

## 4.4

**ERF 723, CORNER OF MALMOK CRESENT & 4 PETREL STREET, VERMONT, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIONS : MESSRS PLAN ACTIVE ON BEHALF OF JMG & T COERTZE**

723 HVM (3721)

H Olivier

19 February 2018

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application has been received on 28 June 2017 from Messrs Plan Active on behalf of JMG & T Coertze on Erf 723, Vermont for the removal of restrictive title conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for the removal of the restrictive conditions in Title Deed T12632/2017, Page 4, Paragraphs E.(c) and E.(d) :

*“E.(c) “No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the transferor company.”*

*E.(d) Unless the permission of the transferor company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one Lot, and in particular, subject to any permission granted as aforesaid, no structure of the type commonly known as “flats” shall erected on the said property.”*

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

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

The erf measures 1211m<sup>2</sup> in extent and is located in a residential area Vermont. The property is vacant at this point in time and is zoned Residential Zone I.

## 4. SUMMARY OF APPLICANT’S MOTIVATION

- ❖ The removal of restrictions is only to enable the land owner to utilize the property in line with its primary rights as stipulated in the Zoning Scheme Regulations.
- ❖ Conditions in the Title Deed, which is less restrictive than the Zoning Scheme, is not being applied for removal, to ensure the Zoning Scheme parameters be respected.
- ❖ No additional land use rights or densification are applied for that would impact the Overstrand Municipal Wide SDF or Overstrand Growth Management Strategy.
- ❖ No impact on biophysical environment.

- ❖ **Spatial Justice** – The Title Deed restrictions are more restricted than the land use restrictions prescribed in the Zoning Scheme.
- ❖ **Spatial Sustainability** – The removal of the restrictions would still ensure development in line with the character of the established residential area, and no conservation worthy area will be impacted on.
- ❖ **Efficiency** – Only the Title Deed restrictions more restrictive than the Zoning Scheme will be removed.

#### 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	29 August 2017	29 September 2017
Gazette	Yes	1 September 2017	29 September 2017
Notices	Yes	29 August 2017	29 September 2017
Ward Councillor	Yes	25 August 2017	29 September 2017
Total letters of support	<b>NONE</b>		
Total letters of objection	<b>THREE (3)</b>		
Was public participation undertaken in accordance with Section 45 - 49 of the Proposed Draft By-Law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly (if no, elaborate below):			<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			<b>Yes</b>

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

Name	Date received	Summary of comments	Recommendation
<b>Engineering Services</b>	12/09/17	See Annexure F.	<b>Positive</b>
<b>Building Control</b>	29/08/17	Supported.	<b>Positive</b>
<b>Local Heritage</b>	29/08/17	Supported.	<b>Positive</b>

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

Three (3) letters of objection were received, the one being a petition list signed by seven (7) surrounding property owners. The objections can be summarised as follows:

- 1) It is not clear as to the intended usage of the second dwelling and other usage rights.

- 2) The application could spoil the peaceful and tranquil suburb, and possibly drop property values.
- 3) Object against a day care centre, guestrooms, canteen, hotel, restaurant, shop, factory or industry or any place of business, but would support a "granny flat", subject to it not being higher than single storey.
- 4) Date for comments was too short and had to be in on 22 September 2017, and some interested parties could not comment.

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

The applicant's response on the objections can be summarized as follows:

- 1) The applicant at a later stage would investigate his possibilities for a second dwelling, home occupation or guest rooms (2).
- 2) The applicant would still only be able to use the property in line with the restrictions as defined under Residential Zone I, being a day care centre, dwelling house, guest rooms, home occupation or second dwelling.
- 3) A condition can be inserted that the erf will not be used as a day care centre, canteen, hotel, restaurant, shop, factory or industry.

The development of a second dwelling will be in line with the height restrictions as in the Zoning Scheme.

- 4) No comments provided.

#### **9. MUNICIPAL ASSESSMENT OF COMMENTS**

- 1) The applicant indicated that it is intended to later develop a second dwelling, and also possibly home occupation and guest rooms. These are uses allowed as primary uses under the Residential Zone I zoning in terms of the Zoning Scheme.
- 2) The comments of the applicant are supported. The primary uses that the property owner will be able to act on is of such that it should not have a major impact on the peacefulness and tranquillity of the area, as they all are limited to a specific scale in terms of the Zoning Scheme. Day care centres may only provide for five (5) children, only two (2) guest rooms for a maximum of five (5) guests may be catered for, a second dwelling may only cater for one (1) family, and home occupation is limited to 25% of a dwelling and outbuildings and may only have one (1) occupant and two (2) non-occupants involved in the home occupation. Should the property owner thus act on such primary rights, the impact of the peacefulness would not be more than a large dwelling for a large extended family.

