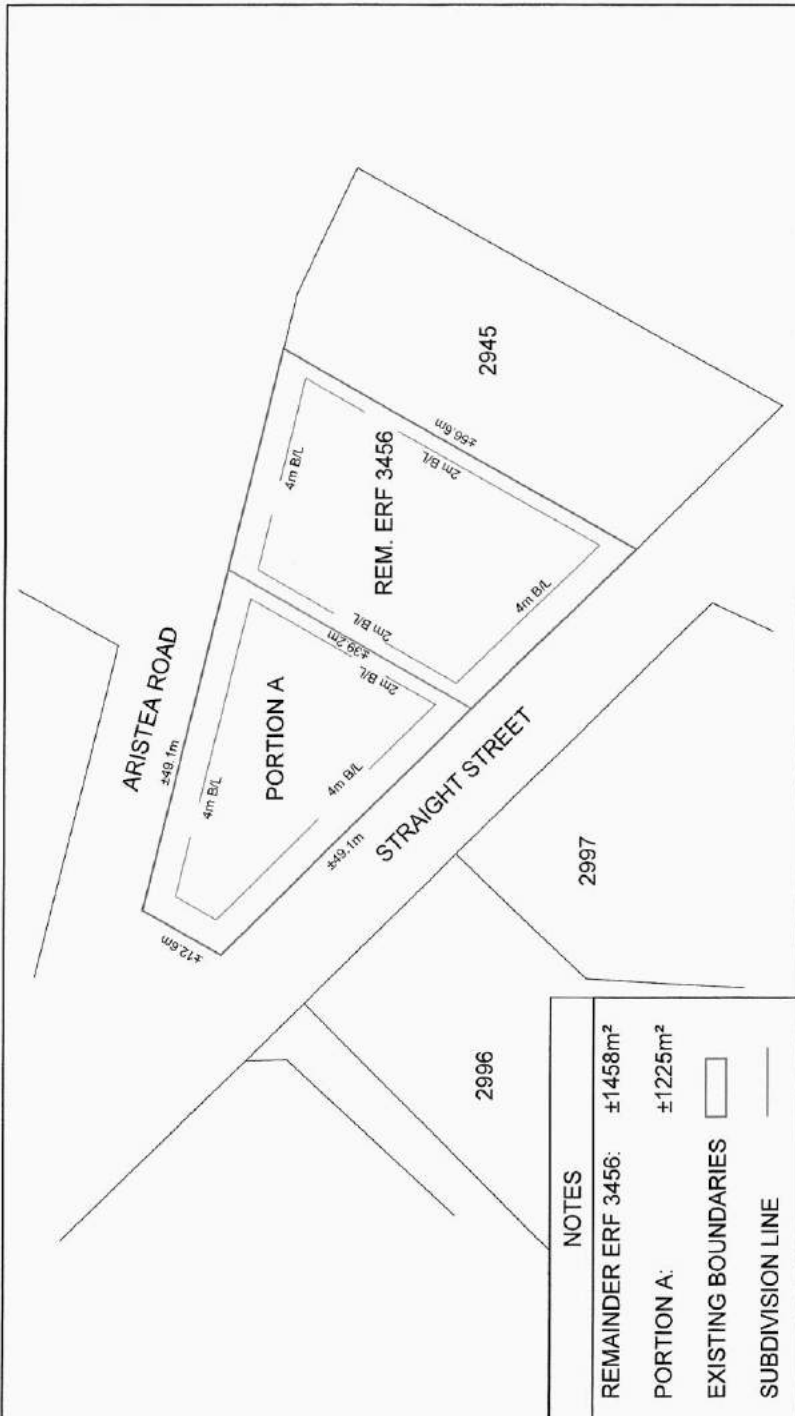
- The proposed subdivision of Erf 3456 Betty's Bay and the removal of a restrictive Title Deed condition fall within the existing land use tendencies in the area;
- The proposal is compatible with the existing erf sizes in the area;
- The proposed subdivision and removal of a restrictive Title Deed condition will not have a negative impact on the current character and land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

Motivation report

2/12

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the subdivision and removal of a restrictive Title Deed condition of Erf 3456 Betty's Bay.

Annexure C



NOTES	
REMAINDER ERF 3456:	±1458m ²
PORTION A:	±1225m ²
EXISTING BOUNDARIES	
SUBDIVISION LINE	

	Planners Active Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	ERF 3456 BETTYS BAY	Plan Description: SUBDIVISION PLAN	Scale: 1:700 Drawing No: 3456subdivision.dwg Date: OCTOBER 2020

1480

Webb Attorneys
Sunclare Building
21 Dreyer Street
Claremont
7708

Annexure D 1/6

Prepared by me

CONVEYANCER
MELISSA WEBB

Deeds Office Registration fees as per Act 47 of 1937		
	Amount	Office Fee
Purchase Price	R. 1,035,000	R. 220,00
Reason for exemption	Category Exemption	Exemption i l o. Sec/Reg Act/Proc.

DATA / CAPTURE
02-10-2020
LINDA NCAPAI

T 000024463 / 2020

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

PETRUS JOHANNES GILLIE

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

The Trustees for the time being of HEESOM TRUST
Registration Number IT57/92

which said Power of Attorney was signed at Cape Town on 17 March 2020

DATA / VERIFY
10-10-2020
FATGEYAH LARNEY

Handwritten initials: b, a, Q2

Handwritten initials: W

And the appearer declared that his/her said principal had, on 23 February 2020, truly and legally sold by Private Treaty, and that he/she, the said Appearer, in his/her capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **FRANK ALEXANDER VAN RENSBURG**
Identity Number 650623 5166 08 9
Unmarried
2. **GARY TURCK**
Identity Number 640820 5232 08 4
Unmarried

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

ERF 3456 BETTY'S BAY
IN THE OVERSTRAND MUNICIPALITY
DIVISION CALEDON
WESTERN CAPE PROVINCE

IN EXTENT 2671 (TWO THOUSAND SIX HUNDRED AND SEVENTY ONE)
Square metres

FIRST REGISTERED by Certificate of Consolidated Title No. T21894/1971 with Diagram No. 2513/68 relating thereto and held by Deed of Transfer No. T15235/1992 ✓

- I. **INSOFAR** as the figure AxyD on said Diagram Number 2513/68 is concerned:
 - A. **SUBJECT** to the conditions referred to in Certificate of Registered Title number T1993/1938.
 - C. **SUBJECT FURTHER** to the following special conditions contained in the Deed of Transfer Number T2318/1943, reading:
 - A. As being in favour of the registered owner of any erf of the Township and subject to the amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance Number 33 of 1934.
 - (a) That this erf be used for residential purposes only but no buildings other than one dwelling together with such outbuildings as are ordinarily required to be used therewith, may be erected thereon.
 - (b) That not more than one-half the area of this erf be built upon.
 - (c) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf, provided that this condition shall not apply to the erven numbers 187 to 200.
 - (d) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf.

B
a
2

W

- B. As being in favour of the Administrator:
- (e) That this erf be not subdivided except with the consent in writing of the Administrator.
- C. 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 this erf if deemed necessary by the local authority.
- (g) That the owner of this erf shall be obliged to receive material to give proper slope to the bank, if this erf is below the level of the adjoining street, and if this erf is above the level of the adjoining street, he shall in like manner permit a safe slope to the bank, unless in either case he shall elect to build retaining walls to the satisfaction of the local authority and within a period to be determined by the local authority.
- (h) That pending the establishment of a local authority for this Township, the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank on this erf if the nature of the soil permits of the use of a septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. On the establishment of such local authority the owner of any erf or erven served by a septic or vacuum tank shall, if required by such local authority, be obliged, without compensation, to remove the septic or vacuum tank, after three months notice in writing has been given by such local authority.
- D. As being in favour of the registered owner of any erf in the Township:
- (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes.
- (c) No slaughter poles, cattle kraals, pig-stys or cow sheds shall be erected or carried on by any person whomsoever on this erf.
- (d) Save with the consent in writing of the Company and of any Local Authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of such nature, nor shall have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or stone thereon.
- (e) No building shall be erected on this erf at a cost of less than R800,00 exclusive of the cost of the land.

Of the foregoing conditions D(b), (c), (d) and (e) have been imposed by Hangklip Beach Estates Limited.

II. INsofar as the figure xBCy on said Diagram Number 2513/68 is concerned:

- A. **SUBJECT** to the conditions referred to in Certificate of Registered Title Number T1993/1938.
- C. **SUBJECT FURTHER** to the special conditions contained in Deed of Transfer Number T9165/1939, reading:-
- (A) As being in favour of the registered owner of any erf of the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:
- (a) That this erf be used for residential purposes only but no buildings other than one dwelling together with such outbuildings as are ordinarily required to be used therewith, may be erected thereon.
- (b) That not more than one-half the area of this erf be built upon.
- (c) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected than 4,72 metres to the street line which forms a boundary of this erf, provided that this condition shall not apply to the erven nos. 187 to 200.
- (d) That no building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 1,57 metres to the lateral boundary common to any adjoining erf.
- (B) As being in favour of the Administrator:
- (e) That this erf be not subdivided except with the consent in writing of the Administrator.
- (C) 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 this erf if deemed necessary by the local authority.
- (g) That the owner of this erf shall be obliged to receive material to give a proper slope to the bank, if this erf is below the level of the adjoining street, and if this erf is above the level of the adjoining street, he shall in like manner permit a safe slope to the bank, unless in either case he shall elect to build retaining walls to the satisfaction of the local authority and within a period to be determined by the local authority.
- (h) That pending the establishment of a local authority for the Township, the sewage of this erf shall not be disposed of otherwise than by means of a properly constructed septic tank on this erf if the nature of the soil permits of the use of a septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. On the establishment of such local authority the owner of any erf or

erfen served by a septic or vacuum tank shall, if required by such local authority, be obliged, without compensation, to remove the septic or vacuum tank, after three months notice in writing has been given by such local authority.

- (D) As being in favour of the registered owner of any erf in the Township:
- (b) No wood and iron buildings of any description shall be erected on this erf nor shall corrugated iron be used for roofing purposes.
 - (c) No slaughter poles, cattle kraals, pig-stys or cow sheds shall be erected or carried on by any person whomsoever on this erf.
 - (d) Save with the consent in writing of the Company and of any Local Authority the owner shall not have the right to make or cause to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or stone thereon.

Of the foregoing conditions D(b), (c) and (d) have been imposed by Hangklip Beach Estates Limited.

D. **SUBJECT FURTHER** to the following special condition contained in Deed of Transfer No. T9165/1939, reading:-

- E. As being in favour of the registered owner of any erf in the Township:
- (a) No building shall be erected on this erf at a cost of less than R800,00 exclusive of the cost of the land.

The foregoing condition has been imposed by Hangklip Beach Estates Limited.

SW

6/6

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

**The Trustees for the time being of HEESOM TRUST
Registration Number IT57/92**

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

- 1. FRANK ALEXANDER VAN RENSBURG, Unmarried
- 2. GARY TURCK, Unmarried

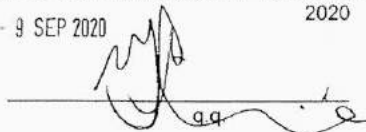
their Heirs, Executors, Administrators or Assigns, now are and henceforth shall be entitled
thereto, conformably to local custom, the State, however reserving its rights, and finally
acknowledging the purchase price to be the sum of R 1 035 000,00 (ONE MILLION THIRTY
FIVE THOUSAND RAND).

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

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE
TOWN on

- 9 SEP 2020

2020



In my presence



REGISTRAR OF DEEDS

99 B

SW

W



TR-D. (Heart
(H. Jd Steep)

Annexure E
1/23

FILE NO:	Er 3456
	Betty's Bay
SCAN NO:	03
COLLABORATOR NO:	1514848

M.J. Dall
Erf 5600
Betty's Bay
7141

Tel: 082-893-0179
Email: michael@mdarch.co.za

3rd March 2021

OVERSTRAND MUNICIPALITY

Dear Sirs

Re: Erf 3456, 4 Straight Street, Betty's Bay: Application for removal of restrictive title deed condition and subdivision: Plan Active (obo FA Van Rensburg & G Turck)

We wish to object to the proposed subdivision of Erf 3456, 4 Straight Street, Betty's Bay on the following grounds:

1. We do not want densification of our area and Betty's Bay.
2. There are several vacant erven in the area and there is not a need for additional erven.
3. In an effort to retain the character of Betty's Bay in general, and our area in particular, we have invested a considerable amount of capital in purchasing vacant erven which are owned in my personal capacity or our Family Trust.
4. The services the Municipality provide are stretched to the limit and don't need to be burdened by additional erven.

