



1. Introduction	
<p><b>a. Brief and Background</b></p> <p>Refer to <b>Annexure A</b> for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by owner of the property, Strupa Ingenieursdienste PTY LTD, to prepare and submit an application for the removal of title deed conditions in terms of the relevant legislation, for Erf 106, Priestlaya Road, Rooi-Els.</p>
2. The Application Proposal:	
<p><b>a. Application Proposal: Title Deed Conditions to be removed</b></p> <p>Refer to <b>Annexure B</b> for the title deed</p>	<p>The owner intends to develop the property, and subsequently wishes to first remove all potential restrictive, non-applicable and irrelevant title conditions, which could potentially restrict the future development of the application area and utilize the application area optimally.</p> <p>The restrictive title deed conditions that are proposed to be removed and considered either:</p> <ul style="list-style-type: none"> <li>• no longer relevant or applicable,</li> <li>• potentially restrictive,</li> <li>• the parties mentioned in the title deed no longer exists</li> <li>• outdated</li> <li>• regulated by other legislation</li> <li>• no longer serves any purpose in the title deed.</li> </ul> <p>The title deed condition proposed to be removed are Section A, B, C, D, &amp; F.D.(a) to F.D.(g) from title deed no T15960/2016 which reads as follow:</p>
<p><b>b. Application:</b></p> <p>The application form is attached as <b>Annexure D</b>.</p>	<p>Application is hereby made in terms of Chapter IV, Section 1692)(f) of the Overstrand By-Law on Municipal Land Use Planning 2015, for the removal of Title Conditions:</p> <p>A., B., C., D., E. F.A., F.B., F.C., F.D.(a) to F.D.(g) from title deed no T15960/2016 reading as follows:</p> <p>A. Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;</p> <p>B. Not Subject to condition B on page 2 of Deed of transfer No. T 48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.</p> <p>C. SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:</p> <p>“By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer.”</p> <p>D. SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which conditions read as follows:</p> <p>“On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government.</p>

That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure.”

E. SUBJECT FURHTER and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:

“Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10<sup>th</sup> March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No. 8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and agress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto.”

F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows:

- A. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No 401 dated 17 October, 1935, and in the memorandum which accompanied the said regulations.
- B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven to be conveyed across this erf if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
- C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
- D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions in any such condition should at any time be suspended or

relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such or conditions as he may impose.

- (a) It shall not be subdivided;
- (b) It shall be used for residential purposes only;
- (c) Not more than one building, excluding a licensed hotel, maisonettes and semidetached houses, together with such outbuildings as are ordinarily required to be used therewith, shall be erected thereon;
- (d) Not more than half the area thereof shall be built upon;
- (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters in height measured from the 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;
- (f) Pending the establishment of 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 if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.
- (g) To the following conditions contained in Deed of Transfer No. 1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any ore 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-sites or cowsheds 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, not 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;
  - (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;
  - (f) No noxious trade or noxious business shall be carried on, on this erf;
  - (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.