The insertion of a condition in a land use approval to prohibit certain land uses would require that it would have to be inserted in the Title Deed to ensure compliance.

This application is however to remove certain Title Deed conditions and the proposal of the applicant to insert such conditions are not considered best practice.

- 3) The land uses such as a canteen, hotel, restaurant, shop, factory and industry could only be allowed on the property should application be made for rezoning, consent use or departure.

It is only at the stage such application is submitted that the impact of such land uses would be considered. It is to be noted that most of the aforementioned uses are not usually associated with the character of single residential areas, and it would be very unlikely that such applications would be desirable.

The applicant also proposes that a condition be inserted that a day-care should not be allowed. The above comments also relate in this regard considering such a condition will then again will have to be inserted in the Title Deed.

As however indicated in Point 2 above, a day-care centre is only limited to cater for five (5) children, with therefore minimum impact on the single residential character. It is therefore the opinion that the Municipality should not insert limitation in approvals (and Title Deeds) if such uses are allowed in terms of the Zoning Scheme.

The property is approximately double the size of the surrounding properties, and a dwelling and outbuilding can be erected on 50% of the area of the erf, 8m high and in compliance with building lines. The same parameters will have to be complied with should a main dwelling and second dwelling be constructed on the property.

The impact of one (1) large double storey dwelling or a main dwelling and second dwelling both constructed double storey would therefore have the same impact on neighbours. The insertion of a condition to limit a second dwelling to single storey is therefore not supported.

- 4) In terms of the records the registered letters to neighbours were sent out on 29 August 2017 and the closing date for comments/objections was 29 September 2017. An advertisement was also placed in the local newspaper on 29 August 2017 and a notice placed on-site. The closing date was again indicated as 29 September 2017.

The advertisement in the Government Gazette was only placed on 1 September 2017. The closing date was still indicated 29 September 2017 in the Gazette. Although the Gazette notice did not provide for a thirty (30) day comment period, no late objections were received that was impacted by the Gazette publication.

Considering that six (6) of the residents who received registered notices responded in time before 29 September 2017, and one (1) other additional objection was received also prior to 29 September 2017 closing date, it is considered that a fair public participation process was followed.

## **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**

The development in areas is controlled in terms of Zoning Schemes, and this application is to remove restrictions that are more restrictive than the Zoning Scheme, but would not lead to additional rights in terms of the Zoning Scheme.

**Spatial sustainability**

The application would allow the land owner to act on land uses considered to be uses in line with the residential character of the area.

**Efficiency**

The removal of the restrictions would allow the property owner to act on his primary rights in terms of the Zoning Scheme and would unlock such land uses for the property to be utilized to its full potential.

**Spatial Resilience**

The removal of restrictions will enable the property owner to utilize the property for more land uses, and potential to obtain some form of additional income.

**Good administration**

The application followed a good public participation process.

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

Same as Point 10.2 above.

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

The property will still be utilized for land uses which are consistent with the Spatial Development Framework and the Overstrand Municipality Growth Management Strategy, 2010.

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

N/A

**10.6 Impact on Municipal engineering services**

The existing services are available.

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

N/A

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

N/A

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS****The financial or other value of the rights**

There is no financial value to the rights.

**The personal benefits which will accrue to the holder of rights and/or to the person seeking the removal**

The removal of the restrictions will have no personal benefit to the holder. South Western Districts Land and Finance Corporation Limited was the original company who developed Vermont, but the company is not in existence anymore. The Municipality is now the body who see to the control of development in the area of Vermont. The land owner who is seeking the removal of the conditions will be able to act on additional land uses allowed as primary rights in terms of its zoning should the removal be successful.

**The social benefit of the restrictive condition remaining in place, and/or being removed / amended**

The Title Deeds restrictions are considered "old" restrictions to control development in the residential area. In most single residential areas uses such as second dwellings, home occupations and renting of guest rooms are acceptable uses. They provide opportunities for communities to work from home, generate some income or cater for accommodation for parents, etc. It is therefore not seen that the conditions have a social benefit, but rather limit the potential of property owners.

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

Only the rights relating to the construction of a second dwelling and limiting the uses (thereby limiting uses in terms of the Zoning Scheme) will be removed.

**12. THE DESIRABILITY OF THE PROPOSAL**

The conditions to be removed were inserted in the Title Deeds of properties in Vermont in 1951. This was to control development on these properties relating to land uses, and limiting it to one (1) dwelling per property.

