




OUR REFERENCE: J036
YOUR REFERENCE: LU/14872 (TP169/2022)
DATE: 25 May 2023

 wilhelm@pieterhuizen.co.za
 +27(0) 83 262 4843
 <https://pieterhuizen.co.za>

Per Email / Per Hand

Dear Sir / Madam

NOTICE OF LAND DEVELOPMENT APPLICATION TO INTERESTED AND AFFECTED PARTIES FOR COMMENT

The following land use application in terms of the Stellenbosch Land Use Planning Bylaw, 2015, refers:

Application Property Address: 12 Calais Street, Franschoek
Application Property Number: Erf 1370, Franschoek
Applicant: Wilhelm Esterhuizen, Pieterhuizen Planning (Pty) Ltd - wilhelm@pieterhuizen.co.za - 083 262 4843
Owner: Raath Familie Trust
Application Reference: LU/14872 (TP169/2022)
Application Type: Removal of restrictive Title Deed conditions, Permanent Departures and Technical Approval

Detailed description of land use or development proposal, including its intent and purpose:

Application is made in terms of Section 15(2)(f) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for the removal of restrictive title deed conditions contained in Title Deed Nr. T76023/2007 Clause B.1.(a) and B.1.(b) to allow for a portion of the building to be three (3) storeys in height (per definition) and for portions of the existing building to have a maximum distance exceeding 6.5m from the ground level to the underside of the eaves.

Application is made in terms of Section 15(2)(b) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for a portion of the building to be three (3) storeys in height to accommodate the existing habitable roof space.

Application is made in terms of Section 15(2)(b) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-

Law, 2019, to allow for the first-floor balcony to be 2.08m in lieu of 2.5m from the eastern common boundary with Erf 1380 Franschhoek and for the ground floor store and first floor kitchen to be 2.3m in lieu of 2.5m from the northern common boundary with Erf 1969 Franschhoek.

In terms of Section 15(2)(g) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a technical approval to allow for a bed and breakfast establishment on the property.

Notice is hereby given in terms of the provisions of that the above-mentioned application has been submitted to the Stellenbosch Municipality for consideration. The application is available for inspection on the Planning Portal of the Stellenbosch Municipal Website for the duration of the public participation process at the following address: <https://www.stellenbosch.gov.za/planning/documents/planning-notice/land-use-applications-advertisements>. If the website or documents cannot be accessed, an electronic copy of the application can be requested from the Applicant.

Written comments, which must include the reference to the application, the name, contact details and physical address of the person to submit the comments, the reasons for the comments, and the interest of the person in the application, may be submitted in terms of Section 50 of the said Bylaw to the Applicant by electronic mail as follows: Wilhelm Esterhuizen – wilhelm@pieterhuizen.co.za. By lodging an objection, comment or representation, the person doing so acknowledges that information may be made available to the public and to the applicant.

The comments must be submitted within 30 days from the date of this notice to be received on or before the closing date of **26 June 2023**.

For any enquiries on the Application or the above requirements, or if you are unable to write and /or submit your comments as provided for, you may contact the Applicant for assistance at the e-mail address provided or telephonically at **083 262 4843** during normal office hours.




Yours faithfully



Wilhelm Esterhuizen

for Pieterhuizen Planning

ONS VERWYSING: J036
JOU VERWYSING: LU/14872 (TP169/2022)
DATUM: 25 Mei 2023

 wilhelm@pieterhuizen.co.za
 +27(0) 83 262 4843
 <https://pieterhuizen.co.za>

Per Epos / Per Hand

Geagte Mnr / Me

KENNISGEWING VAN GROND ONTWIKKELINGS AANSOEK AAN GEÏNTERESSEERDE EN GEAFFEKTEERDE PARTYE VIR KOMMENTAAR.

Die volgende grondgebruik aansoek in terme van Stellenbosch se Verordeninge op Grondgebruikbeplanning, 2015, verwys:

Adres van aansoek eiendom: Calais Straat 12, Franschhoek
Aansoek eiendom beskrywing: Erf 1370, Franschhoek
Aansoeker: Wilhelm Esterhuizen, Pieterhuizen Planning (Pty) Ltd - wilhelm@pieterhuizen.co.za - 083 262 4843
Eienaar: Raath Familie Trust
Aansoek Verwysing: LU/14872 (TP169/2022)
Tipe Aansoek: Opheffing van beperkende Titelakte voorwaardes, permanente afwykings en toestemming ten opsigte van die bepalinge in die soneringskema

Beskrywing van grondontwikkelingsaansoek:

Aansoek word gedoen ingevolge Artikel 15(2)(f) van die Stellenbosch Munisipaliteit Grondgebruikbeplanning verordening, 2015, vir die opheffing van beperkende Titelakte voorwaardes vervat in Titelakte Nr. T76023/2007: Klousule B.1.(a) en B.1(b) dat 'n gedeelte van die gebou drie (3) verdiepings in hoogte (per definisie) toegelaat word en dat gedeeltes van die bestaande gebou 'n maksimum hoogte van meer as 6.5m vanaf die grondvlak tot die onderkant van die dakrand het.

Aansoek word gedoen ingevolge Artikel 15(2)(b) van die Stellenbosch Munisipaliteit Verordening op Grondgebruikbeplanning, 2015, vir 'n Permanente Afwyking van Artikel 55.(1) van die Stellenbosch Munisipaliteit Soneringskema Verordening, 2019, om voorsiening te maak om 'n gedeelte van die gebou as 'n drie (3) verdieping gebou aan te wend vir die gebruik van die bestaande bewoonbare dakspasie.

Aansoek word gedoen ingevolge Artikel 15(2)(b) van die Stellenbosch Munisipaliteit Verordening op Grondgebruikbeplanning, 2015, vir 'n Permanente Afwyking van Artikel 55.(1) van die Stellenbosch Munisipaliteit Soneringskema Verordening, 2019, om voorsiening te maak dat die boulyn van die eerste (1ste) vloer balkon 2.08m is, in stede van 2.5m (Oostelike algemene grens met Erf 1380, Franschhoek) en dat die boulyn van die grondvloer stoorarea asook eerste (1ste) vloer kombuis 2.3m is, in stede van 2.5m (Noordelike algemene grens met Erf 1969, Franschhoek).

Aansoek ingevolge Artikel 15(2)(g) van die die Stellenbosch Munisipaliteit Verordening op Grondgebruikbeplanning, 2015, vir 'n tegniese goedkeuring om 'n bed en ontbyt onderneming op die eiendom toe te laat.

Kennis word hiermee gegee in terme van die genoemde Veronrderinge dat bovermelde aansoek by die Stellenbosch Munisipaliteit ingedien is vir oorweging. Die aansoek is beskikbaar vir insae op die Beplannings Portaal van die Stellenbosch Munisipaliteit se Webtuiste vir die tydsduur van die publieke deelname proses by die volgende adres: <https://www.stellenbosch.gov.za/planning/documents/planning-notice/land-use-applications-advertisements>. Indien die webtuiste of tersaaklike dokumente nie toeganklik is nie, kan die Aansoeker versoek word om 'n elektroniese kopie van die aansoek beskikbaar te stel.

