



## **MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE COMMITTEE ROOM: CORPORATE SERVICES ON WEDNESDAY, 9 APRIL 2025 AT 14:00**

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### **PRESENT**

#### Internal members:

Municipal Manager, Mr J J Scholtz (chairperson)  
Director: Corporate Services, Ms M S Terblanche  
Director: Protection Services, Mr P A C Humphreys

#### External members:

Ms C Havenga  
Mr C Rabie

#### Other officials:

Director: Development Services, Ms J S Krieger  
Senior Manager: Development Management, Mr A M Zaayman  
Senior Town and Regional Planner, Mr A J Burger  
Town and Regional Planner and GIS, Mr H Olivier  
Town and Regional Planner, Ms A de Jager  
Manager: Secretariat and Record Services (secretary)

### **1. OPENING**

The chairperson opened the meeting and welcomed members.

### **2. APOLOGY**

No apologies were received.

### **3. DECLARATION OF INTEREST**

**RESOLVED** that the declaration by Ms C Havenga be noted in respect of Item 6.1 to the extent that the objector is known to Ms Havenga, however Ms Havenga confirmed that there were no discussions on the item.

### **4. MINUTES**

#### **4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 12 MARCH 2025**

##### **RESOLUTION**

(proposed by Mr C Rabie, seconded by Ms C Havenga)

That the minutes of a Municipal Planning Tribunal Meeting held on 12 March 2025 are approved and signed by the chairperson.

### **5. MATTERS ARISING FROM MINUTES**

None.

### **6. MATTERS FOR CONSIDERATION**

6.1/...

## **6.1 PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE ON ERF 28, YZERFONTEIN (15/3/6-14) (WARD 5)**

Ms A de Jager, the author of the item, confirmed that an application for removal of restrictive conditions and departure on Erf 28, Yzerfontein was refused by the Municipal Planning Tribunal (MPT) in August 2020 and referred back to the applicant to give effect to the requirements set by the MPT.

The MPT agreed that the boundary wall and screen wall that was lowered to a maximum height of 2,1 m now adheres to the By-Law parameters.

Although the proposed pergola is in line with the definition of such a structure in the By-Law, the MPT is of the opinion that the pergola unfairly obstructs the view from Erf 29, Yzerfontein and that the construction thereof is only of aesthetic and not functional value.

### **RESOLUTION**

That the item be referred back in order to amend the report to accommodate the refusal for the construction of the pergola.

## **6.2 PROPOSED REZONING OF ERF 339, MALMESBURY (15/3/3-8) (WARD 10)**

Mr A J Burger explained that the application entails the rezoning of Erf 339, Malmesbury from Residential Zone 1 to Business Zone 1 in order to convert the existing dwelling into offices.

Mr Burger stated that Erf 339, Malmesbury is situated inside the Central Business District of Malmesbury and in compliance with the spatial planning of the town.

### **RESOLUTION**

- A. The application for the rezoning of erf 339, Malmesbury be approved in terms of Section 70 of the By-law, subject to the following conditions:

#### **A1 TOWN PLANNING AND BUILDING CONTROL**

- (a) Erf 339 be rezoned from Residential zone 1 to Business zone 1 in order to operate offices as presented in the application;
- (b) Building plans be submitted to the Senior Manager: Development Management for consideration and approval for the change of use of the dwelling to offices;
- (c) The parking requirements in accordance with Chapter 13 of the Swartland Municipality Development Management Scheme (PG 8226 of 25 March 2020) be adhered to;
- (d) The layout of the parking bays be amended to provide for carriageway crossings for an entrance and exit to the property;
- (e) Raised kerbs be installed on the side walk for the length of the street boundary of the property, excluding the carriageway crossings;
- (f) The amended parking layout and any possible departures of development parameters be considered at building plan stage;
- (g) The parking bays be provided with a permanent dust free surface being concrete, paving or tar or a material pre-approved by the Municipality and that the parking bays be clearly marked;
- (h) A landscaping plan be submitted to the Senior Manager: Development Management for consideration and approval;
- (i) The business owner arranges with clients/visitors to the office to only make use of the on-site parking area and not to park in Vrede Street;
- (j) The visiting or response vehicles to the property after business hours be restricted to as few as possible;

#### **A2 WATER**

- (a) The existing water connection be used and that no additional connections will be provided;

#### **A3 SEWERAGE**

- (a) The existing sewerage connection be used and that no additional connections will be provided;

**A4 DEVELOPMENT CHARGES**

- (a) The owner/developer is responsible for the development charge of R17 024,60 towards roads, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/247-188-9210).

**B. GENERAL**

- (a) The approval does not exempt the applicant from adherence to any and all other legal procedures, applications and/or approvals related to the intended land use, as required by provincial, state, parastatal and other statutory bodies;
- (b) The rates and taxes of the property be changed from residential to business;
- (c) The applicant/objectors be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, within 21 days of notification of the decision. An appeal is to comply with section 90 of the By-Law and be accompanied by a fee of R5000,00 to be valid. Appeals that are received late and/or do not comply with the requirements, will be considered invalid and will not be processed.

**C. The application is supported for the following reasons:**

- (a) The property does not consist of any physical restrictions which may impact negative on the application;
- (b) The impact of the proposed business on this portion of Vrede Street is deemed low;
- (c) There are no restrictions in the title deed which prevents the property to be used for business purposes;
- (d) Existing services are deemed sufficient to accommodate the proposed offices;
- (e) Erf 339 is situated inside the CBD and on Vrede Street (activity street) which makes the proposed business use in compliance with the spatial planning of Malmesbury;
- (f) The application complies with the principles of SPLUMA and LUPA;
- (g) The development proposal complies with all zoning parameters of the Business Zone 1 zoning.

**6.3 PROPOSED SUBDIVISION AND CONSENT USE ON ERF 952, MALMESBURY (15/3/6-8; 16/3/10-8) (WARD 10)**

Mr H Olivier gave background to the application received for the subdivision of Erf 952, Malmesbury and consent use to accommodate a double dwelling on the newly created portion.

Mr Olivier confirmed that a double dwelling must be one architectural unit, containing two residential units and that the design presented in the application must be amended to conform to the definition of a double dwelling.

**RESOLUTION**

- A. The application for the subdivision of erf 952, Malmesbury be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the conditions that:

**A1 TOWN PLANNING AND BUILDING CONTROL**

- (a) Erf 952, Malmesbury (1325m<sup>2</sup> in extent) be subdivided into portion 1 (±821m<sup>2</sup> in extent) and portion 2 (±504m<sup>2</sup> in extent) as presented in the application;

**A2 WATER**

- (a) Each subdivided portion be provided with a separate water connection and meter at building plan stage;

**A3 SEWERAGE**

- (a) Each subdivided portion be provided with a separate sewer connection and meter at clearance stage;

**A4 ELECTRICITY**

- (a) Each subdivided portion be provided with a separate electrical connection, costs to be borne by the owner/developer;
- (b) Any relocation of electrical cables will be for the owners/developer's account.
- (c) Any electrical inter-connection be isolated and completely removed.
- (d) The electrical connections be connected to the existing low-voltage network.
- (e) Additional to the abovementioned the owner/developer must pay for the electrical connections to the subdivided erven;
- (f) The Department: Electrical Engineering Services be contacted for a quotation;

**A5 DEVELOPMENT CHARGES**

- (a) The owner/developer is responsible for a development charge of R 17 273,00 towards the bulk supply of regional water, at clearance stage. The amount is payable to the Swartland Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/249-176-9210);
- (b) The owner/developer is responsible for the development charge of R 9 702,55 towards bulk water distribution, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/249-174-9210);
- (c) The owner/developer is responsible for the development charge of R 5 279,65 towards sewerage, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/240-184-9210).
- (d) The owner/developer is responsible for the development charge of R5 723,55 towards wastewater treatment works at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter. (mSCOA: 9/240-183-9210);
- (e) The owner/developer is responsible for the development charge of R20 706,90 towards roads, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter. (mSCOA: 9/247-188-9210);
- (f) The owner/developer is responsible for the development charge of R 4 920,31 towards electricity, at clearance stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter. (mSCOA: 9/253-164-9210);
- (g) The Council resolution of May 2024 makes provision for a 55% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2024/2025 and can be revised thereafter;

- B. The application for consent use on portion of Erf 952, Malmesbury, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2021), be approved, subject to the conditions:

**B1 TOWN PLANNING AND BUILDING CONTROL**

- (a) The consent use authorises a double dwelling house to be accommodated on a portion of Erf 952, Malmesbury;
- (b) The double dwelling adheres to the applicable development parameters, and it be designed as such in order for it to conform to the definition of a double dwelling to the satisfaction of the Senior Manager: Development Management;
- (c) Building plans be submitted to the Senior Manager: Development Management for consideration and approval;

**B2 WATER**

- (a) A single water connection be used and no additional connections be provided to the double dwelling;

**B3 SEWERAGE**

- (a) A single sewer connection be used and no additional connections be provided to the double dwelling;

**B4 DEVELOPMENT CHARGES**

- (a) The development charge towards the supply of regional bulk water amounts to R 11 514,95 and is for the account of the owner/developer at building plan stage. The



- amount is due to the Swartland Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The development charge towards bulk water reticulation amounts to R6 468, 75 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/249-174-9210);
  - (c) The development charge towards sewerage amounts to R 4 022,70 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/240-184-9210);
  - (d) The development charge towards wastewater treatment amounts to R 4 360,80 and is for the account of the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/240-183-9210);
  - (e) The development charge towards streets amounts to R 12 654,60 and is payable by the owner/developer at building plan stage. The amount is due to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter. (mSCOA 9/249-188-9210);
  - (f) The development charge towards electricity amounts to R 4 920,31 and is payable by the owner/developer at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2024/2025 and may be revised thereafter (mSCOA 9/253-164-9210);
  - (g) The Council resolution of May 2024 makes provision for a 55% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2024/2025 and may be revised thereafter;

**C. GENERAL**

- (a) The legal certificate which authorises transfer of the subdivided portions in terms of Section 38 of the By-Law not be issued unless all the relevant conditions have been complied with;
- (b) Any existing services connecting the remainder and/or new portions be disconnected, and relocated, for each erf to have a separate connection and pipe work;
- (c) Should it be deemed necessary to extend the existing services network to provide the subdivided portions with service connections, it will be for the cost of the owner/developer;
- (d) The approval does not exempt the applicant from adherence to all other legal procedures, applications and/or approvals related to the intended land use, as required by provincial, state, parastatal and other statutory bodies.
- (e) The approval is, in terms of section 76(2)(w) of the By-Law, valid for 3 years. All conditions of approval be implemented within these 3 years, without which, the approval will lapse. Should all the conditions of approval be met before the 3-year approval period lapses, the subdivision will be permanent, and the approval period will not be applicable anymore.
- (f) Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R5 000, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals received late and/or do not comply with the requirements, will be considered invalid and will not be processed;

**D. The application be supported for the following reasons:**

- (a) There are no physical restrictions on the property that negatively impacts the proposal;
- (b) The proposed application is consistent and not in contradiction with the Spatial Development Frameworks adopted on Provincial, District and Municipal levels;
- (c) The proposal is spatially resilient, as it proposes housing options that are more affordable;
- (d) The proposed development is not perceived to have a detrimental impact on the health and safety of surrounding landowners, nor will it have a significant impact on environmental or heritage resources;

- (e) The proposed application does not have a significant impact on municipal engineering services nor on the road network;
- (f) Sufficient parking is provided on the subject property and the access to the double dwelling complies with the provisions of the development management scheme;
- (g) The design of the proposed double dwelling makes provision for sufficient outdoor living area as well as clearly takes the privacy of neighbouring properties including the remainder into consideration;
- (h) The proposed second dwelling (double dwelling house) will have a positive economic impact, as it generates income for both the landowner, municipality (through rates and taxes) and tourism, through the spending of the new residents / visitors to the area;
- (i) From the proposal access to the property is obtained directly from Lang Street for portion A and Arcadia Street for the remainder. The impact of the proposal on traffic in the area will be minimal and sufficient on-site parking is provided;
- (j) The proposal will not have a negative impact on the value of neighbouring properties;
- (k) The development proposal is deemed desirable.

**(SIGNED) J J SCHOLTZ  
CHAIRPERSON**

28 March 2025

15/3/4-14/Erf 28  
15/3/5-14/Erf 28

WYK: 5

**ITEM 6.1 ON THE AGENDA OF THE MUNICIPAL PLANNING TRIBUNAL TO BE HELD ON WEDNESDAY, 14 MAY 2025**

LAND USE PLANNING REPORT					
PROPOSED REMOVAL OF RESTRICTIVE CONDITIONS AND DEPARTURE ON ERF 28, YZERFONTEIN					
Reference number	15/3/4-14/Erf 28 15/3/5-14/Erf 28	Application submission date	26 November 2024	Date report finalised	28 March 2025
<b>PART A: APPLICATION DESCRIPTION</b>					
<p>Application for departure on Erf 28, Yzerfontein, in terms of Section 25(2)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), is made in order to depart from the southern street building line from 4m to 0m.</p> <p>Application for the removal of restrictive title deed conditions on Erf 28, Yzerfontein, in terms of Section 25(2)(f) of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), is made in order to remove restrictive conditions from Title Deed T28340/2017 as follows:</p> <p>a) Restriction B.I.(5) that reads as follows:  <i>"... That no building shall be erected within three comma five (3,15) metres of any street line which forms a boundary of the erf, or within three comma one five (3,15) metres of the open space where it forms a boundary of the erf on the sea front..."</i>            be removed from Title Deed T28340/2017;</p> <p>b) Restriction B.I.(6) that reads as follows:  <i>"... That when any of the existing buildings are demolished the building line laid down in (5) shall apply..."</i>            be removed from Title Deed T28340/2017;</p> <p>The applicant is C.K. Rumboll and Partners and the property owner is Lomien Beleggings Proprietary Limited.</p>					
<b>PART B: PROPERTY DETAILS</b>					
Property description (in accordance with Title Deed)	Erf 28 Yzerfontein, in die Swartland Munisipaliteit, Afdeling Malmesbury, Provinsie Wes-Kaap				
Physical address	c/o St. Cross Street and Second Avenue (locality plan attached as Annexure A).	Town	Yzerfontein		
Current zoning	Residential Zone 1	Extent (m <sup>2</sup> /ha)	569m <sup>2</sup>	Are there existing buildings on the property?	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Applicable zoning scheme	Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020)				
Current land use	Dwelling house and garage	Title Deed number & date	T28340/2017		
Any restrictive title conditions applicable	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	If Yes, list condition number(s)	B.I.(5) and B.I.(6) (Deed attached as Annexure C)		
Any third party conditions applicable?	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	If Yes, specify			
Any unauthorised land use/building work	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	If Yes, explain			

PART C: LIST OF APPLICATIONS (TICK APPLICABLE)					
Rezoning	Permanent departure	<input checked="" type="checkbox"/> Temporary departure	Subdivision		
Extension of the validity period of an approval	Approval of an overlay zone	Consolidation	Removal, suspension or amendment of restrictive conditions		<input checked="" type="checkbox"/>
Permissions in terms of the zoning scheme	Amendment, deletion or imposition of conditions in respect of existing approval	Amendment or cancellation of an approved subdivision plan	Permission in terms of a condition of approval		
Determination of zoning	Closure of public place	Consent use	Occasional use		
Disestablish a home owner's association	Rectify failure by home owner's association to meet its obligations	Permission for the reconstruction of an existing non-conforming use			

#### PART D: BACKGROUND

Erf 28 is situated in area D of Yzerfontein, as identified by the Swartland Municipal Spatial Development Framework (MSDF; 2023). The area is characterised by residential development around the main beach, with amenities such as sport facilities, the Yzerfontein Caravan Park and open spaces. A small secondary business node is situated central to the area.

