

## **MOTIVATION REPORT**

OUR REF: AGU/3305

### **PROPOSED REMOVAL OF TITLE DEED RESTRICTIONS, REZONING AND A BUILDING LINE DEPARTURE: ERF 615 AGULHAS**

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#### **1. INTRODUCTION**

This office was appointed by the Daroja Trust for purposes of applying for a Removal of Title Deed Restrictions, Rezoning and Departure from the Cape Agulhas Zoning Scheme By-Law to allow for a boutique hotel on Erf 615 Agulhas, the property known as Shalom. The proposal includes the extension of the existing house at a scale still reconcilable with the surrounding residential area. The facility will provide world class tourist accommodation, that will be synonymous with luxury and relaxation.

Erf 615 is an iconic property, with an excellent sea view, overlooking a public open space and close to the well-known Soldiers tidal pool in Agulhas. The erf consists of five erven that was consolidated in 1980 and has become a landmark over the years to residents and visitors.

#### **2. PURPOSE**

The purpose of this motivation is to apply for:

- A rezoning of Erf 615 in terms of Section 15 (2)(a) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022), from Single Residential to Business Zone, for the development of a boutique hotel. An 8,5m height restriction will be applicable.
- A permanent departure from the development parameters of the zoning scheme in terms of Section 15 (2)(b) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022) to allow for a departure from the 3m side building line applicable to a Business Zone, to allow for a 2m side building line along the south-western boundary, to accommodate the existing house that is already located on this lesser building line.
- Application for a deviation from the 5m building line on Provincial Road, Main Road, to allow for a 4m street building line for new building work along Main Road.

- A removal of title deed restrictions in terms of Section 15 (2)(f) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022), for purposes of removing / suspension of restrictive title deed conditions. Restrictive conditions that must be removed is: B.,C.“A.1.(a),(b), B.(a), (b) and (c)

### 3. PROPERTY DESCRIPTION

Erf 615 is located between Main Road and George Street, Agulhas, opposite a municipal public place, with uninterrupted views over the ocean. There is an existing house on the property.

<b>AREA</b>	3335m <sup>2</sup>
<b>OWNER</b>	Daroja Trust
<b>TITLE DEED</b>	T38614/2020
<b>BOUNDARY: NORTH</b>	Erven 372, 373, 2260 and 375
<b>EAST</b>	Erf 284
<b>SOUTH</b>	Public Open Space, Erf 574
<b>WEST</b>	Erven 280 and 292



Photo of Shalom, taken from the south-eastern side of the property, fronting George Street.



Extract from a Google Earth Image indicating the location of Erf 615, Agulhas

#### **4. CURRENT ZONING**

Erf 615 Agulhas is zoned Single Residential in terms of the Cape Agulhas Zoning Scheme By-Law. Primary and consent uses allowed under this zoning will not be able to facilitate the proposed use.

#### **5. LAND USE AND SURROUNDING LAND USE**

Erf 615 is a single residential erf, that is currently developed with one house. The property is well maintained. The erf is very accessible and located between Main Road and George Street. It overlooks a public open space and is within walking distance of the central business area of Agulhas. The erf was previously consolidated and initially consisted of 5 single residential erven. With an erf size of 3335m<sup>2</sup>, it is the largest single residential property in the area.



Erf 615 is surrounded by single residential properties, except for a municipal public open space towards the south-east.



Photo in a northern direction, along Main Road.



Photo, indicating existing houses towards the east, facing George Street.



Photo, view towards the south.



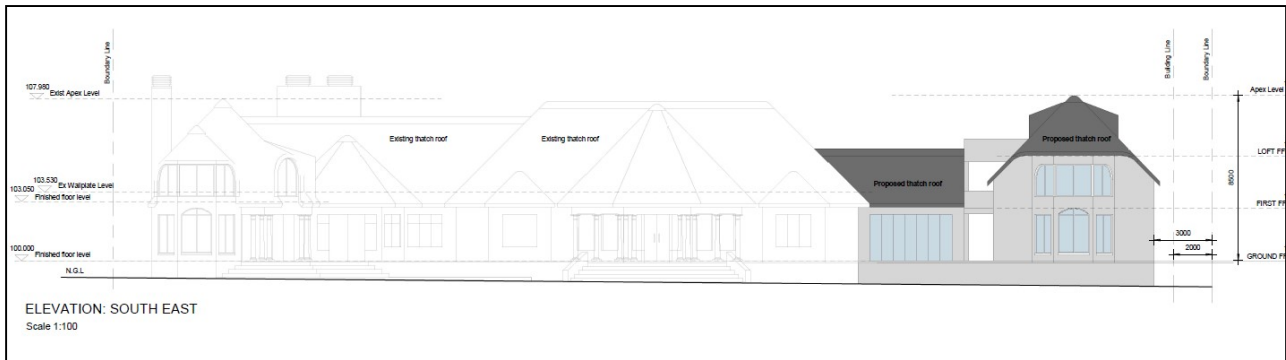
View in a western direction, along George Street.