In 1985 the first Zoning Scheme was approved for this area, which was later replaced in 2014 by the Overstrand Municipality Zoning Scheme Regulations.

As the needs of communities changed over time land uses and development restrictions were captured in the new development control documents, Zoning Schemes, to cater for the new needs for communities. Land uses such as home occupations, second dwellings, two (2) guest rooms and day-care centres (for five (5) children) was inserted in most Zoning Schemes, as it was

considered land uses which fits in with the residential character without having a negative effect on such character.

The conditions to be removed limit the development of the erf to one (1) dwelling. It also does not allow any form of business, etc. which means it could limit the property not to be used for two (2) guest rooms, home occupation, etc. The applicant's intention to remove these conditions is therefore understood, as it limits the potential of the property.

The objections/concerns are more due to the fact that they are concerned that should the conditions be removed, land uses with greater impact on the character of the area will be allowed. As indicated, only the land uses in paragraph 3 will be allowed, and these land uses are of limited scale and considered part of the modern residential character.

Considering the above, it is the opinion that should the conditions in the Title Deed be removed development on the property would still be sufficiently controlled in terms of the Overstrand Municipality Zoning Scheme Regulations. The application is therefore considered desirable.

### 13. RECOMMENDATION

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 on Erf 723, Vermont for the removal of restrictive condition E.(c) and E.(d) of Title Deed T12632/2017, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
  - (a) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
  - (b) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation, and
  - (c) that all the conditions in the Services Report (attached as Annexure F), be complied with;
2. 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

- ❖ The conditions in the Title Deed restricts the development of the erf to its full potential as allowed under its primary rights in terms of its Residential Zone I zoning in terms of the Zoning Scheme.
- ❖ The removal of the restriction would enable the property owner to construct a second dwelling, a day-care centre (for five (5) children), two (2) guest rooms (for five (5) people), and/or a home occupation. The type of land uses and scale is limited to in terms of the Zoning Scheme makes it compatible with surrounding residential use, and should not have a major impact on the residential character.
- ❖ The objectors' concerns that the peaceful residential character of the area and property values will be negatively affected is speculative, especially considering

the limited scale of land use that the property owner will be able to act on as a primary right.

- ❖ The applicant's and objectors' request for conditions to be inserted to limit specific land uses or second dwelling heights respectively is not supported. Such conditions are not required as the restrictions in the Zoning Scheme would limit development on the erf sufficiently.

### 15. Annexures

Annexure A: Locality Plan  
 Annexure B: Motivation Report  
 Annexure C: Title Deed T12632/2017  
 Annexure D: Objections received  
 Annexure E: Applicant's reply on objections  
 Annexure F: Services Report

### SIGNATURES

#### **AUTHOR**

Name : **H OLIVIER**  
 SACPLAN registration number: **B/8128/2004**  
 Signature : \_\_\_\_\_  
 Date: \_\_\_\_\_

#### **REGISTERED PLANNER**

Name : **H VAN DER STOEP**  
 SACPLAN registration number: **A/1708/2013**  
 Signature : \_\_\_\_\_  
 Date: \_\_\_\_\_





Scale: NTS  
 Drawing Nr: Ver723L.dwg  
 Date: 06/2017

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERF 723  
 VERMONT**

All distances approximate  
 and subject to survey.  
 COPY RIGHT RESERVED

**Pland** Stads- en Streeksbeplanners  
 Town & Regional Planners

**PROPOSED REMOVAL OF  
RESTRICTIVE TITLE DEED  
CONDITIONS**

**ERF 723 VERMONT**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

## **MOTIVATION REPORT**

### **1. BACKGROUND**

The owners of Erf 723 Vermont, Mr. J.N.G. Coertze and Mrs. T. Coertze have instructed the company Plan Active to apply for the removal of restrictive Title Deed conditions applicable to the subject erf.

The owners want to develop Erf 723 Vermont and also to erect a second dwelling on the erf in the future. The Title Deed applicable to Erf 723 Vermont contains a restriction that stipulates that only 1 dwelling may be erected on the property. Because the owners have to remove the mentioned restrictive Title Deed condition we are also applying to have the other Title Deed restrictions that are more restrictive than the current land use rights and development parameters prescribed in the Overstrand Municipality Zoning Scheme removed.

Erf 723 Vermont is 1211m<sup>2</sup> in extent and is held by title deed number T12632/2017.