Yours faithfully

Michael John Dall
OWNER - ERF 5600, BETTY'S BAY

MD/dhb

- 5 MAR 2021



TP- n. / heart
(11. ud Sraep)

2/23

FILE NO:	Erf 3456
	Rethieshaai
SCAN NO:	02
COLLABORATOR NO:	LS14844

M.J. Dall
Erf 2970
Betty's Bay
7141

Tel: 082-893-0179
Email: michael@mdarch.co.za

3rd March 2021

OVERSTRAND MUNICIPALITY

Dear Sirs

Re: Erf 3456, 4 Straight Street, Betty's Bay: Application for removal of restrictive title deed condition and subdivision: Plan Active (obo FA Van Rensburg & G Turek)

We wish to object to the proposed subdivision of Erf 3456, 4 Straight Street, Betty's Bay on the following grounds:

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2. There are several vacant erven in the area and there is not a need for additional erven.
3. In an effort to retain the character of Betty's Bay in general, and our area in particular, we have invested a considerable amount of capital in purchasing vacant erven which are owned in my personal capacity or our Family Trust.
4. The services the Municipality provide are stretched to the limit and don't need to be burdened by additional erven.

Yours faithfully

M. J. Dall

Michael John Dall
OWNER - Erf 2970, Betty's Bay

MD/dhb

P - 4 MAR 2021

TP D. Theart
(H. Ud Stoop)



3123

MEMORANDUM

ERF 3456, BETTY'S BAY: PROPOSED SUBDIVISION AND REMOVAL OF A RESTRICTIVE CONDITION OF TITLE: PRELIMINARY OBJECTION

1. INTRODUCTION

- 1.1. Application has been made for the removal of a restrictive title deed condition applicable to Erf 3456, Betty's Bay ('Erf 3456') as well as for the subdivision of this property.
- 1.2. The 'town planning' application process is (and has always been) slanted in favour of applicants. The unfortunate reality is that if the applicant is a consultant acting on behalf of a land owner all that his/her client is generally concerned with is a positive result as speedily as possible, which means that if the applicant somehow manages to 'take shortcuts' during the process it will be to his/her advantage. He/she will 'look good' in the eyes of the development community and will gain a reputation as someone who 'can get the job done'.
- 1.3. Furthermore, an applicant has the opportunity to comment on objections received and is therefore in a position to say virtually anything at that stage, whether it is correct or not, with little fear that his/her comments on an objection would be challenged. He/she can then be paid for services delivered and move on to the next application.
- 1.4. This has effectively created a planning system that is characterized by mediocrity and an approach of 'quantity rather than quality' (i.e. 'let's get as many applications as possible submitted/finalized as quickly as possible' rather than to make sure that those applications comply with prescribed requirements). Applications are very often sub-standard, littered with incorrect and/or misleading information, filled with meaningless 'waffle', incomplete, etc. However, the applicants 'get away' with it as the officials do not have the time or inclination to require amendments while the applicants are not always challenged by reasonably well-informed objectors, and the circle of approval of sub-standard applications perpetuates itself.
- 1.5. In those isolated instances where applicants are indeed confronted by more 'knowledgeable' objectors, the applicants invariably say 'sorry', and ostensibly correct those errors in their comment on the objections. For this they can then also charge an additional fee from their clients.

FILE NO:	Er 3456 ✓
	Bentosbaai
SCAN NO:	KBB 3456
COLLABORATOR NO:	1509125

TP 22 FEB 2021

- 1.6. None of the above is in the interest of the planning profession nor does it contribute to what the new planning system introduced by the Spatial Planning and Land Use Management Act, 2013 ('SPLUMA') seeks to achieve.
- 1.7. Section 39 of the Overstrand Municipality: By-Law on Municipal Land Use Planning (2015) ('the Planning By-Law') outlines the documentation that is required as part of an application. It speaks for itself that the information so provided must be complete and correct. This is why Section 84 (1) (e) of the Planning By-Law makes it an offence if an applicant *"supplies particulars, information or answers in an application ... knowing it to be false, incorrect or misleading or not believing them to be correct"*.
- 1.8. The above also explains why the prescribed Application Form requires an applicant to (inter alia) confirm:
1. *"that the information contained in this application form and accompanying documentation is complete and correct"*.
 5. that he/she is ***"aware that it is an offence in terms of section 84 (1) (e) to supply particulars, information or answers knowing the particulars, information or answers to be false, incorrect or misleading or not believing them to be correct and in doing so can lead to criminal proceedings of a fine or imprisonment or both"*** (note the bold font on the Application Form).
- 1.9. When a person is authorized by an owner in terms of Section 16 (2) of the Planning By-Law to prepare and submit a land use application on behalf of that owner, and in particular if the person so authorized acts on a consultancy basis and is paid by the owner for the services so delivered, there is an added fiduciary responsibility on that applicant to act diligently and with the necessary duty of care. And if that applicant then confirms that his professional capacity is that of a *"Town Planner"* (see Section G of the completed Application Form) he has a further duty not only to his client, but also to the profession to which he belongs to ensure that he acts assiduously and professionally at all times. Sadly this was not the case in the matter under consideration.
- 1.10. As will be explained in more detail below, the documentation submitted by the applicant contains incorrect and/or misleading statements/information, while all the required applications to allow the proposed subdivision have in fact not been made. It is difficult to accept that the applicant was not aware that at least some (and probably even most) of the incorrect statements made or information submitted were in fact incorrect, or that he consciously believed those incorrect statements or information submitted to be correct.

5/23

1.11. At best for the applicant he did not undertake a 'due diligence' exercise to ensure that the documentation submitted and statements made by him were correct before submission of the application. This is, with respect, no excuse, bearing in mind that he specifically confirmed that the information provided is correct. It would appear that as a direct result of his actions the applicant is guilty of an offence in terms of Section 84 (1) (e) of the By-Law.

1.12. It is placed on record that the owners of Erf 2948 object to the proposed subdivision of Erf 3456, and that they have requested me to prepare a Memorandum in support of their objection. It is further placed on record that in view of the failure by the applicant to comply with prescribed requirements I have deliberately not made any comment on the merits of the application in this current Memorandum, not only as it would be impossible to do so based on the incorrect and/or misleading and/or incomplete documentation available, but also as it would be premature. The owners of Erf 2948 do however reserve the right to comment on such merits at the appropriate time, as explained in paragraph 6.6 below.

2. THE APPLICATION FORM

2.1. In Section C of the Application Form the applicant, in response to the question "*any restrictive conditions?*", confirmed that there are no such conditions (i.e. he clearly circled the 'N' as opposed to the 'Y').

2.1.1. This is not only confusing and misleading, but in fact a blatant mistruth.

2.1.2. First, how can the applicant on the one hand suggest that there are no restrictive conditions, but on the other hand make application to amend/suspend/delete (some of) those conditions that according to him do not exist (see page 2 of the Application Form)?

2.1.3. Second, pages 2 – 5 of the relevant Title Deed contain lengthy lists of restrictive conditions that are applicable to the property in one way or another. This should be clear to even a casual observer or layman.

2.1.4. The applicant was clearly aware of the existence of the restrictive conditions, and by confirming in writing that there are no such conditions he has committed an offence in terms of Section 84 (1) (e) of the Planning By-Law. This is fatal to the application in its current form.

2.2. It speaks for itself that it is of critical importance for any interested stakeholder to be (made) aware of previous similar applications in respect of the same property, and in

6/23

particular to be (made) aware of the various recommendations and decisions in respect of such previous applications.

- 2.2.1. It is exactly for this reason that Section D of the Application Form requires an applicant to specifically confirm if there *"has been any previous related application(s)?"*, and if so to provide the relevant reference number. The applicant in the current matter chose to simply ignore this question on the Application Form, but nevertheless referred to *"a similar (previous) application"* in his Motivation Report (paragraph 1).
- 2.2.2. It is not known if the failure to mention the previous application (with the appropriate reference number) on the Application Form was a deliberate action to avoid any consideration of the recommendation of the officials and the decision of the Mayoral Committee in respect of that previous application or if it was simply an oversight.
- 2.2.3. Whatever the case may be, the applicant was clearly aware of the previous application but has failed to disclose that information, even though he was specifically required to do so. Through his action (or rather his failure to act in this instance) the applicant has clearly (again) committed an offence in terms of Section 84 (1) (e) of the Planning By-Law. This is (again) fatal to the application.
- 2.2.4. This is not mere semantics or something that can conveniently be corrected retrospectively by 'ticking the box' on the Application Form in response to this objection. Although only contained in the 'Background' section of the Motivation Report of the applicant, the apparent approval of the previous application nevertheless sets the tone for everything that follows. The statement that *"the owners intend to subdivide Erf 3456 in a similar way than was previously approved"* inevitably creates the impression (and may even be designed to create the impression) that the new application should simply be approved as it was in any event previously approved, which in turn will influence potential objectors if they are not (made) aware of exactly what has transpired during the previous application process.
- 2.2.5. The onus is on the applicant to provide all the information that is relevant to the application, and not on the potential objectors to somehow 'find' it. In particular, if an applicant refers to a previous application in support of his current application he has the (professional) responsibility to provide the detail of that previous application.

- 2.2.6. Without any knowledge of the background to the previous application (and due to the failure by the applicant to provide that information) it is simply not possible to comment on the merits of the current proposal on an informed basis.

3. **INCORRECT / MISLEADING INFORMATION**

- 3.1. Although the total extent of Erf 3456 is 2671m² the applicant somehow manages to increase this size to 2683m² in his actual subdivision proposal (see paragraph 4.4.1 of the Motivation Report, where it is stated that the sizes of the proposed new erven would be ±1458m² and ±1225m²). It is understandable that the exact size of the individually proposed erven may well only be determined at survey stage, but their combined size can surely not exceed the size of the original Erf 3456.
- 3.1.1. This is once again not mere semantics. The applicant suggests that the proposed new erven are similar in size to those of the surrounding area (see for example paragraph 3.4.2 of the Motivation Report). In this context the 12m² conveniently added to the total 'available erf size' may well make a substantial difference to this argument. Once again, it is simply not possible to comment on the application on an informed basis due to the failure by the applicant to present accurate and correct information.
- 3.1.2. In addition to the above, this is yet another example where the applicant is guilty of an offence in terms of Section 84 (1) (e) of the Planning By-Law by providing incorrect (or at the very least misleading) information – which is again fatal to the application in its current form.
- 3.2. The proposed Subdivision Plan of the applicant shows 4m street building lines. No indication is given by the applicant anywhere in his Motivation Report that the corresponding building lines imposed as restrictive conditions of title are in fact 4,72m.
- 3.2.1. The reason for the failure by the applicant to refer to these more onerous building lines can only be one of the following:
- 3.2.1.1. It was an (or actually another) oversight on the side of the applicant, which in turn implies that the application contains misleading information (again in conflict with Section 84 (1) (e) of the Planning By-Law) that needs to be corrected before any stakeholders can comment on the proposal on an informed basis, or;

8/23

- 3.2.1.2. The owners of Erf 3456 are well aware of and intend to make a future application for removal of the more onerous 'title deed' street building lines, but do not wish to disclose that future action at this stage, or;
- 3.2.1.3. The owners of Erf 3456 have no intention to comply with the more onerous building lines as and when proposed Portion A is developed in future.

4. THE PROPOSED REMOVAL OF A RESTRICTIVE CONDITION OF TITLE

- 4.1. The manner in which the restrictive conditions of title that apply to Erf 3456 have been treated by the applicant is somewhat disturbing, to say the least. It has already caused considerable confusion to potential stakeholders, and will continue to do so unless the application is corrected and the potentially affected persons granted a fair opportunity to comment on the basis of a correct application.
- 4.2. Section 39 (1) (l) of the Planning By-Law allows the Municipality to request a conveyancer's certificate "*indicating that no restrictive condition in respect of the application is contained in such title deeds*". As application was in this instance made by a professional consultant for the removal of a certain (allegedly relevant) restrictive condition it was understandably not deemed necessary by the Municipality to require such a conveyancer's certificate.
- 4.3. It is not clear whether either the applicant or the land owner has consulted with a conveyancer before the application was lodged. On the basis of the information currently available it has to be assumed that it did not happen.
- 4.4. The applicant was clearly aware that when the previous approval (of which he had not provided any detail, as mentioned in paragraph 2.2 above) was granted it "*was for a subdivision only and did not include the removal of a restrictive Title Deed condition*" (see paragraph 1 of the Motivation Report). It appears that the applicant simply assumed (and incorrectly so) that both the Municipality and the applicant at the time have erred, and that "*the Title Deed applicable ... contains a restriction that needs to be* (or should have been) *addressed in order for the proposed application to be approved*" (see paragraph 1 of the Motivation Report).
- 4.5. Not only was the applicant wrong in his assumption (for the reasons that will be explained below), but he also arrived at the inexplicable conclusion that only the restrictive condition contained on "*Page 4, paragraph B(e)*" (see paragraph 3.4.3 of the

9/23

Motivation Report) needs to be removed, and failed to mention the similar restrictive condition contained on Page 3, paragraph B(e) of the Title Deed. This implies that, based on his version of what is required, the application was incomplete.