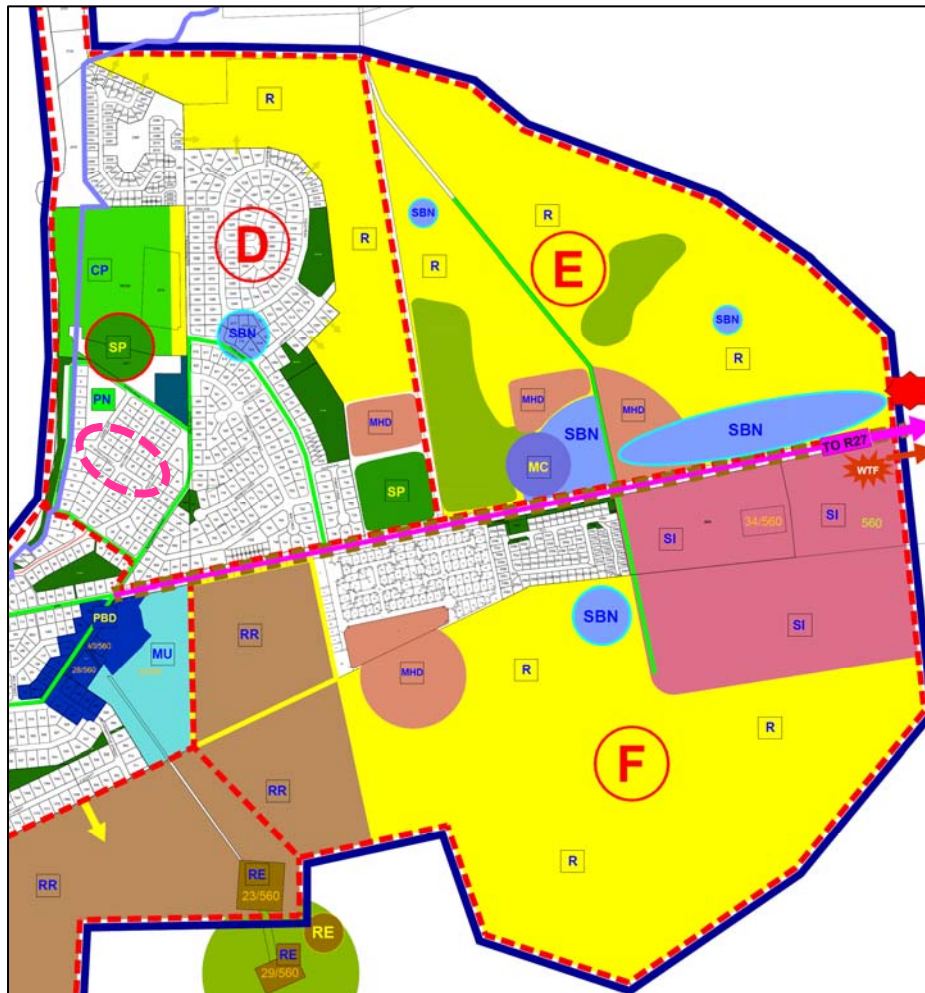


Figure 1: SDF for Yzerfontein

In August 2020, application was submitted for the departure from the street building line and the removal of restrictive title deed conditions on Erf 28, Yzerfontein, to address an existing structure encroaching on the building lines. The walls of the structure was 2,7m – 3m high and dense lattice work served as a roof to the space below.

The application was refused by the Municipal Planning Tribunal on 24 of November 2021, and the owner was required to demolish the lattice roof and reduce the screen wall height to a maximum of 2.1m, measured from natural ground level (NGL) to the top of the columns (letter of refusal attached as Annexure G).



The owners subsequently gave effect to the requirements set by the Tribunal – removing the lattice roof and lowering the wall – and then constructed a new structure, which meets the definition of a pergola, on top of the screen and boundary walls. The following images illustrate the old structure versus the new structure that is being applied for.





The applicant further added a braai room and guest quarters on the first floor of the dwelling, consistent with the development parameters of Residential Zone 1.

The main differences between the first application for removal of restrictive conditions and the current application are as follows:

2020/2021 Application	Current Application
1. The height of the screen wall between the boundary and dwelling exceeded the permissible By-Law parameter of 2,1m (2,7 – 3m high).	1. The boundary wall and screen wall was lowered to a maximum height of 2,1m, adhering to the By-Law parameters.
2. The lattice roof cover did not adhere to the By-Law definition of a pergola and as such was included in the coverage calculations.	2. The lattice roof was replaced with a structure that adheres to the definition of a pergola, namely: “any roofless, horizontal or almost horizontal grid or framework and is applicable if the area seen in the horizontal projection of the solid portions of the grid does not exceed 25% of the total area thereof;
3. Condition B.I.(4) in the title deed restricted the coverage to 50%. The lattice roof caused the maximum coverage to be exceeded and application was made for the removal of the condition.	3. According to the By-Law, a pergola that adheres to the definition, is exempted from coverage calculations. The removal of the deed condition is thus not necessary anymore, as the total coverage currently does not exceed 50%.
4. The Title Deed restricts any structures, except boundary walls, inside the building line area. As the screen wall exceeded the permissible height and the lattice was considered a roof, it could no longer be considered as merely a part of a boundary wall, but rather a ‘building’, which is restricted by condition B.I.(5) in the Title Deed. Application was made for the removal of the condition.	4. Both the boundary wall and screen wall were lowered to maximum 2,1m, adhering to the definition of structures that are permitted inside building lines. Consequently, the walls no longer necessitate or form part of the reason to remove condition B.I.(5). However, the pergola and its support elements are not exempted from the need for building line departure and the removal of the restrictive condition.
5. The view from Erf 29 was proven to be obstructed by the non-conforming screen wall.	5. The boundary and screen walls are now consistent with the By-Law and deed parameters and cannot be cited as obstructing elements of the view from Erf 29. The pergola is the only portion of the combined structure that causes the need for departure and removal of conditions. The impact of the pergola on the view from Erf 29 will be considered in order to determine if the structure truly obstructs the view or not.
6. Application for the removal of restrictions was refused and consequently the building line departure by the screen wall and lattice roof could not be considered positively either.	6. Evaluation of the current proposal will determine whether all aspects may be considered positively.

## PART E: PRE-APPLICATION CONSULTATION (ATTACH MINUTES)

Has pre-application consultation been undertaken?

Y

N

## PART F: SUMMARY OF APPLICANT'S MOTIVATION

The owners/developers of Erf 28, Yzerfontein, aim at expanding the existing dwelling unit, in order to optimally utilise the space on the property and consequently increase the value of the erf.

### 1. Planning policy

#### 1.1 Matters referred to in Section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA

- a) Spatial Justice: The departure from the street building line to accommodate the existing pergola has minimal impact on the sea view from Erf 29. The previously 2.7m high screen wall has been lowered to 2.1m, providing a clear vista, while complying with the National Building Regulations, the Municipal By-Law on Boundary Walls and Fences (PG 7638), and Section 12.1 of the Swartland Municipal By-Law on Land Use Planning (PG 8226). Additionally, the pergola's permeable design results in minimal obstruction to the view from Erf 29.

Therefore, the departure from the street building line ensures equitable development that benefits all property owners without unfairly privileging one over another. Spatial justice seeks to redress imbalances and promote fairness in the use and enjoyment of space.

The lowered screen wall and the permeable pergola design demonstrate a thoughtful approach to balancing the rights of the owner of Erf 28 to develop their property and the rights of the owners of Erf 29 to enjoy their view. By reducing the height of the screen wall and using a visually permeable structure, the design minimizes obstruction and mitigates any negative impact on the view from Erf 29. The approach reflects a fair distribution of spatial benefits, ensuring that both parties can enjoy their properties without excessive compromise.

Thus, the application supports the principle of spatial justice by promoting development that is sensitive to the surrounding context and the rights of all property owners, ensuring fair and balanced outcomes in the shared urban environment.

- b) Spatial Sustainability: The design changes on the property have been made specifically to balance development rights with minimal adverse effects on neighbouring properties. Spatial sustainability focuses on promoting efficient, equitable, and context-sensitive development, ensuring that all stakeholders benefit without disproportionately harming others.

In this case, the proposal addresses any potential negative impacts through thoughtful design, such as lowering the screen wall and incorporating a permeable pergola. These changes reduce any obstruction of views or sense of enclosure for neighbouring properties, particularly Erf 29.

- c) Efficiency: The proposal aligns with the spatial planning principle of efficiency by optimizing land use within existing urban boundaries without adding unnecessary bulk or density. The pergola provides an aesthetically pleasing, functional addition to the property while maintaining compliance with key regulations. Although it does not increase the number of dwelling units, the proposal maximizes the use of available space in a way that enhances the property's utility and visual appeal.

The principle of efficiency in spatial planning encourages the optimal use of land and resources, which the proposal achieves by utilizing the available space without overdeveloping or crowding the property. The pergola, as part of the overall design, improves the liveability of the property while respecting the surrounding context, ensuring that it does not create a sense of overcrowding or overdevelopment.

Regarding the view from Erf 29, the impact has been significantly minimized through design adjustments such as lowering the screen wall and ensuring the pergola remains permeable. This careful approach reflects an efficient use of land that balances private development with minimal negative effects on neighbouring properties, ensuring that views are only minimally impacted.

Furthermore, the addition of the pergola improves the property's interface with the public realm by enhancing the visual appeal and architectural coherence of the street frontage. The structure adds value to both the property and the streetscape, aligning with the principle of efficiency by contributing to the overall aesthetic and functional quality of the area without overburdening local infrastructure or significantly impacting neighbours' rights.

- d) Spatial Resilience: The proposal aligns with the spatial planning principle of efficiency by optimizing land use within existing urban boundaries without adding unnecessary bulk or density. The pergola provides an aesthetically pleasing, functional addition to the property while maintaining compliance with key regulations. Although it does not increase the number of dwelling units, the proposal maximizes the use of available space in a way that enhances the property's utility and visual appeal.



The principle of efficiency in spatial planning encourages the optimal use of land and resources, which the proposal achieves by utilizing the available space without overdeveloping or crowding the property. The pergola, as part of the overall design, improves the liveability of the property while respecting the surrounding context, ensuring that it does not create a sense of overcrowding or overdevelopment.

Regarding the view from Erf 29, the impact has been significantly minimized through design adjustments such as lowering the screen wall and ensuring the pergola remains permeable. The careful approach reflects an efficient use of land that balances private development with minimal negative effects on neighbouring properties, ensuring that views are only minimally impacted.

Furthermore, the addition of the pergola improves the property's interface with the public realm by enhancing the visual appeal and architectural coherence of the street frontage. The structure adds value to both the property and the streetscape, aligning with the principle of efficiency by contributing to the overall aesthetic and functional quality of the area without overburdening local infrastructure or significantly impacting neighbours' rights.

- e) Good administration: All decision-making regarding the outcome of the application will be guided by relevant statutory land use planning systems.

The owner of Erf 28 already engaged with some of the surrounding landowners in person in order to obtain support. The email correspondence from Mr. Carel Snyman, Mr. Chris de Jager, and Mr. Philip Johnson (representative of the Vlakfontein Familie Trust), confirming that they do not object to the development of the existing pergola, are attached as Annexure H.

Further, the application will be taken through the public process by the Swartland Municipality and all relevant departments will be approached. Participation of different relevant departments and the public will ensure an informed decision.

## 2.1 Swartland Municipal Spatial Development Framework (SDF, 2023)

Erf 28 is situated in area D of the SDF. Area D is a residential area around the main beach with supporting community, sport and tourist facilities and a secondary business node. The proposed use is thus supported by the SDF.

## 2.2 Schedule 2 of the By-Law (Zoning Scheme Provisions)

The property is zoned Residential Zone 1 and the development proposal will not affect the land use of the property, but building line departure is considered necessary. The departure proposes the relaxation of the 4m south western street building line to 0m is proposed.

## 2.3 Section 25(2)(f) of the By-Law: Removal of Restrictive Title Deed Conditions

The restrictive conditions to be removed from Title Deed T28340/2017 read as follows:

*"...B.I. (5) That no building shall be erected within three comma five (3,15) metres of any street line which forms a boundary of the erf, or within three comma one five (3,15) metres of the open space where it forms a boundary of the erf on the sea front;*

*(6) That when any of the existing buildings are demolished the building line laid down in (5) shall apply..."*

The land use provisions set out in the By-Law are sufficient to ensure sustainable development on Erf 28 and additional restrictions in the title deed are considered unnecessary.

The restrictions have no financial benefit for the owner, or a third party. The By-Law contains the same provisions and has the same effect as the title deed to preserve and protect the character of the area.