Skryflike kommentaar, wat besonderhede ten opsigte van die verwysings nommer van die aansoek, die name, fisiese adres en kontak besonderhede van die persoon wat die kommentaar lewer, die redes vir die kommentaar, en die belang van die persoon wat die kommentaar lewer in die aansoek, kan ingedien word in terme van Artikel 50 van genoemde Verordeninge aan die Aansoeker by wyse van elektroniese pos as volg: [Wilhelm Esterhuizen – wilhelm@pieterhuizen.co.za](mailto:wilhelm@pieterhuizen.co.za). Deur 'n beswaar, kommentaar of versoë te rig, erken die persoon wat dit doen dat inligting aan die publiek en aan die aansoeker beskikbaar gestel kan word. Die kommentaar moet by wyse van elektroniese pos aan die Aansoeker gestuur word as volg: Deur 'n beswaar, kommentaar of versoë te rig, erken die persoon wat dit doen dat inligting aan die publiek en aan die aansoeker beskikbaar gestel kan word.

Die kommentaar moet binne 30 dae vanaf die datum van hierdie kennisgewing gestuur word en moet ontvang word voor of op die laaste dag van die sluitings datum van **26 Junie 2023**.

Indien daar enige navrae op die aansoek of bovermelde vereistes vir die lewer van kommentaar is, of indien dit nie moontlik is om geskrewe kommentaar te lewer of die kommentaar op die wyse te lewer soos voorsiening gemaak is nie, kan die Aansoeker geskakel word vir bystand by die vermeldde elektroniese pos adres of telefonies by 083 262 4843 gedurende normale kantoor ure.

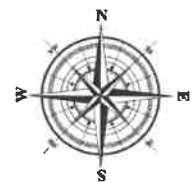
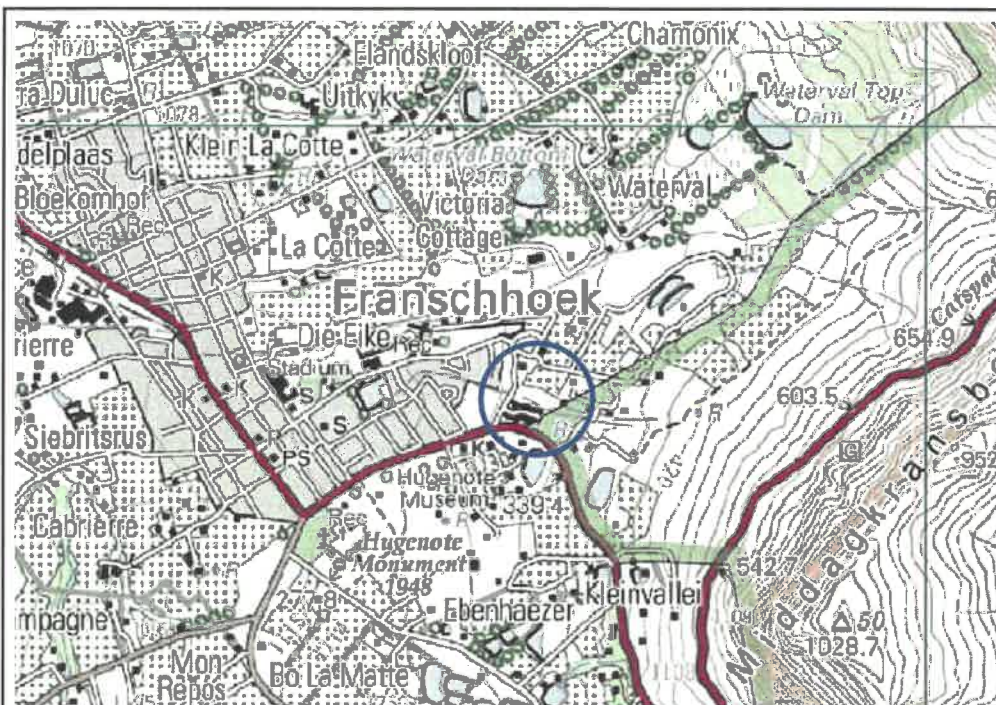
Die uwe



Wilhelm Esterhuizen

vir Pieterhuizen Planning

ANNEXURE A
LOCALITY MAP



PIETERHUIZEN
PLANNING

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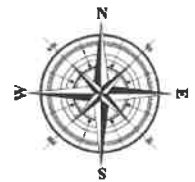
**LOCALITY MAP
ERF 1370 FRANSCHHOEK**

This map is for information purposes only. Pieterhuizen Planning (Pty) Ltd accepts no liability for any error whatsoever.



LEGEND:

-  ERVEN
-  ERF 1370



PIETERHUIZEN
PLANNING

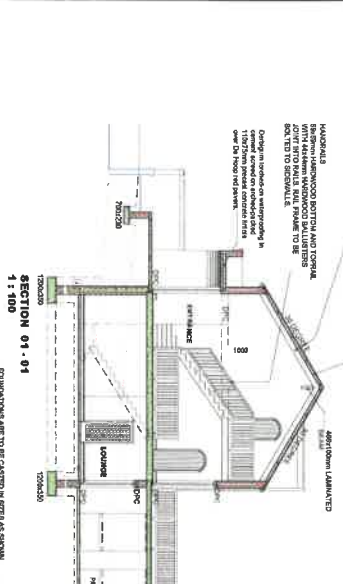
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**LOCALITY MAP
ERF 1370 FRANSCHHOEK**

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ANNEXURE B
AS-BUILT DRAWING

GENERAL NOTES:
 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES (IBC) AND ALL APPLICABLE LOCAL ORDINANCES.
 2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.
 3. ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE APPLICABLE AGENCIES.
 4. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL UTILITIES AT ALL TIMES.
 5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
 6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING UTILITIES AND STRUCTURES.
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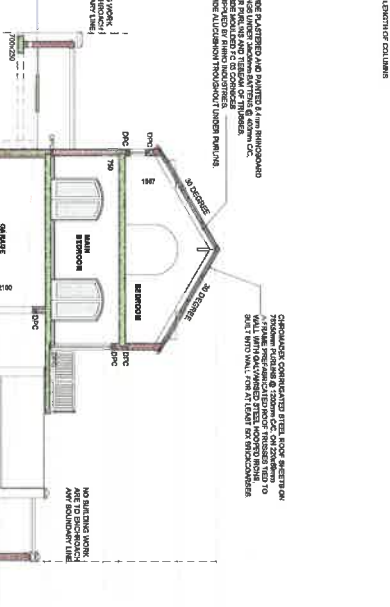
SECTION 01 - 91
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SECTION 02 - 02
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SECTION 03 - 03
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SECTION 04 - 04
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DATE: 28-OCT-22
SCALE: 3/002