### 3. Site Information

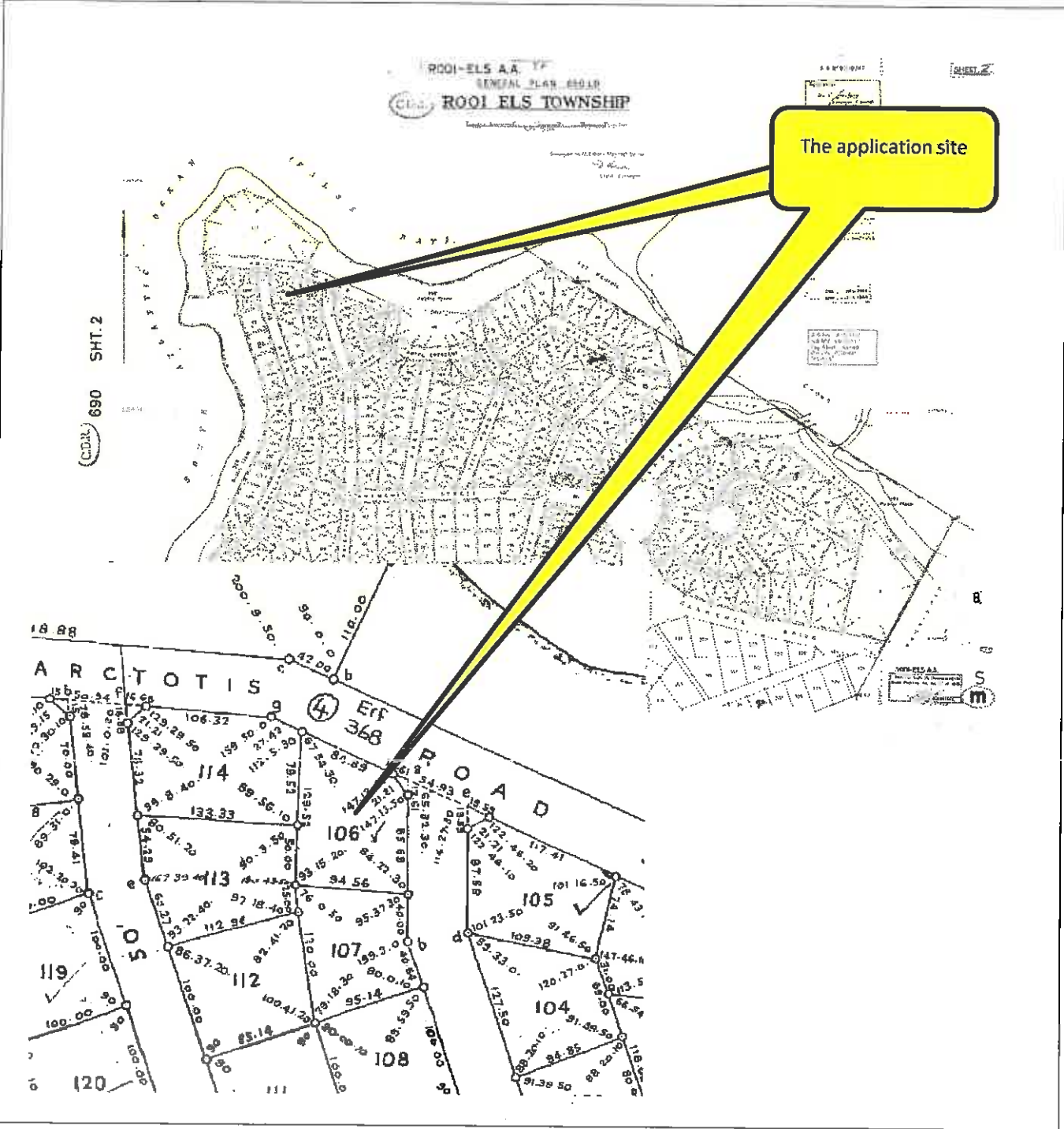
**a. Property Description and Title Deed**

Property	Extent	Title Deed	Registered Owner
Erf 106 Rooi-Els	1031m <sup>2</sup>	T15960/2016	Strupa Ingenieursdienste PTY LTD

The title deed T 15960/2016 contains several potential restrictive and inappropriate title conditions. The Conveyancer, Me Monica Korf issued a certificate confirming that conditions can and need to be removed to utilise Erf 106 Rooi-Els for future improvement and development.

Refer to Annexure E for the SG Diagram and Annexure C for the Conveyancer's Certificate

The Surveyor General Plans are reflected in the following sketch here-below:



**b. Location:**

Refer to **Annexure F** for the locality plans.

**Regional Context:**

The application area is located within Rooi-Els. Within the regional context, Rooi-Els is a settlement in Overberg District Municipality located south-east of the Cape Town Central Business area and approximately 80km by road along the scenic and popular Clarens Drive, in the Western Cape province of South Africa. It was declared a township in June 1948, and is situated 5 km north of Pringle Bay, on the eastern shore of False Bay.[2]