The restrictive conditions hold no benefits for the owner and the removal will enable the owner to develop the property consistent with the latest policy and legislation.

The restrictions hold no social benefits for the owner or third parties through remaining in place.

The proposed removal will remove restrictions which are already managed by the Swartland Integrated By-Law which include provisions relating to building lines and coverage. Not all conditions are proposed for removal.

## 2.3 Access and parking

The property is accessed directly via St. Cross Street. Two parking bays are available in front of the double garage that is connected to the dwelling.



#### 2.4 Services

The property is serviced and the proposed development will not require additional services.

#### 2.5 Motivation

It is motivated that the proposal will contribute to the visual representation and aesthetic value of the property and the proposal will not negatively affect the privacy of the surrounding properties, as the pergola is situated within the boundaries of the application property.

The pergola does not negatively affect the sea view of the surrounding properties.

Erf 28 is located on a corner with a four way stop and the view of motorists is unobstructed. Traffic safety is thus not negatively affected.

The proposed departure and removal of restrictive conditions are considered desirable on the basis of the following;

- a) The proposal complies with the Swartland Spatial Development Framework (2023-2027) as the main forward planning document for Yzerfontein and the Swartland Municipal Area as a whole;
- b) The proposed development enhances the principles of LUPA and SPLUMA;
- c) The development proposal will complement the character of the area and not adversely affect any natural conservation areas or surrounding agricultural practises;
- d) The development uses an existing plot within the Urban Edge to its optimal potential;
- e) The proposal will also contribute to the visual representation and aesthetic value of the property;
- f) The proposal will not negatively affect the privacy of the surrounding properties, as the pergola is situated within boundaries of the subject property adjacent to a street;
- g) The erection of the pergola on a portion of the street building line will not adversely affect the sea view of the surrounding properties;
- h) No view of motorists is affected negatively; and
- i) No fire risk is created by the establishment of a pergola on the southern side of the property.

#### **PART G: SUMMARY OF PUBLIC PARTICIPATION**

Was public participation undertaken in accordance with section 55- 59 of the Swartland Municipal: By-law on Municipal Land Use Planning?

Y

N

The application was advertised in the local newspapers and Provincial Gazette on 4 December 2024 and a total of 20 registered notices were issued to affected parties. Notices were also sent via e-mail, where addresses were available. Please refer to Annexure D for the public participation map.

Total valid comments	1		Total comments and petitions refused				0	
Valid petition(s)	Y	N	If yes, number of signatures					
Community organisation(s) response	Y	N	Ward councillor response	Y	N	The application was forwarded to councillor Rangasamy, but no comments were forthcoming.		
Total letters of support	0							

#### **PART H: COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS**

Name	Date received	Summary of comments	Recommend	
			Pos.	Neg.
Department: Development Services	6 Dec 2024	Building plans be submitted to the Senior Manager: Development Management, for consideration and approval.	✓	

PART I: COMMENTS RECEIVED DURING PUBLIC PARTICIPATION	SUMMARY OF APPLICANT'S REPLY TO COMMENTS	MUNICIPAL ASSESSMENT OF COMMENTS
<p><b>A Kriel Erf 29 Annexure E</b></p> <p>1. Dit is duidelik dat die prieël opgerig is sonder goedgekeurde bouplanne.</p> <p>Hou in gedagte dat alles gebeur het nadat die eerste konstruksie summier deur SM afgekeur is. Dit wil amper voorkom asof die eienaars van Erf 28 moedswillig was met die aanbouing. Mnr. Mostert het die goedgekeurde bouplan en die besluit wat daaroor voorsien is, verontagsaam.</p> <p>2. Die konstruksie grensend aan Cross straat en aan die buitekant van slaapkamer 2, dien op die oog af geen doel nie, maar ontnem Erf 29 van uitsig. Uitsig is wel nie 'n gegewe deurslag-gewende faktor vir beswaar nie, maar om beperkende voorwaardes te wysig</p>	<p>1. While it is acknowledged that the pergola was erected without Municipal approval, the applicant is now taking the necessary steps to obtain Municipal approval to authorise the existing structure.</p> <p>In 2021, an application was submitted to authorise a previously constructed structure. However, the existing screen and boundary walls did not comply with the National Building Regulations as they exceeded the maximum allowable height. Additionally, the structure atop the screen wall, intended as a pergola, did not meet the definition of a pergola due to its lattice roof exceeding the permitted coverage.</p> <p>Following the Municipal Planning Tribunal's (MPT) refusal of the application in November 2021, the MPT required the owners to:</p> <ol style="list-style-type: none"> <li>remove the non-compliant lattice roof;</li> <li>lower the screen wall to a maximum height of 2.1m; and</li> <li>reduce the boundary wall height to comply with the Swartland Municipality: By-law on Boundary Walls and Fences (PG 7638).</li> </ol> <p>The owners have since fully complied with these requirements. The screen and boundary walls were adjusted to meet regulatory standards, and a new pergola was erected in place of the lattice roof.</p> <p>However, as the pergola encroaches on building line restrictions, approval is still required in terms of the By Law. The new structure is more permeable, resulting in significantly less impact on the views of surrounding neighbour.</p> <p>2. The comment that the construction along Cross Street serves no purpose and deprives Erf 29 of its view is subjective and overlooks the functional and aesthetic intent behind the pergola. While views are indeed an important consideration in</p>	<p>1. The previous refusal and requirements stipulated in the previous approval letter of 2021, were heeded and adhered to. The same set of circumstances are no longer applicable to the application and only the relevant facts are considered.</p> <p>The Swartland Municipality is currently in the midst of an amnesty period for the submission of building plans for unauthorised building work. The amnesty aims at motivating land owners to legalise and update the building plan information for their properties and thus no fines for unauthorised building work will be issued during the period.</p> <p>Furthermore, the By-Law affords applicants the opportunity to, at any time, rectify unlawful land use practises, by adhering to the correct application process.</p> <p>In light of the abovementioned, the application is considered as if no contraventions have been affected. The merits of the application are evaluated and the owner/developer will be liable to adhere to all possible conditions resulting from the approval.</p> <p>2. Whether or not the pergola is aesthetically pleasing is subjective and a matter of taste.</p> <p>Precedented court ruling determined that, once an owner/developer acts outside of the prevue afforded by the zoning parameters applicable to the erf, the impact</p>

	<p>ter wille van 'n estetiese aanbouing, is beslis ook onaanvaarbaar.</p> <p>Nie net is die aanbouing van die woning op Erf 28 'n ontsiering nie, maar die klein stukkie see-uitsig van Erf 29 word totaal ontnem deur die onwettige konstruksie en eintlik sinnelose aanbouing in sy geheel, tesame met die uitheemse Minatokka boom voor die struktuur.</p> <p>3. Met verwysing na die brief van die Yzerfontein se Inwonersvereniging van 10 Oktober 2020. Mnr. Brittain is wel nie meer die voorsitter nie en die destydse konstruksie is afgebreek en grensmure moes verlaag word, maar nou, met die heroprigting van 'n nuwe onwettige konstruksie, is dieselfde punte weer ter sprake. Die debat wat destyds gevoer is, is steeds relevant en moet beslis deurgetrek word na die huidige beswaar.</p>	<p>certain contexts, the impact on the view from Erf 29 is minimal.</p> <p>The pergola is a modest structure that was designed to complement the existing property and enhance its liveability, rather than obstruct the views from neighbouring properties.</p> <p>The pergola provides functional space to the property, providing a sheltered outdoor area that improves the living experience of the residents. Importantly, the primary obstruction to the view from Erf 29 is caused by the screen wall, not the pergola. The screen wall complies with the National Building Regulations, the Municipal By-Law on Boundary Walls and Fences (PG 7638), and Section 12.1 of the Swartland Municipal By-Law on Land Use Planning (PG 8226), as it has been lowered from 2.7m to 2.1m, measured from the natural ground level (NGL) to the top. According to the By-Law, a screen wall may be erected within building line restrictions as long as it does not exceed the 2.1m height limit.</p> <p>The image at the end of Part I illustrates the view from the owners of Erf 29 towards the sea when standing completely on the edge of the front porch. The pergola has a minimal effect on their view.</p> <p>3. The objections raised in the Yzerfontein Residents' Association letter dated 10 October 2020 were addressed in this office's response to comments document dated 13 November 2020, which remains valid and can be referenced as needed. However, regarding the initial response to concerns about obstructed views, the objections pertained to a 2.7m high screen wall and a pergola that did not meet the definition outlined in the By-Law. Also refer to 1 and 2.</p>	<p>on the view from neighbouring erven may be reason for refusal of a proposal. However, it is argued that the measure of the impact should be evaluated.</p> <ol style="list-style-type: none"> <li>A tiny portion of the ocean is visible from the left-most corner of the stoep on Erf 29. The question is thus asked: Was the view that great to start with? The objector cannot lay claim to an asset that did not exist previously;</li> <li>The pergola is a permeable structure and the ocean is still visible from Erf 29, despite the construction;</li> <li>The solid screen wall and boundary wall are consistent with the development parameters of the zoning.</li> </ol> <p>It is thus determined that, while the pergola is surely visible from Erf 29, the impact on the view is minimal.</p> <p>3. The objection is not applicable to the current proposal.</p>
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Below: the view from the very edge of the stoep on Erf 29.



## PART J: MUNICIPAL PLANNING EVALUATION

### 1. Type of application and procedures followed in processing the application

Application for departure on Erf 28, Yzerfontein, in terms of Section 25(2)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), is made in order to depart from the 4m street building line to 0m.

Application for the removal of restrictive title deed conditions on Erf 28, Yzerfontein, in terms of Section 25(2)(f) of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), is made in order to remove restrictive conditions from Title Deed T28340/2017 as follows:

a) Restriction B.I.(5) that reads as follows:

*“...That no building shall be erected within three comma five (3,15) metres of any street line which forms a boundary of the erf, or within three comma one five (3,15) metres of the open space where it forms a boundary of the erf on the sea front...”*

be removed from Title Deed T28340/2017;

b) Restriction B.I.(6) that reads as follows:

*“...That when any of the existing buildings are demolished the building line laid down in (5) shall apply...”*

be removed from Title Deed T28340/2017;

The application was advertised in the local newspapers and Provincial Gazette on 4 December 2024 and a total of 20 registered notices and e-mails were issued to affected parties. The commenting period for the application concluded on 24 January 2025, and one objection was received. The objection was referred to the applicant for comment on 30 January 2025 and the response to comments was received back on 26 February 2025. No notices were returned unclaimed.

The applicant is C.K. Rumboll and Partners and the property owner is Lomien Beleggings Proprietary Limited.

### 2. Legislation and policy frameworks

#### 2.1 Matters referred to in Section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA

a) Spatial Justice: The proposed departure does not impact negatively on the sea view from Erf 29. A view is not a right, unless the obstructer acts outside of the development parameters, in which case the impact of the obstruction must be determined. The impact of the departure at hand is considered minimal within the context and in relation to the quality of the sea view before the departure. The proposal is thus considered consistent with the By-Law, LUPA and SPLUMA and can therefore be deemed consistent with spatial justice.

Spatial Sustainability: Spatial sustainability encourages the optimal use of land to enhance both individual properties and the broader community. The proposal improves the aesthetic and functional value of the property without causing undue harm to its surroundings, demonstrating a commitment to spatial sustainability by promoting a harmonious coexistence between private development and community well-being.

b) Efficiency: The proposed development is considered to enhance the interface between the property and the public realm.

c) Good Administration: The application was communicated to the affected land owners through registered mail and advertisement in local newspapers and the Gazette. The application was also circulated to the relevant municipal departments for comment. Consideration was given to all correspondence received and the application was dealt with in a timeous manner. It is therefore argued that the principles of good administration were complied with by the Municipality.

d) Spatial Resilience: The principle is not applicable to the development proposal.

#### 2.2 Spatial Development Framework (SDF)

The SDF is a high level spatial guideline and does not make provision for building line departure. The development proposal will not alter the land use and the residential character of the property will thus remain consistent with the development proposals of the SDF.

#### 2.3 Schedule 2 of the By-Law (Zoning Scheme Provisions)

Erf 28, Yzerfontein is zoned Residential Zone 1. The development proposal will not impact on the land use of the property, but application is made for departure from the development parameters, specifically the southern street building line.

Section 12.2.1 of the By-Law makes provision for the departure from building lines and specifically differentiates between lateral/side building lines and street building lines.

Section 12.2.1(e), applicable to street building lines, reads as follows:

*“(e) The municipality may relax the street building line under the following circumstances:*

- (i) in the case of a garage or carport subject to 13.1.2;*
- (ii) if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a public street; or*
- (iii) if, in its opinion, there are other special circumstances such as the topography of the site...”*

The proposed departure is not for a garage or carport, but rather an outdoor seating area used by the residents. The pergola is the only portion of the structure that requires the removal of restrictive conditions, as well as the departure from the development parameters, as the screen wall and boundary wall adhere to the restrictions of both the Deed and By-Law.

It is argued that the pergola serves as both a practical and decorative element to the exterior façade of the dwelling. The structure itself is permeable and the ocean is still visible from Erf 29. The materials and colours used for the construction of the pergola are consistent with the character of the surrounding environment, i.e. a coastal town.

The movement of traffic is not obstructed by the pergola, nor is the streetscape negatively impacted by and unsafe or unsightly structure.

#### **2.4 Desirability of the proposed utilisation**

The removal of restrictive condition B.I.(5) is necessary in order to allow for the construction of the proposed pergola to depart from the street building line. Restrictive condition B.I.(6) is also proposed to be removed, as it becomes redundant once B.I.(5) is removed.

The owner/developer are asserting the right, provided by the By-Law, to rectify a previous land use contravention, namely the construction of a pergola above the boundary wall.

Building plans of the unauthorised construction will be required via a condition of approval, rectifying the omission.

The impact on the view from Erf 29 was assessed and it is determined that the quality of the view was poor from the outset and that the permeability of the proposed pergola ensures that the ocean remains visible from the stoep on Erf 29, as before. The impact is thus considered minimal and not detrimental to the rights of the objector.

Not the removal of the restrictive conditions, nor the departure, are thus argued to have any impact on the rights of the objector or other affected parties in the area, whether it be financial or personal.

The departure has no impact on traffic safety or sight lines.