REVISIONS:
 NO. DATE BY DESCRIPTION
 1 28-OCT-22 JZ INITIALS
 2 28-OCT-22 JZ INITIALS

ANNEXURE C
MOTIVATION REPORT

**REMOVAL OF RESTRICTIVE TITLE DEED CONDITION,
PERMANENT DEPARTURES, AND TECHNICAL APPROVAL**

**ERF 1370 FRANSCHHOEK
AT 12 CALAIS STREET**



SUBMITTED TO:

Land Use Management
Stellenbosch Municipality

ON:

03 November 2022

BY:

PIETERHUIZEN
P L A N N I N G

OUR REFERENCE: J036
YOUR REFERENCE: Case ID to be confirmed.
DATE: 03 November 2022

PIETERHUIZEN PLANNING (PTY) LTD
2021/472575/07

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1. EXECUTIVE SUMMARY

Property Description	Erf 1370 Franschhoek
Property Address	12 Calais Street Franschhoek
Property Extent	802m ²
Registered Owner	<i>Raath Familie Trust</i>
Title Deed Number	T. 76023/2007
Surveyor General Diagram Number	S.G. No. 11005/91
Applicable Zoning Scheme	Stellenbosch Municipality Zoning Scheme By-Law, 2019
Current Zoning	Conventional Residential Zone
Current Land Use	Dwelling House
Proposal	Regularisation of existing unapproved dwelling house and the establishment of a Bed and Breakfast on the property.
Applications Required	<p>In terms of Section 15(2)(f) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for the removal of restrictive title deed conditions B.1.(a) and B.1(b) to allow for a portion of the building to be three (3) storeys in height (per definition) and for portions of the existing building to have a maximum distance exceeding 6.5m from the ground level to the underside of the eaves.</p> <p>In terms of Section 15(2)(b) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for a portion of the building to be three (3) storeys in height to accommodate the existing habitable roof space.</p> <p>In terms of Section 15(2)(b) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for the first-floor balcony to be 2.08m in lieu of 2.5m from the eastern common boundary with Erf 1380 Franschhoek and for the ground floor store and first floor kitchen to be 2.3m in lieu of 2.5m from the northern common boundary with Erf 1969 Franschhoek.</p> <p>In terms of Section 15(2)(g) of the Stellenbosch Municipality Land Use Planning By-Law, 2015, for a technical approval to allow for a bed and breakfast establishment on the property.</p>

Table 1 Executive Summary

2. INTRODUCTION AND PURPOSE OF APPLICATION

The purpose of this report is to motivate the land use applications required to allow for the existing dwelling house on Erf 1370 Franschhoek (hereafter referred to as “the property”) to be regularised in terms of the title deed of the property, the Stellenbosch Municipality Land Use By-Law, 2019 (hereafter referred to as “the By-Law”) and the

Stellenbosch Municipality Zoning Scheme By-Law, 2019 (hereafter referred to as “the zoning scheme”) as well as to allow for a bed and breakfast establishment to be operated on the property.

The following documents are attached to this report:

Annexure A:	Application Form
Annexure B:	Copy of Deed of Transfer No. T.76023/2007
Annexure C:	Trust Resolution and Power of Attorney
Annexure D:	Conveyancer Certificate
Annexure E:	S.G. Diagram No. 11005/91
Annexure F:	Locality Map
Annexure G:	Land Surveyor Certificate
Annexure H:	As-Built Drawings

3. THE PROPERTY

3.1 Ownership and Authorisation

Erf 3291 Franschhoek is registered in the name of the *Raath Familie Trust* (hereafter referred to as “the owner”), measures 802m² in extent, and is held by Deed of Transfer No. T.76023/2007 – see **Annexure B**, attached, for a copy of the title deed.

The trust has duly authorised *Wilhelm Esterhuizen of Pieterhuizen Planning (Pty) Ltd* to submit the required land use applications to the Stellenbosch Municipality. The trust resolution and power of attorney are attached to this report as **Annexure C**.

3.2 Title deed Conditions

As mentioned, the property is held by Deed of Transfer No. T.76023/2007. Conveyancer *Grant Alastair Gregory Hill of Miller Bosman Le Roux Attorneys* has certified that the following restrictive title deed condition is applicable to this application:

Condition B.1.(b) Have a maximum distance not exceeding SIX COMMA FIVE (6,5) metres at any point of the building from ground level to the underside of the eaves;

It should, however, be noted that we are of the opinion that the following restrictive title deed condition is also applicable to this application:

Condition B.1.(a) Not exceed TWO (2) stories at any point;

The above conditions were imposed by L.E.R. Investments (Pty) Ltd (Registration no. 91/03137/07) at the instance of the Municipality of Franschhoek for its benefit and for the benefit of its successors in title. The conveyancer certificate is attached to this report as **Annexure D**.

3.3 Surveyor General Document

The **Surveyor General Diagram** has been obtained from the Surveyor General's office. According to S.G. Diagram No. 11005/91, the property was formed as a result of the subdivision of Erf 955 Franschhoek. This subdivision was approved by the Surveyor General's office on 31 March 1992.

Figure 1, below, is an extract of the Surveyor General Diagram illustrating the locality of the property in relation to the subdivision of the then Erf 955 Franschhoek.