- 4.6. The simple reality is that Erf 3456 is a consolidation of the original Erven 2946 and 2947, as clearly shown on the Surveyor General Diagram 2513/68 provided by the applicant. The original Erf 2946 is denoted by the figure xBCy shown on the Surveyor General Diagram, while the original Erf 2947 is denoted by the figure AxyD.
- 4.7. Even a superficial reading of the Title Deed in respect of Erf 3456 makes it clear the restrictive conditions on page 2 paragraph I (A – D) apply to only the original Erf 2947, and that the restrictive conditions on page 3 paragraph II (A – D) apply to only the original Erf 2946. The restriction on subdivision therefore applies to the further subdivision of any of the original component erven of Erf 3456, but not to the re-subdivision of the consolidated Erf 3456 into its original components. This is the reason why it was not previously necessary for any of these restrictive conditions of title to be removed.
- 4.8. In summary, if the purpose of the current application is to re-create the original component erven of Erf 3456 there is no need for the removal of any restrictive conditions of title.
- 4.9. On the other hand, if the objective is to subdivide Erf 3456 into two portions that do not follow the boundaries of the original component erven the detail (and reasons) for this has to be explained and motivated, while the application then also has to include the removal of the restrictive conditions that apply to both of the original component erven (and not only for the removal of only the restriction that applies only to the original Erf 2946). In this latter instance it will also be necessary for the applicant to motivate why it is considered necessary to remove the relevant condition rather than to only amend it.
- 4.10. Lastly, the applicant has to also clearly address the conditions referred to in paragraphs I (A) (page 2) and II (A) (page 4) of the Title Deed (which he has to date conveniently failed to mention) before any meaningful comment can be made on the application.

5. (POSSIBLY) INCOMPLETE APPLICATION

- 5.1. Indications are that the relevant township was established during 1938 and approved by the (then) Administrator in terms of the provisions of the Townships Ordinance, 1934 (Ord. 33 of 1934).

10/23

- 5.2. At the time when that approval was granted the Administrator would have imposed conditions of approval, similar to conditions that would be imposed by the Municipality in terms of the Planning By-Law if application for rezoning/subdivision to establish a new township had to be made today.
- 5.3. Those original (1938) conditions of township establishment are as relevant and as applicable today as they were nearly a century ago.
- 5.4. The onus is on the applicant to obtain (and to then provide on request) those original conditions to determine if it is necessary for any application for an amendment of those conditions to be made in terms of Section 16 (2) (h) of the Planning By-Law. This has clearly not been done.

6. THE WAY FORWARD

- 6.1. Section 42 (b) of the Planning By-Law requires the Municipality to in writing verify whether the application complies with Section 39.
 - 6.1.1. I have no knowledge as to whether or not such verification occurred in this instance, but as the application process has been commenced with it has to be assumed that it was done.
 - 6.1.2. 'Verification' by the Municipality for the purposes of Section 42 (b) does not warrant that the documentation and information submitted by the applicant in support of the proposal is complete and correct. It merely implies that it was verified that the application fee has been paid, that the Application Form was completed and signed, and that, importantly, the applicant has confirmed the requirements mentioned in paragraph 1.8 above.
 - 6.1.3. In particular, this 'verification' cannot be used by an applicant in default as an 'excuse' to suggest that the correctness of the information provided by him should have been 'checked' by the Municipality.
- 6.2. Although it is somewhat unfortunate, there is no provision in the Planning By-Law that allows the Municipality to, after an application has been accepted in good faith by the Municipality, 'verified' accordingly in terms of Section 42 (b) and proceeded with, refuse to further consider that application on the basis that is incomplete and/or is to a large extent based on incorrect information or statements.
- 6.3. However, the option is always there that a responsible applicant would, in recognition thereof that he is in default and that his application was fundamentally flawed, at his

11/23

own initiative formally withdraw that application in terms of Section 45 (1) of the Planning By-Law. This, I suggest, would be the appropriate course of action in the current matter.

- 6.4. The alternative, should the applicant not withdraw the application, is for the Municipality to, as a result of this comment and in terms of Section 53 (1) (b) of the Planning By-Law, instruct the applicant to amend the application in such a manner that it complies with all prescribed requirements, or for the applicant to do so in terms of Section 53 (1) (a).
- 6.5. It is placed on record that should the application be amended in terms of Section 53 (1) to address the various shortcomings that have been identified, the owners of Erf 2948 would regard such amendments as material for the purposes of Section 53 (2), and would expect to receive notice thereof as well as an opportunity to comment on such amended application. Their rights in this regard are and remain reserved.
- 6.6. Bearing in mind the numerous discrepancies and inaccuracies in the documentation submitted by the applicant, as outlined above, it is impossible for any stakeholder to at this stage constructively comment on the merits of the development proposal on an accurate and informed basis. As mentioned in paragraph 1.12 above, I have deliberately not done so, in the expectation that the owners of Erf 2948 would be given such an opportunity at a later stage, once (and if) an amended (or new) application is submitted. However, I do (again) place on record that the owners of Erf 2948 object to the proposed subdivision.
- 6.7. Lastly, it has to be respectfully pointed out that the actions of an applicant who submits incorrect and/or misleading and/or incomplete application documentation inevitably places the other stakeholders at a disadvantage. This is particularly the case where a concerned neighbour takes the time and effort to evaluate and comment on an application, and then, through no fault of his/her own, has to repeat that same process when an amended application is submitted. This is patently unfair and would not happen if an applicant complies with his/her duties at the outset.
- 6.8. It is exactly for this reason suggested that, based on the "Good Administration" development principle mentioned by the applicant (see the middle of page 11 of the Motivation Report), the Municipality should take Section 84 (1) (e) of the Planning By-Law, which makes the submission of false, incorrect or misleading information by an applicant an offence, seriously, in particular as an applicant confirms on the Application Form that he is aware of that provision. Minor errors are obviously not a source of concern, but where an applicant submits incorrect

12/23

information/documentation to the extent that it requires an amended application in terms of Section 53 (1) it becomes a different matter.



LUDOLPH GERICKE
B.Sc / M.TRP / LLB
20 FEBRUARY 2021

13/23

L Gillion

From: Intoherb <intoherb@gmail.com>
Sent: Sunday, 21 February 2021 21:54
To: H van der Stoep
Cc: L Gillion
Subject: OBJECTION: ERF 3456, BETTY'S BAY PROPOSED REMOVAL OF RESTRICTIVE CONDITION OF TITLE AND SUBDIVISION
Attachments: R GERICKE (OBJECTION) ERF 3456 2021.02.20.pdf

Dear Ms van der Stoep

The abovementioned application as well as our brief discussion on Friday 12 February 2021 refer.

Attached please find a (preliminary) Memorandum of comment on the application. Kindly note that we are of the opinion that the application is deficient in its current form (for the reasons explained in the Memorandum), and that it will require a withdrawal (or at least an amendment) of the application. Kindly further note that we have deliberately not made any comment on the merits of the application as it is impossible to do so on an informed basis due to the incorrect/incomplete/ misleading information provided by the applicant.

Please note lastly that we expect to be informed of the submission of a new/revised application and to be granted an opportunity to comment on the merits of the application at that stage. Our rights in this regard are fully reserved.

Kind regards

Rhona Gericke

Business & Marketing Consultant

Cell: +27 83 307 1450



Virus-free. www.avg.com

L Gillion

From: Intoherb <intoherb@gmail.com>
Sent: Friday, 05 March 2021 09:42
To: L Gillion
Subject: Re: OBJECTION: ERF 3456, BETTY'S BAY PROPOSED REMOVAL OF RESTRICTIVE CONDITION OF TITLE AND SUBDIVISION

14/23
05 MAR 2021
OVERSTRAND MUNICIPALITY
TP. A. Ineart
(H. Ud Stoop)

Dear Ms Gillion

Kindly put on record that I have not received any further feedback on my previous email of 21 February 2021. I refer you to par. 6. 5 below of my objection and would like to receive confirmation that my rights to object remain reserved.

"6.5 It is placed on record that should the application be amended in terms of Section 53 (1) to address the various shortcomings that have been identified, the owners of Erf 2948 would regard such amendments as material for the purposes of Section 53 (2), and would expect to receive notice thereof as well as an opportunity to comment on such amended application. Their rights in this regard are and remain reserved."

Kind regards,

Rhona Gericke

Business & Marketing Consultant

Cell: +27 83 307 1450

FILE NO:	CF 3156 ✓
	Bethesda
SCAN NO:	KBB 3456
COLLABORATOR NO:	1514900

On Mon, Feb 22, 2021 at 8:29 AM L Gillion <loretta@overstrand.gov.za> wrote:

Dear Ms Gericke

Receipt is hereby acknowledged of your e-mail. A formal communication will follow in due course.

Regards

Loretta Gillion

Administrator : Town & Spatial Planning

TP - 5 MAR 2021

15/23

C.M. Jacobs

2942 Highlevelweg,
Bettysbaai
7141



Re: Erf 3456 Bettysbaai

AANSOEK OM OPHEFFING VAN BEPERKENDE TITELAKTEVOORWAARDE EN ONVERVERDELING

Overstrand Munisipaliteit

ERF 3456 Straightstraat 4,

Bettysbaai

Ek, Christina Maria Jacobs van 2942 Highlevelweg, Bettysbaai maak beswaar teen die onderverdeling van erf 3456 Straightstraat, Bettysbaai.

- Daar is op die oomblik 4 erwe wat al baie lank in die mark is en nie verkoop nie. Erf 2915, 2927, 2945 is vanaf Januarie 2020 in die mark en 2906 is al van Oktober 2010 in die mark.

Daar is nog 23 onontwikkelde erwe in Highlevel weg.

Dit maak net glad nie sin om nog erwe in Highlevel te onderdeel as daar reeds soveel onontwikkelde erwe in die straat is nie.

Dus sien ek hierdie onderverdeling slegs as 'n najaag van geld. Hierdie eiendom en die erf wat nog nie eens onderverdeel is nie, is alreeds in die mark geplaas om verkoop te word. So dus is dit nie ten voordeel van die Bettysbaai nie maar vir die eienaar se sak.

- Bettysbaai is nie 'n stad of gewone dorp nie, maar is in 'n biosfeer natuurreservaat geleë. Om nou nog erwe te onderverdeel beteken dat daar nog huise gebou gaan word en die natuur waarvoor ons so baie omgee vernietig gaan word. Daar gaan dan nog meer besoedeling gaan wees en mense wat die natuur vertseur. Is ons biosfeer natuurreservaat status nie meer belangrik genoeg nie? Of is geld nou belangriker as die pragtige natuur wat ons probeer bewaar?

As 'n belastingbetaller en inwoner van Highlevelweg is ek baie ongelukkig dat ons nie hierdie kennisgewings per pos of e-pos ontvang het nie. Hoe moet die mense, wat nie permanent in Bettysbaai bly nie, weet van hierdie onderverdeling (wat hulle ook gaan beïnvloed). Dit is bloot onregverdig dat ons nie per pos of e-pos in kennis gestel is nie.

Groete.

Marietjie Jacobs – 2942 High Level Road

FILE NO:	Erf 3456 ✓
	Bettysbaai
SCAN NO:	KBB 3456
COLLABORATOR NO:	1515748

TP 09 MAR 2021

TP N/Ahead
(M. Ud Stoop)

16/23

L Gillion



From: itec1331@maxitec.co.za
Sent: Wednesday, 03 March 2021 18:21
To: L Gillion
Subject: Erf 3456, 4 Straight street, Betty's Bay Application for removal of Restrictive Title Deed Condition and Subdivision

Afternoon Loretta

Re.: Erf 3456, 4 Straight street, Betty's Bay - Application for removal of restrictive Title Deed condition and Subdivision

I object to the Application above for the following reasons:

1. In the Application the applicants state that "densification should be encouraged in all areas" as it will lead to "better utilization of the property in terms of modern city development". Betty's Bay is not a modern city but a rural seaside village within a Biosphere Reserve which contains a rich diversity of Fynbos and fauna. To allow densification and "the land to be utilised to its fullest potential" as is stated in the Application will lead to further destruction of the natural habitat of the fauna and flora that flourish here.