No additional engineering services will be required due to the proposed development.

The proposed pergola is considered a minor structural element, permeable and not solid, providing a measure of shade to the space below and serving as a decorative finishing, consistent with the architecture of the dwelling.

The proposed departure and removal of restrictive conditions considered desirable in the context.

#### **2.5 Public Interest**

The proposed pergola will have no effect whatsoever on the broader public and the removal of restrictive conditions and departure will not negatively impact on the rights of affected parties.

### **3. Impact on municipal engineering services**

The departure will have no impact on any municipal engineering services.

### **4. Comments of organs of state**

No comments were requested.

### **5. Response by applicant**

See Annexure F.



## PART K: ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

### The financial or other value of the rights

The removal of the restrictive conditions may impact positively on the property value of Erf 28, albeit minimal, rather than the restrictive conditions being of any monetary value.

The impact on the property values of the affected properties would be conjecture. The perceived loss of property value of Erf 29 was mitigated through the construction of a permeable structure, ensuring that the ocean remains visible from the property.

No other direct financial values are linked to the rights.

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

The departure will allow the owner to develop the property to his requirements.

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

The owners of Erf 29 retain a sea view, due to the permeable nature of the pergola. No other social benefits are considered to be affected by the removal.

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

It has been determined that the removal will have no impact on the rights of the abutting property owners (Erf 29), as the view is minimally impacted and remains largely in place. Condition B.I.(6) becomes redundant after the removal of B.I.(6) and is also proposed for removal.

All other restrictive conditions will remain applicable and in conjunction with the development parameters of the By-Law, the rights of affected parties remain intact.

## PART L: RECOMMENDATION WITH CONDITIONS

**A.** The application for departure on Erf 28, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to encroach on the southern street building line, subject to the conditions that:

### **1. TOWN PLANNING AND BUILDING CONTROL**

- a) The 4m street building line be departed from and reduced to 0m;
- b) The building line departure be restricted to the portion of the structure that encroaches on the building line, as presented in the application;
- c) Building plans clearly indicating the existing structure and the proposed amendments be submitted to the Senior Manager: Development Management for consideration and approval;

**B.** The application for the removal of restrictive conditions registered against Title Deed T28340/2017 of Erf 28, Yzerfontein, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the conditions that:

### **1. TOWN PLANNING AND BUILDING CONTROL**

- a) Restriction B.I.(5) that reads as follows:  
“...That no building shall be erected within three comma five (3,15) metres of any street line which forms a boundary of the erf, or within three comma one five (3,15) metres of the open space where it forms a boundary of the erf on the sea front...”  
be removed from Title Deed T28340/2017;
- b) Restriction B.I.(6) that reads as follows:  
“...That when any of the existing buildings are demolished the building line laid down in (5) shall apply...”  
be removed from Title Deed T28340/2017;
- c) The applicant/owner applies to the Deeds Office to amend the Title Deed in order to reflect the removal of the restrictive conditions;
- d) The following minimum information must be provided to the Deeds Office in order to consider the application, namely:
  - i. Copy of the approval by Swartland Municipality;
  - ii. Original Title Deed, and
  - iii. Copy of the notice which was placed by Swartland Municipality in the Provincial Gazette;
- e) A copy of the amended Title Deed be provided to Swartland Municipality for record purposes.

## 2. GENERAL

- a) The approval does not exempt the owner/developer from compliance with all legislation applicable to the approved land use;
- b) The approval is valid for a period of 5 years, in terms of section 76(2) of the By-Law, from the date of decision. Should an appeal be lodged, the 5 year validity period starts from the date of outcome of the decision for or against the appeal. All conditions of approval be implemented before the new land use comes into operation and failing to do so will cause the approval to lapse. Should all conditions of approval be met within the 5 year period, the land use becomes permanent and the approval period will no longer be applicable.
- c) The applicant/objector be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Yzerfontein, 7299 or by e-mail to [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za), within 21 days of notification of decision. An appeal is to comply with section 90 of the By-Law and is to be accompanied by a fee of R5 000,00 in order to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

## PART M: REASONS FOR RECOMMENDATION

- a) The removal of the restrictive conditions will enable the property owner to construct a pergola on the property, contributing to the aesthetics of the dwelling and enhancing the street scape.
- b) Condition that is to be removed, is governed by more than one legislative tool. The development will thus not be able to continue unchecked, even after condition has been removed;
- c) The removal will not negatively impact on the rights of the surrounding land owners, as rights are protected by the By-Law development parameters;
- d) The proposed departure is caused by a small portion of the braai and chimney breast, abutting a walkway and thus the neighbouring property is not negatively impacted upon;
- e) No objections were lodged against the application



## PART N: ANNEXURES

Annexure A	Locality Plan
Annexure B	Site Development Plan
Annexure C	Title Deed
Annexure D	Map indicating interested/affected parties
Annexure E	Objections from A. Kriel
Annexure F	Response to comments
Annexure G	Previous refusal letter
Annexure H	Letters of support/consent

## PART O: APPLICANT DETAILS

First name(s)	C.K. Rumboll and Partners			
Registered owner(s)	Lomien Beleggings Proprietary Limited.	Is the applicant authorised to submit this application:	Y	N

## PART P: SIGNATURES

<b>Author details:</b> Annelie de Jager Town Planner SACPLAN registration number: (A/2203/2015)			Date: <b>28 March 2025</b>	
Recommendation: Alwyn Zaayman Senior Manager: Development Management SACPLAN registration number: (B/8001/2001)	Recommended		Not recommended	<input checked="" type="checkbox"/>
			Date: <b>31 March 2025</b>	

## PART Q: RESOLUTION

That the item be referred back in order to amend the report to accommodate the refusal of the construction of the pergola.



## **RE-EVALUATION**

The Municipal Planning Tribunal recommended on 9 April 2025 that the item be referred back to the Delegated Official, requesting additional photographs of the view from Erf 29 and, taking the new information into account, the re-evaluation of the following relevant aspects:

### **1. Case Law**

The Cape of Good Hope Provincial Court ruling on Clark v. Faraday and Another (Case 8532/03: 12 December 2003), determined that the view from a property is not a right and a neighbour may not be held responsible for the obstruction of said view, if "an owner (or occupier) of land uses the property in an ordinary and natural manner, the owner is not guilty of committing an injuria (or nuisance)". The inverse is then also true.

Application for departure and removal of title conditions exist precisely for the instances where owners intend to venture outside of the ordinary and natural development rights afforded a property. Thus, it is argued that, as the view from Erf 29 is obstructed by a structure erected outside of the development rights on Erf 28, an injuria is indeed committed. Subsequently, the legal principle cited supports the objector who wishes to assert the right/retain the unobstructed view from Erf 29.

### **2. Unauthorised construction**

The owner/developer constructed the pergola without first obtaining the relevant building plan and land use approvals. The By-Law determines that application may be made at any time to rectify such an omission and that the proposal will be considered as if it is new and lawful. However, the risk to the applicant is also the same as for a new application and approval is not guaranteed.

The owners/developers completed a similar application process in 2020 and are familiar with the requirements and restrictions of the proposed development.

### **3. Section 42 of SPLUMA and Chapter VI of LUPA**

- a) Spatial Justice: The proposed removal and departure impacts negatively on the sea view from Erf 29, thus the proposal is considered in contradiction with the By-Law, LUPA and SPLUMA and can therefore not be deemed consistent with spatial justice.
- b) Spatial Sustainability: The proposal impacts negatively on the rights of others and therefore it is not considered spatially sustainable.
- c) Efficiency: The proposal does not constitute densification. When the negative impact on the view from Erf 29 is taken into account, it cannot be argued that the development enhances the interface between the property and the public realm.
- d) Good Administration: The application was communicated to the affected land owners through registered mail and advertisement in local newspapers and the Gazette. The application was also circulated to the relevant municipal departments for comment. Consideration was given to all correspondence received and the application was dealt with in a timeous manner. It is therefore argued that the principles of good administration were complied with by the Municipality.
- e) Spatial Resilience: The principle is not applicable to the development proposal.

### **4. Desirability**

The proposal at hand, once subjected to the relevant legislative processes, was proven to impact negatively on the rights (view) from Erf 29, limiting the use and enjoyment of the property. In addition, the departure has been proven to be in contradiction with the principles of LUPA, SPLUMA and the By-Law and may therefore not be considered desirable in the context.

### **5. Site inspection**

A site inspection was conducted by the author on 11 April 2025 and the following photographs were taken to illustrate the impact of the proposed pergola on the sea view from Erf 29.



Image 1: View from next to the dwelling at natural ground level



Image 2: View towards the house from the same position at natural ground level





Image 2a: View from the steps to the stoep



Image 2b: View from the steps to the stoep





Image 3: View from the centre of the stoep



Image 4: View from the edge of the stoep at eye level (1,6m above stoep level), natural, no zoom



Image 5: View from the edge of the stoep, camera at  $\pm 2\text{m}$  above stoep level, zoomed in approximately 6x

## **PART S: NEW RECOMMENDATION WITH CONDITIONS**

- A.** The application for departure on Erf 28, Yzerfontein, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- B.** The application for the removal of restrictive conditions registered against Title Deed T28340/2017 of Erf 28, Yzerfontein, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);



### **1. TOWN PLANNING AND BUILDING CONTROL**

- a) The development proposal contradicts the principles of LUPA and SPLUMA and therefore cannot be supported;
- b) The departure from the 4m street building line impacts negatively on the view from Erf 29, Yzerfontein. A view is not a right, unless the structure that obscures the view, departs from the prescribed development parameters. As the proposal is to depart from the building line and in doing so the view from Erf 29 is obstructed, the rights of the property owner of Erf 29 are negatively affected and the application cannot be approved;
- c) The proposed removal of the Title Deed conditions negatively impacts on the rights enjoyed by Erf 29 and thus cannot be positively motivated or supported;
- d) The owner/developer is instructed to remove the pergola by no later than 30 June 2025.

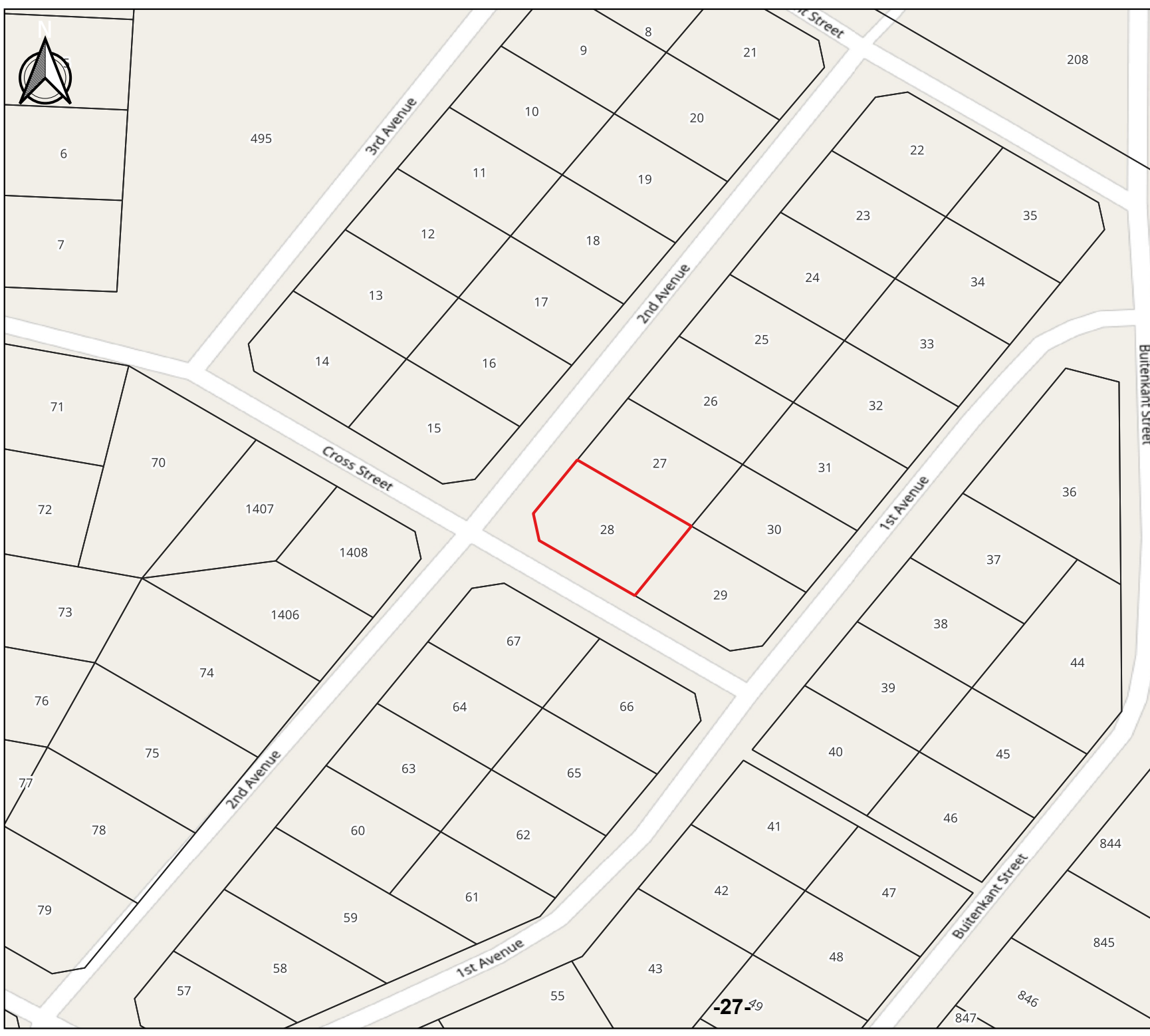
### **2. GENERAL**

The applicant/objector be informed of the right to appeal against the decision of the Municipal Planning Tribunal in terms of section 89 of the By-Law. Appeals be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Yzerfontein, 7299 or by e-mail to [swartlandmun@swartland.org.za](mailto:swartlandmun@swartland.org.za), within 21 days of notification of decision. An appeal is to comply with section 90 of the By-Law and is to be accompanied by a fee of R5 000,00 in order to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