## 2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

## 3. DESIRABILITY

### 3.1 PROPERTY DESCRIPTION

The subject property is situated on the corner of Malmok Crescent and Petrel Street, Vermont. Please refer to the enclosed locality plan. Erf 723 Vermont is 1211m<sup>2</sup> in extent and it is situated in a predominantly residential area in close proximity to the coast.

### 3.2 ZONING

Erf 723 Vermont is zoned Residential Zone I and is currently vacant. Surrounding properties are zoned for single residential purposes and are being used as such.

### 3.3 LAND USE

Erf 723 Vermont is currently vacant.

Land uses that surround erf 723 Vermont are single dwellings, vacant erven, public roads and public open spaces. It is therefore evident that erf 723 Vermont is within a predominantly residential area.

### 3.4 PROPOSAL

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's By-law on Municipal Land Use Planning, 2016, for the removal of restrictive Title Deed conditions.

It is the intention of the owners of erf 723 Vermont to develop the erf within the current land use rights as prescribed in the Overstrand Municipal Zoning Scheme Regulations that includes a second dwelling unit. In order to do so it would be required that we apply for the removal of restrictive Title Deed conditions that are more restrictive than the Overstrand Municipal Zoning Scheme Regulations.

The detail of the application can be described as follows:

#### 3.4.1 Proposed Removal of Restrictive Title Deed Conditions

Erf 723 Vermont is 1211m<sup>2</sup> in extent and the owners intend to erect a second dwelling unit in the future on Erf 723 Vermont.

The enclosed Title Deed, T12632/2017 contains the following Title Deed restrictions of which E.(c) and E.(d) will have to be addressed:

- Page 4, paragraph E.(c):
  - (c) No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the transferor company.
- Page 4, paragraph E.(d):
  - (d) Unless the permission of the transferor company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one Lot, and in particular, subject to any permission granted as aforesaid, no structure of the type commonly known as "flats" shall be erected on the said property.

## Motivation report

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

### 6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)

#### Use of the property

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

- (a) **Primary uses are:** day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;
- (b) **Building lines**
  - (i) **Street building line**  
The street building line is determined in accordance with the net erf area as listed in the table below:

Net erf area	Street building line
Less than 400 m <sup>2</sup>	2,0 m
400 m <sup>2</sup> and greater	4,0 m

If paragraphs E.(c) and E.(d) of the above mentioned Title Deed are not removed the owner will be restricted to use the property for single residential purposes only and will not have the possibilities to exploit his other primary land use rights such as the construction of a second dwelling unit, the use of a portion of the dwelling as home occupation or guest rooms (2).

Please take note that the proposed removal of the restrictive Title Deed conditions is mainly because they are more restrictive than the land use restrictions under the current zoning of the property that is Residential Zone 1. It is not proposed that we depart from any land use restrictions or development rules as prescribed in the Overstrand Municipality Zoning Scheme, under a Residential Zone 1 zoning. It is therefore also the reason why clause E.(a) on page 3 of the Title Deed is not applied for to have it removed, due to the fact that the Overstrand Municipality Zoning Scheme has more restrictive building lines than the building lines described in the Title Deed.

## Motivation report

Building plans will be submitted in the future once the owners are ready to develop the subject erf. The building plans will conform to all land use restrictions and development rules as prescribed under the current zoning, Residential Zone I, in the Overstrand Municipality Zoning Scheme Regulations.

### 3.5 ACCESS

The property is situated on the corner of Malmok Crescent and Petrel Street, Vermont. The exact position of the access point to the subject erf will be confirmed with a building plan submission, when the new owners intend to build.

### 3.6 SERVICES

Due to the fact that Erf 723 Vermont is within an already developed residential area municipal services already exist to which the erf can connect to. We are not applying for any additional land use rights, but to have the restrictive Title Deed conditions removed in order to utilise the erf as prescribed in the Overstrand Municipality Zoning Scheme Regulations. Because we are not applying for a change of land use by means of a rezoning or consent use or creating additional even the current services provided to Erf 723 Vermont will be sufficient.

### 3.7 TITLE DEED

The title deed 12632/2017 has restrictions that need to be removed in order for the owners to utilise the subject property to its fullest potential.

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

- Page 4, paragraph E.(c):

(c) No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the transferor company.

- Page 4, paragraph E.(d):

(d) Unless the permission of the transferor company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one Lot, and in particular, subject to any permission granted as aforesaid, no structure of the type commonly known as "flats" shall be erected on the said property.

The reasons for the removal of the restrictive Title Deed conditions have already been covered as per paragraph 3.4.1 above.

### 3.8 FORWARD PLANNING

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

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for residential purposes. The residential zoning of the subject erf will be retained and no additional land use rights are applied for with this application. No additional erven will be created.