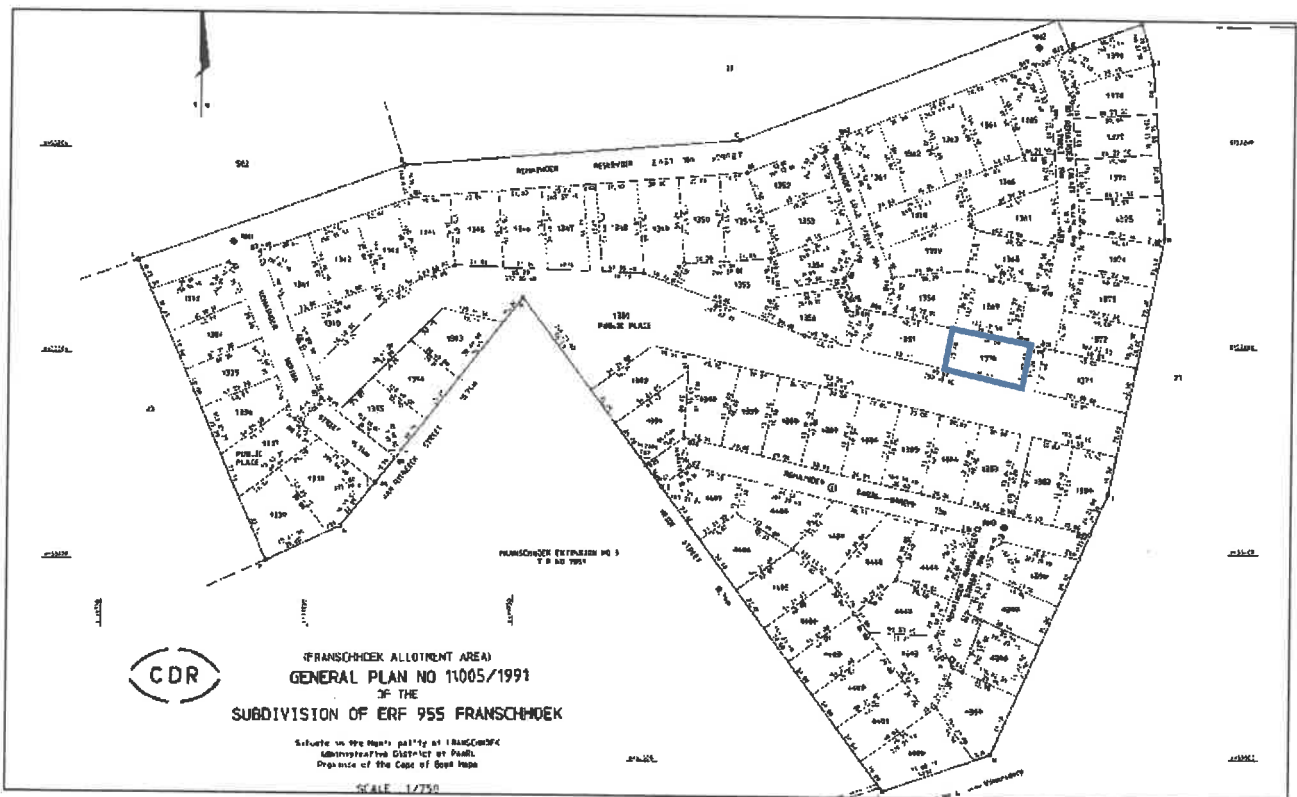


Figure 1 Locality Map of the Property

3.4 Locality and Context

With reference to the **Locality Map** and **Aerial Photograph**, Figures 2 and 3 on page 6, the property is situated at 12 Calais Street, in the eastern part of Franschhoek – well within the urban edge of the settlement.

The property is developed with a dwelling house and gains pedestrian access from Calais Street and vehicular access via a registered servitude over Erf 1380 Franschoek.