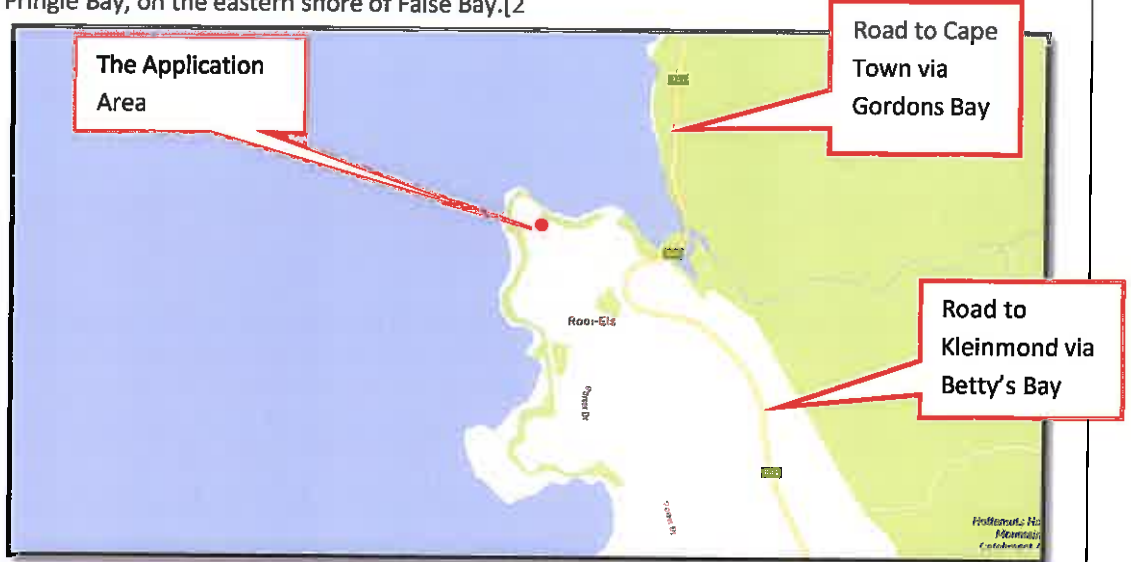


Figure 2: Locality Plan – Regional Context

**Local Context:**

Within the local context the application area is located on the northern side of Rooi Els at the end of a Cul-de-Sac in Priestleya Road as shown in the following Google image:

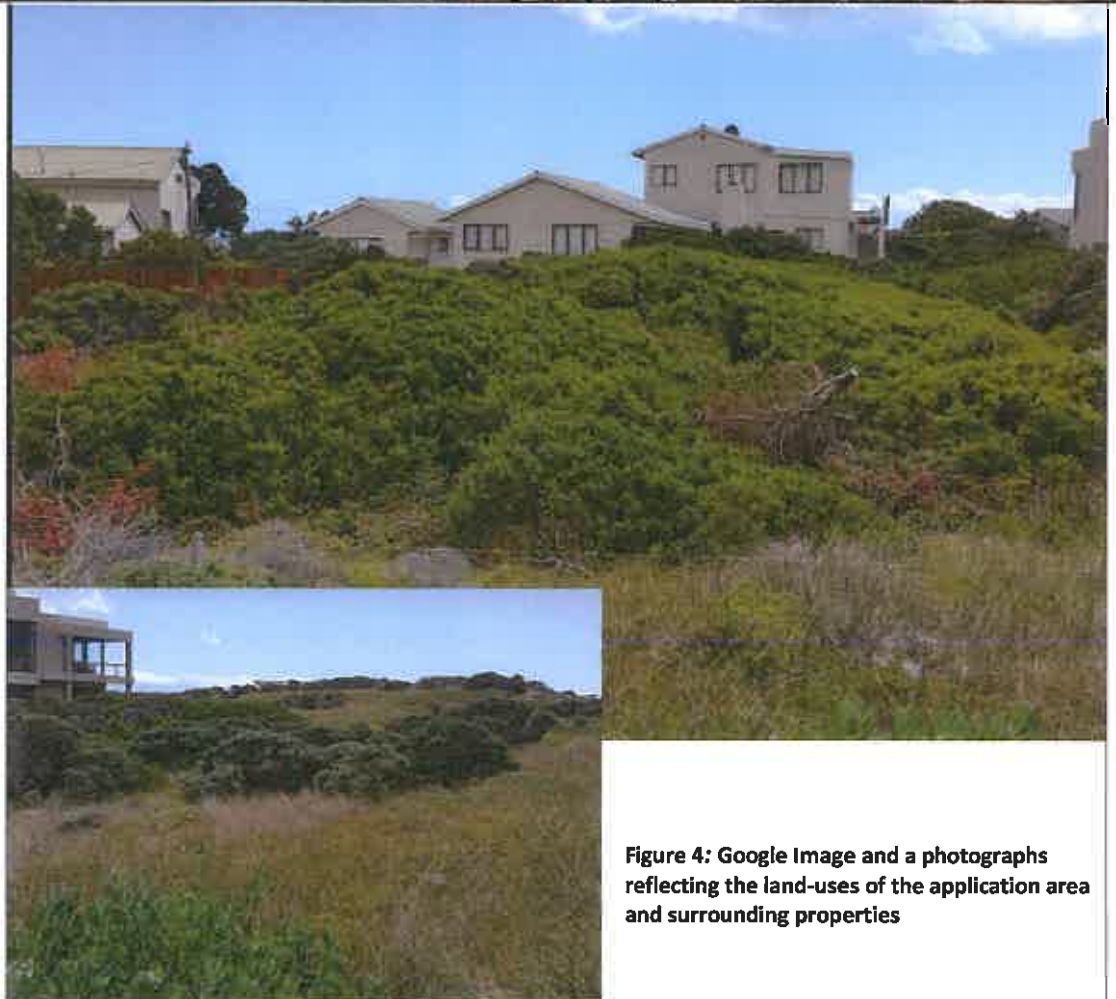


Figure 3: Locality Plan – Local Context

**c. Land Use:**

Refer to **Annexure H** for the Land Use Plan.

