



OVERSTRAND MUNISIPALITEIT
ERF 668, CHINA MARAISLAAN 56,
FISHERHAVEN: AANSOEK OM
OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDES: WRAP
(nms WG & J THELANDER)

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoeke van toepassing op Erf 668, Fisherhaven (die eiendom), naamlik:

Opheffing van Beperkende Titellaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titellaktevoorwaardes E.4(b), E.4(c) en E.4(d) soos vervat in Titellakte T61942/2021 van die eiendom ten einde 'n tweede wooneenheid op die eiendom te akkommodeer.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 and 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **29 Julie 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H Olivier** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word om hul kommentare te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. 76/2022

OVERSTRAND MUNICIPALITY
ERF 668, 56 CHINA MARAIS AVENUE,
FISHERHAVEN: APPLICATION FOR
REMOVAL OF RESTRICTIVE TITLE DEED
CONDITIONS: WRAP (obo WG & J
THELANDER)

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), of the following applications applicable to Erf 668, Fisherhaven (the property), namely:

Removal of Restrictive Title Deed Conditions

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions E.4(b), E.4(c) and E.4(d) as contained in Title Deed T61942/2021 of the property to accommodate a second dwelling unit on the property.

Details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **29 July 2022**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Olivier** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comments.

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

Municipal Notice No. 76/2022

UMASIPALA WASE-OVERSTRAND
ISIZA 668, 56 CHINA MARAIS AVENUE,
FISHERHAVEN: ISICELO UKUSUSWA
KWEZITHINTELO KWISIVUMELWANO
SOBUNINIMHLABA : I-WRAP PROJECT
OFFICE (EGAMENI LIKA WG & J
THELANDER)

Esi saziso sikhutshwe ngokuvumelana neCandelo- 47 nele 48 loMthetho kaMasipala wase- Overstrand Otshintshweyo omalunga Nokuceba Kokusetyenziswa Komhlaba kaMasipala (2020) ukuba kufunyenwe ezi zicelo zilandelayo eziqukiweyo kwi- Erf 668 i- Fisherhaven (Ipropati), ngale ndlela:

Ukususwa kwezithintelo kwiSivumelwano soBuninimhlaba

Isicelo ngokuvumelana neCandelo - 16(2)(f) ngeMithetho Yedolophu yokususa imibandela eluqilima yetaytile yobunini- E.4.(b), E.4.(c) ne- E.4.(d), equkiweyo kwiTaytile Yobunini i- T61942/2021 yesakhiwo ukuze kuhlaliswe enye indawo yokuhlala kwipropati.

Inkcukacha mayela nesindululo siyafumaneka ukuze sihlolwe phakathi evekini ngamaxesha omsebenzi ukusuka kwintsimbi ye08:00 ukuya kweye16:30 kwiSebe: Izicwangciso Zedolophu kwanombolo 16 Paterson Street, eHermanus.

Naziphi na izimvo ezibhaliweyo zingangeniswa ngokwezibonelelo zamaSolotyama-51 nama-52 kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngoLwesihlanu okanye ngaphambi koLwesihlanu, **29 EyeKhala 2022**, ukhankanye igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Imibuzo ngefowuni ingabhekiswa kuMphathi kuCwangciso lweDolophu, **uMnu. H Olivier** ku-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiCandelo leDolophu apho igosa likamasipala liza kumceda avakalise izimvo zakhe ngokusemethethweni.

Umlawuli kaMasipala, Masipala waseOverstrand, P.O. Box 20, **HERMANUS**, 7200

Municipal Notice No. 76/2022

Locality Plan Erf 668 - Fisherhaven

 Subject property

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Town Planning & Project Management

Inset



669

668

667

656

Scale 1 : 1000

Broader context



FISHERHAVEN

Scale 1 : 8000



MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SR1	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 668 Fisherhaven
Restrictive title deed conditions	Condition E 4(b), (c) and (d)
Extent	1487m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 668 Fisherhaven, hereafter referred to as the subject property, is located on China Marais Avenue, Fisherhaven (refer **Plan 1 – Locality Plan**). The property owners (Werner Gustav Thelander and Julicha Thelander) appointed WRAP Project Office to submit this application on their behalf (refer **Annexure A – Power of Attorney**). The property owners purchased the property in 2021 with the intention to construct a second dwelling unit in the form of a granny flat to be home to the property owners' parents.