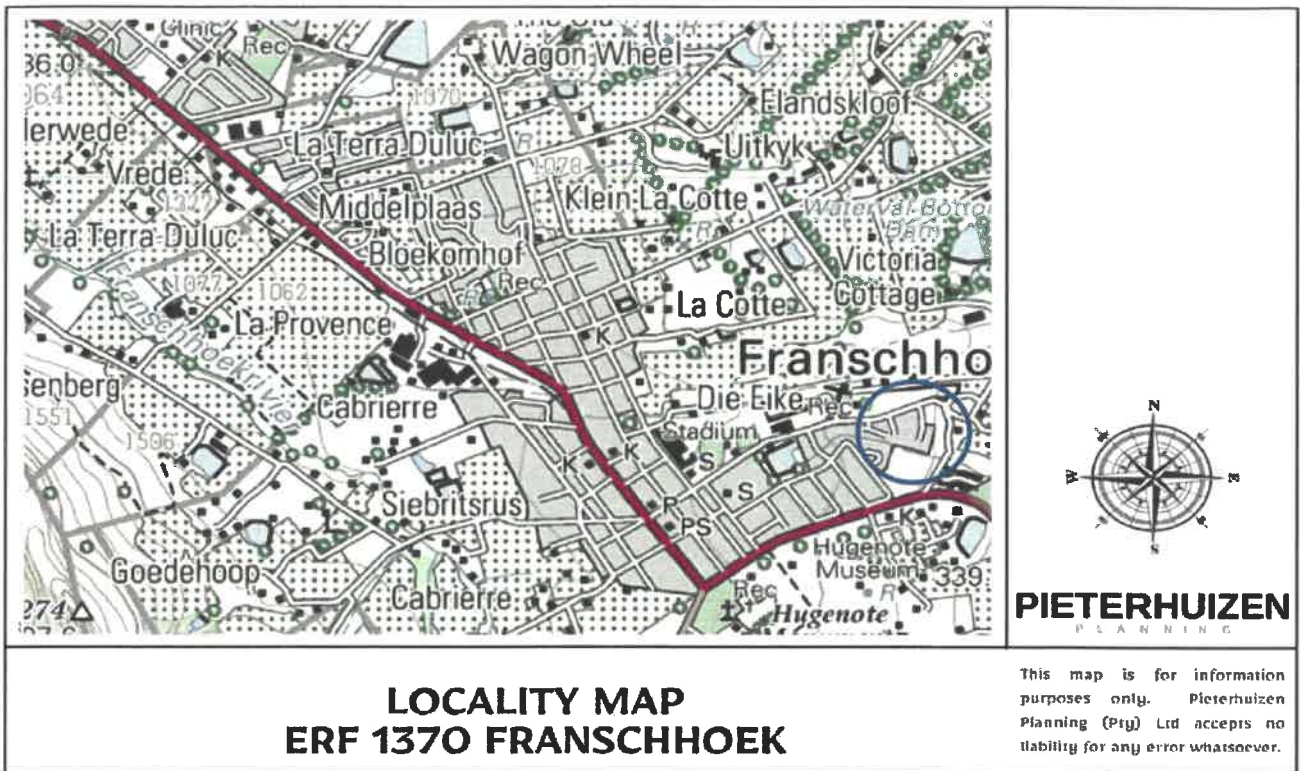


Figure 2 Locality Map of the Property

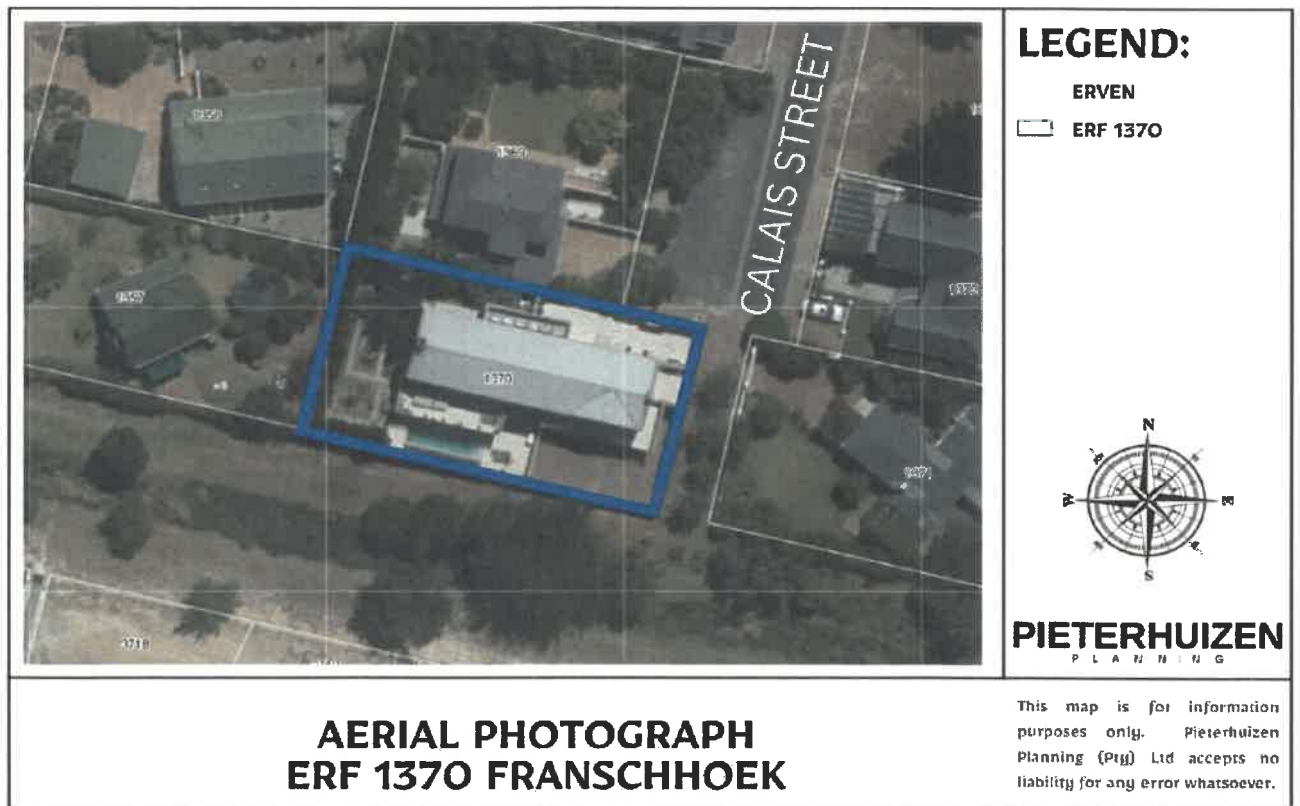


Figure 3 Aerial Photograph of the Property

The Stellenbosch Municipality Spatial Development Framework, 2019 (hereafter referred to as “the SDF”), refers to Franschhoek as a *significant tourism destination* which is not proposed for major growth. Facilities which contribute to Franschhoek being a significant tourism destination is evident throughout the town and even in proximity to the property.

Within a radius of 400m from the property, a desktop study revealed that a total of 12 properties are used as tourism accommodation facilities. Figure 4, below, illustrates the tourism accommodation facilities within proximity of the property.

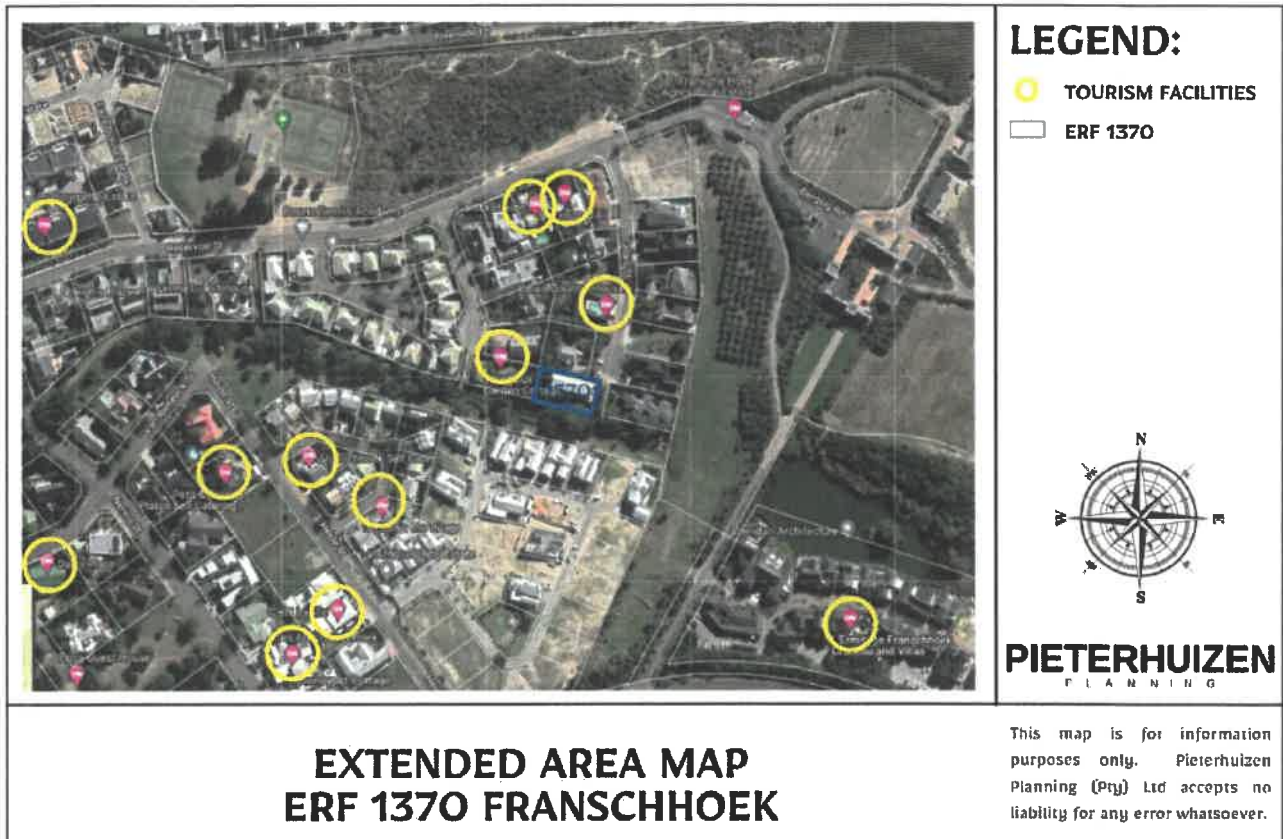


Figure 4 Aerial Photograph of the Extended Area Surrounding the Property

3.5 Topography of the Property

The topography of the property bears importance in respect of this application. It should be noted that a Land Surveyor Certificate for the property has been obtained in 2018. The land Surveyor Certificate, drawn by *Friedlander, Burger and Volkmann* and attached to this report as **Annexure G**, illustrates that the property has a significant fall (3.5m) from the north-eastern corner to the south-western corner of the property.

3.6 Zoning

The zoning of properties situated in the Stellenbosch Municipal Area is regulated in terms of the Stellenbosch Zoning Scheme By-Law, 2019 (hereafter referred to as “the Zoning Scheme”).

Figure 5, below, is an extract of the Stellenbosch Municipality’s **Zoning Map**, indicating the property zoned Conventional Residential.



Figure 5 Extract of the Zoning Map

The land use rights, and development parameters applicable to the property (zoned conventional residential) are set out in Table 2, below:

Conventional Residential Zone 501m ² – 1500m ²	
Land Uses	Zoning Scheme Provisions
Primary Uses	Dwelling House
Additional Uses	Bed and Breakfast Establishment; Home Day Care Centre; Home Occupation Practice; Home Lodging; Second Dwelling; Occasional Use (One Event/Year); Private Road
Consent Uses	Commune; Extramural Facility; Group Housing; Guest House; House Shop; Occasional use (>One Event/Year); Tourist Dwelling Unit; Additional Uses Exceeding Parameters in this Chapter

Development Parameters	Zoning Scheme Provisions
Street Boundary Building Lines	4m
Common Boundary Building Lines	2.5m
Coverage	50%
Height	2 Storeys
Parking:	
- Dwelling House	2 Bays
- Bed and Breakfast Establishment	1 Bay / Guest Bedroom
Special Condition	No more than three bedrooms may be used for the Bed and Breakfast.