The application area is currently vacant. The surrounding properties to the east, south and west are developed with single residential dwellings houses. An open space between the application area and the coast line is located north of the application site.

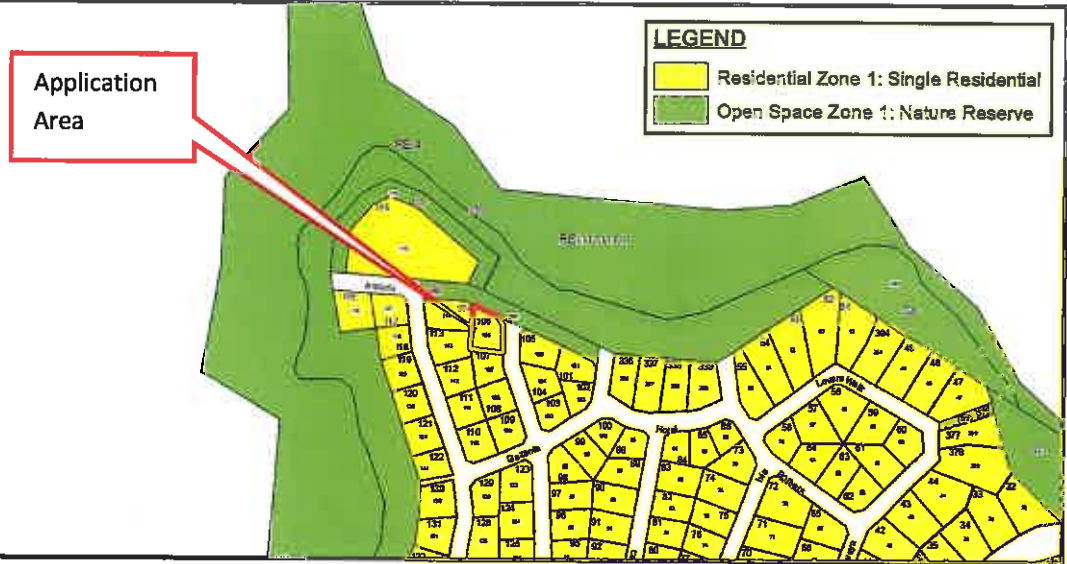


**Figure 4: Google Image and a photographs reflecting the land-uses of the application area and surrounding properties**

**d. Zoning:**

The application area, Erf 601, Rooi-Els is zoned Residential Zone 1: Single Residential in terms of the current zoning scheme.

Refer to the Extract of Hermanus Final Zoning 2014 map attached as Annexure G



**Figure 5: Extract from the Overstrand Municipality: Hermanus Final Zoning 2014 map**

In terms of the zoning scheme regulations the following summarized development parameters for Erf 106, Priestlaya Road, Rooi-Els as per the Planning Scheme Regulation, are applicable:

Parameters	Existing Zoning	
Zoning	RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL (SR1)	
Primary Use	Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;	
Consent Uses	Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.	
Coverage	50%	
Height	8m	
Building lines	Street	4m
	Side	2m
	Rear	2m
Parking	2 bays per du	



#### 4. The application motivation

<p><b>Motivation for the application:</b></p>	<p><b>1. Introduction and overview</b></p> <p>The current title deed includes several dated and inappropriate title deed conditions transferred from previous title deeds over time with the oldest document dating as far back as 1839.</p> <p>Documents referred to in the said title deed T15960/2016 includes:</p> <ul style="list-style-type: none"> <li>• Certificate of Consolidated Title No.T3720/1937 (year: 1937)</li> <li>• Deed of Transfer No. 6068/1940 (year: 1940)</li> <li>• Deed of Grant (year: 1839)</li> <li>• Deed of Transfer No.T1672/1956 (year: 1956)</li> <li>• Ordinance 33 of 1934 (year: 1934)</li> </ul> <p>Between 1839 and 1956, land use rights were predominantly managed by virtue of conditions within the title deed. The municipality has since introduced zoning schemes to manage land-use within its authority areas.</p> <p>The conditions being applied for to be removed are either not relevant any more or managed by virtue of the latest Overstrand Municipal Zoning Scheme. A motivation for each of the title deed conditions are provided in the following section of the report:</p>
Condition	Motivation for the removal of the condition
<p>A. <i>Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;</i></p>	<p>This condition refers to the pivot deed. As indicated in the conveyancer certificate, the same restrictive clauses are found in this pivot deed than in title deed T15960/2016 (the subject property's title deed).</p> <p>Also referred to the <b>Annexure B2</b> where the specific title deed conditions are referenced to the subject property's title deed conditions.</p> <p>Subsequently it is considered appropriate to remove this condition.</p>
<p>B. <i>Not Subject to condition B on page 2 of Deed of transfer No. T 48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.</i></p>	<p>In this instance the, it is indicated that the condition is "NOT SUBJECT to" and therefore this condition is subsequently not considered applicable to the property and serves no purpose.</p> <p>This specific condition means that the mining rights over the property is cancelled.</p> <p>Therefore it is also considered appropriate to remove this condition from Title Deed T15960/2016, the subject property.</p>
<p>C. <i>SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:</i></p> <p><i>"By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the</i></p>	<p>Title Condition C, as created in 1940, restricts the land-use and type of buildings that may be built on the application area.</p> <p>The current Overstrand Municipal zoning scheme regulates the land use rights whilst the National Building Regulations and Standards Act No. 103 regulates the building types and methods.</p> <p>In essence the said title deed is duplicated and can subsequently potentially create confusion or even an oversight. Therefore it is recommended that the land-use and building specifications be dealt with by only the</p>

remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer.”

D. SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which conditions read as follows:

“On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government. That the road and throughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure.”

generally accepted norm being the Overstrand Municipality Zoning Scheme and the National Building Regulations and Standards, Act no 103.

In summary, Title Condition D makes provision to ensure access to a farm, which according to information was a part of a former whaling station. Rooi Els is now a town with erven and roads to provide access to the different registered portions of the area.

More specific, Erf 106 Rooi Els is a registered erf that will not restrict any access to any area or farm portion.

Furthermore, due to the urban nature as well as the conservation of the application area it is considered unreasonable to allow the public to unteam cattle, to fish from the application area or to bind the owner of the application in terms of cultivation requirements.

Therefore this condition is considered completely inappropriate to the erf and is recommended to be removed.

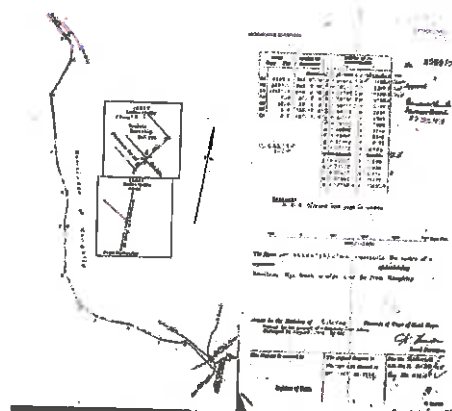


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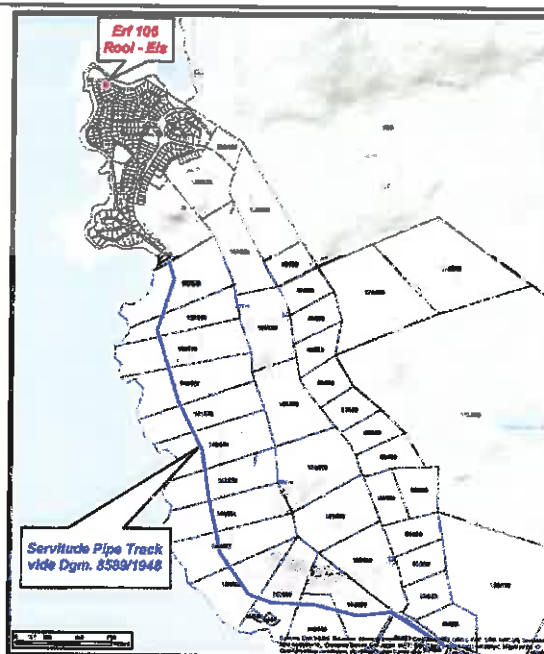
“Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10<sup>th</sup> March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No.

The pipeline refer to does not affect the property as reflected in the following servitude diagram and sketch (also refer to Annexure I)



8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and egress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto.”



F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows.

A. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No 401 dated 17 October, 1935, and in the memorandum which accompanied the said regulations.

This clause specific refers to “Any words and expressions used” under the provision of the Ordinance 33 of 1934. This validity of the said ordinance expired on 30 June 2013 in terms of Section 14(2) of Land Use Planning Ordinance, 1985 and is therefore not applicable anymore. Also refer to Circular 19/2012 from the Department of Environmental Affairs and Development Planning attached as **Annexure J**.

B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven to be conveyed across this erf if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.