#### **Overstrand Growth Management Strategy**

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 1 that consists mainly of Vermont's single residential erven. No densification of this planning unit is proposed.

The proposed application for the removal of restrictive Title Deed conditions is in line with the proposals of the Overstrand Wide Spatial Development Framework and the Overstrand Growth Management Strategy.

It is therefore our opinion that the proposed removal of the restrictive Title Deed conditions can be supported and that the proposal is also in line with the current land use trends for the area.

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

#### **3.9.1 HERITAGE VALUE**

Erf 723 Vermont is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is vacant and not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

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

#### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

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

### **3.10 PLANNING PRINCIPLES**

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



Spatial Justice: The proposed removal of restrictive Title Deed conditions will be in line with the current land use tendencies. The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribed in the Title Deed.

Spatial sustainability: The proposed removal of restrictive Title Deed conditions is in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Vermont. Spatially the land use will be in line with the residential character of the area.

Efficiency: The restrictive Title Deed conditions to be removed are more restrictive than the land use restrictions prescribed in the Overstrand Municipality Zoning Scheme under the current zoning that is Residential Zone 1. It is therefore proposed that only the land use restrictions in terms of the Overstrand Municipal Zoning Scheme under a zoning of Residential 1 apply and not the restrictions prescribed in the Title Deed.

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

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

#### 4. RECOMMENDATION

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

- The proposed removal of restrictive Title deed conditions of Erf 723 Vermont falls within the existing land use tendencies in the area;

## Motivation report

- There will be no impact on services;
- The proposed removal of restrictive Title Deed conditions will not have a negative impact on the current character and land values of the surrounding erven.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of restrictive Title Deed conditions applicable to Erf 723 Vermont.

**340**

DYKES VAN HEERDEN SLABBERT  
HOPKINS  
Unit E4/2  
Edward IV  
120-122 Edward Road  
Bellville 7530  
South Africa

Prepared by me

  
CONVEYANCER  
LISE COETZEE

Deed description		Amount	Rate %
Purchase price/Value		970 000,00	880,00
Mortgage cap of Amount			
Balance for completion			

T000012632 / 2017

### DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

**LISE COETZEE**

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, the said appearer being duly authorised thereto by a Power of Attorney which said Power of Attorney was signed at Bellville on 25 January 2017 granted to him by

**RETIEF CLAASSENS DU TOIT**  
Identity Number 730725 5015 08 5  
Unmarried

DATA / CAPTURE  
13 MAR 2017  
GONCALVES BELINDA

DATA / VERIFY  
23 MAR 2017  
LARNY FATGEYAH

GhostConvey 15.9.6.8

And the appearer declared that his said principal had, on 28 December 2016, truly and legally sold by Private Treaty, and that he, the said Appearer, in his capacity aforesaid, did, by virtue of these presents, cede and transfer to and on behalf of:

1. **JOHANNES NICOLAAS GERHARDUS COERTZE**  
Identity Number 600731 5107 08 5  
Married out of community of property
2. **TESSE COERTZE**  
Identity Number 610404 0106 08 4  
Married out of community of property

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

ERF 723 VERMONT  
IN THE OVERSTRAND MUNICIPALITY  
DIVISION CALEDON  
PROVINCE OF THE WESTERN CAPE

IN EXTENT 1211 (ONE THOUSAND TWO HUNDRED AND ELEVEN)  
Square metres

**FIRST TRANSFERRED** by Deed of Transfer Number T5157/1951 with Diagram No. 2533/1946 relating thereto and held by Deed of Transfer Number T64100/2013

- A. **SUBJECT** to such conditions as are referred to in Deed of Transfer Number T2258/1921.
- B. **ENTITLED** to the benefit of the rights mentioned in the endorsement dated 16<sup>th</sup> September 1924 on said Deed of Transfer Number 2258/1924, which reads as follows, namely:
 

"By Notarial Deed dated the 31<sup>st</sup> July 1924, (1) conditions (1) in transfer number 7685 dated 9<sup>th</sup> September 1913 re sale of liquor has been cancelled on (2) conditions (2) in said Transfer 7685 re water rights have been varied."
- C. **SUBJECT FURTHER** to the conditions mentioned in the Notarial Deed dated 11<sup>th</sup> April 1930 annexed to Deed of Transfer dated 25<sup>th</sup> September 1925, number 9286, and referred to in the endorsement thereon dated 29<sup>th</sup> April 1930, reading as follows, namely:

Page 3

"By Notarial Deed dated 11.4.1930 a restriction has been imposed upon the remainder of the land held hereunder that no liquors shall be sold thereon without the consent of the present or future proprietors of the property held under Transfer 53 dated 5<sup>th</sup> January 1918 as will more fully appear on reference to the copy annexed hereto."