Table 2 Development Rules and Provisions of the Zoning Scheme

4. EXISTING DEVELOPMENT AND DEVELOPMENT HISTORY

The property is currently developed with a dwelling house comprising of three (3) bedrooms, a double-façade garage, two (2) lounges, a kitchen, and a domestic accommodation unit.

Building plans for the dwelling house was initially submitted in 2007. Prior to the approval of building plans, the construction of the dwelling house started. A cease building work notice was issued to the owner after the commencement of the illegal building work. The owner of the property was then taken to court upon which a fine was imposed and paid by the owner.

During 2014, correspondence was received from the Stellenbosch Municipality including the minutes of the then known *Planning and Economic Development Committee* meeting dated 7 May 2013. The minutes resolved that, *inter alia*, the then applied for departures (coverage- and rear building line departures) could be recommended for approval. However, there were some uncertainties regarding the alignment of the submitted plans with the restrictive title deed conditions.

It should be noted that the Stellenbosch Municipality Zoning Scheme By-Law, 2019, replaced the Franschoek Town Planning Scheme Regulations and the coverage- and rear building line departures are not applicable anymore. The property is now subject to a coverage of 50% (in lieu of 30%) and swimming pools are permitted within common boundary building lines, subject to a height of 2.1m.

Upon perusal of all available documentation and the initial assessment of the as-built plans, we are of the opinion that the existing building does not conform with restrictive title deed conditions B.1.(a) and B.1.(b) as contained in Deed of Transfer No. T.76023/2007. This is largely due to the fact that the property has a significant slope (3.5m) from the north-eastern corner to the south-western corner, as identified under Section 3.5 of this report and by the Land Surveyor Certificate attached.

5. THE PROPOSAL

It is proposed to regularise the existing dwelling house on the property in terms of the restrictive title deed conditions and the zoning scheme provisions applicable to the property.

With reference to the As-Built Drawings, drawn by *Tim Ziehl Architects* and attached to this report as **Annexure G**, the existing dwelling house comprise the following development parameters:

Conventional Residential Zone 501m ² – 1500m ²	
Development Parameters	Existing Dwelling House
Primary Use	Dwelling House
Street Boundary Building Setback	4.6m
Common Boundary Building Setback - Eastern - Southern - Western - Northern	2.08m (first floor balcony) 4.42m (first floor balcony) 8.59m (ground and first floor) 2.3m (ground floor store and first floor kitchen)
Coverage	39%
Height (Zoning Scheme and Title Deed)	2 Storeys + 3 Storeys for the eastern portion of the building (habitable roof space)
Parking: - Dwelling House	Double-façade garage (2 Bays)
Height to Underside of Eave (Title Deed)	6.77m

Table 3 Development Parameters of Existing Dwelling House

It is furthermore proposed that the property be provided the opportunity to be used as a Bed and Breakfast Establishment. Bedrooms 1, 2, and 3 (as per the As-Built Drawings) are proposed to be used for the Bed and Breakfast Establishment. This will amount to a total of 6 persons being able to occupy the existing building under the use of a Bed and Breakfast.

6. APPLICATION REQUIRED

The assessment of the existing development against the provisions of the zoning scheme concludes that the following applications is required:

In terms of Section 15(2)(f):

For the removal of restrictive title deed conditions B.1.(a) and B.1(b) to allow for a portion of the building to be three (3) storeys in height (per definition) and for portions of the existing building to have a maximum distance exceeding 6.5m from the ground level to the underside of the eaves.

In terms of Section 15(2)(b):	For a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for a portion of the building to be three (3) storeys in height to accommodate the existing habitable roof space.
In terms of Section 15(2)(b):	For a permanent departure from Section 55.(1) of the Stellenbosch Municipality Zoning Scheme By-Law, 2019, to allow for the first-floor balcony to be 2.08m in lieu of 2.5m from the eastern common boundary with Erf 1380 Franschhoek and for the ground floor store and first floor kitchen to be 2.3m in lieu of 2.5m from the northern common boundary with Erf 1969 Franschhoek.
In terms of Section 15(2)(g):	For a technical approval to allow for a bed and breakfast establishment on the property.

7. ADJUDICATION AND MOTIVATION

7.1 Motivation for Removal of Restrictive Title Deed Conditions

The property was first transferred by Deed of Transfer no. T15043/1997. The conditions imposed in this deed was imposed at the time the township was created and the said conditions was imposed by the L.E.R. Investments (Pty) Ltd. This company has since undergone a change of name, liquidation and deregistration.

Even though it is not the applicable municipality, we are of the opinion that this removal is in line with paragraph 1.2 of *City of Cape Town Title Deed Standard Operating Procedure on the Removal, Suspension and Amendment of Restrictive Title Deed Conditions and Traditions Servitudes* and may be classified as *Developer's Restrictive Conditions*. Under this paragraph, it is stated that the *City* (and in this instance, the Stellenbosch Municipality) is not required to enforce compliance with the developer's restrictive title deed condition and therefore can grant a planning approval for a land use which would contravene the developer's restrictive condition.

This document further stipulates that the deciding authority must have regard to the fact that these restrictions will also confer rights on the beneficiary of the title deed restriction. It is argued, in this instance, that the beneficiaries of the restrictive conditions will not gain any further rights as a result of the removal of these conditions. As identified in this report, the property is situated on a slope next to a public open space – this slope has triggered the assessment of the existing building, per definitions, to be three storeys in height for a portion of the building and to have a height exceeding 6.5m from the natural ground level to the underside of the eave.

Furthermore, the Stellenbosch Municipality must have regard to Section 39(5) of the Western Cape Land Use Planning Act 3 of 2014 (hereafter referred to as "LUPA") and Section 47 of the Spatial Planning and Land Use Management Act 16 of 2013 (hereafter referred to as "SPLUMA") when considering whether to remove or amend a restrictive title deed condition.

The motivation, in terms of the said consideration, follows:

Section 33.(5)(a): the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;

It is unlikely that the restrictions currently add any financial value to the owners of properties as per General Plan No. 11005/1991. The deletion of the restrictive conditions will allow for the regularisation of the existing dwelling house and will allow for the legal occupation of the building on the property. The proposal will be in character with and be compatible with the surrounding, existing urban single residential landscape. It is not believed that the proposed deletion of the conditions will have any undesirable impact on the character or property values of the erven in this sought-after and popular area.

Section 33.(5)(b): the personal benefits which accrue to the holder of rights in terms of the restrictive condition;

It is not believed that the "holders" of these rights currently enjoy any personal benefits. L.E.R Investments (Pty) Ltd has since changed their name, been liquidated and deregistered.