It is further stated in this Application that the removal of the restrictive condition and the subdivision will not detract "from the visual or residential appeal of the area". It is very evident that the applicants do not reside in Betty's Bay otherwise they would be aware that for every new residence built here there is a conservancy tank to be pumped out regularly, which necessitates the tanker to attach and detach, with the attending noise, pollution and dust that comes with it.

This does not add to the visual or residential appeal of the area.

3. The applicants state that "It is our opinion that there are enough services capacity to service the proposed additional single residential erf". Unfortunately this is not the case. The Municipality struggles at times to provide sufficient services to the existing residences (water pressure is often low, water pipes often break and take many hours to repair - depriving homes of water, gravel roads are in a very poor condition, runaway fires are a fact of life here and as recently as 2019 destroyed many homes in Betty's Bay, during the holiday periods the available septic tankers struggle to keep up with the demand for pumping out conservancy tanks).

4. The Application states "by denying the removal of the Title Deed restriction, additional people will be deprived from owning property in the area". In fact there are currently about 1500 vacant plots in Betty's Bay and about 30 properties for sale here.

5. Erf 3456 is situated in a very strategic spot where five roads come together: High Level Road, Aristeia Road, Straight street, and two unnamed access lanes (between erf 2949 and erf 2948; and erf 2996 and erf 2997). The situation right now: there is a very dangerous acute corner where traffic has to negotiate a hairpin bend to get from Straight street into High Level Road (turning right). Another entrance and a building blocking the view will increase the danger in this area.

My name: E.M.Muller

Address: 2949 High Level Road, Betty's Bay Cell no.: 082 664 8774 e-mail address: emmuller@itec.co.za Interest in the application: I have been living in Betty's Bay since March 1994, coming here for holidays since 1958 and been a home owner since 1996.

Reasons for comment: I am concerned about preserving the beautiful area that we are privileged to live in.

FILE NO:	Erf 3456
	Dehoobooi ✓
SCAN NO:	KBB 3456
COLLABORATOR NO:	1514228
	1

TP - 4 MAR 2021

TP- 13 / Heesom
(11. Ud Sloep)

17/23

L Gillion



From: Mike Nesor (V) <mike.nesor@vox.co.za>
Sent: Thursday, 25 February 2021 11:55
To: L Gillion
Subject: Objection - Municipal Notice No 9/2021 - Erf 2345 Betty's Bay: Application for Removal of Restrictive Title Deed and Subdivision. - Erf 3456 Betty's Bay (Reworked Version)

To whom it may concern.

As the registered owner of Erf 2944, and being an interested and affected party, my motivation for objecting to the abovementioned, is as follows:

"Heesom Cottage" as the original dwelling on Erf 2345 used to be known, is clearly an unappreciated structure that should have been respected and preserved in its current form, if only for its great historic significance and value – not only to Betty's Bay, but the Overstrand as a whole.

Denys Heesom, the original owner, frequented the property for many years, where he also sadly died on 23rd September 1979. Mr Heesom was South Africa's principal cricket statistician as well as editor of the South African Cricket Annual. He was the first chairman of the Flora Conservation Committee of the Botanical Society. Mr Heesom was also the first Mayor of Betty's Bay and the Denys Heesom memorial trail was created in his honour.

With the above as background, it appears as if the recent modifications done to the existing dwelling, made little or no effort to preserve Heesom's legacy. Therefore, should the above-mentioned application be approved, it will invariably result in another dwelling being constructed on Erf 3456, as well. Based upon the evidence of the scant respect paid to the historical significance of the property in general, there is no reason to believe that any construction on Erf 3456, will not only ignore, but obliterate Heesom's legacy forever.

It is within your power to prevent this from happening.

Yours truly.

Mrs JA Nesor
Erf 2944 Betty's Bay
082 457 5937

FILE NO:	Of 3156
	Belliebaai ✓
SCAN NO:	
COLLABORATOR NO:	1513640

TP - 2 MAR 2021

TP A. Ihear
(H. ud Skoop)

18/23



ERF 2950
High Level Road
Betty's Bay

Municipal Manager
Overstrand Municipality
P.O. Box 20
HERMANUS
7200

FILE NO:	OF 3456
	Schiesbaai
SCAN NO:	KBB 3456
COLLABORATOR NO:	1509915

Dear Sir/Madam
RE: Municipal Notice No. 9/2021

**OVERSTRAND MUNICIPALITY ERF 3456, 4 STRAIGHT STREET, BETTY'S BAY:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND SUBDIVISION**

As residents of nearby High Level Road we would like to lodge an objection to the application by PLAN ACTIVE on behalf of FA VAN RENSBURG AND G TURCK.

The intersection of Straight Street and Aristeia Road is one we use to access our home. Like most of the intersections in our village it is an uncontrolled intersection on a gravel road. It is however also a switch-back intersection (see the applicants' subdivision plan included in their submission) and any construction on the proposed subdivision on the corner of Straight Street and Aristeia Road would make line of site practically impossible and make the intersection extremely dangerous.

The position of Betty's Bay in the Kogelberg Biosphere Reserve is of great significance. The Kogelberg Nature Reserve Complex includes the Betty's Bay Marine Protected Area (MPA), which covers 3 km of coastline and the inshore marine environment from just east of Jock's Bay and Stony Point in the west.

The open spaces, including undeveloped erven, and absence of boundary fences in the vicinity of ERF 3456 in this eastern part of Betty's Bay between the Harold Porter Botanical Gardens and Jock's Bay provide a vital corridor between the Kogelberg and the Marine Reserve. It should be noted that a very long term previous resident of the property in question was a keen champion of the Fynbos and propagated rare and threatened Fynbos plants in her garden. An environmental survey of the grounds may reveal plants that will require protection.

I have no doubt you can clearly remember the devastating fires of January 1st to 11th just two years ago when in just one night the Catholic Church and some forty houses in our village were completely destroyed and many others badly damaged. Had the houses been more densely situated it would have made it even more difficult and dangerous for fire fighters and many more homes would have been lost. The home of the previous owners of ERF 3456 was one of the thirty odd houses severely damaged.

TP

2021-02-22

19/23

Many of those properties have been sold at enormous loss simply to salvage something. In the process speculators able to purchase them have scooped up bargains and have been able to quickly and cheaply rebuild on existing foundations, thus avoiding NHBRC registration etc., quickly "flipping" houses in the hope of making a very good return often with no intention of ever being part of the community.

The title deed transfer number for this property would indicate that this purchase was probably at such a discount and the proposed subdivision might simply suggest greed. There are many vacant stands and stands with existing homes available in Betty's Bay in general and in this part of Betty's Bay in particular to meet the needs of prospective residents.

The applicants would seem to have scant knowledge of the village. They assert that "Removing the condition will enable the better utilization of the property in terms of modern city development ... contribute to the prevention of urban sprawl" Any reference to "city planning" and preventing "urban sprawl" in the context of Betty's Bay is absurd. Betty's Bay is known as the longest village in South Africa and its over 13km sprawl between sea and mountain along Clarence Drive is its very nature! Furthermore the erf in question is NOT proximate to the CBD of the village. If such a thing exists in the context of Betty's Bay it is adjacent to the Caltex service station, the old Post Office and the Municipal premises that house the Library and the Volunteer Fire Fighters offices, almost 4km away.

The applicants' claim that their proposal will increase the market value of the area and attract investment is far-fetched and it is unlikely to have any impact at all on the economy of the area. Over the many years that we have been home owners in Betty's Bay many similar applications for removal of restrictive title deed conditions and subdivision have been successfully objected to and the applicant's assertion to the contrary is not honest. Removal of the restrictive condition could however set a precedent that could well open a flood gate of similar applications.

We trust your office will carefully consider all submissions in this matter and act in the best interests of the village of Betty's Bay and its residents.

Kind regards
Gordon Smith



TP. n. (Heart
(1. Jd Skoop)

20/23

THE MICHAEL DALL FAMILY TRUST

27 Mains Avenue, Kenilworth, 7708

Tel: (021) 797-8102

E-mail: admin@mdarch.co.za

Registration No. T977/91

Trustees: M.J. Dall, S.M. Dall, R.J.S. Moffat

FILE NO:	27 3456
	Retrieval
SCAN NO:	04
COLLABORATOR NO:	1514855

3rd March 2021

OVERSTRAND MUNICIPALITY

Dear Sirs

Re: Erf 3456, 4 Straight Street, Betty's Bay: Application for removal of restrictive title deed condition and subdivision: Plan Active (obo FA Van Rensburg & G Turck)

We wish to object to the proposed subdivision of Erf 3456, 4 Straight Street, Betty's Bay on the following grounds:

1. We do not want densification of our area and Betty's Bay.
2. There are several vacant erven in the area and there is not a need for additional erven.
3. In an effort to retain the character of Betty's Bay in general, and our area in particular, we have invested a considerable amount of capital in purchasing vacant erven which are owned in my personal capacity or our Family Trust.
4. The services the Municipality provide are stretched to the limit and don't need to be burdened by additional erven.

Yours faithfully

Michael John Dall

Trustee

On Behalf of The Michael Dall Family Trust - owner of Erf 2961, Betty's Bay

Tel: 082-893-0179

Email: michael@mdarch.co.za

MD/dhb

T.P. n. Ahearne
(11. ud Steep)

THE MICHAEL DALL FAMILY TRUST

27 Mains Avenue, Kenilworth, 7708

Tel: (021) 797-8102

E-mail: admin@mdarch.co.za

Registration No. T977/91

Trustees: M.J. Dall, S.M. Dall, R.J.S. Moffat

FILE NO:	SF 3456
	Kelliedbaai
SCAN NO:	01
COLLABORATOR NO:	1514840

3rd March 2021

OVERSTRAND MUNICIPALITY

Dear Sirs

Re: Erf 3456, 4 Straight Street, Betty's Bay: Application for removal of restrictive title deed condition and subdivision: Plan Active (obo FA Van Rensburg & G Turck)

We wish to object to the proposed subdivision of Erf 3456, 4 Straight Street, Betty's Bay on the following grounds:

1. We do not want densification of our area and Betty's Bay.
2. There are several vacant erven in the area and there is not a need for additional erven.
3. In an effort to retain the character of Betty's Bay in general, and our area in particular, we have invested a considerable amount of capital in purchasing vacant erven which are owned in my personal capacity or our Family Trust.
4. The services the Municipality provide are stretched to the limit and don't need to be burdened by additional erven.

Yours faithfully

Michael John Dall

Trustee

ON BEHALF OF THE MICHAEL DALL FAMILY TRUST & THE PETER

DALL FAMILY TRUST - OWNER OF ERF 3463, BETTY'S BAY

Tel: 082-893-0179

Email: michael@mdarch.co.za

MD/dhb

TP - 4 MAR 2021

22/23

L Gillion

From: Peter Dall <gpdall@iafrica.com>
Sent: Sunday, 07 March 2021 20:16
To: L Gillion
Cc: 'Peter Dall'
Subject: Application for removal of restrictive Title Deed Condition and Subdivision Erf 3456

Attn: The Municipal Manager, Overstrand Municipality

I, George Peter Dall, ID No: 4703165011086, of Mountain Road, Betty's Bay (Erf 5599), would like to by means of this letter object to the proposed removal of restrictive Title Deed Condition and Subdivision of Erf 3456.

The reasons for the objection are:

- Betty's Bay hardly needs additional Erven at this stage, with less than 25% of the erven being developed to date
- Betty's Bay's character is a sprawling erven development that protects the biodiversity of the area, especially the Flora.
- Proposed subdivision will create a very awkward shaped plot with only a 12m length boundary on the Western side. The trend in the area has been more to consolidation of properties than subdivision.
- There was a very good reason why a Restrictive Title Deed Condition was inserted in the Title Deed and I believe the good reasons for this Restrictive Title Deed Condition have not changed since this condition was inserted.

I do not believe that this subdivision and removal of Restrictive Title Deed Condition would be in the best interests of this portion of Betty's Bay and Betty's Bay in total.