This is a condition taken up in the recent implemented Overstrand By-Law on Municipal Land-Use Planning, 2105, Section 29 reading as follows:

“29. Services arising from subdivision

Subsequent to the granting of an application for subdivision in terms of this By-law the owner of any land unit originating from the subdivision must—

(a) allow without compensation that the following be conveyed across his or her land unit in respect of other land units:

- (i) gas mains;
- (ii) electricity cables;
- (iii) telephone cables;
- (iv) television cables;
- (v) other electronic infrastructure;
- (vi) main and other water pipes;

	<p>(vii) foul sewers;  (viii) storm water pipes; and  (ix) ditches and channels;</p> <p>(b) allow the following on his or her land unit if considered necessary and in the manner and position as may be reasonably required by the Municipality:</p> <p>(i) surface installations such as mini-substations;  (ii) meter kiosks; and  (iii) service pillars;</p> <p>(c) allow access to the land unit at any reasonable time for the purpose of constructing, altering, removing or inspecting any works referred to in paragraphs(a) and (b); and</p> <p>(d) receive material or permit excavation on the land unit as may be required to allow use of the full width of an abutting street and provide a safe and proper slope to its bank necessitated by differences between the level of the street as finally constructed and the level of the land unit, unless he or she elects to build retaining walls to the satisfaction of and within a period to be determined by the Municipality.”</p> <p>Subsequently this condition in the said title deed is not necessary any more.</p>
<p>C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.</p>	<p>Refer to the paragraph here-above with specific reference to Section 29(d) of the Overstrand Municipal By-Law on Land Use Planning, 2015 where this condition is covered and therefore considered appropriate to remove.</p>
<p>D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such or conditions as he may impose.</p> <p>(a) Is shall not be subdivided;  (b) It shall be used for residential purposes only;  (c) Not more than one building, excluding a licensed hotel, maisonettes and semi-detached houses, together with such outbuildings as are ordinarily required to be used therewith, shall</p>	<p>These conditions refer to the typical land-use management conditions. The Overstrand Municipality Zoning Scheme effected on 1 January 2014 contains conditions relating to the land use management of all erven within the Overstrand Municipality, hence resulting to a duplication between conditions D(a) to (g) of title deed no T15960/2016 and that of the Overstrand Municipality Zoning Scheme, 2014.</p> <p>Subsequently the need to rather use the latest more applicable conditions compared to the dated conditions found the said title deed no T15960/2016 of Erf 106 Rooi Els.</p> <p>In this instance it will also contribute the more efficient use of the property with lesser building lines (common as well as street building lines)</p>

be erected thereon;

- (d) Not more than half the area thereof shall be built upon;
- (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters in height measured from the 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;
- (f) Pending the establishment of 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 if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.
- (g) To the following conditions contained in Deed of Transfer No.1672/1956 imposed by Hangklip Beach Estates Limited 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-sites or cowsheds shall be erected or carried on by any person whomsoever on this erf;
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- (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;
- (f) No noxious trade or noxious business shall be carried on, on this erf;
- (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.

## 2. The proposed application

The purpose of this application is to remove dated title deed conditions to allow for the property to be planned and developed in terms of the relevant zoning scheme instead of the duplicated and restrictive title deed conditions.

## 3. Existing character of the environment

The application area is within an area where mostly holiday homes are developed and is adjacent to a nature reserve that includes dunes and the beach. The area is within an urban area with mostly single residential zoned properties. The application area and surrounding properties falls within a No Densification Zone in terms of the Overstrand Growth Management Strategy 2010.