As mentioned above, the proposal will be in character with the surrounding natural and built environment. Although the removal seems aggressive, it is not proposed to deviate from the proposal to merely regularise the existing dwelling house on the property (apart from possibly establishing a bed and breakfast establishment on the property).

Section 33.(5)(c): the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is amended, suspended or removed;

The proposal will enable the owner of the property to regularise the existing building on the property and to enable them to legally occupy the building. The removal of the restrictive title deed conditions will also (finally) provide the owner the opportunity to submit building plans to the Municipality for approval.

Section 33.(5)(d): the social benefit of the restrictive condition remaining in place in its existing form;

It is not believed that there is any social benefit (including to the broader society) in the restrictive conditions being retained in their existing form, e.g. it does not concern a public open space or community facility used or accessible to the general public. On the contrary, there is sufficient reason to motivate that the proposed deletion of the restrictive conditions is indeed considered to have a social benefit.

If the conditions are not deleted, the erf will lose the opportunity of being regularised.

Section 33.(5)(e): the social benefit of the removal, suspension or amendment of the restrictive condition; and

The deletion of the restrictions will have a positive social benefit given that it will enable the regularisation of the existing building within an existing residential urban area.

Furthermore, and given the character of the area, it is believed that the proposed deletion of the conditions will have no material negative social impact since the existing building has been occupied for numerous years. **Please note that we do not condone the illegal building work that has been completed. We do, however, argue that the building work may (and can) be regularised.**

Lastly, the removal of the restrictive title deed conditions, which will result in the regularisation of the existing building on the property, will not amount to the overdevelopment of the property which might result in a negative social impact. In fact, any further development will be regulated by the applicable Zoning Scheme.

Section 33.(5)(f): whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.

The proposal will not remove the beneficiaries' right completely as applicable Zoning Scheme, with its development rules, will remain in place to regulate the further development of the property.

The proposed deletion is seen as a reasonable and acceptable way to allow for the regularisation of the existing building on the property.

7.2 Motivation for Height Departure

The zoning scheme makes provision for a dwelling house on a conventional residential zoned property to be two (2) storeys in height. As mentioned, the property's topography is that of a steep slope (3.5m) from the north-eastern corner (highest point) to the south-western corner (lowest point) whilst the existing dwelling house has been developed with a roof height (above mean sea level) that is consistent throughout the entire building. Viewed from any elevation, the existing building will be seen as a two-storey dwelling house. Figure 6, below, is a photograph of the eastern elevation as viewed from the public open space. This clearly illustrates the building to seem like a two-storey dwelling house.



Figure 6 Eastern Elevation of the Existing Dwelling House

The definition of a storey, as per the zoning scheme, is *single level of any building, measured from finished floor level to finished floor of the storey above, or to the ceiling in the case of the top storey. A roof-space utilised or intended to be utilised for the purpose of human habitation is also regarded as a storey. If the ceiling level varies, the mean ceiling level will be calculated. One storey shall not exceed 4 meters, therefore if a maximum of one storey is permitted, the height of the one storey building may not exceed 4 meters measured from finished floor level to ceiling; if two storeys are permitted, the two-storey building shall not exceed 8 meters measured from finished ground floor level to ceiling of the first floor, and so forth. Furthermore, a basement storey is defined as any storey or division of a storey with a ceiling level which protrudes less than 1 meter at any point above existing ground level.*

It was previously contested that the garage division of the ground floor should be regarded as a basement. This, per definition of a basement, is however not possible due to the slope of the property to the south. Portions of the ceiling level of the garage protrudes more than 1m above the existing ground level.

With the existing roof-space being utilised as a bedroom, this portion of the existing dwelling house is per definition three storeys in height with the garage level being the ground storey, the master bedroom being the first storey and bedroom 2 being the third storey. At this portion of the building's highest point, it measures 7.9m from the finished ground floor to the mean ceiling level. Figure 7, below, illustrates the extent of the departure required:

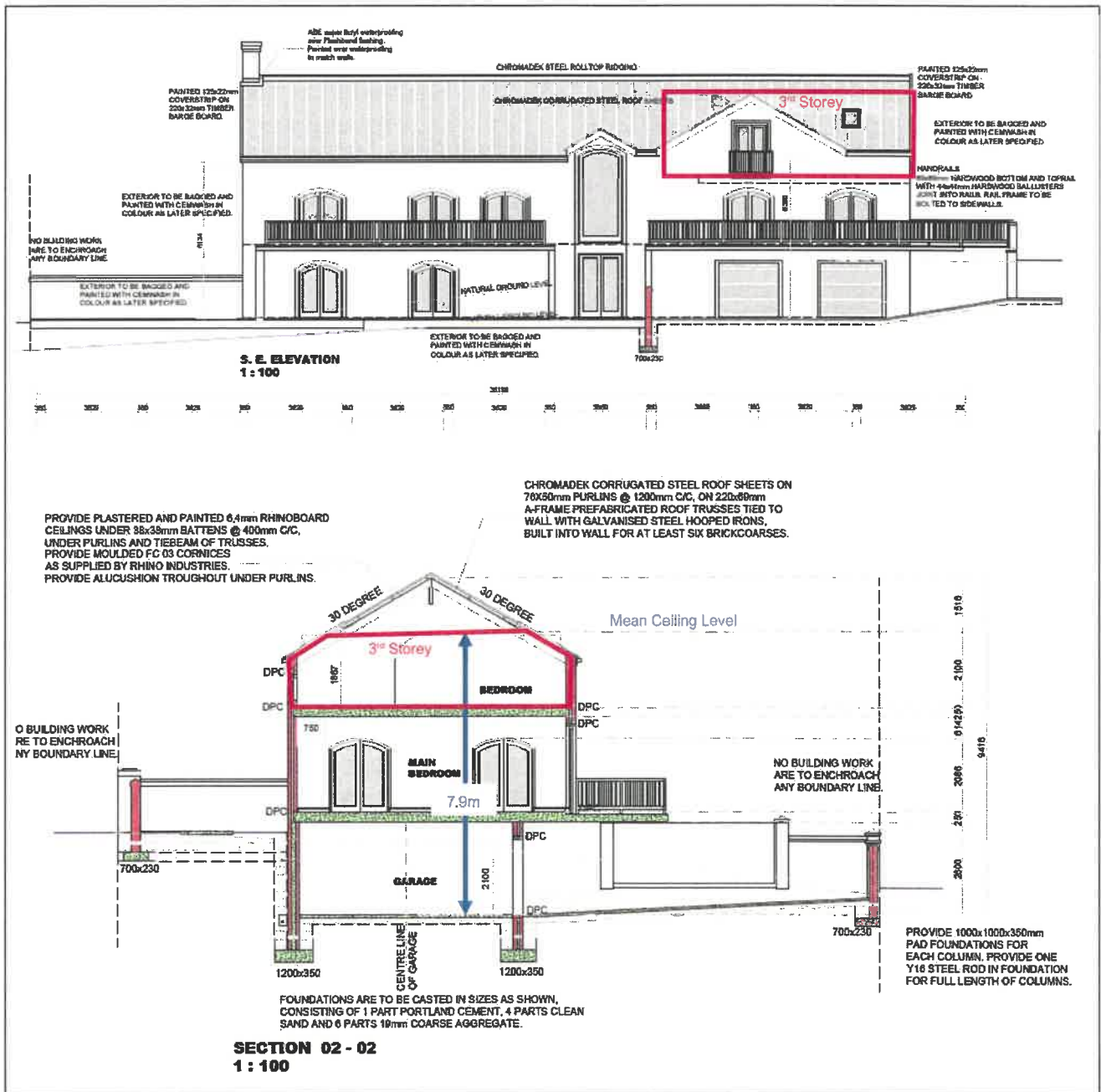


Figure 7 Extent of Third Storey Departure

It should be further noted that, although habitable, the roof-space will not have a material negative impact on the privacy of the surrounding property owners. To the east, the neighbouring property is a public open space and Erf 1371 Franschoek, which is well secured by trees – see Figure 8, below, for a view from the eastern window of the roof-space.



Figure 8 View from Roof-Space towards Erf 1371 Franschoek

To the south, the property only abuts a public open space – it is argued that the approval of the height departure will have no material impact on the surrounding property owners. It is further argued that the height departure is technical in character and the approval thereof will have no material impact on the existing built environment of the area.

7.3 Motivation for Building Line Departures

The common boundary building line departures are required to allow for the existing first floor balcony to be closer than 2.5m from the eastern common boundary with Erf 1380 Franschoek – a public open space, and for the storeroom and kitchen to be closer than 2.5m from the northern common boundary.

In our opinion, common boundary building lines for conventional residential properties are set in legislation to protect abutting property owners in the event of development next to their property. In this instance, the eastern residential property located closest to this property is Erf 1371 Franschoek. The two properties are divided by a portion of Erf 1380 Franschoek, a public open space, which measures approximately 6m in width. It is reasonable to argue that development will not occur on this public open space due to the fact that a servitude right of way (in favour of Erf 1370 Franschoek) is registered over this portion of the property. The existing balcony is thus situated more than 6m from the common boundary with Erf 1371 Franschoek and the approval of this application will have no material impact on the owner of Erf 1371 Franschoek.

7.4 Motivation for Bed and Breakfast Establishment

As mentioned, Franschoek is described by the SDF as a tourism destination within the Stellenbosch Municipal Area. Tourism, apart from agriculture, is one of the largest economic activities for the Franschoek town. With the character of the surrounding area already established as suitable for tourism accommodation, as identified by Figure 3 of this report, it is argued that the proposed Bed and Breakfast Establishment will have no material impact on the character of the surrounding area and built environment.

7.5 Motivation for Height Departure

7.6 Motivation in Terms of Section 65 of the By-Law

Section 65 of the By-Law relates to the adjudication of applications submitted in terms of the By-Law. The applications required, as set out in Section 5 of this report, are assessed in Table 4 below, against the general criteria for the consideration of applications as set out in Section 65(1) of the MPBL:

Assessment of Applications in terms of Section 65(1) of the By-Law	
Section 65(1) Criteria	Assessment of Proposal
a. Application submitted in terms of the By-law.	The application is submitted in terms of Sections 15(2)(f), 15(2)(b) and 15(2)(g) of the By-law.
b. Procedure followed in processing the application.	To be decided.
c. Desirability of land use	The existing uses are permitted as primary use rights on the property. The proposed Bed and Breakfast is desirable, since Franschoek is characterised to be a tourism destination within the Stellenbosch Municipality.
d. Comment in response to public participation.	If required, the application will be advertised in accordance with the Stellenbosch Municipality's requirements.
e. Applicants' response to comments received.	To be confirmed.
f. Investigations in terms of other laws.	Not Applicable.

g. Written assessment by planner.	To be done by the Stellenbosch Municipality.
h. Impact on municipal engineering services.	It is argued that the existing uses will not have a material impact on the municipal engineering services, since the property is developed with only a single dwelling house. With regards to the proposed Bed and Breakfast Establishment, the Stellenbosch Municipality's engineering department will comment on the proposal during circulation.
i. The IDP and SDF	<p>The Stellenbosch Municipality's Spatial Development Framework (hereafter referred to as "the SDF") guides land use decisions in both the short and long term.</p> <p>The existing use of the property is that of a single residential dwelling house, in line with the applicable zoning of the property. It is therefore argued that this use in line with the IDP and SDF of the Stellenbosch Municipality</p> <p>In further motivation of the alignment between the proposal and as mentioned in this report, the SDF states that Franschhoek is a significant tourism destination. The proposed Bed and Breakfast Establishment will provide the property owner the opportunity to accommodate up to six tourists on the property.</p>
j. IDP and SDF of district Municipality.	In line with this applicable plan and framework.
k. IDP and SDF of local Municipality	Discussed and addressed under points i and j, above.
l. Applicable structure plans	N/A
m. Applicable policies for decision making	Aligned.
n. Provincial spatial development framework	The application is in line with the Municipal and District SDF and IDP, which is informed by the provincial IDP and SDF. Thus, the application is in line with the provincial SDF.
o. Regional spatial development framework.	N/A
p. National policies, norms, and criteria.	N/A
q. Section 42 of the Spatial Planning and Land Use Management Act.	The application is considerate towards the requirement and provisions of Section 42 of the Spatial Planning and Land Use Management Act.

r. Chapter VI of the Land Use Planning Act	<p>Spatial Justice: Aligned. The approval of the applications will allow for an opportunity for a property to be regularised with primary and additional land use rights.</p> <p>Spatial Sustainability: Aligned. The approval of the applications will allow for the property to be utilised in a manner that is most responsive to the current demand in terms of property utilisation in the area.</p> <p>Efficiency: Aligned. The applications entail the utilisation of existing infrastructure on an optimal level. The proposal will allow for the efficient utilisation of the resources on the property.</p> <p>Good Administration: The approval of this application will be in the best interest of the Stellenbosch Municipality.</p> <p>Spatial Resilience: Through the approval of this application, there will be no material negative impact on the surrounding area; nor would there be any additional risk to the resilience of human residents in the area.</p>
s. Applicable provisions of the zoning scheme	As discussed, the proposed development is in line with the provisions of the Zoning Scheme.

Table 4 Motivation of the Applications

8. CONCLUSION

The applications have been made in terms of Section 15(2) of the By-Law for the removal of restrictive title deed conditions, permanent building line and height departures and a technical approval which is required in terms of the zoning scheme.

This report has demonstrated that the proposed application will not have a material impact on the surrounding property owners and that the proposal is considerate towards the existing built environment. It is also argued that the proposal is in the best interest of the Stellenbosch Municipality to allow for the regularisation of development, generally in accordance with the provisions of the zoning scheme, on the property. It is therefore recommended that these applications should be approved.

PIETERHUIZEN PLANNING (PTY) LTD

3 November 2022