- D. **SUBJECT FURTHER** to the following condition in Deed of Transfer Number T2287/1935, which reads as follows:

"Subject to the conditions that the present and future proprietors of all erven sold and transferred in the Township of Vermont (as shown on the General plan Number V.34) shall be entitled by means of the existing system of distribution laid down and situate on the said remainder extent of Lot No. 1 of Onrust River and Rheeziht, to a reasonable supply of water for domestic purposes if available provided that the owners of this property shall in no way be responsible to provide water for such purposes if not available and that they shall have the right to impose a reasonable charge for any repairs and maintenance of the various pipelines and for the use of and distribution of the water."

- E. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer Number T5157/1951 imposed in favour of South Western Districts Land and Finance Corporation Limited (hereinafter referred to as the Transferor Company) and its successors in title of the remainder of the land held by Deed of Transfer Number T7923/1935, namely:

- (a) Save with the consent of the Transferor company in writing no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 3,15 metres to the street line which forms the boundary of the said property, and no such building or structure shall be situate within 1,57 metres of the lateral boundary common to any adjoining Lot, nor save with the consent aforesaid, may the said property (or any lot if the property sold comprises more than one Lot) be subdivided.

GhostConvey 15.9.6.8

## Page 4

- (b) No building shall be erected on the said property unless plans (including one showing sitting of proposed buildings) and specifications have been previously submitted and are approved by the transferor company in writing in addition to the requirements of any Local Authority in control over the area of the Township.
- (c) No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the transferor company.
- (d) Unless the permission of the transferor company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one Lot, and in particular, subject to any permission granted as aforesaid, no structure of the type commonly known as "flats" shall be erected on the said property.
- (f) The owner of the said property shall be obliged to allow the drainage and sewerage on any other lot to be conveyed over such property if deemed necessary by the Local Authority and in such matter and in such position as may from time to time be reasonable required by the said Local Authority.

All the conditions (a) to (d) and (f) set out above shall be binding on the transferee and his successors in title to the said property but the said transferor company reserves the right to sell any other lot or lots in the said Vermont Township free from any one or more of the aforesaid conditions (a) to (d) and/or subject to other conditions.

After the said transferor company has ceased to be the owner of any property under said Deed of Transfer Number 7023/1935 or of any lot in the Vermont Township under any deed of title, the powers of permission and approval vested in the said transferor company under the aforesaid conditions (a) to (d) inclusive shall be exercisable by the Local Authority for the time being in control of the area of Vermont Township.

*GhostConvey 15.9.6.8*

Page 5

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

**RETIEF CLAASSENS DU TOIT, Unmarried**

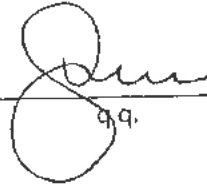
heretofore had to the premises, did in consequence also acknowledge him to be entirely dispossessed of, and disentitled to the same, and that by virtue of these presents, the said

1. **JOHANNES NICOLAAS GERHARDUS COERTZE, Married as aforesaid**
2. **TESSE COERTZE, Married as aforesaid**

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 R970 000,00 (NINE HUNDRED AND SEVENTY THOUSAND RAND) .

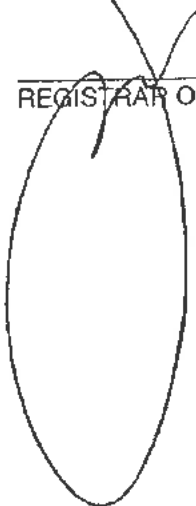
IN WITNESS WHEREOF, I the said Registrar, together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE and EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 2017 -03- -9

  
\_\_\_\_\_

In my presence

REGISTRAR OF DEEDS

  
\_\_\_\_\_

GhostConvey 15.9.6.8



Delivered by hand  
Hermanus Municipality  
Magnolia Street  
Hermanus  
7200

FILE NO: EL 723-HVM
SCAN NO:
COLLABORATOR NO:
1078051



19 September 2017

Dear Sirs

TP-A Theart  
(Hollivier)

Re: Erf 723 Vermont - Removal of Restrictive Title Deed Conditions

I am writing to you as you have taken over plan approval, ect from the transferor company. I have in my possession an unregistered letter concerning the above, there is also apparently a registered letter which gives the final date for objections as 22 September 2017. I feel that this is too soon as some interested parties are away and have not received this letter from Plan Active Town Planners.