A second dwelling unit is a primary right in the OMLUS on a property zoned SR1. The title deed however contains restrictive title deed conditions, which only allows one dwelling unit on the subject property.

As a result, the following application is required:

- Removal of restrictive title deed conditions E 4(b), (c) and (d);

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

WRAP compiled this report to ensure the applicant's vision is achieved. The following is proposed:

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

There are three title deed conditions that prohibit the applicant to utilise their property to its full extent as described in Section 3 and the rationale for the removal of these conditions are discussed below:



Restrictive Title Deed Conditions
Condition E 4(b) – “it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”
Condition E 4(c) – “not more than 30% of the area thereof shall be built upon;”
Condition E 4(d) – “no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf not within 10 meters of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;”

The rationale for the removal of the restrictive title deed conditions is to enable the applicant to achieve the development intent highlighted in Section 3 and not be restricted in the future. The title deed conditions are more restrictive than what is allowed in terms of the OMLUS.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

5. APPLICATION

Considering the above, application is made for the following:

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

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed second dwelling is not out of the ordinary and is allowed in terms of the OMLUS.

7. TITLE DEED

Title deed T61942/2021 (refer **Annexure B**) was perused and there are several restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit that the applicant's intent with the subject property can be realised.

Title deed restrictions



Condition E 4(b) – “it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”

Condition E 4(c) – “not more than 30% of the area thereof shall be built upon;”

Condition E 4(d) – “no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 15 feet to the street line which forms a boundary of this erf not within 10 meters of the rear or 5 feet of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 10 feet in height measured from floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;”

Motivation

The rationale for the proposed removal

The subject property is currently being used for a single dwelling unit. The property owners have the vision and opportunity to expand on their primary right in terms of the OMLUS by building a second dwelling unit. The second dwelling will be used by their parents, but the proposed development is however restricted by the conditions mentioned above and therefore require removal.

Title deed condition background

The restrictive title deed conditions were originally intended to protect the residential character of the Fisherhaven area, and the new/modern intention is to create additional residential options within the Fisherhaven area. Any amendment or removal of these conditions require the consent of the Administrator. This authority now vests with the Overstrand Municipality.

Status quo

The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand Area’s residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions. The removal of these conditions will bring the subject property in-line with what is allowed on a single residential property.

The current and future development of the property is being restricted by these title deed conditions. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the land use schemes and policies of the Overstrand Municipality, the applicant is not able to utilise their property to its full extent.

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective</i>	No person or entity will be affected financially by the removal of these restrictive title deed conditions.



MOTIVATION

<i>of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The property owners will be gaining from the removal of the restrictive condition as it will allow them to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i> <i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	These restrictive conditions do not have a social benefit.
<i>(f) 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.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:



MOTIVATION

RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL		
Land Use Restrictions		
Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Comply
Consent use	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A
Development parameters		
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: <ul style="list-style-type: none"> ➤ 400m² and greater = 50% 	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: <ul style="list-style-type: none"> ➤ 400 m² and greater = 4m (ii) The side and rear building lines are determined in accordance with the net erf area: <ul style="list-style-type: none"> ➤ Greater than 400 m² = 2m 	Comply
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Comply
	Existing Dwelling = ±201m ² Proposed Second Dwelling area = ±70m ² Coverage = ±271m ² / 18.23%	Comply
	Existing Dwelling House – Single Storey Proposed Second Dwelling – Single Storey Two parking bays for each dwelling	Comply



9. SERVICES

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

Electricity, Water, Sewage and Solid Waste

The subject property is connected to an electrical network, as well the OM's water network and a conservancy tank that is serviced by the OM. The proposal of this application will not greatly affect these networks.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from China Marais Avenue and the proposal will not affect this.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability

The need for the land use application is to ensure the property meets all the needs of the property owners. The desirability is more often a personal feeling of the property owners. The intent is to build a secondary dwelling house and create additional space to occupy on their property for their parents. The proposed dwelling will not benefit any other users or person, but it will increase the property's value and, in the future, may yield additional income for the OM.

To achieve their vision, the applicant has appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the proposed dwelling house will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

Economic impact

There is little to no impact on the economy. The building of the proposed additional dwelling house will temporarily employ a contractor that will use workers to assist in the construction phase. Building materials will be purchased at local suppliers.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and affected parties when an application is approved. The development will not affect the property values of surrounding properties.



Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is not located within the 'Category D – Urban Conservation'. The purpose of the zone is to protect and manage undeveloped conservation-worthy public owned land within the Overstrand's urban edge, and adjacent buffer areas, while promoting the retention of viable priority ecological corridors in areas that are to be developed, to ensure an integrated 'conservation and development' approach that will enhance living conditions for the communities of the Overstrand.

The subject property is located adjacent (across the road) from an agricultural land unit. The proposal for a second dwelling unit (removal of restrictive title deed conditions) is not going to negatively affect the above-mentioned land unit.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within this zone.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling will not contribute to spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a second dwelling will add housing opportunities into the Fisherhaven area, densifying an existing property.

Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the applicant's requirements are met.

Spatial resilience



MOTIVATION

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation. Public participation forms an integral part of the land use planning process. The public participation process provides people who may be affected by the proposal with an opportunity to provide comment and to raise issues of concern about the proposal or make possible suggestions that may result in an enhanced outcome of which both parties benefit. Comments will be reviewed and considered after which it will be addressed accordingly.



13. EVALUATION

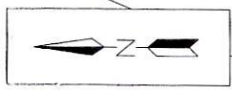
The property owners envision constructing a second dwelling unit that requires the removal of the previously mentioned restrictive title deed conditions. The removal of the restrictive title deed conditions was motivated in terms of SPLUMA and LUPA.

The proposed land use is not out of context with the surrounding area and is not seen as an intrusive land use. The proposed second dwelling unit will also not impede on views, sunlight or negatively affect the character of the area. The proposal for a second dwelling unit is in harmony with all relevant spatial planning policies which illustrates that the applicants did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