## **6. PROPOSED DEVELOPMENT**

The existing house on erf Erf 615 is known as Shalom and a well-known landmark among residents and visitors. The proposal is to keep the already renovated house and entertainment areas mostly in its current form and to extend the house with additional guest rooms on the north-eastern boundary of the property. The proposed boutique hotel will be able to accommodate a total of 21 guest rooms in the existing house and the extension.

The house currently already has two formal entrance gates from Main Road and one entrance from George Street. Guests will make use of the Main Road entrances. There will be ample parking for the 21 guest rooms on the property, in compliance with the zoning scheme. The entire property will be available for guests to enjoy, and will include a living / dining area, a meticulously landscaped garden and a new swimming pool area.

The appointed architect, Zoon Jacobs, will ensure that extensions will match the existing house in terms of appearance and scale. An 8,5m height restriction will be imposed, to ensure that the height and scale of the building remains in character with the surrounding area, while still creating a unique tourist facility. Please refer to the attached site plans and elevations, and also the extract below.



Proposed extension: south-east elevation



Proposed extension: north-west elevation

## 6.1 REZONING

Application is made to rezone Erf 615 to Business to allow for a boutique hotel, with a height restriction of 8,5m. This is the same height restriction applicable to a single residential property.

The purpose of a Business Zone in terms of the Cape Agulhas By-Law: *'is to provide for the establishment of mixed uses in business nodes and along activity streets.'*

Erf 615 is located on an activity street. It is the only property in Agulhas that is large enough for what it proposed - that can offer visitors such an unspoiled view, without having to develop outside the urban edge, or encroach onto public open spaces.

Meals will be prepared and served to clients as required. Breakfast, lunch, dinner and bar facilities will be available. Meals and liquor will only be provided to guests and will not be available to the general public.

The parking layout is indicated on the attached site plan. For the proposed 21 guest rooms, 23 parking spaces are provided, to also make sufficient provision for management parking.

All the required Health and Safety regulations will be complied with and will be obtained upon approval of the application.

**Requirements of a Business Zone in terms of the Zoning Scheme By-Law:**

<b>Zoning Scheme Parameter</b>	<b>Restriction in terms of the Zoning Scheme</b>	<b>Compliance</b>
Floor Factor	5	Yes
Coverage	100%	Yes, the proposed coverage is only 35,4%.
Height:	16m from highest point of the natural ground level immediately adjacent to the building, provided that where the building is situated on a slope it may at no point exceed 20m when measured from the natural ground level immediately adjacent to that point.	Yes, the height of buildings will be restricted to 8,5m.
Street building line	0m, next to George Street	Yes, a 4m building line is maintained.
Lateral building lines	3m next to Single Residential properties.	No. The existing house was already erected on the 2m side building line, compliant with the Single Residential parameter.  New building work will however comply with the 3m building line applicable next to single residential properties.

**In terms of the Roads Ordinance**, there is a 5m street building line applicable next to a Provincial Main Road. Application is made for a departure to allow for 4m. There is an existing garage already on 2,8m, next to the Main Road road reserve.

## **6.2 DEPARTURE FROM BUILDING LINES**

Even though a Business Zone generally has 0m street and side building lines, building lines applicable to a Business is more restrictive than those applicable to Single Residential when bordering on a Single Residential property. The existing house was erected with a 2m side building next to Erf 292. Application is made to deviate from this prescribed building line, to accommodate the existing house.

A departure from the 5m Provincial Main Road building line is also applied for, to allow a 4m building for new structures. The existing garage / outbuilding was historically erected on 2,8m. The proposed 4m building line will not detract from the existing land use, or impact on site lines.