**PART T: SIGNATURES**

<b>Author details:</b> Annelie de Jager Town Planner SACPLAN registration number: (A/2203/2015)			Date: <b>7 May 2025</b>	
Recommendation: Alwyn Zaayman Senior Manager: Development Management SACPLAN registration number: (B/8001/2001)	Recommended		Not recommended	<input checked="checked" type="checkbox"/>
			Date: <b>7 May 2025</b>	





LEGEND:

Application Property

DRAWING:

**LOCALITY MAP**

ERF 28, YZERFONTEIN

NOTE:

ALL AREAS AND DISTANCES ARE  
SUBJECT TO SURVEYING

AREA:	DATE:
SWARTLAND MUNICIPALITY	OCT 2014

PREPARED BY:

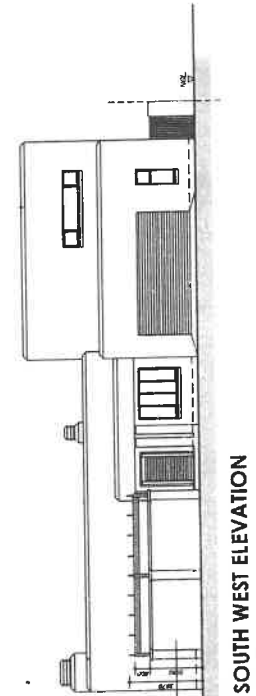
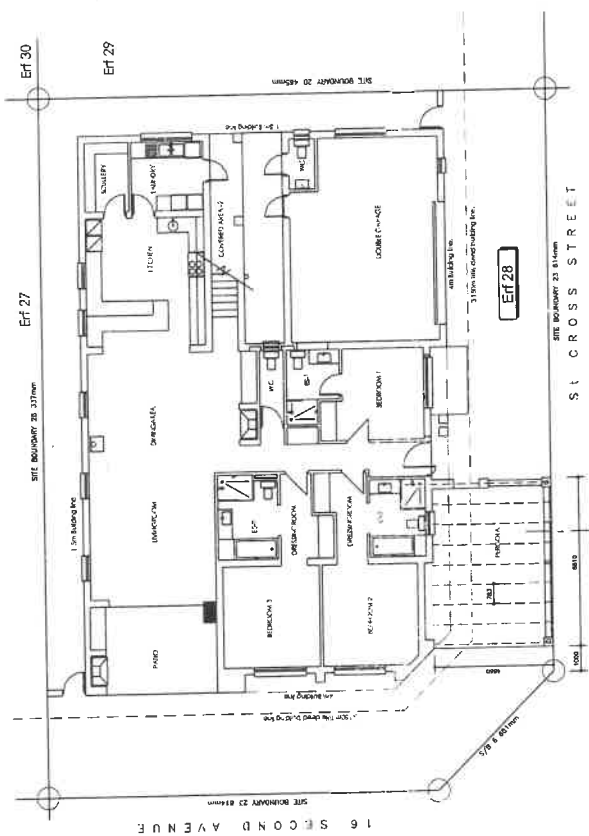
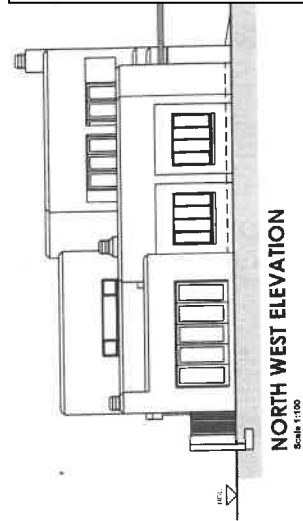
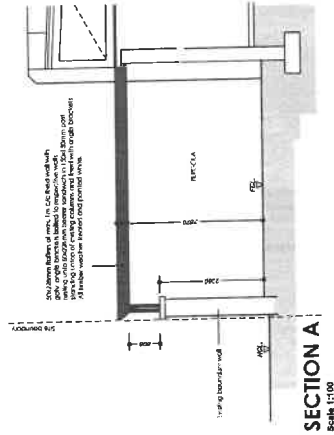
CK RUMBOLL & PARTNERS  
TOWN PLANNERS  
PROFESSIONAL SURVEYORS

16 RAINIER STREET, MALMEBO  
TEL: 022 482 1845  
EMAIL: reception@rumboll.co.za



**ANNEXURE A**

# ANNEXURE B



**AREA CALCULATION**

ITEM	AREA (sq. ft.)	PERCENT
SITE	500	100%
EXISTING FLOOR AREA	280	56%
NEW FLOOR AREA	220	44%
TOTAL FLOOR AREA	500	100%
TOTAL COVERED AREA	500	100%
% COVERED		100%

- 1. THE OCCUPATION OF THE SITE IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 2. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 3. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 4. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
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- 7. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 8. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 9. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.
- 10. THE PROPOSED DEVELOPMENT IS TO BE USED AS A RESIDENTIAL DEVELOPMENT.

PROJECT INFORMATION		CLIENT INFORMATION		DRAWING INFORMATION	
PROPOSED NEW PERGOLA ON ERF 28		E MOSTERT		01	
16 SECOND AVENUE & ST. CROSS STREET, YZERFONTEIN.					
SECTION & ELEVATION					
SCALE: 1:100		DATE: 03 JULY 2024		DRAWING NO: 01	
DRAWN BY: WILFRED		CHECKED BY: WILFRED		PROJECT NO: 2024/28-01	
OCCUPATION: 1H / DWELLING		SINGLE RESIDENTIAL		DRAWING DATE: 01	
CLIENT: YZERFONTEIN		YZERFONTEIN		DRAWING NO: 01	
CITY / TOWN: 4		COUNTRY: 4		DRAWING NO: 01	
COORDINATES: 101.3334212095 Long, 18.1426094F					
NOTE: 1. THE DRAWING IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION.					
2. ANY DISCREPANCIES SHALL BE THE RESPONSIBILITY OF THE CLIENT.					
3. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
4. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
5. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
6. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
7. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
8. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
9. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					
10. THE CLIENT SHALL BE RESPONSIBLE FOR THE DESIGN OF THE BUILDING.					



**ANNEXURE C**

DU PLESSIS & MOSTERT  
Transportbesorgers  
MALMESBURY

Fee endorsement		Office fee
	Amount	
Purchase price/Value	R. 1360 000 - 00	R. 1030 - 00
Mortgage capital amount	R. ....	R. ....
Reason for exemption	Exempt i.t.o. Cat. .... section .... Act. ....	

Opgestel deur my

*[Handwritten Signature]*  
TRANSPORTBESORGER  
MARIUS CHRISTO VAN ZYL

DATA / VERIFY  
25 MAY 2017  
TALBOTSTRAAT

DATA / CAPTURE  
24 MAY 2017  
KETILEN

**TRANSPORTAKTE**

HIERBY WORD BEKEND GEMAAK DAT  
RAYMOND FRANCIS SCOTT

700028340 / 2017

verskyn het voor my, Registrateur van Aktes te Kaapstad, Hy die gesegde Komparant synde daartoe behoorlik gemagtig deur 'n volmag uitgevoer te MALMESBURY op die 19de dag van April 2017, deur

**LOUISA JACOBA MOSTERT**  
(Identiteitsnommer 410913 0060 08 5)  
Getroud buite gemeenskap van goedere

welke volmag, geteken in die teenwoordigheid van getuie ooreenkomstig die Wet, my hede getoon is

En die Komparant het verklaar dat sy voorsege Prinsipaal werklik en wettiglik verkoop het op 19 April 2017 en dat Hy, in sy hoedanigheid as voorgesegde Prokureur, deur hierdie Akte, gesedeer en getranspoteer in volle en vrye eiendom aan en ten behoeve van

**LOMIEN BELEGGINGS PROPRIETARY LIMITED**  
(Registrasienommer 1995/001124/07)

die se opvolgers in titel of Regverkrygendes

ERF 28 Yzerfontein, in die Swartland Munisipaliteit, Afdeling Malmesbury, Provinsie Wes-Kaap;

GROOT : 569 (Vyf Honderd Nege en Sestig) vierkante meter

AANVANKLIK oorgedra kragtens Transportakte Nommer T.32156/1971 met Kaart L.G.Nommer 559/1937 wat daarop betrekking het en gehou kragtens Sertifikaat van Geregistreerde Titel Nommer T.66347/2016.

- A. ONDERHEWIG aan die voorwaardes waarna verwys word in Sertifikaat van Geregistreerde Titel Nommer T3728/1937;
- B. ONDERHEWIG VERDER aan die spesiale voorwaardes vervat in gesegde Transportakte Nommer T32156/1971, opgelê deur die Administrateur kragtens Artikel 15 van Ordonnansie Nommer 13 van 1927 in verband met die goedkeuring van die stigting van die gesegde Dorp, naamlik:-

"I. AS being in favour of the registered owner of any erf in the said Township -

- (1) That the erf be used for residential purposes only.
- (2) That the erf be not subdivided.

/...

*[Handwritten signature]*

- (3) That not more than one dwelling together with the necessary outbuildings and appurtenances, be erected on the erf.
- (4) That not more than one-half the area of the erf be built upon.
- (5) That no building shall be erected within three comma one five (3,15) metres of any street line which forms a boundary of the erf, or within three comma one five (3,15) metres of the open space where it forms a boundary of the erf on the sea front.
- (6) That when any of the existing buildings are demolished the building line laid down in (5) shall apply.

II. AS being in favour of the Local Authority:-

- (7) That the owner of each erf, whether the applicant for the establishment of the township or any future owner, shall be obliged to allow the drainage or sewerage of any other erf or erven to be conveyed over such erf if deemed necessary by the Local Authority, and in such manner and in such position as may from time to time reasonably be required."

C. ONDERHEWIG VERDER aan die volgende voorwaarde vervat in gesegde Transportakte Nommer T32156/1971, opgelê deur Yzerfontein Seaside Estate (Proprietary) Limited vir solank as dit die eienaar is van enige erwe in Yzerfontein Dorp gehou kragtens Transportakte Nommer T3729/1937, en ten gunste van enige plaaslike owerheid wat in Yzerfontein Dorp gestig mag word, en enige geregistreerde eienaar van 'n erf in die gesegde Dorp, naamlik:-

"That no building shall be erected on any erf until the plans and specifications thereof have been submitted to and approved of by the Company or in the event of a Local Authority being established at

/...

*W. J. J.*

Yzerfontein Township, by such Local Authority and no structure of a temporary or semi-permanent nature may be erected on any erf."

D. HIERDIE erf is, soos uiteengesit in Transportakte Nommer T32157/1971, NIE GEREGTIG op die voordele van die Notariële Akte van Serwituut waarna verwys word in 'n endossement gedateer 28 Mei 1937 op Transportakte Nommer T3729/1937, aangegaan tussen die Maatskappy en William Abraham Smit, die Agent van Nicolaas Gerhardus Pienaar op die 26 April 1937 en aangeheg aan Transportakte Nommer T3729/1937, ten gunste van die Maatskappy, welke regte kragtens die gesegde Akte van Serwituut verkry, voorbehou is tot die gesegde Maatskappy solank dit grond in Yzerfontein Dorp bouterrein besit.

E. GEREGTIG aan die volgende voorwaarde vervat in gesegde Transportakte Nommer T32156/1971, opgelê deur Yzerfontein Seaside Estate (Proprietary) Limited vir die voordeel van die Transportnemer en sy opvolgers in titel, naamlik:-

"That the owner of this erf or his successors in title shall be entitled with other owners of erven in Yzerfontein Township Site to take an equal share of the water in the reservoir erected by the Company on Lot Number 102, Yzerfontein Township Site."

DIE Komparant doen dus hiermee afstand van al die regte, aanspraak en titel wat die Transportgewer

voorheen op genoemde eiendom gehad het, en gevolglik erken die Komparant ook dat die Transportgewer geheel en al van die besit daarvan onthef en nie meer daarop geregtig is nie, en dat kragtens hierdie akte, bogenoemde Transportnemer

/...

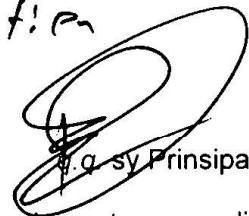


die se opvolgers in titel of Regverkrygendes Erfgename, Eksekuteurs, Administrateurs of Regverkrygendes tans en voortaan daartoe geregtig is, ooreenkomstig plaaslike gebruik, behoudens die Regte van die Staat; en ten slotte erken hy dat die hele Koopsom ten bedrae van R1 360 000,00 (Een Miljoen Drie Honderd en Sestig Duisend Rand) behoorlik betaal of verseker is.

TEN BEWYSE waarvan ek, die genoemde Registrateur, tesame met die Komparant, hierdie Akte onderteken en dit met die Ampseël bekragtig het.

ALDUS GEDOEN en verly op die Kantoor van die Registrateur van Aktes, te Kaapstad

op hede die 23<sup>ste</sup> dag van Mei in  
die jaar van ons Heer, Tweeduisend en Sewentien



J. G. sy Prinsipaal/ale.

In my teenwoordigheid,



REGISTRATEUR VAN AKTES

/...



Opgestel deur my

Transportbesorger

MARIUS CHRISTO VAN ZYL

PROKURASIE OM TRANSPORT UIT TE MAAK

Ek die ondergetekende

**LOUISA JACOBA MOSTERT,**

(Identiteitsnommer 410913 0060/08 5)

Getroud buite gemeenskap van goedere

stel hiermee aan

SIMONE IMMELMAN en/of REKHA JAGA en/of RAYMOND FRANCIS SCOTT en/of  
MICHAEL RHODES COLLINS en/of DANIEL FRANCOIS FYFER en/of SIMONE  
FRANKS en/of ANDREW MARK HEIBERG

met mag van Substitusie om my wettige Prokureur en Agent te wees, om te verskyn  
in die Kantoor van die Registrateur van Aktes, te Kaapstad en dan en daar namens  
my Transport te passeer aan

**LOMIEN BELEGGINGS PROPRIETARY LIMITED**

(Registrasienommer 1995/00124/07)

van die volgende eiendom

ERF 28 Yzerfontein, in die Swartland Munisipaliteit, Afdeling Malmesbury, Provinsie  
Wes-Kaap;

GROOT : 569 (Vyf Honderd Nege en Sestig) vierkante meter


GEHOU KRAGTENS Sertifikaat van Geregistreerde Titel Nommer T.66347/2016

welke gesegde\...

welke gesegde eiendom verkoop is deur my op 19 April 2017 aan die gesegde Transportnemer vir R1 360 000,00 (Een Miljoen Drie Honderd en Sestig Duisend Rand) en om in die algemeen alles te doen of te laat doen wat ookal nodig mag wees vir die bereiking van die voormelde doeleindes en alles wat aldus gedoen word, word hiermee bekragtig.