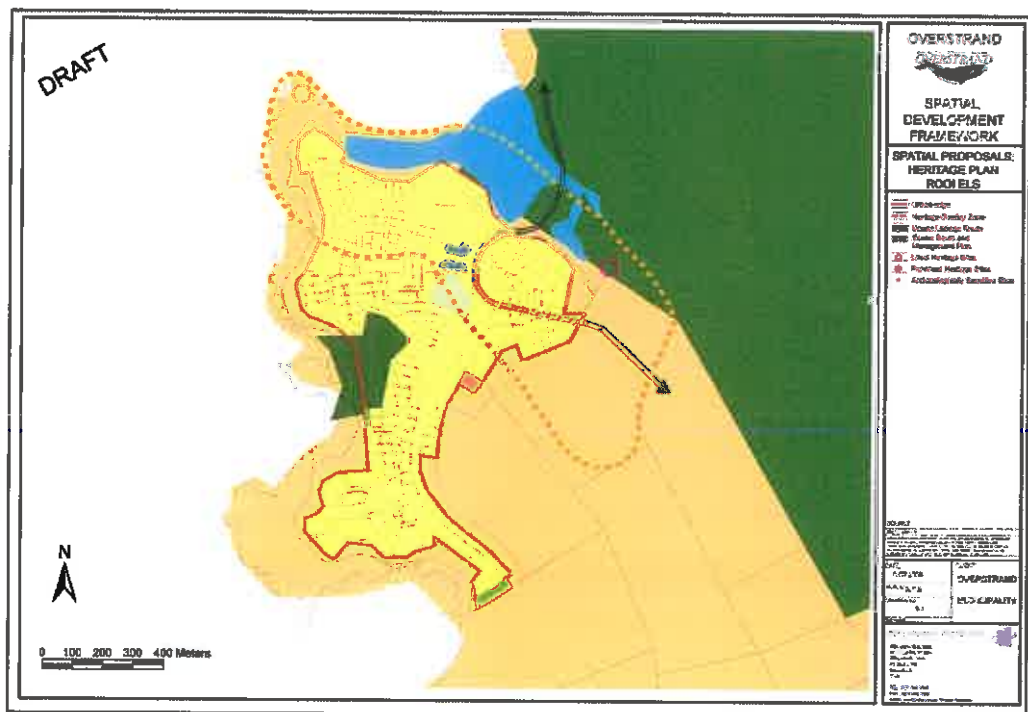
## 4. Desirability of the proposal

The removal of the above mentioned title deed restrictions will provide for a singular set of land use management rules and also allow for more updated and appropriate statutory legislation taking the current need but also the land economy and conservation into consideration more aligned with the character of the existing area.

## 5. Laws and policies relevant to the consideration of the application and forward planning and land use documents

In terms of the law and policies, the following are applicable relevant to the application site and this application:

### a. The Overstrand Spatial Development Plan, 2006



"5.5.5 Housing policy

(i) Motivation

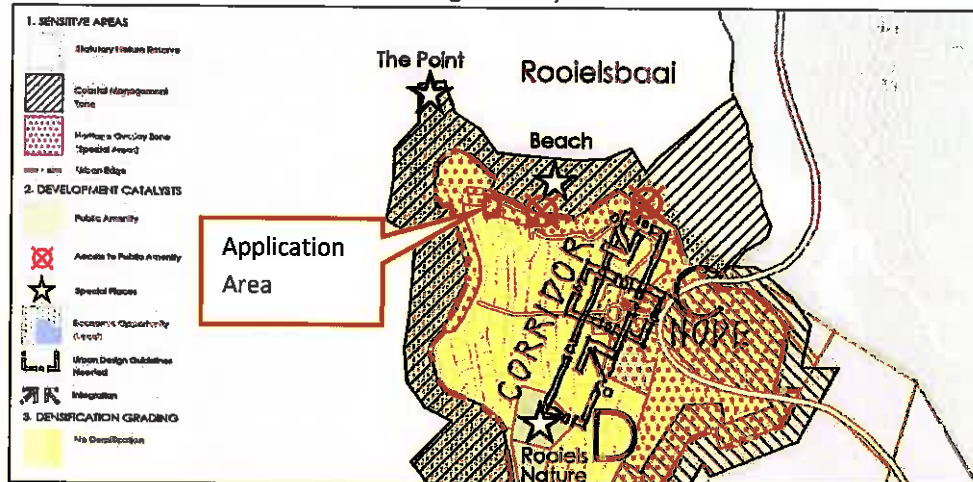
The projected population growth in Overstrand municipality will increase pressure on the demand for housing. The SDF is *inter alia* concerned with the optimum use of land within the context of the study area. An appropriate balance thereof needs to be achieved between densities, which control the location and amount of land used for residential development and the need to provide satisfactory residential environments and the protection of the natural attributes of the area's setting. Furthermore, a full range of residential needs must be catered for. The needs of the poor, youth, the single and the elderly are becoming more prevalent and therefore must be addressed in future residential policies.

LPL 2: **Balanced Housing Provision**

- The ongoing provision of land and / or redevelopment opportunities for residential / housing uses, within the urban edge, must be viewed as a priority. This together with the need to provide for integration and a balanced mix of housing types for the full range of income groups must also inform decision making.

**b. Overstrand Municipality: Growth Management Strategy – 2010**

In terms of the Overstrand Growth Management Strategy, the application area falls within a No Densification Zone as well as a Heritage Overlay Zone.



**6. The impact of the proposal on municipal engineering services**

The removal of the said title deed restrictions will allow for a more flexible approach to the provision of services to the site and will allow the municipality to fully regulate the services to be installed.

**7. Planning Principles**

**Spatial justice:** The current restrictive title deed conditions limit the potential of the application area and are considered consistent with the latest scientific and researched standards and regulations to ensure optimal urban development planning. The removal of the said restrictive title deed conditions will subject the application to rules and regulations managed by the municipality that reflects the current character of the area.

**Spatial sustainability:** The proposal of the removal of the restrictive title deed conditions is not only consistent, but will bring the application area more aligned with all policy and future planning documents and principles of the Municipality and different spheres of government .

**Efficiency:** The removal of the restrictive title deed conditions such as the restrictive building lines will allow for more efficient options in terms of the upgrading of the property in future.