## **6.3 REMOVAL OF TITLE DEED RESTRICTIONS**

In terms of the title deed of erf 615 there are restrictions registered against the property. It is subject to the restrictions registered in title deed T38614/2020 imposed by the Administrator of the Province Cape of Good Hope during the approval of the Town Agulhas in terms of Ordinance 33 of 1934. There are also however restrictions in favour of the landowners of Extension 1 and the developers at that time. The restrictions that have to be removed are B.,C.“A.1.(a),(b), B.(a), (b) and (c) and read as follows:



- B. SUBJECT FURTHER to the terms of the Servitude as referred to in the endorsement dated 13 November 1935 on Deed of Transfer Number 2516/1934, which endorsement reads as follows:

"By Notarial Deed dated 21<sup>st</sup> June 1935, the owner and his Successors in Title of Lot Number 137, L'Agulhas Township held under Transfer Number 1637/1934 has been granted the sole and exclusive right to keep a hotel licence on the said Lot and to establish licensed hotels and/or obtain liquor licences on the properties held under Paras. 1 and 3 hereof subject to conditions as will more fully appear on reference to copy of said Notarial Deed filed with said Transfer No. 1637/1934."

- C. SUBJECT FURTHER AND ENTITLED to the benefits of the following special conditions contained in Deed of Transfer Number 9526/1937, which shall be binding on the Transferor and her Successors in Title, namely:

"A. The special conditions imposed upon approval of the said "L'Agulhas Extension Township Number 1" under Ordinance Number 33 of 1934.

1. Special conditions in favour of the registered Owner of any Erf in the Township:
  - (a) That this Erf be used for residential purposes only.
  - (b) That not more than half the area of this erf be built upon.

- B. The special condition imposed by L'Agulhas Township Company (Proprietary) Limited for its benefit as owners of the remainder held under Paragraphs 1 and 3 of the said Deed of Transfer Number 2516/1934: (condition (a) being imposed also for the benefit of owners of Lots in the township).
- (a) No building shall be erected on this Lot unless and until the plans for such building shall have been submitted to and approved by the Company or by its Successors in Title, which shall be binding upon the owner and his Successors in Title.
  - (b) That while the Company or its Successors in Title are administering the water supply of the Township, they have free access at all reasonable times to this erf for the purpose of maintaining and repairing the piping laid on this Erf.
  - (c) That the Company or its Successors in Title shall have the right at any time to the free and undisturbed passage for electric telegraph or telephone wires over this Erf and for the erection of poles not less than 3,05 metres high from the ground together with the right of access at all reasonable times to such wires for the purpose of removal or maintenance."

Section 39 (5) of LUPA states that the Municipality should consider the following when considering the removal, suspension or amendment of restrictive conditions:

*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.*

The removal of the said conditions will accrue to the holder of the rights a financial benefit as it allows the owner to develop the property for non-residential purposes - a boutique hotel.

*b) The personal benefits which accrue to the holder of rights in terms of the restrictive condition;*

The restrictive Title Deed conditions currently prohibit the property owner from using the property for anything other than strictly residential purposes.

*c) The personal benefit which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;*

As explained above, the removal of the restrictive conditions will allow the property owners to develop the property into a boutique hotel.

*d) The social benefit of the restrictive condition remaining in place in its existing form;*

The retainment of the restrictive title deed conditions holds no social benefit.

*e) The social benefit of the removal, suspension or amendment of the restrictive condition; and*

The removal of the restrictive conditions allows for the development of a unique tourist facility that will benefit the entire Cape Agulhas area.

*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 removal of the indicated conditions will not completely remove the rights as the By-law provides control thereafter.

## **7. CRITERIA FOR CONSIDERATION OF THE APPLICATION**

The Cape Agulhas Municipal By-Law on Municipal Land Use Planning lists a number of criteria that an application needs to meet. The relevant points to the information that a planning application will have to include are listed below and the application is evaluated in terms of these points.

### **7.1 The desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding the desirability of proposed land uses.**

The Western Cape Spatial Development framework has a strong emphasis on revitalising urban spaces creating an urban living environment which is more convenient, efficient and aesthetically pleasing to residents. Erf 615 is located next to an activity route, with currently a single residential zoning. With the further development of the premises, additional tourist accommodation opportunities are created, while enhancing the visual appearance of the area.

### **7.2 The impact of the proposal on Municipal Engineering Services**

The boutique hotel will be partially accommodated inside the existing house, that will be extended with rooms mainly on the north-eastern portion of the erf. With the house existing, and the erf previously consolidated from five erven, the impact on municipal services will be reasonable and can be accommodated with available infrastructure.

### **7.3 District and Municipal Forward Planning Documents**

#### **Die Overberg Spatial Development Framework.**

Densification and concentration of facilities are one of the District Municipalities strategies to achieve more functional towns.