Signed at Betty's Bay



TP. n. Ahearne
(H. Ud Groep)



George Peter Dall

Peter Dall Consultancy,
P.O. Box 453,
Bettys Bay 7141
Western Cape.
REPUBLIC OF SOUTH AFRICA.
Tel:- +27 28 2729671
Mobile:- +27 827844326
Fax No:- +27 865679471
Email:- gpdall@iafrica.com or peter@pdconsult.co.za

FILE NO:	Er 3456
	Schoobaai
SCAN NO:	Dall
COLLABORATOR NO:	1515756

TP
- 9 MAR 2021

23/23

L Gillion

From: Bill Steyn <billsteyn@sonicmail.co.za>
Sent: Sunday, 14 February 2021 08:18
To: L Gillion
Subject: Erf 3456 Bettys Bay



Hi Loretta,
 The Bettys Bay Ratepayers have no objection to the request to divide this property.

Regards
 Bill Steyn- Chairman

TP - A Theart
 (H vld Stoep)

FILE NO:	EL 3456-KBB
SCAN NO:	KBB 3456
COLLABORATOR NO:	1507605

TP 15 FEB 2021



TOWN & REGIONAL PLANNERS
STADS-EN STREEKSBEPLANNERS



Annexure F 1/20

6 Magnolia St / Str
PO Box / Posbus 296
HERMANUS
7200
Tel: (028) 313 1673
Fax / Faks: (028) 312 1351
Email:
planactive@hermanus.co.za
Website: www.planactive.co.za

Our reference: PA20048

Your reference: 3456 KBB

TP - A Theart
(H vld Stoep)

28 June 2021

The Municipal Manager
Overstrand Municipality
PO BOX 20
Hermanus
7200

FOR ATTENTION: MRS H. VAN DER STOEP

Sir

FILE NO: EL 3456-KBB ✓
SCAN NO: KBB 3456
COLLABORATOR NO: 1552670

ERF 3456 BETTY'S BAY: PROPOSED REMOVAL OF A RESTRICTIVE TITLE DEED
CONDITION AND SUBDIVISION
CLIENTS: MR. FA VAN RENSBURG & MR. G TURCK

Reference is made to our application dated 13 November 2020 as well as your letter dated 31 March 2021.

The objections received from CM Jacobs, JA Nesor, R Gericke, EM Muller, GL Smith, MJ Dall on behalf of the Michael Dall Family Trust, MJ Dall, MJ Dall on behalf of the Michael Dall Family Trust & The Peter Dall Family Trust, and GP Dall (received late) refer and can be summarized as follow:

1. There are already a large number of vacant erven in High Level Road and that the proposed subdivision of Erf 3456 Betty's Bay is not necessary. It is also mentioned that the proposal is merely a money-making scheme as a portion of Erf 3456 Betty's Bay is already advertised as for sale, prior to the subdivision being approved.

Divine Inspiration Trading 329 (Pty) Ltd. trading as Plan Active
Reg. No. 2006/030921/07
Vat. No. 4770250340

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

As mentioned in the motivational report, that accompanied this application, the proposed subdivision of Erf 3456 Betty's Bay follows the same erf configuration as the residential erven in the same residential block and would also be of a similar size. The proposed application should be evaluated on its own merits as the owners of Erf 3456 Betty's Bay only own the subject property and no other vacant property in the area. The fact that a portion of the subject property is already advertised to be sold is at the risk of the property owners and does not have any impact on the decision to be made by the Overstrand Municipality with regards to the outcome of the proposed application. We, as the applicant, and the objectors should trust that the Overstrand Municipality will be impartial and that the proposed application will be evaluated according to the facts at hand.

As per the statistics provided by the Building Department at the Overstrand Municipality it is clear that Betty's Bay is one of the towns which is developing the fastest in the Overstrand region with regards to approved building plans. As per the table below the only other areas that have more approved building plans are the Hermanus and Gansbaai areas.

Town	Approved building plan for 1 May 2020 to 30 April 2021
Betty's Bay	61
Hangklip Kleinhoewe	1
Kleinmond	12
Pringle Bay	14
Rooiels	3
Gansbaai	100
Hermanus	80
Stanford	16

- 2. According to the objector Bettys Bay is not a city or ordinary town but it is situated in a biosphere nature reserve. It is mentioned that by allowing subdivisions in the area more houses will be built and it will destroy nature. It is also mentioned that there will be more pollution in the area.**

According to the Overstrand Municipal Land Use Scheme, 2020, properties with a Residential Zone 1 zoning have potentially a primary right to erect a second dwelling. In this instance the owners can still extend the existing footprint of the existing dwelling without a land use application. As mentioned in our motivation report the proposed application does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3. The proposed application should have been circulated via email or by registered mail as not all residents are permanently residing in Betty's Bay.

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

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

- (1) The Municipality may on application in terms of Section 16(2) by notice in the *Provincial Gazette* amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.
- (2) In addition to the procedures set out in Chapter V, the owner must -
 - (a) submit the a certified copy of the title deed to the Municipality; and
 - (b) submit the bondholder's consent to the application, where applicable.
- (3) The Municipality must cause a notice of its intention to consider an application under Subsection (1) to be served on—
 - (a) all organs of state that may have an interest in the title deed restriction;
 - (b) every holder of a bond encumbering the land;
- (c) a person whose rights or legitimate expectations will be materially and adversely affected by the approval of the application; and
- (d) all persons mentioned in the title deed for whose benefit the restrictive condition applies.

The neighbouring property owners do have an interest in the restrictions, but the restrictions do not vest them with any private rights to the property within the contents of Section 25 of the Constitution of the Republic of South Africa. Section 25(1) of the Constitution permits the deprivation of property rights if it is done in terms of a law of general application and is not arbitrary. As a result, the removal of a restrictive title deed condition is permitted and empowered by the relevant planning laws namely Section 47 of the Spatial Planning and Land Use Management Act, 16 of 2013, Section 39 of the Western Cape Land Use Planning Act, 3 of 2014, and Overstrand Municipality's Amended Municipal Planning Bylaw (2020). In addition, the Title Deed condition does not stipulate that the condition was registered in favour of all or every property owner in Betty's Bay.

4. The original dwelling on the property belonged to Denys Heesom. Mr Heesom was South Africa's principal cricket statistician as well as editor of the South African Cricket Annual. It is said that he was the first chairman of the Flora Conservation Committee of the Botanical Society. Mr Heesom was also the first

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Mayor of Betty's Bay and the Denys Heesom memorial trail was created in his honour. "Heesom Cottage", as the original dwelling on Erf 3456 used to be known, is an unappreciated structure that should have been respected and preserved in its current form, if only for its great historic significance and value — not only to Betty's Bay, but the Overstrand as a whole. According to the objector no effort to preserve Heesom's legacy was made and is of the opinion that should the above-mentioned application be approved; it will invariably result in another dwelling being constructed on Erf 3456.

The subject property, Erf 3456 Betty's Bay, is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the **Overstrand Heritage Survey Report (2009)**.

It should be noted that an application for the subdivision of Erf 3456 Betty's Bay was submitted in 2004 and approved in 2007, while the property was still owned by the Heesom Trust.

5. A Memorandum of Preliminary objection was compiled by Ludolph Gericke on behalf of Ms. Rhona Gericke. According to the writer of the comments, the town planning application process is (and has always been) slanted in favour of applicants. The objector states that, "the unfortunate reality is that if the applicant is a consultant acting on behalf of a landowner all that his/her client is generally concerned with is a positive result as speedily as possible, which means that if the applicant somehow manages to take shortcuts during the process it will be to his/her advantage. He/she will 'look good' in the eyes of the development community and will gain a reputation as someone who 'can get the job done'. It is also mentioned that an applicant has the opportunity to comment on objections received and is therefore in a position to say virtually anything at that stage, whether it is correct or not, with little fear that his/her comments on an objection would be challenged. He/she can then be paid for services delivered and move on to the next application. The writer is of the opinion that applications are very often substandard, littered with incorrect and/or misleading information. However, the applicants 'get away' with it as the officials do not have the time or inclination to require amendments while the applicants are not always challenged by reasonably well-informed objectors, and the circle of approval of sub-standard applications perpetuates itself.

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The writer is of the opinion that the planning process is corrupt and that we, as the applicant, manipulate the planning process to secure results in our favour. These are very serious accusations made by the writer as the proposed application has been submitted in accordance with the regulations of the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**.

With the above statements, not only does the writer accuse the applicant of unlawfulness but he also accuses the Overstrand Municipality accordingly. The Overstrand Municipality evaluated the proposed application prior to the public participation process. We, as the applicant motivated our application to the best of our ability with the information at hand and we are of the opinion that the proposed application has merit. It should also be noted that the writer questions the ability of the Overstrand Municipality to make decisions.

It is mentioned that the ***"applicant has the opportunity to comment on objections received and is therefore in a position to say virtually anything at that stage, whether it is correct or not, with little fear that his/her comments on an objection would be challenged"***. We as the applicant are forwarded the objections, that were received during the public participation process, and have to provide our comments to the objections. The planning official at the Overstrand Municipality will thereafter be in a position to make recommendations once all the comments are received. It is clear that the writer of the memorandum does not have any confidence in the planning process nor the discretion of the Overstrand municipal officials, as are clearly indicated in the comments made.

Chapter 8, Section 78 (2) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, read as follows: ***"A person whose rights are affected by a decision of the Municipal Planning Tribunal or an Authorised Official or by the failure of the Municipal Planning Tribunal or an Authorised Official to take a decision within the period contemplated in Sections 59 and 61 may appeal in writing to the Appeal Authority within 21 days of the decision"***. The writer of the memorandum is in no position to state that the applicant has an advantage in the planning process, as the affected parties are given the opportunity to comment on the proposed application and can also appeal once the decision letter has been issued. The content of the memorandum is based purely on speculation and is not relevant to the application at hand as *it does not comment on the merit of the application*.

6. According to the writer of the memorandum, **Section 39 of the Overstrand Municipality: By-Law on Municipal Land Use Planning (2015) ('the Planning By-Law')** outlines the documentation that is required as part of an application submitted. It speaks for itself that the information so provided must be complete

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and correct. The writer mentions that according to Section 84 (1) (e) of the Planning By-Law makes it an offence if an applicant *"supplies particulars, information or answers in an application ... knowing it to be false, incorrect or misleading or not believing them to be correct"*. It is said that the above also explains why the prescribed Application Form requires an applicant to (inter a Lia) confirm: *"that the information contained in this application form and accompanying documentation is complete and correct"* .that he/she is *"aware that it is an offence in terms of section 84 (1) (e) to supply particulars, information or answers knowing the particulars, information, or answers to be false, incorrect or misleading or not believing them to be correct and in doing so can lead to criminal proceedings of a fine or imprisonment or both"*(note the bold font on the Application Form).

The statement is made by the writer that "When a person is authorized by an owner in terms of Section 16 (2) of the Planning By- Law to prepare and submit a land use application on behalf of that owner, and in particular if the person so authorized acts on a consultancy basis and is paid by the owner for the services so delivered, there is an added fiduciary responsibility on that applicant to act diligently and with the necessary duty of care. And if that applicant then confirms that his professional capacity is that of a *"Town Planner"*(see Section G of the completed Application Form) he has a further duty not only to his client, but also to the profession to which he belongs to ensure that he acts assiduously and professionally at all times". According to the writer this was not the case in the matter under consideration. The writer states that the application submitted by the applicant contains incorrect and/or misleading statements/information. The writer states that it is difficult to accept that the applicant was not aware that at least some (and probably even most) of the incorrect statements made or information submitted were in fact incorrect, or that the applicant consciously believed those incorrect statements or information submitted to be correct. According to the writer the applicant did not undertake a 'due diligence' exercise to ensure that the documentation submitted, and statements made by him were correct before submission of the application. The writer states that as a direct result of the applicants actions the applicant is guilty of an offence in terms of Section 84 (1) (e) of the By-Law and it is placed on record that the owner of Erf 2948 objects to the proposed subdivision of Erf 3456.

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The writer states that it should be placed on record that in view of the failure by the applicant to comply with the prescribed requirements, that he has deliberately not made any comment on the merits of the application as it would be impossible to do so based on the incorrect and/or misleading and/or incomplete documentation available, but also as it would be premature. The owners of Erf 2948 do however reserve the right to comment on such merits at the appropriate time.

With regards to the above and a letter from the municipality dated 17 November 2020, the following additional information was requested after the initial submission of the application documentation.