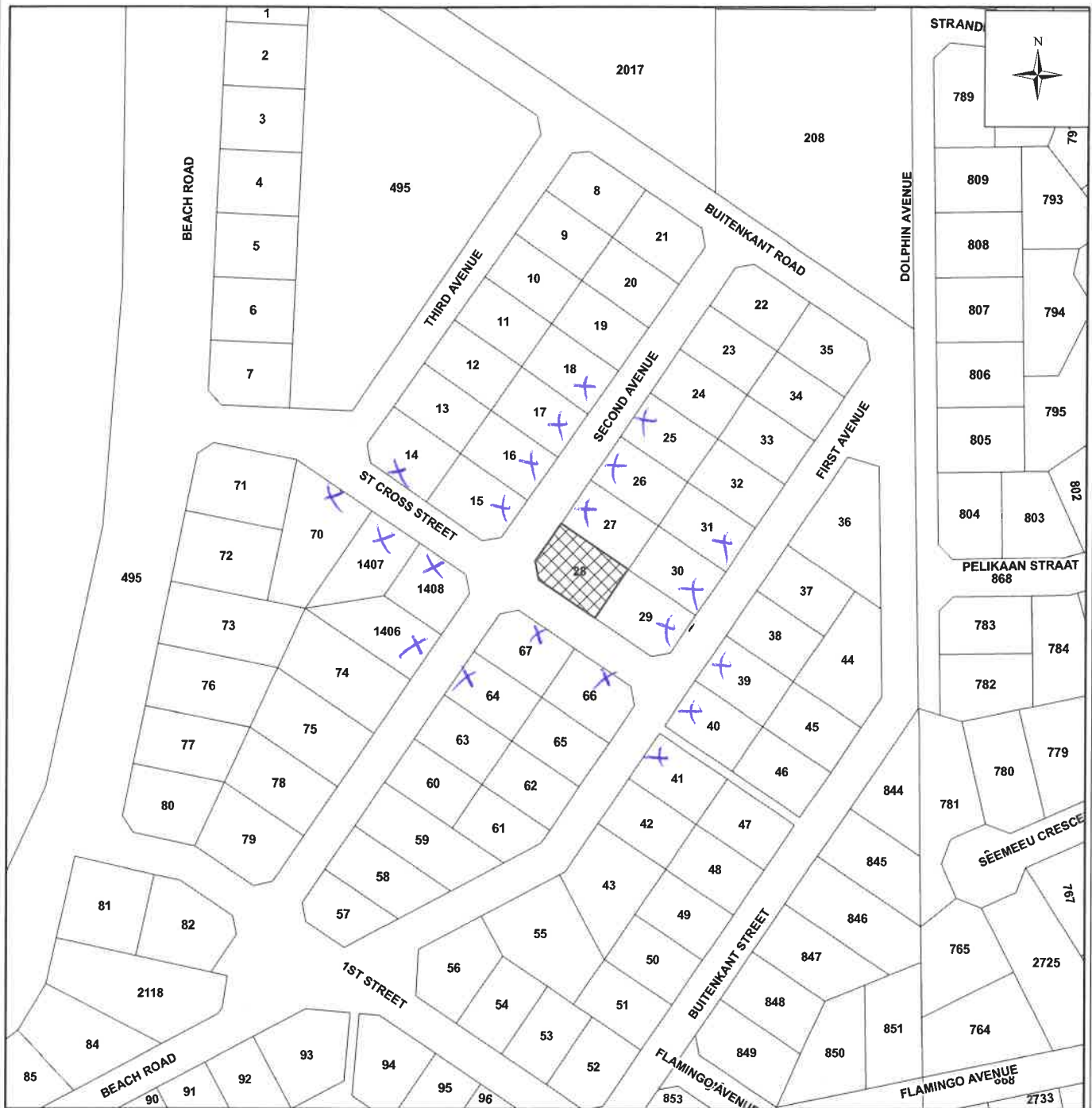
ALDUS GEDAAN EN GEGEE TE MALMESBURY OP HIERDIE 19DE DAG VAN APRIL 2017 in die teenwoordigheid van die ondergetekende getuies.

AS GETUIES:

1. 

2. 



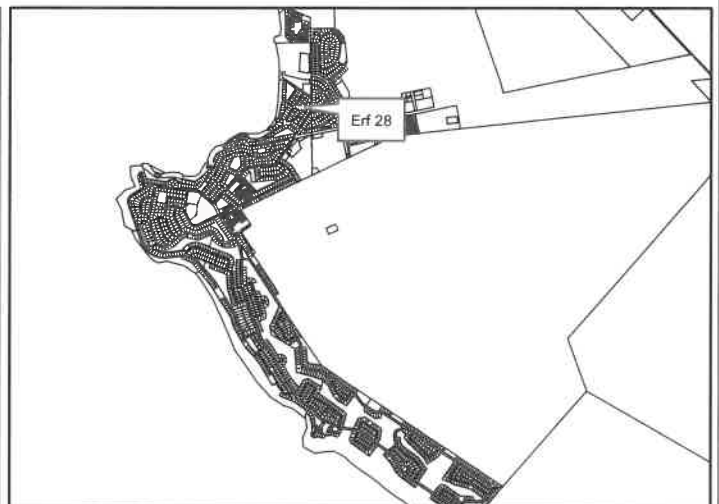


**Voorgestelde opheffing en afwyking**

**Erf 28, Yzerfontein**

**Publieke deelname**

**Skaal: NVT**





21 Januarie 2025

Geagte Meneer Burger, Olivier en Me de Jager asook ander lede van die betrokke bestuur

U skrywe van 4 Desember 2024 verwys :

**Hiermee wens ek beswaar aan te teken teen ENIGE voorgestelde opheffings van beperkende voorwaardes en afwykings van ontwikkelingsparameters op erf 28, Yzerfontein.**

Die vertrekpunt vir my beswaar spruit daaruit dat die eienaars van Erf 28 weer eens skuldig is aan die onwettige oprigting van 'n konstruksie wat nie die bouregulasies van SM onderskryf nie. Die oprigting van die konstruksie strek tot nadeel van Erf 29 se uitsig en waarde, maar die onwettige oprigting *self*, is wat te *alle* tye voorop gestel moet word. 'n Soortgelyke oortreding het daartoe gelei dat vorige konstruksies afgebreek moes word – net om nou weer opgerig te word.

Mnr Mostert se e-pos (Julie 2024) gerig aan my, wat ek ook aan SMgestuur het, verwys :

- In sy brief vra Mnr Mostert dat toestemming verleen moet word sodat die grondgebruikaansoek vir die prieël wat reeds gedurende **2023** opgerig is, goedgekeur kan word. Mnr Mostert heg ook 'n bouplan, gedateer **3 Julie 2024** aan. Dit is dus baie duidelik dat die prieël opgerig is sonder dat enige bouplanne opgetrek is of vir goedkeuring ingehandig is. Hou ingedagte dat dit alles gebeur het nadat die eerste onwettige konstruksie summier deur die SM afgekeur is. Ek kan en sal dus nie toestemming verleen daartoe nie.
- Mnr Mostert skryf verder dat toestemming benodig word aangesien die prieël konstruksie veroorsaak dat 'n grondgebruikaansoek vir opheffing van titelbeperkings en boulynafwyking, voltooi moet word.

Op hierdie punt wil ek u graag verwys na die aangehegde brief van Yzerfontein se Inwonersvereniging van 10 Oktober 2020. Dit is 'n gedetailleerde beswaar gerig aan SM, waarin die voorsitter, Mnr Edward Brittain, optree in belang van die destyde eienaar van Erf 29, Leense van Dijk. Mnr Brittain is wel nie meer die voorsitter van die Inwonersvereniging nie en die destydse konstruksie is afgebreek en grensmure moes verlaag word, maar nou, met die her-oprigting van 'n nuwe onwettige konstruksie, is dieselfde punte weer ter sprake. Die debat wat gevoer word deur Mnr Brittain destyds en die vrae wat gerig word aan die SM, is steeds relevant en moet

beslis deurgetrek word na die huidige beswaar teen die onwettige nuut opgerigte prieël.

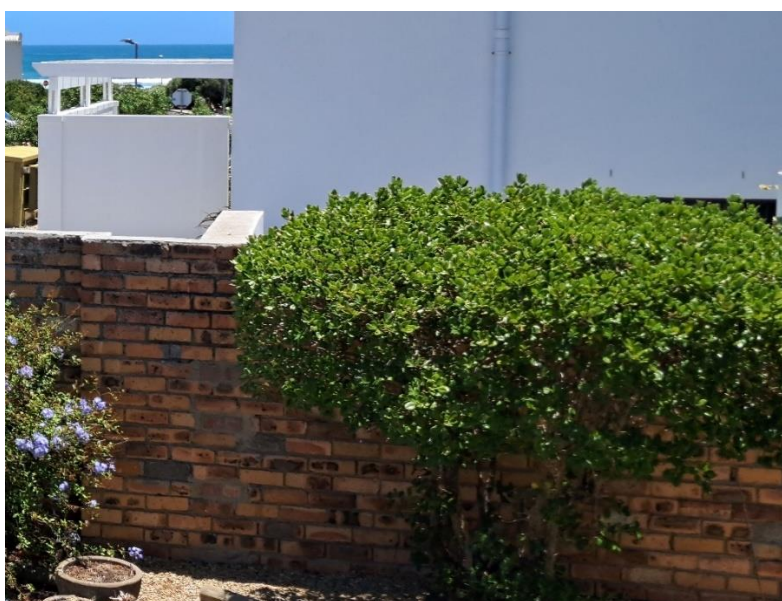
- In sy skrywe aan my is Mnr Mostert oortuig dat die prieël wat sonder die nodige goedkeuring en bouplanne opgerig is, van so 'n aard is 'om niemand se uitsig te belemmer nie'. Hierdie selfde punt is reeds in 2020 weerlê deur die Inwonersvereniging se skrywe:

*We most strongly disagree with this statement insofar as it*

*relates to the property of our member, Leense van Dijk.*

Met spesifieke verwysing na die bouplanne : Die konstruksie grensend aan Cross straat en aan die buitekant van slaapkamer 2 dien op die oog af geen doel nie maar ontnem Erf 29 van uitsig. Uitsig is wel nie 'n gegewe en deurslaggewende faktor vir beswaar nie, maar om beperkende bouregulasies te wysig ter wille van 'n estetiese aanbouing, is beslis ook onaanvaarbaar. Dit wil amper voorkom asof die eienaars van Erf 28 moedswillig was met die aanbouing - veral gesien in die lig daarvan dat hulle, niteenstaande die feit dat daar 'n dispuut oor 'n 'pergola' was in 2020, 'n tweede keer 'n onwettige konstruksie oprig op dieselfde grensmuur. Mnr Mostert het dus willens en wetens die goedgekeurde bouplan en die besluit wat daaroor deur SM aan Mnr Mostert voorsien is, verontagsaam.

In die aangehegde beswaar van 15 April is 'n volledige stel foto's, maar die negatiewe impak van die onwettige konstruksie is veral duidelik op die onderstaande foto's :



*Geneem vanaf die stoep op Erf 29. Onwettig konstruksie belemmer beslis die uitsig.*



*Geneem vanaf die stoep van Erf 29. Nie net is die aanbouing van die woning op Erf 28 'n ontsiering nie, maar die klein stukkie see uitsig van Erf 29 word totaal ontnem deur die ontwettige konstruksie en eintlik sinlose aanbouing in sy geheel links op die foto.*



*Geneem vanaf die stoep van Erf 29 nadat die grensmuur verlaag en die vorige pergola afgebreek is. Uitsig is onbelemmer.*

*Op hierdie foto is die uitheemse Minatokka boom aan die voorkant van grensmuur nog klein, maar op die volgende foto's kan gesien word hoe dit ook die uitsig belemmer en later totaal gaan wegneem.*





*Januarie 2025 : Geneem vanaf die stoep op Erf 29. Uitheemse Minatokka boom raak 'n probleem*



*Januarie 2025 : Geneem vanaf die Crossstraat om aan te dui hoe die uitheemse Minatokka boom groei en uitsig belemmer.*



*Erf 28 met uitheemse Minatokka boom*

Ek vra dat SM hierdie beswaar van herhaaldelike onwettiging oprigting in 'n ernstige lig sal sien en sal optree volgens die voorskrifte van die bouregulasies wat van toepassing is en nie sal toegee dat bouregulasies verander word bloot om eienaars se onwettige optredes te regverdig nie.

Vriendelike groete

Aeltsje Kriel

0843507271

# ANNEXURE F

DATE: 26 February 2025

OUR REF: MAL/11582/ZN/MV

YOUR REF: 15/3/5-14/Erf\_28

15/3/4-14/Erf\_28

BY HAND

ATTENTION: Mr A. Zaayman

Municipal Manager  
Swartland Municipality  
Private Bag X52  
**MALMESBURY**  
7300

Mr,

## **COMMENTS ON OBJECTIONS: REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND DEPARTURE OF DEVELOPMENT PARAMETERS ON ERF 28, YZERFONTEIN**

### **1. Introduction**

Your letter dated 30 January 2025, received by this office via email on 31 January 2025, refers.

This office has been appointed by Mr. Eddie Mostert, representative of Lomien Beleggings Pty Ltd, owners of Erf 28, Yzerfontein, to attend to all town planning actions regarding the removal of restrictive title deed conditions and departure from a street building line on Erf 28. The application is made to authorise an existing pergola encroaching the southern street building line.

The following neighbour raised objections to the application during the public participation period:

A. Aeltsje Kriel (Erf 29)

This document serves as a response to the objections received.

### **2. Comments on Objections**

Please see our office's response to the objections received below in tabular form.