#### **CAPE AGULHAS SPATIAL DEVELOPMENT FRAMEWORK, 2024**

The 2024 Spatial Development Framework is applicable.



The 2024 Spatial Development Framework is applicable to this development site. With the residential erf being in an already mostly developed area, no special recommendations are made. It is mentioned in the document that context-sensitive densification should be supported.



Extract from the SDF, 2024

The importance of the protection of natural areas outside the urban edge is mentioned. With the intensification in use of an existing house, urban sprawl is contained and areas outside the urban edge protected.

## 7.4 SPATIAL DEVELOPMENT FRAMEWORK: WESTERN CAPE

### WESTERN CAPE PROVINCIAL SDF (2014)

The Western Cape Provincial SDF was approved in 2014 by the Western Cape Parliament and serves as strategic spatial planning tool that “communicates the provinces spatial planning agenda”.

The recent shift in legislative and policy frameworks have clearly outlined the roles and responsibility of provincial and municipal spatial planning and should be integrated towards the overall spatial structuring plan for the province to create and preserve the resources of the province more effectively through sustainable urban environments for future generations. This shift in spatial planning meant that provincial inputs are in general limited to provincial scale planning. However, it is important to note some of the key policies laid down by the PSDF have a bearing on the application.

The proposed development compliments the SDF spatial goals that aim to take the Western Cape on a path towards:

- (i) Greater productivity, competitiveness and opportunities within the spatial economy;
- (ii) More inclusive development in the urban areas;
- (iii) Strengthening resilience and sustainable development.

Key policies that is supported by this application:

Policy E3: Revitalise and Strengthen Urban Space-Economies as the Engine of Growth

5. Existing economic assets (e.g. CBDs, township centres, modal interchanges, vacant and under-utilised strategically located public land parcels, fishing harbours, public squares and markets, etc.) should be targeted to levers the regeneration and revitalisation of urban economies.

8. Incentives should be put in place to attract economic activities close to dormitory residential areas, facilitate brownfields development.

**Policy S3: Ensure Compact, Balanced & Strategically Aligned Activities & Land Uses**

This policy reflects the main aim of the policy through targeting economic assists (e.g. Modal Interchanges underutilised strategically located land parcels) should be used as a lever to regenerate and revitalise urban settlements.

Promoting functional integration and mix land use to increase liability of urban areas. Thus, the policy specifies the importance to- increase density of settlements and number of units in new housing projects; continue to deliver public investment to meet the needs in settlement developments; integrate packages of land, infrastructure and services as critical to promote densification and efficiency associated with agglomeration.

**7.5 Complies with Section 42 of the SPLUMA and Chapter 6 of LUPA:**

The Spatial Planning and Land Use Management Act (SPLUMA) and Land Use Planning Act (LUPA) came into effect in 2016 in the Cape Agulhas Municipality. One of the main objectives of this act is to provide a framework for spatial planning and land use management to address past spatial and regulatory imbalances.

Section 42 of SPLUMA and Chapter 6 of LUPA prescribe certain aspects that have to be taken into consideration when deciding on an application. These are:

- development principles set out in Chapter 2 of SPLUMA
- protect and promote the sustainable use of agricultural land
- national and provincial government policies
- the municipal spatial development framework; and take into account—
  - (i) the public interest;
  - (ii) the constitutional transformation imperatives and the related duties of the State;
  - (iii) the facts and circumstances relevant to the application;

- (iv) the respective rights and obligations of all those affected;
- (v) the state and impact of engineering services, social infrastructure and open space requirements; and
- (vi) any factors that may be prescribed, including timeframes for making decisions.

SPLUMA and LUPA sets out the following 5 main development principles applicable to spatial planning, land use management and land development:

1. Spatial justice
2. Spatial sustainability
3. Efficiency (optimising the use of existing resources and infrastructure)
4. Spatial resilience (allow for flexibility in spatial plans)
5. Good administration

Compliance with SPLUMA & LUPA Principles:

As discussed in this report, this development proposal is consistent with the approved statutory spatial policy framework for the area, as well as the Provincial Spatial Development Framework. The table below indicates how the proposed development will be consistent with the SPLUMA principles.