- Application form:
 - Section B: provide correct postal address and contact details in full of registered owners (both).
 - Section C: indicate restrictive conditions for which application is made.
 - Section C: indicate bondholder and submit bondholder's consent.
- Motivation refers to previous approval, submit copy of previous decision letter.

On 18 November 2020 the additional information as requested, was submitted, prior to the commencement of the public participation process.

7. The writer of the memorandum states that Section D of the Application Form requires an applicant to specifically confirm if there "has been any previous related application(s)?", and if so to provide the relevant reference number. The applicant in the current matter chose to simply ignore this question on the Application Form, but nevertheless referred to "a similar (previous) application" in his Motivation Report (paragraph According to the objector this is not mere semantics or something that can conveniently be corrected retrospectively by 'ticking the box' on the Application Form in response to this objection. Although only contained in the 'Background' section of the Motivation Report of the applicant, the apparent approval of the previous application nevertheless sets the tone for everything that follows. The statement that "the owners intend to subdivide En 3456 in a "similar way than was previously approved" inevitably creates the impression (and may even be designed to create the impression) that the new application should simply be approved as it was in any event previously approved, which in turn will influence potential objectors if they are

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not (made) aware of exactly what has transpired during the previous application process.

The writer is correct in stating that we did not indicate on the application form that any related application was previously made. After consulting with the Municipal administration staff at the time no record could be found of the previous subdivision documentation, we however submitted proof of the subdivision in the form of the approved diagram - S.G. No. 3785/2007. As per the endorsement on the diagram the approval was issued in terms of Section 25 of Ordinance 15 of 1985.

- 8. The proposed Subdivision Plan of the applicant shows a 4m street building line. No indication is given by the applicant anywhere in his Motivation Report that the corresponding building lines imposed as restrictive conditions of title are in fact 4,72m. The owners of Erf 3456 are well aware of and intend to make a future application for the removal of the more onerous 'title deed' street building lines, but do not wish to disclose that future action at this stage, or; The owners of Erf 3456 have no intention to comply with the more onerous building lines as and when proposed Portion A is developed in future.**

It is clearly indicated in the motivation report that the application only constitutes the removal of the following Title Deed restriction:

"That this erf be not subdivided except with the consent in writing of the Administrator".

The intention of the owners is to subdivide the subject property. It should be obvious to the writer of the memorandum (in his professional capacity) that any future applications that triggers any other restrictions in the said Title Deed should be addressed in a land use application. The proposed application constitutes the subdivision of Erf 3456 Betty's Bay and no departures are proposed at this stage. Should any development be planned that depart from the Zoning Scheme Regulations the affected neighbouring properties will be given the opportunity to provide their comments with a new application process..

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9. It is stated by the writer of the memorandum that although the total extent of Erf 3456 is 2671m² the applicant somehow manages to increase this size to 2683m² in his actual subdivision proposal (see paragraph 4.4.1 of the Motivation Report, where it is stated that the sizes of the proposed new erven would be ±1458m² and ±1225m²). It is understandable that the exact size of the individually proposed erven may well only be determined at survey stage, but their combined size can surely not exceed the size of the original Erf 3456.

The motivation report does not contain a paragraph 4.4.1. It should be noted that the precise extent of the subdivided portion is determined by a Professional Land Surveyor. The discrepancy of the extent of the remainder will have no impact on the application at hand.

10. According to the writer of the memorandum the manner in which the restrictive conditions of title that apply to Erf 3456 have been treated by the applicant is somewhat disturbing, to say the least. It is mentioned that the proposed application already caused considerable confusion to potential stakeholders and will continue to do so unless the application is corrected, and the potentially affected persons granted a fair opportunity to comment on the basis of a correct application. According to the writer, Section 39 (1) (l) of the Planning By-Law allows the Municipality to request a conveyancer's certificate "*indicating that no restrictive condition in respect of the application is contained in such title deeds*". As application was in this instance made by a professional consultant for the removal of a certain (allegedly relevant) restrictive condition it was understandably not deemed necessary by the Municipality to require such a conveyancer's certificate. It is not clear whether either the applicant or the landowner has consulted with a conveyancer before the application was lodged. On the basis of the information currently available it has to be assumed that it did not happen. According to the writer, the applicant was clearly aware that when the previous approval (of which he had not provided any detail, as mentioned in paragraph 2.2 above) was granted it "*was for a subdivision only and did not include the removal of a restrictive Title Deed condition*" (see paragraph 1 of the Motivation Report). According to the writer, it appears that the applicant simply assumed (and incorrectly so) that both the Municipality and the applicant at the time have erred, and that "*the Title Deed applicable ... contains a restriction that needs to be (or should have been) addressed in order*

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for the proposed application to be approved"(see paragraph 1 of the Motivation Report). The writer states that the applicant was wrong in his assumption (for the reasons that will be explained below), but he also arrived at the inexplicable conclusion that only the restrictive condition contained on "Page 4, paragraph B(e)"(see paragraph 3.4.3 of the Motivation Report) needs to be removed and failed to mention the similar restrictive condition contained on Page 3, paragraph B(e) of the Title Deed. According to the writer, based on the version of the applicant of what was required, the application was incomplete. The writer states that the reality is that Erf 3456 is a consolidation of the original Erven 2946 and 2947, as clearly shown on the Surveyor-General Diagram 2513/68 provided by the applicant. The original Erf 2946 is denoted by the figure xBCy shown on the Surveyor-General Diagram, while the original Erf 2947 is denoted by the figure AxyD. Even a superficial reading of the Title Deed in respect of Erf 3456 makes it clear the restrictive conditions on page 2 paragraph I (A — D) apply to only the original Erf 2947, and that the restrictive conditions on page 3 paragraph II (A — D) apply to only the original Erf 2946.

The writer states that the restriction on subdivision therefore applies to the further subdivision of any of the original component erven of Erf 3456, but not to the re-subdivision of the consolidated Erf 3456 into its original components. This is the reason why it was not previously necessary for any of these restrictive conditions of title to be removed. In summary, if the purpose of the current application is to re-create the original component erven of Erf 3456 there is no need for the removal of any restrictive conditions of title. On the other hand, if the objective is to subdivide Erf 3456 into two portions that do not follow the boundaries of the original component erven the detail (and reasons) for this has to be explained and motivated, while the application then also has to include the removal of the restrictive conditions that apply to both of the original component erven (and not only for the removal of only the restriction that applies only to the original Erf 2946).

According to the writer it will also be necessary for the applicant to motivate why it is considered necessary to remove the relevant condition rather than to only amend it. According to the writer, the applicant has to also clearly address the conditions referred to in paragraphs I (A) (page 2) and II (A) (page 4) of the Title Deed (which he has to date conveniently failed to mention) before any meaningful comment can be made on the application.

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As mentioned earlier in our comments the writer questions the planning process followed by the Overstrand Municipality and it is also clear that there is a personal vendetta towards town planning consultants. It should be noted that nowhere in the ±9-page memorandum there is a comment on the merit of the application at hand.

The writer questions the fact if a conveyancer was consulted. We can confirm that we consulted with a conveyancer at the firm **STBB Attorneys** and that a conveyancer certificate was submitted stating the removal of restriction "Page 4, paragraph (B)(e) of the Title Deed, T24463/2020. The writer of the memorandum did not make the effort to verify the attachments submitted with the application documentation, if he did, it would be clear that we as the applicant indeed submitted a conveyancing certificate.

As indicated in the **conveyancer's certificate** provided by **Hendrik Johannes Mouton** on behalf of **STBB Attorneys only Page 4, paragraph (B)(e) of the Title Deed** needs to be addressed. Taking the comments from the writer in consideration it would be expedient to remove both conditions I.B (e) on Page 2 and II (B) (e) on Page 4 of T Deed No.24463/2020.

The matter at hand regarding the removal of the restrictive Title Deed conditions was referred back to the conveyancer at STBB Attorneys and the following comments were received:

"As discussed during our telephone call yesterday you confirmed that the intention is to subdivide the property into the original 2 components.

The title deed does not prohibit the subdivision of the consolidated property as a whole but rather prohibits the original 2 components from being further subdivided. As such, there is no need for the restrictive conditions to be removed".

It should also be noted that the proposed application was made in terms of the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** and **not** as per the **Overstrand Municipality's By-law on Municipal Land Use Planning, 2015** as mentioned throughout the memorandum.

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11. As per the writer of the memorandum, Section 42 (b) of the Planning By-Law requires the Municipality to in writing verify whether the application complies with Section 39. The writer states that he has no knowledge as to whether or not such verification occurred in this instance, but as the application process has been commenced with, it has to be assumed that it was done. It is said by the writer that 'Verification' by the Municipality for the purposes of Section 42 (b) does not warrant that the documentation and information submitted by the applicant in support of the proposal is complete and correct. It merely implies that it was verified that the application fee has been paid, that the Application Form was completed and signed, and that, importantly, the applicant has confirmed the requirements mentioned earlier in the objection. In particular, this 'verification' cannot be used by an applicant in default as an 'excuse' to suggest that the correctness of the information provided by him should have been 'checked' by the Municipality. T24463/2020 needed to be addressed with the proposed application.

We can confirm that the proposed application was indeed verified by the Overstrand Municipality as additional information was requested on 17 November 2020. We submitted the additional information as requested by the town planning official, Mrs H. van der Stoep prior to the commencement of the public participation process.

As can be noted from the above details the writer of the memorandum based his speculations on the presumption that errors were made in the application which we understand is important, as application documentation should contain accurate information. The writer however never acted professionally by "verifying" the documents available.

The writer cannot be excused for not verifying and scrutinising all the application documentation as it was freely available *for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus and at the Betty's Bay Library, Clarence Drive, Betty's Bay* as indicated in three languages (Afrikaans, English and isiXhosa) in the public notice as seen below.

Besonderhede aangaande die voorstel lê ter insae gedurende wekedae tussen 08:00 and 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus en by die Betty'sbaai Biblioteek, Clarencerylaan, Betty'sbaai.

Details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus and at the Betty's Bay Library, Clarence Drive, Betty's Bay.

lincukacha ezimayela nesi sicelo siayfumaneka ukuze sihlolwe kwintsuku zaphakathi evekini ukusukakwintsimbi yes8:00 ukuya kweye-16:30 kwiSebe: izicwangciso ngeDolophu kwa16 Paterson Street, Hermanus naseBetty's Bay Library, Clarence Drive, eBetty's Bay.

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12. According to the writer the applicant has the option is to take responsibility in recognition thereof that he is in default and that his application was fundamentally flawed and take the initiative to withdraw the application. The writer also states that another alternative, should the applicant not withdraw the application, is for the Municipality to, as a result of this comment and in terms of Section 53 (1) (b) of the Planning By-Law, instruct the applicant to amend the application in such a manner that it complies with all prescribed requirements, or for the applicant to do so in terms of Section 53 (1) (a).

We believe that it will not be necessary to withdraw the proposed application in terms of Chapter 5, Section 45(1) of the Overstrand Municipal Amended By-Law, 2020 nor do we find it necessary for the Overstrand Municipality to give instruction to amend the proposed application in terms of Chapter 5, Section 45(4)(c) of the Overstrand Municipal Amended By-Law, 2020. The reason being that the proposed application is deemed to be complete and has followed due process. It should also be noted that the sections mentioned by the writer are incorrect as the Overstrand Municipal By-Law, 2015 has been replaced by the Overstrand Municipal Amended By-Law, 2020. This is a clear indication that the writer of the memorandum, appointed by the owner of Erf 2948 Betty's Bay, did not conduct a detailed investigation and was thus never in a position to comment on the detail of the proposed application.

13. The writer further states that it should be placed on record that should the application be amended in terms of Section 53 (1) to address the various shortcomings that have been identified, the owners of Erf 2948 would regard such amendments as material for the purposes of Section 53 (2) and would expect to receive notice thereof as well as an opportunity to comment on such amended application. Their rights in these regards are and remain reserved. Bearing in mind the numerous discrepancies and inaccuracies in the documentation submitted by the applicant, as outlined, it is impossible for any stakeholder to at this stage constructively comment on the merits of the development proposal on an accurate and informed basis. According to the objector it should respectfully pointed out that the actions of an applicant who submits incorrect and/or misleading and/or incomplete application documentation inevitably places the other stakeholders at a disadvantage. This is particularly the case where a concerned neighbour takes the time and effort to evaluate and comment on an application, and then, through no fault of his/her own, has to repeat that same process when an amended application is submitted. This is patently unfair and

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would not happen if an applicant complies with his/her duties at the outset. It is exactly for this reason suggested that, based on the "Good Administration" development principle mentioned by the applicant (see the middle of page of the Motivation Report), the Municipality should take Section 84 (1) (e) of the Planning By-Law, which makes the submission of false, incorrect, or misleading information by an applicant an offence, seriously, in particular as an applicant confirms on the Application Form that he is aware of that provision. Minor errors are obviously not a source of concern, but where an applicant submits incorrect information/documentation to the extent that it requires an amended application in terms of Section 53 (1) it becomes a different matter.