I am not against the erection of two buildings on the erf, providing that they to be for the personal use of the registered owners or their family. I am however against the erf being used for the purpose of a "day care centre" or "guest rooms" as amongst reasons this will disturb the peaceful nature of the area and also possibly lead to the properties in the area experiencing a decrease in valuation.

I trust that this request will have a favorable outcome.

Owner: Mr PA Bakker *Bakker*  
 ID No: 4408260027082  
 Cell no: 0825660844  
 Erf: 604  
 Address: 13 Malmok Crescent, Vermont

MAIN CORRESPONDENCE -

↑  
Ker. mon @ telkomsa.net

Owner: MCKEMY STEPHENS  
 ID No: 4511035006081  
 Contact no: 0825761839  
 Erf: 605  
 Address: 15 Malmok Crescent

*Stephens*  
 561140044084  
 605  
 15 Malmok Crescent Vermont.

Owner: A.L. CALDWELL  
 ID No: 6605030155089 *Caldwell*  
 Contact no: 0826031894  
 Erf: 724  
 Address: 18 Malmok Crescent, Vermont

Owner: MR AP & JS VENTER *for*  
 ID No: 471135027082 4809220086686  
 Contact no: 0825693825 0833310559  
 Address: 2 PEREL STREET VERMONT ERF 711

*for*

Owner: *Dhoni*  
 Contact no: 0832384310  
 ID no: ~~4904288~~ 4904265102086  
 Erf: 1485  
 Address: 8 Petrel Vermont

Received: *[Signature]*  
 OVERSTRAND MUNICIPALITY  
 DEPARTMENT: TOWN PLANNING  
 P O BOX 20, HERMANUS, 7200

21 SEP 2017

Owner: Leonie v. Loggenberg  
 Contact: 028 316 2465  
 Id: 421220 0005186  
 Erf: 1484  
 Address: 10 Petrel crescent

*L. Loggenberg*



TR A Theart  
C H Olivier

**Loretta Gillion - OBJECTION TO APPLICATION FOR REMOVAL OF TITLE DEED RESTRICTIONS OF ERF 723 VERMONT**



**From:** Mandy Caldwell <amandac05@hotmail.co.za>  
**To:** "loretta@overstrand.gov.za" <loretta@overstrand.gov.za>  
**Date:** 25/09/2017 12:15 PM  
**Subject:** OBJECTION TO APPLICATION FOR REMOVAL OF TITLE DEED RESTRICTIONS OF ERF 723 VERMONT

Dear Sir / Madam

Kindly take note that I object to the application for removal of title deed restrictions of erf 723 Vermont due to the fact that it is directly next door to my property, erf 724 Vermont. This is an extremely peaceful and tranquil suburb and do not want it spoilt in any way. I certainly do not want the value of my property or the properties in the area to be dragged down due this application for removal.

I vehemently object to the following:

1. Day care centre;
2. Canteen;
3. Hotel;
4. Restaurant;
5. Shop;
6. Factory;
7. Industry or any place of business.

I would be amiable to the request for a "granny cottage" or "flatlet" on the condition that the said properties be no higher than single storey.

For any further information kindly contact me.

Regards

Amanda Caldwell  
 Erf 724 Vermont  
 18 Malmok Street  
 Vermont  
 Tel: 028 - 316 3768  
 Cell: 082 603 1894

FILE NO:	EL 723
	Vermont
SCAN NO:	38
COLLABORATOR NO:	1079067

TP

26 SEP 2017

The Municipal Manager  
Overstrand Municipality  
Hermanus Administrative  
PO Box 20  
Hermanus  
7200



TR A Theart  
(H Olivier)

Proposed Removal of Restrictive Title Deed Conditions: ERF 723

Sir/Madam

With reference to the documents received from Plan Active dated 25 August 2017 requesting permission for removal of Title Deed Restrictions of Erf 723, Vermont we note the following:

- The owners would like to erect a second dwelling on the property.
- The owners would like to make use of all their current primary land usage rights under Residential Zone 1 which includes other usage rights such as a day care centre.
- The owners are not clear as to the intended usage of the second dwelling that could be used as a day care centre.

As such we object to the removal of Title Deed Restrictions of Erf 723.