<b><i>SPLUMA &amp; LUPA Principle</i></b>	<b><i>Compliance</i></b>
<b><i>Spatial Justice</i></b>	The development allows for a higher order use, on a property that is large enough for what is proposed. It will ensure a world class guest accommodation facility inside the Agulhas urban edge. The erf is very well located in terms of unspoiled sea views.
<b><i>Spatial Sustainability</i></b>	The 21-bedroom boutique hotel, results in a higher order use inside the Urban Edge, intensifying existing infrastructure use, without impacting negatively on the Sense of Place.
<b><i>Spatial Efficiency</i></b>	Development will make use of existing resources in terms of infrastructure, providing slightly higher density development in a



	central location.
<b><i>Spatial Resilience</i></b>	The proposal is in line with overhead planning documents recommending densification inside the Urban Edge. The current house will be repurposed for a demand that was identified in the Cape Agulhas area.
<b><i>Good Administration</i></b>	This principle has no direct bearing on the application; however, the Cape Agulhas municipality is obligated to consider the application fairly and within the timeframes provided in terms of the municipal planning bylaw.

## **8. DESIRABILITY**

### **a) CHARACTER OF THE SURROUNDING AREA**

The area in which Erf 615 is located is of a residential nature, with a large number of the houses mainly used for holiday accommodation. The erf and the existing house are significantly larger than most surrounding properties. The proposal will however, with the proposed coverage and height restriction, not have a significant impact on the character of the surrounding area. The extensions will be in the same style and scale of what is already there.

### **b) SAFETY AND WELLBEING OF THE COMMUNITY**

With sufficient parking being provided on site, the proposal should not have a negative impact on the safety and wellbeing of the community. Year-round occupation and formal security at the house, therefore more surveillance, will add an element of safety to the neighbourhood.

### **c) VISUAL IMPACT**

The development is partially inside an existing building and the proposal should not have an undue visual impact. The proposed height restriction is the same as what is currently applicable to single residential properties and the coverage is significantly less than what is allowed by the title deed and zoning scheme by-law.

### **d) SOCIO-ECONOMIC IMPACT**

- The owners will develop their property into a profitable enterprise.

- The boutique hotel will be the first of its nature in the Cape Agulhas area and will attract a significant number of overseas visitors, that will benefit all the service providers in the area.
- Job creation for at least eight permanent staff members.
- Local members of the community will receive training and acquire new skills.
- More tourists attracted to Agulhas, due to a new, quality accommodation facility offered, that will further strengthen the local economy.

## **9. ACCESS & PARKING**

Access to the property is taken from two existing access points in Main Road. Parking is provided on-site, as prescribed by the Zoning Scheme By-Law. Parking is required at 1 parking bay per guest unit. Twenty-one parking bays are required for the 21 bedrooms. Two additional parking bays are provided for management.

## **10. SERVICES**

All services are already existing, but it is expected that certain upgrades will be required. Service upgrades will be provided as prescribed by Council.

## **11. NATIONAL ENVIRONMENTAL MANAGEMENT ACT, ACT 107 OF 1998**

PHS Environmental Consultants were appointed to conduct an ad hoc setback line determination application for Erf 615. With the rezoning of the property, Activity 19A of the National Environmental Management Act, 1998 (Act No. 107 of 1998) Environmental Impact Assessment ("EIA") Regulations, 2014 (Government Notice ("GN") No. 324, 325, 326 and 327 in Government Gazette No. 40772 of 7 April 2017) will be triggered, due to the property being within 100m from the high-water mark of the sea.

Only after receiving the decision from the Department of Environmental Affairs, the municipality will be able to take a decision on the town planning application.

## 12. CONCLUSION

From the above it can be concluded that the application for:

- A rezoning of Erf 615 in terms of Section 15 (2)(a) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022), from Single Residential to Business, for the development of a boutique hotel. An 8,5m height restriction will be applicable.
- A permanent departure from the development parameters of the zoning scheme in terms of Section 15 (2)(b) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022) to allow for a departure from the 3m prescribed building line applicable to a Business Zone, to allow for a 2m side building line along the south-western boundary, to accommodate the existing house that is already located on this lesser building line.
- Application for a deviation from the 5m building line on Provincial Road, Main Road, to allow for a 4m street building line for new building work along Main Road.
- A removal of title deed restrictions in terms of Section 15 (2)(f) of Cape Agulhas Municipality: By-law on Municipal Land Use Planning (PG 8632 of 15 July 2022), for purposes of removing / suspension of restrictive title deed conditions. Restrictive conditions that must be removed is: B.,C.“A.1.(a),(b), B.(a), (b) and (c)

meets the criteria as set out in The Spatial Planning and Land Use Management Act (SPLUMA) and the Cape Agulhas Municipal Land Use Planning Bylaw, is desirable and it is therefore recommended that the application for the proposal be supported by the relevant authorities and approved by the Cape Agulhas Municipality.