As previously commented, we believe the application at hand to be complete. It should again be reiterated that the sections referred to by the objector are that of the **Overstrand Municipal By-Law, 2015**, which was replaced by the **Overstrand Municipal Amended By-Law, 2020**. As mentioned by the writer the intention was never to comment on the merit of the application but to highlight the "errors" in the application. We have pointed out as per our above comments that the writer's accusations are incorrect, and that the contents of the memorandum was purely based on assumptions and speculations.

It should be respectfully pointed out that the content of the memorandum was based on the wrong information. It should be noted that the amendments that were requested by the municipality were indeed submitted prior to the commencement of the public participation process. The writer questions the planning process, commented on the application procedure with reference to the wrong Municipal By-law and clearly did not scrutinise all of the application documentation.

14. The objector states that Betty's Bay is not a modern city but a rural seaside village within a Biosphere Reserve which contains a rich diversity of Fynbos and fauna. To allow densification and "the land to be utilised to its fullest potential" as is stated in the application will lead to further destruction of the natural habitat of the fauna and flora that flourish here.

The proposed application makes provision to subdivide the subject property. The owners still have the right to extend the existing footprint of the existing dwelling without any land use application. The owners have the option to extend the existing footprint on the subject property within their rights.

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The proposed subdivision will allow for new building lines on both portions (common building line) which will result in more open space (vision lines) on the subject property. The application is also circulated to the relevant environmental department, whom will also apply their expertise and will provide their professional comments on the proposed application.

15. The objector states that for every new residence built in the area, there is a conservancy tank to be pumped out regularly, which necessitates the tanker to attach and detach, with the attending noise, pollution and dust that comes with it. According to the objector this does not add to the visual or residential appeal of the area. It is also mentioned that the Municipality struggles at times to provide sufficient services to the existing residences (water pressure is often low, water pipes often break and take many hours to repair - depriving homes of water, gravel roads are in a very poor condition, runaway fires are a fact of life and as recently as 2019 destroyed many homes in Betty's Bay, during the holiday periods the available septic tankers struggle to keep up with the demand for pumping out conservancy tanks).

It should be noted that a conservancy tank does not need to be pumped every day. The proposed application is also circulated to the relevant service delivery departments whereby they will provide their professional comments on whether they have capacity or not to provide the additional, required services. The objector provides no statistics with reference to service delivery and is thus in no position to provide any comments on the capacity of services in the area. The owners of Erf 3456 Betty's Bay are also well aware of the Bulk Services contribution payable, which can contribute to the upgrading of services in the area.

16. According to the objector the Application states "by denying the removal of the Title Deed restriction, additional people will be deprived from owning property in the area". In fact, there are currently about 1500 vacant plots in Betty's Bay and about 30 properties for sale here.

The owners of Erf 3456 Betty's Bay do not own any of the 1500 vacant plots nor the 30 plots that are currently for sale. The owners of Erf 3456 Betty's Bay however own the subject property and therefore an application is made on the subject property. The subject property is also much larger

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in extent than the surrounding properties and therefore will the proposed subdivision be in line with the erf size of the properties in the vicinity.

- 17. According to the objector, Erf 3456 is situated in a very strategic spot where five roads come together: High Level Road, Aristeia Road, Straight street, and two unnamed access lanes (between erf 2949 and erf 2948; and erf 2996 and erf 2997). It is said that the situation is very dangerous where traffic has to negotiate a hairpin bend to get from Straight Street into High Level Road (turning right). Another entrance and a building blocking the view will increase the danger in this area.**

The proposed application will not have any impact on the traffic as the roads mentioned by the objector will remain unchanged whether the application is approved or not and no building plans are available whereby the access points are indicated. It should be noted that the proposed application is circulated to various departments who will provide their expert opinion with regards to access points as soon as such plans are available for submission.

- 18. According to the objector the intersection of Straight Street and Aristeia Road is one they use to access their home. Like most of the intersections in the village it is an uncontrolled intersection on a gravel road. It is however also a switch-back intersection and any construction on the proposed subdivision on the corner of Straight Street and Aristeia Road would make line of site practically impossible and make the intersection extremely dangerous.**

The proposed subdivision will not have any additional impact on the corner where Erf 3456 Betty's Bay is situated as the same building lines that are applicable on Erf 3456 Betty's Bay will also apply to the new proposed portion. Any building line departures in future will have to be applied for and the affected parties will be given an opportunity to provide their comments.

17/20

19. According to the objector the position of Betty's Bay in the Kogelberg Biosphere Reserve is of great significance. The Kogelberg Nature Reserve Complex includes the Betty's Bay Marine Protected Area (MPA), which covers 3 km of coastline and the inshore marine environment from just east of Jock's Bay and Stony Point in the west. It is also said that the open spaces, including undeveloped erven, and absence of boundary fences in the vicinity of ERF 3456 in this eastern part of Betty's Bay between the Harold Porter Botanical Gardens and Jock's Bay provide a vital corridor between the Kogelberg and the Marine Reserve. It should be noted that a very long-term previous resident of the property in question was a keen champion of the Fynbos and propagated rare and threatened Fynbos plants in her garden. An environmental survey of the grounds may reveal plants that will require protection.

As previously commented the proposed application was circulated to the various departments in the Overstrand Municipality for their expert comments. During this process, the various departments will provide their comments. The environmental department will request an environmental study if they deem it necessary to do so before they will provide their final comment. The residents of Betty's Bay can be rest assured that any environmental issue, if any, will be addressed in the prescribed manner. It should also be noted that the application at hand does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

20. The objector refers to the devastating fires of January 1st to 11th, just two years ago when in one night the Catholic Church and some forty houses in the village were completely destroyed and many others badly damaged. It is mentioned that had the houses been more densely situated it would have made it even more difficult and dangerous for fire fighters and many more homes would have been lost. According to the objector the home of the previous owners of ERF 3456 Betty's Bay was one of the thirty odd houses severely damaged. It is said that many of those properties have been sold at enormous loss simply to salvage something. In the process speculators were able to purchase them for bargains and they have been able to rebuild on existing foundations quickly and cheaply, thus avoiding NHBRC registration etc., quickly "flipping" houses in the hope of making a very good return often with no intention of ever being part of the community. The title deed transfer number for this property would indicate that this purchase was probably at such a discount and the proposed subdivision

18/20

might simply suggest greed. There are many vacant stands and stands with existing homes available in Betty's Bay in general and in this part of Betty's Bay in particular, to meet the needs of prospective residents.

We, as the applicant and the owners of Erf 3456 Betty's Bay remember the devastating fire that is mentioned by the objector, we however feel that the proposed application should be evaluated on its own merit. The objector speculates that had the houses been more densely situated it would have made it even more difficult and dangerous for fire fighters and many more homes would have been lost. The subject property is very accessible and therefore the two proposed portions can be easily accessed. It is easy for the objectors to speculate on what would have happened, but the merit of the application should still be first priority.

It is also speculated that the owners of Erf 3456 Betty's Bay bought the property to gain financial benefit. This is merely speculation, but if this is the case the owners saw a business opportunity as we are currently in a very difficult economic situation. The proposed subdivision is in line with the current erf sizes within the vicinity and this is also an opportunity for the Municipality to obtain Bulk Services levies and obtain rates and taxes monthly which can contribute to the upgrading of the area.

21. According to the objector, the applicants have scant knowledge of the village. It is said that the applicant asserts that "Removing the condition will enable the better utilization of the property in terms of modern city development and will contribute to the prevention of urban sprawl". According to the objector any reference to "city planning" and preventing "urban sprawl" in the context of Betty's Bay is absurd. Betty's Bay is known as the longest village in South Africa and its over 13km sprawl between sea and mountain along Clarence Drive is its very nature. According to the objector the proposal will not increase the market value of the area and attract investment. It is said that over the many years that the objector has been a homeowner in Betty's Bay many similar applications for removal of restrictive title deed conditions and subdivision have been successfully objected to and the applicant's assertion to the contrary is not honest. Removal of the restrictive condition could however set a precedent that could well open a flood gate of similar applications.

19/20

It should be noted that the applicant does have sound knowledge of the area as we have been actively involved in the Overstrand area for the past **20 years**. The objector states that there are many open plots in the area that are for sale. The subdivision of Erf 3456 Betty's Bay will create a similar portion in extent as the properties in the vicinity and therefore the proposal will not be anything out of the ordinary. The objector mentions that Betty's Bay has 13km of sprawl between sea and mountain along Clarence Drive, which means that urban sprawl needs to be curbed. It is important to create higher density areas which will also contribute to better control of resources. As mentioned earlier the proposal will also allow the municipality to obtain Bulk Services levies which can contribute to the upgrading of the existing area. It should be noted that the proposal should be evaluated on its own merit as the benefits outweighs the so-called negative impacts of the proposed application.

22. According to the objector, to retain the character of Betty's Bay in general, and the area in particular, they have invested a considerable amount of capital in purchasing vacant erven. It is also stated by the objector that the services the Municipality provides are stretched to the limit and do not need to be burdened by additional erven.

As commented previously, the general public cannot comment on the capacity of services as the proposed application is circulated to the relevant departments for their expert opinions. The proposed application will not have any impact on the character of Betty's Bay as mentioned in the motivational report.

Conclusion

The objections that were received on the proposed application mainly constitutes the alleged errors that were made on the application form and the planning process itself. It is important to note that the additional information requested was submitted before the application was circulated to the public. We however believe that the comments that were made by the writer of the Memorandum, Mr. L. Gericke were very negative, based on the completeness of the application documentation as well as the planning process, but he never took the time to verify the application documentation with all the enclosed annexures.

Emphases was also placed on the capacity and availability of services and the protected environment of the area, as mentioned previously the proposed application will be circulated to the relevant departments for their expert opinions and comments. The objectors, although they are residing in the area, cannot make informed comments on the capacity of services.

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It should be noted that the subject property is a consolidated erf. Erven 2947 and 2946 were consolidated to form Erf 3456 Betty's Bay in 1968 and registered in the Deeds Office in 1971. Erf 3456 Betty's Bay was then subdivided in 2007 to form Erf 5572 Betty's Bay and a remainder, but this subdivision diagram (SG No.3785/2007) was never registered in the Deeds Office. The application at hand is thus to obtain a new approval for the subdivision, as the 2007 subdivision approval has lapsed and at the same time also make provision to remove the restrictive title deed condition/s, if applicable.

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

Yours faithfully



Darren Adams

Pr. Town Planner

Annexure G 1/2

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION &
SUBDIVISION: ERF 3456, BETTY'S BAY**

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

Conditions:

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

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

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

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

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

The contribution according to the current policy (2020/2021) is as follows:

Freehold erven:

Water	R 23 957.00 x 1	=	R 23 957.00
Sewerage	R 16 153.00 x 1	=	R 16 153.00
Roads	R 7 243.00 x 1	=	R 7 243.00
Stormwater	R 8 357.00 x 1	=	R 8 357.00
Solid Waste	R 1 448.00 x 1	=	<u>R 1 448.00</u>
TOTAL (inclusive of VAT)		=	R 57 158.00

Note:

- 1.3 The above figures are estimates**
1.4 The above figures do not include evaluation/investigation levies and connection fees
2. that each property should have their own water connection and conservancy tanks as per Municipal specification;

3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that stormwater be allowed to discharge through the proposed Erven, Betty's Bay, unobstructed;
6. that no on-street parking be allowed.

p.p. R. Chetty
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

03/11/2021
DATE

Annexure H 1/4



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

Stefan Geldenhuys
Tel: 021 414 5546
Email: StefanG@openseve.co.za
Our Ref : WWIP_WBBY301_21
Your Ref : 3456 KBB

08 February 2021

Attention : S Muller
Overstrand Municipality
Hermanus

PLANT AFFECTED : COPPER

**Wayleave application : REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND SUBDIVISION
ERF 3456, 4 STRAIGHT STREET, BETTY'S BAY**

With reference to your letter received **28 January 2021**

**Important cables and other infrastructure are affected, please contact our Melt Van As / 021 852
1717 / 081 363 7873 / Meltva@openseve.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

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.