**Spatial resilience:** By removing restrictive title deed conditions, the application area's potential improves, making it more desirable and more capable of recovering from market shocks.

**Good administration:** This application is fully consistent with the general science of land-use planning by ensuring the land economy is enhanced and the relevant land-use legislation respecting by following the process prescribed in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015.

The latter is also considered part and partial of good administration where inter alia consultive planning practices is pursued and financial, social, environmental matters are positively contributed towards and enhanced.



## 5. Conclusion

The application as motivated in this report is regarded desirable within its local context and well integrated within the existing community land-use activities. It is therefore recommended that this removal of restrictive title deed conditions application made in terms of Chapter IV, Section 35 and Chapter V, Section 39 of the Overstrand By-Law on Municipal Land Use Planning 2015 be approved for the removal of the following conditions of title deed no T15960/2016

A., B., C., D., E. F.A., F.B., F.C., F.D.(a) to F.D.(g) from title deed no T15960/2016 reading as follows:

- C. Subject to such conditions as referred to in Certificate of Township Title No T13367/1948;
- D. Not Subject to condition B on page 2 of Deed of transfer No. T 48879/2009, by virtue of Section 53 of the Mining Titles Registration Amendment Act of 2003.

C. SUBJECT FURTHER and entitled to the benefit of the conditions referred to in the Servitude Endorsement dated 24 June 1940 on Certificate of Consolidated Title No. T3720/1937 which Endorsement reads as follows:

“By Deed of Transfer No. 6068/1940 dated 24/06/1940 certain conditions relating to (b) prohibition of Petrol Station on land (d) Wood and iron buildings (e) slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder as will more fully appear on reference to the said Deed of Transfer.”

D. SUBJECT FURTHER to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30 April, 1839 (Stellenbosch quitrents Volume 12 No. 18) which reads as follows:

“On condition that all roads and thoroughfares running over this land, shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good, by order Government. That the road and thoroughfare leading to the Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hindrance, to fish there, and he shall be bound (according to existing laws of this Settlement) to have brought into such state of cultivation as it is capable of, the land thus granted being further subject to all such duties and regulations as are either already, or shall future be established in respect of land granted under similar tenure.”

E. SUBJECT FURHTER and entitled to the benefits of the Servitude reference whereto is made in the Endorsement dated 8 April 1949 on Certificate of Township Title No. T13367/1948 which said Endorsement reads as follows:

“Registration of Servitude

By Notarial Deed No. 107/1949 dated the 10<sup>th</sup> March, 1949, the Administrator of the Province of the Cape of Good Hope, or his Nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township, for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the above-mentioned township by means of a pipeline indicated on the servitude diagram No. 8589/1948 by the letters a, b, c, d, e, f, g, h, i, j, k, l, m, n, annexed to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works, (d) aqueducts (e) purification works and reservoirs (f) access to and agress from the present or future headworks, site, pipeline, reservoirs and purification work over the remainder of the farm Hangklip held under Certificate of Consolidation Title No. 3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto.”

F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T1672/1956 imposed by

the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of the Ordinance 33 of 1934 reading as follows:

- A. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No 401 dated 17 October, 1935, and in the memorandum which accompanied the said regulations.
- B. The owner of this erf shall, without compensation, be obliged to allow the sewage and drainage including stormwater of any erf or erven to be conveyed across this erf if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
- C. The owner of this erf shall be obliged, without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide as safe and proper slope to its bank owing to the difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.
- D. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restrictions in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation subject to compliance with such or conditions as he may impose.
  - (a) Is shall not be subdivided;
  - (b) It shall be used for residential purposes only;
  - (c) Not more than one building, excluding a licensed hotel, maisonettes and semidetached houses, together with such outbuildings as are ordinarily required to be used therewith, shall be erected thereon;
  - (d) Not more than half the area thereof shall be built upon;
  - (e) No building or structure except boundary walls and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf, nor within 3.15 meters of the rear or 1.57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the local authority an outbuilding not exceeding 3.05 meters in height measured from the 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, and provided further that a garage may be erected up to such street line if in the opinion of the local authority the level of the erf is such as to make that necessary;
  - (f) Pending the establishment of 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 if the nature of the soil permits, otherwise into a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation be obliged to remove it.
  - (g) To the following conditions contained in Deed of Transfer No. 1672/1956 imposed by Hangklip Beach Estates Limited as being in favour of the registered owner of any ore 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-sites or cowsheds 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, not 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;

- (e) No building (excluding outbuildings) shall be erected on this erf for a superficial area of less than 99 square meters;
- (f) No noxious trade or noxious business shall be carried on, on this erf;
- (g) The Transferee shall not camp over-night or light fires on the erf save with the written consent of the company.