Kind Regards

Elizabeth Victor

FILE NO:	EL 723-HVM
SCAN NO:	27
COLLABORATOR NO:	1080407

TP  
29 SEP 2017

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

6 Magnolia St / Str  
 PO Box / Posbus 296  
 HERMANUS  
 7200

Tel: (028) 313 1673  
 Fax / Faks: (028) 312 1351

Email: [planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)  
 Website: [www.planactive.co.za](http://www.planactive.co.za)



Our reference: PA17061  
 Your reference: 723 HVM (3721)

16 November 2017

THE MUNICIPAL MANAGER  
 OVERSTRAND MUNICIPALITY  
 P.O. BOX 20  
 HERMANUS  
 7200

FOR ATTENTION: Mr. H. Olivier

Sir

TRA Theart  
 CH Olivier

FILE NO:	EL 723
	Vermont
SCAN NO:	33
COLLABORATOR NO:	1102861

**ERF 723 VERMONT - PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS**

Your letter dated 1 November 2017 and the objections from Mrs. E. Victor, Mrs. A. Caldwell and a petition attached thereto refer. Our comments on the objections received are as follows:

The owners would like to develop Erf 723 Vermont and also to erect a second dwelling on the erf in the future. The Title Deed applicable to Erf 723 Vermont contains a restriction that stipulates that only 1 dwelling may be erected on the property. Because the owners have to remove the mentioned restrictive Title Deed condition we are also applying to have the other Title Deed restrictions that are more restrictive than the current land use rights and development parameters prescribed in the Overstrand Municipality Zoning Scheme removed.

Title Deed, T12632/2017 contains the following Title Deed restrictions of which E.(c) and E.(d) will have to be addressed:

- Page 4, paragraph E.(c):

(c) No canteen, hotel, restaurant, shop, factory, industry or any place of business whatsoever shall be opened or conducted on the said property except with the consent in writing of the transferor company.

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; MSAP1  
 Pauline Spronk: B (Soc Sc) US, BA Hon (UNISA)  
 Meriké Lerm: B. Art et Scien Cum Laude (Town Planning) UNW; SACTRP

- Page 4, paragraph E.(d):

- (d) Unless the permission of the transferor company in writing be obtained under condition (c) above the said property shall be used for residential purposes only and only one dwelling together with such outbuildings as are ordinarily required for domestic purposes, shall be erected on any one Lot, and in particular, subject to any permission granted as aforesaid, no structure of the type commonly known as "flats" shall be erected on the said property.

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

#### **6.1 RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)**

##### **Use of the property**

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

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

(b) **Building lines**

- (i) **Street building line**  
The street building line is determined in accordance with the net erf area as listed in the table below:

<b>Net erf area</b>	<b>Street building line</b>
Less than 400 m <sup>2</sup>	2,0 m
400 m <sup>2</sup> and greater	4,0 m

If paragraphs E.(c) and E.(d) of the above mentioned Title Deed are not removed the owner will be restricted to use the property for single residential purposes only and will not have the possibilities to exploit his other primary land use rights such as the construction of a second dwelling unit, the use of a portion of the dwelling as home occupation or guest rooms (2).

Please take note that the proposed removal of the restrictive Title Deed conditions is mainly because they are more restrictive than the land use restrictions under the current zoning of the property that is Residential Zone 1.

It is not proposed that we depart from any land use restrictions or development rules as prescribed in the Overstrand Municipality Zoning Scheme, under a Residential Zone 1 zoning. It is therefore also the reason why clause E.(a) on page 3 of the Title Deed is not applied for to have it removed, due to the fact that the Overstrand Municipality Zoning Scheme has more restrictive building lines than the building lines described in the Title Deed.

Building plans will be submitted in the future once the owners are ready to develop the subject erf. The building plans will conform to all land use restrictions and development rules as prescribed under the current zoning, Residential Zone 1, in the Overstrand Municipality Zoning Scheme Regulations.

In order to accommodate all the objectors, the owner has agreed that the municipality imposes the following conditions of approval, restricting the land use of Erf 723 Vermont:

That Erf 723 Vermont may not be used as a:

- Day care centre;
- Canteen;
- Hotel;
- Restaurant;
- Shop;
- Factory;
- Industry.

We hope you find our comments acceptable and that you would be in a position to finalize the application.

Yours faithfully



**J V Mc LACHLAN**  
**PLAN ACTIVE**

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIONS: ERF 723, VERMONT (3721)**

Stormwater (SW) : In order  
Electricity : Escom  
Water : In order  
Sewer : In order  
Roads and traffic : In order

**Conditions**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that should additional services connections be required, the owner will be responsible for the payment of bulk services levies;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
4. that stormwater be allowed to discharge through Erf 723, Vermont, unobstructed;
5. that no on-street parking be allowed.

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

12/9/2017  
**DATE**