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

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

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

All OpenServe rights remain reserved.

Yours faithfully



For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

PLANT AFFECTED : COPPER

This wayleave, Reference Number WWIP_WBBY0391_21 is valid for 12 months from date hereof and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three meters of any Openserve Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Melt Van As at Telephone No 081 363 7873 must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration, should the of the work, upon which the actual location of Openserve Plant will be applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existance of the indicated plant and to notify Openserve immediately, should the applicant locate any Openserve Plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof.

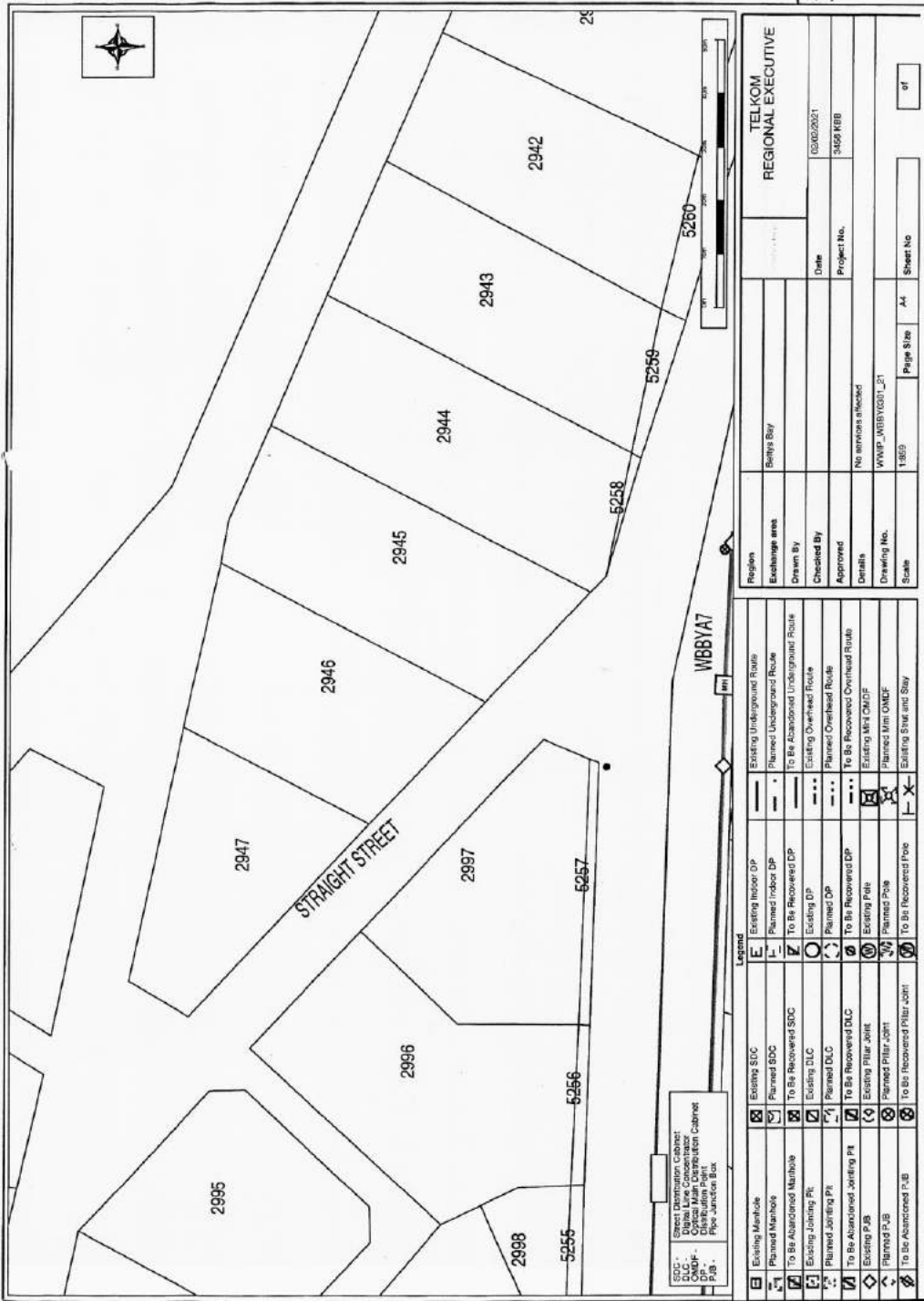
Date: 2021-02-02

By: S Geldenhuys
For Regional General Manager
Western Cape

Legend	Green
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC)	
5. Jointing Pit / AJB	
6. Jointing Pillar (PJ)	
7. Pipe Junction Box (B/S)	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable (A/C)	



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Region	WBBYAT
Exchange area	Belays Bay
Drawn By	
Checked By	
Approved	
Details	No services affected
Drawing No.	WNP_MBBY001_L21
Scale	1:800
Page Size	A4
Sheet No	
	of

Existing Manhole	Existing Manhole	Existing Inroad DP	Existing Underground Route
Planned Manhole	Planned Manhole	Planned Inroad DP	Planned Underground Route
To Be Abandoned Manhole	To Be Abandoned Manhole	To Be Recovered DP	To Be Abandoned Underground Route
Existing Joining PI	Existing Joining PI	Existing DP	Existing Overhead Route
Planned Joining PI	Planned Joining PI	Planned DP	Planned Overhead Route
To Be Abandoned Joining PI	To Be Abandoned Joining PI	To Be Recovered DP	To Be Recovered Overhead Route
Existing PAB	Existing PAB	Existing Pole	Existing Wkt OMDF
Planned PAB	Planned PAB	Planned Pole	Planned Wkt OMDF
To Be Abandoned PAB	To Be Abandoned PAB	To Be Recovered Pole	Existing Strut and Stay

SDC - Street Distribution Cabinet
 DLC - Digital Line Concentrator
 DP - Distribution Point
 PAB - Pole Access Box

Legend

TELKOM REGIONAL EXECUTIVE



Overstrand Municipality
Loretta@overstrand.gov.za



Annexure I 114

Date: 2021/01/29

Enquiries:
WayleavesWesternOU@eskom.co.za

WAYLEAVE APPLICATION: Removal of Restrictive Title Deed Condition
Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition I C B (a) as contained in

YOUR REF: 3456 KBB

ESKOM REF: 00266-21

THIS IS NOT AN APPROVAL TO START CONSTRUCTION

I hereby inform you that Eskom has no objection to 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.

1. Eskom services are affected by your proposed works and the following must be noted:

- Eskom has no objection to the proposed work and include a drawing indicating Eskom 11kV/LV underground services in close proximity.
- Please note that underground services indicated are only approximate and the onus is on the applicant to verify its location.
- There may be LV overhead services / connections not indicated on this drawing.
- The successful contractor must apply for the necessary agreement forms and additional cable information not indicated on included drawing, in order to start construction.

Application for Working Permit must be made to:

Customer Network Centre: Grabouw

Enchanté Swartz / Bongiswa Babu

021 859 8005 / 021 859 8025 / 079 345 0733 / 073 260 2857

SwartzEn@eskom.co.za / BabuB@eskom.co.za

Include Eskom Wayleave as-built drawings and all documentation, when applying for Working Permit.

Should it be necessary to move, relocate or support any existing services for possible future needs, it will be at the developer's cost. Application for relocating services must be made to Customer Services on 08600 37566 or customerservices@eskom.co.za

Distribution Division - Western Region [Land Development]
Western Region
Eskom Road Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 06 003 7566 www.eskom.co.za
Eskom Holdings SOC Limited Reg No 2002/015527/30

FILE NO:	AF 3456
	Kathesbaai
SCAN NO:	3456
COLLABORATOR NO:	1502788

TP - 1 FEB 2021

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2. Underground Services

The following conditions to be adhered to at all times:

- a) Works will be carried out as indicated on plans.
- b) No mechanical plant to be used within 3.0m of Eskom underground cables.
- c) All services to be verified on site.
- d) Cross trenches to be dug by hand to locate all **underground services** before construction work commences.
- e) If Eskom underground services cannot be located or is grossly misplaced from where the wayleave plan indicates, then all work is to be stopped and Graham Hector from the Land Development Office to be contacted on 021 980 3551 / HectorG@eskom.co.za, to arrange the capturing of such services.
- f) In cases where proposed services run parallel with existing underground power cables the greatest separation as possible should be maintained with a minimum of 1000mm.
- g) Where proposed services cross underground power cables the separation should be a minimum of **300mm** with protection between services and power cables. (Preferably a concrete slab)
- h) No manholes; catch-pits or any structure to be built on top of existing underground services.
- i) Only walk-behind (2 ton Bomac type) compactors to be used when compacting on top of and 1 metre either side of underground cables.
- j) If underground services cannot be located then the Customer Network Centre (CNC) should be consulted before commencement of any work.
- k) **No work can take place within the servitude of a 66kV Cable or 132kV Cable if indicated.** Should you need to undertake any work within the proximity of our 66kV or 132kV Cables please contact Graham Hector on 082 7720 359 or graham.hector@eskom.co.za

3. O.H. Line Services:

- a) The following building and tree restriction on **either side of centre line** of overhead power line must be observed:

Voltage	Building restriction either side of centre line
11 / 22kV	9.0 m
66kV	11.0 m
132kV	15.5 m

- b) No construction work may be executed closer than **6 (SIX) metres** from any Eskom structure or structure-supporting mechanism.
- c) No work or no machinery nearer than the following **distances from the conductors**:

Voltage	Not closer than:
11 / 22kV	3.0 m
66kV	3.2 m
132kV	3.8 m

- d) Natural ground level must be maintained within Eskom reserve areas and servitudes.
- e) That a **minimum ground clearance** of the overhead power line must be maintained to the following clearances:

Voltage	Safety clearance above road:
11 / 22kV	6.3 m
66kV	6.9 m
132kV	7.5 m

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- f) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.
- g) That Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
- i. Having 24 hour access to its infrastructure according to the rights mentioned in (a) above,
 - ii. To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules,
 - iii. To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom,
 - iv. To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure.
- h) Eskom must have at least a 10m obstruction free zone around all pylons (not just a 10m radius from the centre).
- i) Eskom shall not be liable for the death or injury of any person, or for loss of or damage to any property, whether as a result of the encroachment or use of the area where Eskom has its services, by the applicant, his/her agent, contractors, employees, successors in title and assignee.
- j) The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
- k) Eskom shall at all times have unobstructed access to and egress from its services.
- l) Any development which necessitates the relocation of Eskom's services will be to the account of the developer.
- m) Lungile Motsisi MotsisiL@eskom.co.za. Eskom Transmission must be contacted on 011 800 5734 to comment on behalf of the 400 kV OVERHEAD POWERLINES. NO WORK WITHIN THIS SERVITUDE OR UNDERNEATH POWERLINES IS ALLOWED until comment from Eskom Transmission has been obtained.

4. **NOTE**

Wayleaves, Indemnity form (working permit) and all as-built drawings issued by Eskom to be kept on site at all times during construction period.

Yours faithfully

LAND DEVELOPMENT (BRACKENFELL)

Annexure J 1/2

File reference:	3456 KBB
Date:	28 January 2021



INTERNAL MEMORANDUM

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

TO:

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


Applicant	PLAN ACTIVE (obo FA VAN RENSBURG AND G TURCK)
Property Details	ERF 3456, 4 STRAIGHT STREET, BETTY'S BAY
Application Description	APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION AND SUBDIVISION

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.	Motivation	
4.	Site Development Plan	

YOUR DEPARTMENT'S COMMENTS:

<p>The EMS has no objection to the application. Please do note that the National Environmental Management Act (NEMA) Environmental Impact Assessment Regulations may require that, due to the subdivision of the property, Environmental Authorisation from the DEA DP may be required for activities listed in the EIA Regulations Listing Notices 1, 2 and 3. The undeveloped property (Erf 5572) should not be bulldozed as the following would be triggered. GNR 324, Listing Notice 3.</p> <p><u>Activity 12.</u></p> <p><i>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a Maintenance management plan</i></p> <p><i>i. Western Cape</i></p> <p><i>i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;</i></p> <p><i>ii. Within critical biodiversity areas identified in bioregional plans;</i></p> <p><i>iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;</i></p> <p><i>iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or</i></p>

<p>v. <i>On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister</i></p>			
<p>Depending on the future development proposed on the subdivision, other Listed Activities may be triggered.</p>			
Signature:		Date:	10 March 2021

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

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

COMMENTS REQUIRED BY: 5 March 2021