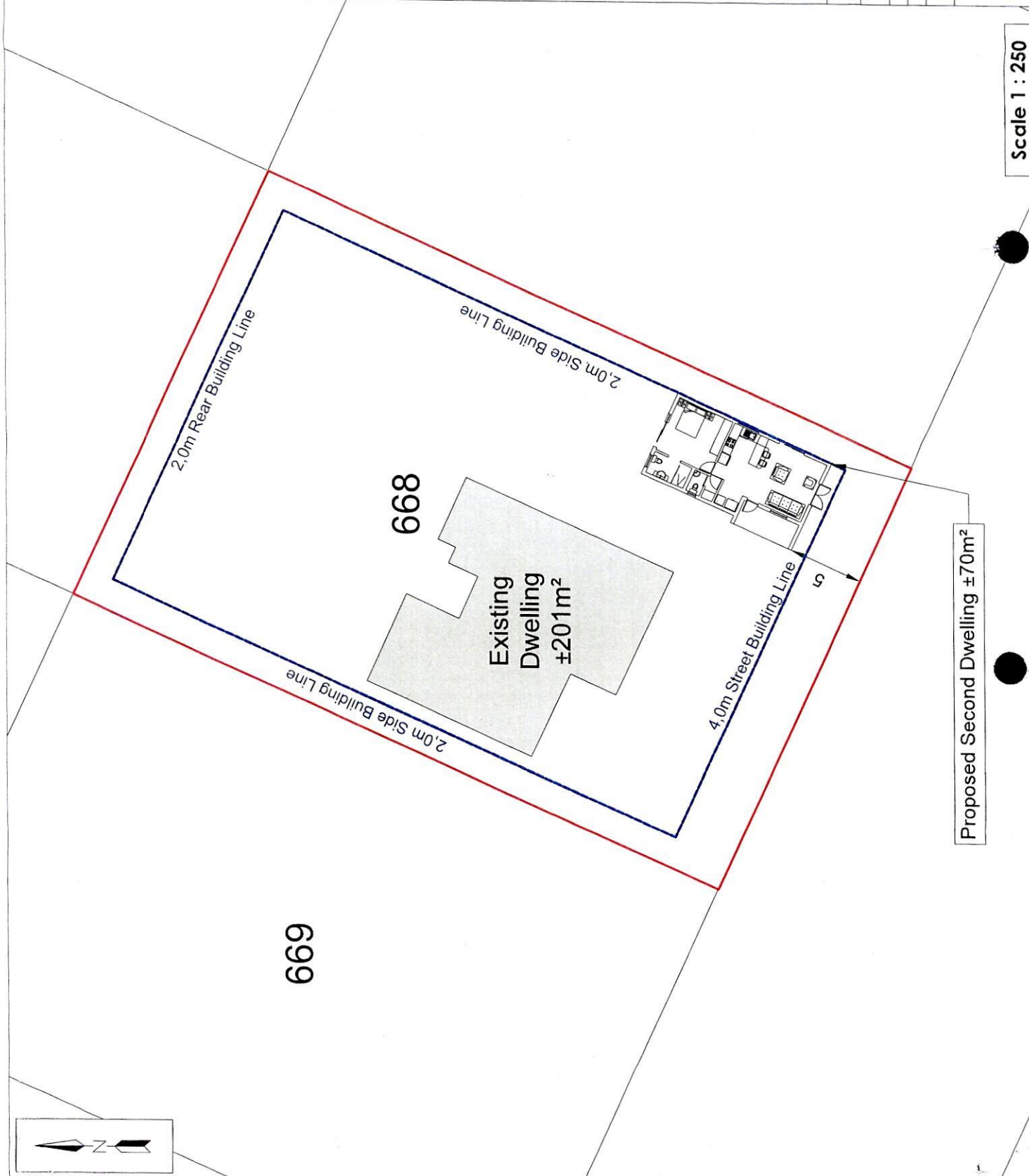
14. RECOMMENDATION


Based on the abovementioned motivation, it is recommended that the following be approved:

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



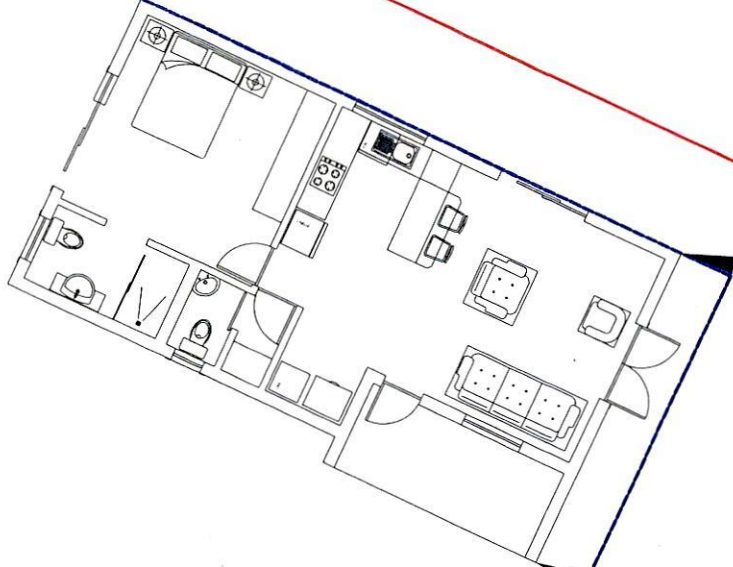
Copies of A3



Site Development Plan Erf 668 - Fisherhaven
Proposed Second Dwelling Unit Area - ±70m ²
Existing Dwelling Unit Area - ±201m ²
Coverage Site Area - 1487m ² Existing Dwelling Unit - ±201m ² Proposed Second Dwelling Unit - ±70m ² Total Coverage - ±271m² / 18.23%
Plan prepared by: Thian Jansen
All distances are approximate and subject to a survey
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Unit B, Standard House, Corner of Royal and Dirkie Uys Street Hermanus, 7200
 Project Office Town Planning & Project Management



4,0m Street Building Line



Inset Site Development Plan Erf 668 - Fisherhaven
<u>Proposed Second Dwelling Unit</u> Area - ±70m ²
<u>Existing Dwelling Unit</u> Area - ±201m ²
<u>Coverage</u> Site Area - 1487m ² Existing Dwelling Unit - ±201m ² Proposed Second Dwelling Unit - ±70m ² Total Coverage - ±271m² / 18.23%
Plan prepared by: Thian Jansen
All distances are approximate and subject to a survey
Tel: 028 313 1411
Email: admin@wrapgroup.co.za
Unit 8, Standard House, Corner of Royal and Dikkie Uys Street Hermanus, 7200

Proposed Second Dwelling ±70m²

Scale 1 : 100



Project Office
Town Planning & Project Management