Table 1: Comments on Objections

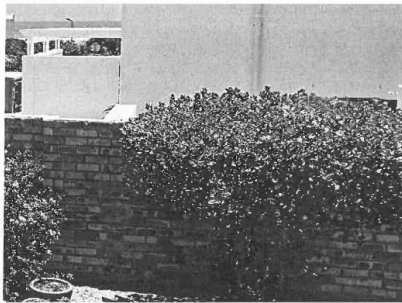
Objectors	Objections	Comments from CK Rumboll & Partners
A	<p><u>Illegal Construction:</u></p> <p>1. “Mnr. Mostert versoek in ‘n brief gedurende Julie 2024 dat toestemming verleen moet word sodat die grondgebruiksaansoek vir die prieël wat reeds gedurende 2023 opgerig is, goedgekeur kan word. ‘n Bouplan, gedateer 3 Julie 2024, is aangeheg. Dit is dus duidelik dat die prieël opgerig is sonder dat bouplanne opgetrek is of vir goedkeuring ingedien is. Hou in gedagte dat alles gebeur het nadat die eerste konstruksie summier deur Swartland Munisipaliteit afgekeur is.</p> <p>Dit wil amper voorkom asof die eienaars van Erf 28 moedswillig was met die aanbouing – veral gesien in die lig daarvan dat hulle, nie teenstaande die feit dat daar ‘n dispuut oor ‘n “pergola” was in 2020, ‘n tweede keer ‘n onwettige konstruksie oprig op dieselfde grensmuur. Mnr. Mostert het wetend die goedgekeurde bouplan en die besluit wat daaroor deur Swartland Munisipaliteit aan Mnr. Mostert voorsien is, verontagsaam.</p>	<p>1. While it is acknowledged that the pergola was erected without Municipal approval, the applicant is now taking the necessary steps to obtain Municipal approval to authorise the existing structure.</p> <p>In 2021, an application was submitted to authorise a previously constructed structure. However, the existing screen and boundary walls did not comply with the National Building Regulations as they exceeded the maximum allowable height. Additionally, the structure atop the screen wall, intended as a pergola, did not meet the definition of a pergola due to its lattice roof exceeding the permitted coverage.</p> <p>Following the Municipal Planning Tribunal’s (MPT) refusal of the application in November 2021, the MPT required the owners to:</p> <ul style="list-style-type: none"> <li>• remove the non-compliant lattice roof;</li> <li>• lower the screen wall to a maximum height of 2.1m; and</li> <li>• reduce the boundary wall height to comply with the Swartland Municipality: By-law on Boundary Walls and Fences (PG 7638).</li> </ul> <p>The owners have since fully complied with these requirements. The screen and boundary walls were adjusted to meet regulatory standards, and a new pergola was erected in place of the lattice roof. However, as the pergola encroaches on building line restrictions,</p>

	<p>Die eienaars van Erf 28 is weereens skuldig aan die onwettige oprigting van 'n konstruksie wat nie die bouregulasies gehoorsaam nie.”</p>	<p>approval is still required in terms of the Swartland Municipality's By-law on Municipal Land Use Planning (PG 8226).</p> <p>The following images illustrate the old structure versus the new structure applied for authorisation. The new structure is clearly more permeable, resulting in significantly less impact on the views of surrounding neighbors.</p> <div data-bbox="1129 529 1915 1052" data-label="Image"> </div> <p><i>Figure 1: Old vs New Structure</i></p>
A	<p><u>Negative effect on views from Erf 29:</u></p> <p>2. “Die konstruksie grensend aan Cross straat en aan die buitekant van slaapkamer 2, dien op die oog af geen doel nie, maar ontnem Erf 29 van uitsig. Uitsig is wel nie ‘n gegewe deurslaggewende faktor vir</p>	<p>2. The comment that the construction along Cross Street serves no purpose and deprives Erf 29 of its view is subjective and overlooks the functional and aesthetic intent behind the pergola. While views are indeed an important consideration in certain contexts, the impact on the view from Erf 29 is minimal. The pergola is a modest structure that was designed to complement the existing property and enhance its</p>

beswaar nie, maar om beperkende voorwaardes te wysig ter wille van 'n estetiese aanbouing, is beslis ook onaanvaarbaar.

Nie net is die aanbouing van die woning op Erf 28 'n ontsiering nie, maar die klein stukkie see-uitsig van Erf 29 word totaal ontnem deur die onwettige konstruksie en eintlik sinnelose aanbouing in sy geheel, tesame met die uitheemse Minatokka boom voor die struktuur.

Die negatiewe impak van die onwettige konstruksie is veral duidelik op die onderstaande foto's:"

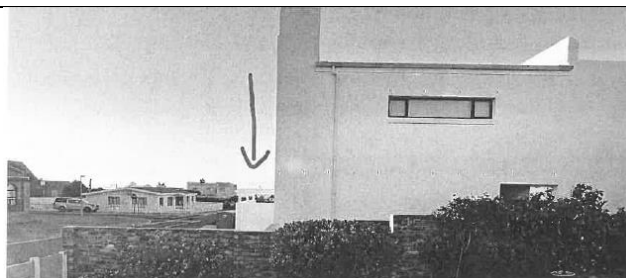


*Geneem vanaf die stoep op Erf 29. Onwettig konstruksie belemmer beslis die uitsig.*

liveability, rather than obstruct the views from neighboring properties. The pergola provides functional space to the property, providing a sheltered outdoor area that improves the living experience of the residents.

Importantly, the primary obstruction to the view from Erf 29 is caused by the screen wall, not the pergola. The screen wall complies with the National Building Regulations, the Municipal By-Law on Boundary Walls and Fences (PG 7638), and Section 12.1 of the Swartland Municipal By-Law on Land Use Planning (PG 8226), as it has been lowered from 2.7m to 2.1m, measured from the natural ground level (NGL) to the top. According to the By-Law, a screen wall may be erected within building line restrictions as long as it does not exceed the 2.1m height limit.

The following figure illustrates the view from the owners of Erf 29 towards the sea when standing completely on the edge of their front porch. The pergola has a minimal effect on their view.

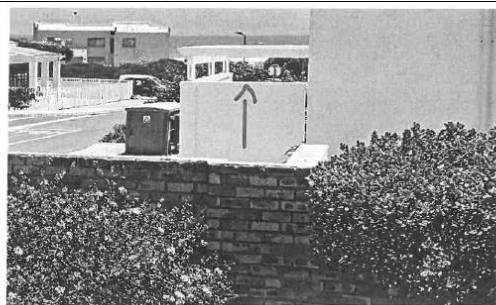


*Geneem vanaf die stoep van Erf 29. Nie net is die aanbouing van die woning op Erf 28 'n ontsiering nie, maar die klein stukkie see uitsig van Erf 29 word totaal ontnaem deur die ontwetige konstruksie en eintlik sinlose aanbouing in sy geheel links op die foto.*



*Geneem vanaf die stoep van Erf 29 nadat die grensmuur verlaag en die vorige pergola afgebreek is. Uitsig is onbelemmer.*






*Januarie 2025 : Geneem vanaf die stoep op Erf 29. Uitheemse Minatokka boom raak 'n probleem*



*Januarie 2025 : Geneem vanaf die Crossstraat om aan te dui hoe die uitheemse Minatokka boom groei en uitsig belemmer.*



	 <p><i>Erf 28 met uitheemse Minatokka boom</i></p>	
A	<p><u>Objections during Initial Application in 2020:</u></p> <p>3. “Ek verwys ook na die brief van die Yzerfontein se Inwonersvereniging van 10 Oktober 2020. Dit is ‘n gedetailleerde beswaar gerig aan Swartland Munisipaliteit, waarin die voorsitter, Mnr. Edward Brittain, optree in belang van die destydse eienaar van Erf 29, Leense van Dijk. Mnr. Brittain is wel nie meer die voorsitter nie en die destydse konstruksie is</p>	<p>3. The objections raised in the Yzerfontein Residents’ Association letter dated 10 October 2020 were addressed in this office’s response to comments document dated 13 November 2020, which remains valid and can be referenced as needed.</p> <p>However, regarding the initial response to concerns about obstructed views, the objections pertained to a 2.7m high screen wall and a pergola that did not meet the definition outlined in the Swartland Municipality: By-law on Municipal Land Use Planning (PG 8226). For</p>

	<p>afgebreek en grensmure moes verlaag word, maar nou, met die heroprigting van 'n nuwe onwettige konstruksie, is dieselfde punte weer ter sprake. Die debat wat gevoer word deur Mnr. Brittain destyds en die vrae wat gerig word aan die Munisipaliteit, is steeds relevant en moet beslis deurgetrek word na die huidige beswaar teen die onwettige nuut opgerigte prieël.”</p>	<p>details on how the new structure minimally impacts the view from Erf 29, refer to Points 1 and 2 of this document.</p>
--	--	---

### 3. Conclusion

The applicant has made substantial improvements to address the concerns that led to the refusal of the 2021 application, ensuring full compliance with planning and zoning regulations. The departure from the southern street building line, while initially a concern, has been thoroughly justified in this application. The new pergola structure—featuring a permeable design in place of the previous roofed structure—and the lowered walls significantly minimise any impact on the view from Erf 29.

We invite the Municipality to conduct an on-site inspection to assess the structure's actual impact on sea-views from Erf 29.

As demonstrated in the October 2024 Motivational Report, this application aligns with the principles of LUPA and SPLUMA. The development does not negatively impact the surrounding area and enhances both the aesthetics and functionality of the dwelling on Erf 28. Furthermore, the structure and walls fully comply with the National Building Regulations, the Municipal By-Law on Boundary Walls and Fences (PG 7638), and the Swartland Municipal By-Law on Land Use Planning (PG 8226).

We trust the above information will be found in order during the assessment of the application.

Regards,

A handwritten signature in black ink, appearing to read 'M Crafford', followed by a small dot.

Mandri Crafford (Pr. Pln. 3241/2022)

For *CK RUMBOLL & PARTNERS*



CLEAN AUDITS SINCE 2010/11



Munisipaliteit  
Municipality  
Umasipala

# ANNEXURE G

*Ons gee gestalte aan 'n beter toekoms!  
We shape a better future!  
Sibumba ikamva elingcono!*

Lêer verw/ 15/3/4-14/Erf\_28  
File ref: 15/3/5-14/Erf\_28

Navrae/Enquiries:  
Ms D N Stallenberg

24 November 2021

C K Rumboll & Partners  
P O Box 211  
MALMESBURY  
7299

**By Registered Mail**

Sir/Madam

## **PROPOSED REMOVAL OF RESTRICTIVE TITLE CONDITIONS AND DEPARTURE ON ERF 28, YZERFONTEIN**

Your application with reference YZE/11582/ZN/MV dated 25 August 2021 on behalf Lomien Beleggings Pty Ltd has reference.

- A** The Municipal Planning Tribunal has resolved at a meeting held on 17 November 2021 to refused the application for the departure on Erf 28, Yzerfontein, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to encroach on the southern street building line;
- B.** The application for the removal of restrictive conditions registered against erf Erf 28, Yzerfontein, is refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- C. Non-approvals/refusals A. and B. above are motivated as follows:**
- C1 TOWN PLANNING AND BUILDING CONTROL**
- (a) The development proposal contradicts the principles of LUPA and SPLUMA and therefore cannot be supported;
- (b) The departure from the 4 m street building line impacts negatively on the view from Erf 29, Yzerfontein. A view is not a right, unless the owner that obscures the view, departs from the prescribed development parameters. As the proposal is to depart from the building line and in doing so the view from Erf 29 is obstructed, the rights of the property owner of Erf 29 are negatively affected and the application cannot be approved;
- (c) The Section 12.2.1(e) of the By-Law restricts the structures and circumstances under which building line departure may be considered. The proposed application is in contradiction with the section and is therefore refused;
- (d) The proposed removal of the Title Deed conditions negatively impacts on the rights enjoyed by Erf 29 and thus cannot be motivated or supported;
- (e) The construction of the screen walls over the street building line initially did not take place and were marked as omitted from the approved building plan after construction. Once the screen walls were built, however, the owner/developer went beyond that which was approved and opened the

*Rig asseblief alle korrespondensie aan:*

**Die Munisipale Bestuurder  
Privaatsak X52  
Malmesbury 7299**

**Tel: 022 487 9400**

**Faks/Fax: 022 487 9440**

**Epos/Email: swartlandmun@swartland.org.za**

**Moorreesburg Tel: 022 433 2246**

*Kindly address all correspondence to:*

**The Municipal Manager  
Private Bag X52  
Malmesbury 7299**

**Darling Tel: 022 492 2237**

**Yzerfontein Tel: 022 451 2366**

application up to renewed scrutiny. It is therefore recommended that the owner/developer not only demolishes the lattice roof, but also that the screen wall be lowered to a maximum height of 2.1 m, measured from the natural ground level to the highest point of the column top, consistent with the By-Law;

- (f) The boundary wall be demolished to a height that complies with the Swartland Municipality: By-Law relating to Boundary Walls and Fences (PG 7638 dated 24 June 2016);
- (g) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;

**D. GENERAL**

- (a) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

**E. The reasons for the refusal of the application are as follows:**

- (a) The development proposal contradicts the principles of LUPA and SPLUMA and therefore cannot be supported;
- (b) The departure from the 4 m street building line impacts negatively on the view from Erf 29, Yzerfontein. A view is not a right, unless the owner that obscures the view, departs from the prescribed development parameters. As the proposal is to depart from the building line and in doing so the view from Erf 29 is obstructed, the rights of the property owner of Erf 29 are negatively affected and the application cannot be approved;
- (c) The Section 12.2.1(e) of the By-Law restricts the structures and circumstances under which building line departure may be considered. The proposed application is in contradiction with the section and is therefore refused;
- (d) The proposed removal of the Title Deed conditions negatively impact on the rights enjoyed by Erf 29 and thus cannot be motivated or supported;
- (e) The construction of the screen walls over the street building line initially did not take place and were marked as omitted from the approved building plan after construction. Once the screen walls were built, however, the owner/developer went beyond that which was approved and opened the application up to renewed scrutiny. It is therefore recommended that the owner/developer not only demolish the lattice roof, but also that the screen wall be lowered to a maximum height of 2.1 m, consistent with the By-Law and the Title Deed.

In terms of Chapter VII, Section 89 of the Swartland Municipality By-law relating Municipal Land Use Planning (PG 8226 of 25 March 2020), you as well as the objectors have a right to appeal within 21 days of date of registration of this letter to the appeal authority of the Swartland Municipality against Council's decision.

Should you decide to appeal, you can write to the following address:

The Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299

Please note that if the applicant/objector does appeal, an appeal fee of R2400-00 is payable. The appeal must be accompanied by the proof of payment and only then will the appeal be regarded as valid.

Yours faithfully



**MUNICIPAL MANAGER**

via Department Development Services  
/ds



**Eddie Mostert (Huis)**

## ANNEXURE H

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Sent:** Thursday, July 18, 2024 10:16 AM  
**To:** 'Carel Snyman'  
**Subject:** RE: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Goeie more Carel,

Ja dit is vir die prieël wat reedes daar is.  
Baie dankie Carel.

Groete

Eddie

---

**From:** Carel Snyman <carel@aztomix.com>  
**Sent:** Thursday, July 18, 2024 9:01 AM  
**To:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Subject:** Re: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Middag Eddie,

Hoop dit gaan goed. Is hierdie goedkeuring vir die struktuur wat reeds daar is? Indien so dan is ek gelukkig daarmee.

Groete  
Carel

---

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Sent:** Tuesday, July 16, 2024 2:00 PM  
**To:** Carel Snyman <carel@aztomix.com>  
**Subject:** FW: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

[Warning, this email was sent from outside your organisation.]

Posbus 5,

Malmesbury

Geagte mnr Snyman,

Ek is die eienaar van die eiendom in 2e straat16, erf nr 28, Yzerfontein. Ek het onlangs 'n prieël opgerig wat die huis met die grensmuur verbind. Dit is om estetiese rede

so opgerig om deursigtig te wees en om niemand se uitsig te belemmer nie. Die hoogte van die grensmuur en skermmuur voldoen aan die bepalings van die Munisipale Grondgebruik verordening . Die priëel konstruksie veroorsaak egter dat 'n grondgebruiksaansoek vir opheffing van titelbeperkings en boulynafwyking voltooi moet word.

U toestemming word in terme van die wetgewing versoek sodat die grondgebruiksaansoek vir die priëel so oorweeg word.

Ek vra u toestemming dat die priëel so goedgekeur word.

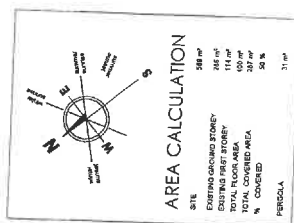
Aangeheg is 'n bouplan van die priëel wat u asb moet besigtig, teken en terug epos met u toestemming al dan nie.

Baie dankie vir u samewerking.

Groete

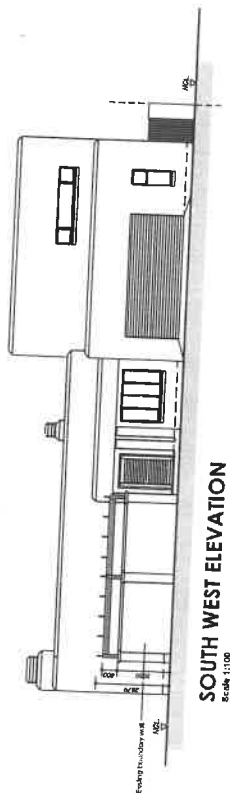
Eddie Mostert

Sel 0827897755

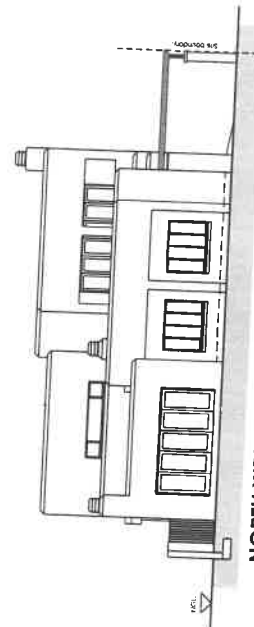


- DIMENSIONS & LEVELS TO BE VERIFIED ON SITE BEFORE COMMENCEMENT OF ANY WORK.
- BOUNDARY PEGS TO BE VISIBLE / INDICATED TO THE BUILDING INSPECTOR PRIOR TO COMMENCEMENT OF ANY BUILDING WORK.
- NO PART OF FOUNDATIONS OR WALLS TO PROJECT BEYOND THE SITE BOUNDARY.
- SUBMIT ENGINEER DRAWINGS FOR ALL REINFORCED STRUCTURAL WORKS, STRUCTURAL STEEL WORKS ETC.

The Occupational Health and Safety (OHS) Act, 1993 [Act No.85 of 1993] places the duty on the employer to ensure, as far as is reasonably practicable, that the workplace under his or her control is free from risk to health and safety *o/p* SANS 10400 Part A, B.1.3.4.



**NORTH WEST ELEVATION**  
Scale 1:100



**NORTH WEST ELEVATION**  
Scale 1:100

[illegible]

## Eddie Mostert (Huis)

**From:** Chris de Jager <chris@dejagerboshoff.co.za>  
**Sent:** Wednesday, July 24, 2024 11:43 AM  
**To:** eddiemos@dupmoslaw.co.za  
**Cc:** Andre Lund; Oddette Boshoff; Petro van Deventer; Sorita Loubser; spvblerk@lantic.net  
**Subject:** FW: Lrf 28 Yzerfontein Priël goedkeuring EW Mostert  
**Attachments:** E Mostert - 28 - Yzerfontein - 02 JULY 2024\_CBdJ signed.pdf

Meneer Mostert,

Ons bevestig dat die trustees nie enige beswaar het teen die oprigting van die priël op erf28, Yzerfontein nie. Aangeheg vind die bouplan geteken deur CB de Jager in sy hoedanigheid as trustee.

### CHRIS DE JAGER CA(SA) RA

DIRECTOR

t +27 (0)22 482 1167

De Jager Boshoff Building, 5 Church Street, Malmesbury, 7300

PO Box 107, Malmesbury, 7299

[www.dejagerboshoff.co.za](http://www.dejagerboshoff.co.za)



DISCLAIMER



DE JAGER BOSHOFF

CHARTERED ACCOUNTANTS (SA) • REGISTERED AUDITORS

**From:** Sorita Loubser <sorita@unikone.co.za>

**Sent:** Tuesday, July 16, 2024 1:53 PM

**To:** Chris de Jager <chris@dejagerboshoff.co.za>; 'Andre Lund' <Andre.Lund@consultm.co.za>

**Cc:** Petro van Deventer <petro@unikone.co.za>

**Subject:** FW: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

### SORITA LOUBSER

ASSISTANT ACCOUNTANT

T +27 22 482 1169 Ext 131

De Jager Boshoff Building, 5 Church Street, Malmesbury, 7300

PO Box 107, Malmesbury, 7299

OFFICE HOURS MONDAY TO THURSDAY 08H00-16H30 | FRIDAY 08H00 - 16H00

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>

**Sent:** Tuesday, July 16, 2024 1:50 PM

**To:** Sorita Loubser <sorita@unikone.co.za>

**Subject:** RE: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>

**Sent:** Tuesday, July 16, 2024 1:48 PM

**To:** 'abkriel@mweb.co.za' <abkriel@mweb.co.za>

**Subject:** FW: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Posbus 5,  
Malmesbury

Geagte mnr/mev die Trustees van die VLAKFONTEIN FAMILIE TRUST,

Ek is die eienaar van die eiendom in 2e straat16, erf nr 28, Yzerfontein. Ek het onlangs 'n prieël opgerig wat die huis met die grensmuur verbind. Dit is om estetiese rede so opgerig om deursigtig te wees en om niemand se uitsig te belemmer nie. Die hoogte van die grensmuur en skermmuur voldoen aan die bepaling van die Munispale Grondgebruik verordening. Die prieël konstruksie veroorsaak egter dat 'n grondgebruiksaansoek vir opheffing van titelbeperkings en boulynafwyking voltooi moet word.

U toestemming word in terme van die wetgewing versoek sodat die grondgebruiksaansoek vir die prieël so oorweeg word.

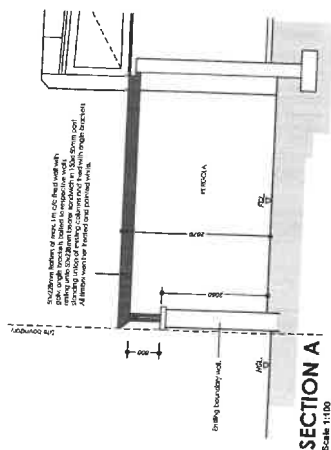
Ek vra u toestemming dat die prieël so goedgekeur word.

Aangeheg is 'n bouplan van die prieël wat u asb moet besigtig, teken en terug epos met u toestemming al dan nie. Baie dankie vir u samewerking.

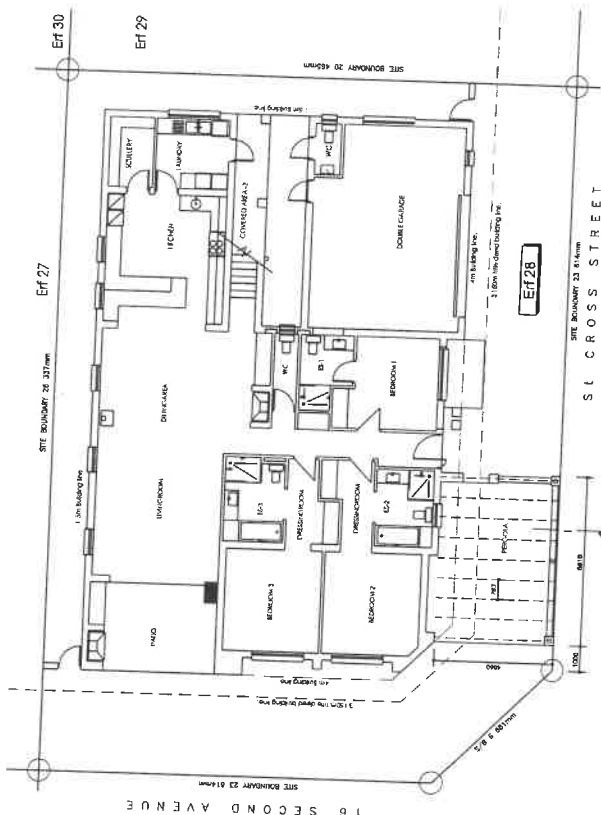
Groete  
Eddie Mostert  
Sel 0827897755



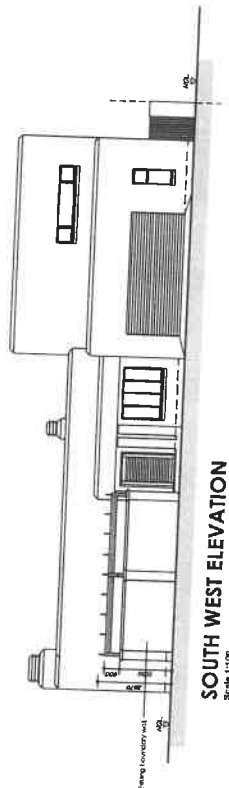
CB de Jager



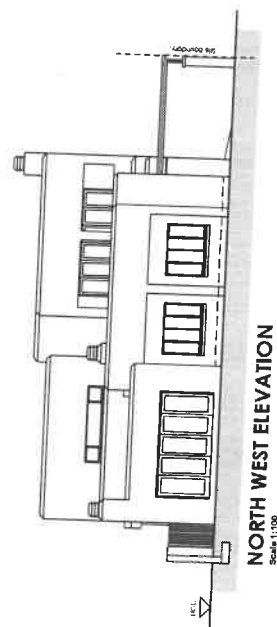
**SECTION A**  
Scale 1:100



**FLOOR & SITE PLAN**



**SOUTH WEST ELEVATION**



**NORTH WEST ELEVATION**  
Scale 1:100

[illegible]

## **Eddie Mostert (Huis)**

---

**From:** estelle@craigmore.co.za  
**Sent:** Thursday, August 8, 2024 11:26 AM  
**To:** 'Eddie Mostert (Huis)'  
**Subject:** RE: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Als in orde

Philip Johnson

---

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Sent:** Thursday, August 1, 2024 12:36 PM  
**To:** estelle@craigmore.co.za  
**Subject:** FW: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Goeie more mev Johnson,

Na aanleiding van ons gesprek nou die dag heg ek die fotos van die priël hierby aan .  
Ek sal bly wees as u daarna kyk en dan u antwoord vir goedkeuring daarvan aan my sal terugstuur.

Baie dankie,  
Louisa Mostert

---

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Sent:** Tuesday, July 16, 2024 1:50 PM  
**To:** 'sorita@unikone.co.za' <sorita@unikone.co.za>  
**Subject:** RE: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

---

**From:** Eddie Mostert (Huis) <eddiemos@dupmoslaw.co.za>  
**Sent:** Tuesday, July 16, 2024 1:48 PM  
**To:** 'abkriel@mweb.co.za' <abkriel@mweb.co.za>  
**Subject:** FW: Erf 28 Yzerfontein Priël goedkeuring EW Mostert

Posbus 5,  
Malmesbury

Geagte mnr/mev die Trustees van die VLAKFONTEIN FAMILIE TRUST,

Ek is die eienaar van die eiendom in 2e straat16, erf nr 28, Yzerfontein. Ek het onlangs 'n priël opgerig wat die huis met die grensmuur verbind . Dit is om estetiese rede so opgerig om deursigtig te wees en om niemand se uitsig te belemmer nie. Die hoogte van die grensmuur en skermmuur voldoen aan die bepalings van die Munispale Grondgebruik verordening . Die priël konstruksie veroorsaak egter dat 'n grondgebruiksaansoek vir opheffing van titelbeperkings en boulynafwyking voltooi moet word.

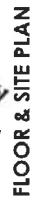
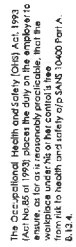
U toestemming word in terme van die wetgewing versoek sodat die grondgebruiksaansoek vir die priël so oorweeg word.

Ek vra u toestemming dat die priël so goedgekeur word.

Aangeheg is 'n bouplan van die priël wat u asb moet besigtig, teken en terug epos met u toestemming al dan nie.

Baie dankie vir u samewerking.

Groete  
Eddie Mostert  
Sel 0827897755

[illegible]