



**MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL
(MPT)**

A G E N D A

**THIS AGENDA WILL BE DEALT WITH AT
MPT MEETING OF 8 DECEMBER 2022**

DATE:	10 NOVEMBER 2022
VENUE:	VIRTUAL
TIME:	10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

3 November 2022

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that the **Municipal Planning Tribunal (MPT)** will go into session **VIRTUALLY** on **Thursday, 10 November 2022 at 10:00** to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr S Madikane (Member)
4. Mr H Blignaut (Member)
5. Ms R Louw (Member)
6. Mr R Kuchar (Authorised Official)
7. Mr S van der Merwe (Senior Town Planner)
8. Ms H van der Stoep (Senior Town Planner)
9. Mr H Olivier (Town Planner)
10. Mr P Roux (Town Planner)
11. Secretariat

**MUNICIPAL PLANNING TRIBUNAL
(MPT)**

10 November 2022

I N D E X

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1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 13 October 2022

4. ITEMS FOR CONSIDERATION

4.1 ERF 5559, 243 FIFTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF THE KIEPERSOL BELEGGINGSTRUST

Report attached

4.2 ERF 668, 56 CHINA MARAIS AVENUE, FISHERHAVEN, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: MESSRS WRAP PROJECT OFFICE ON BEHALF OF WG & J THELANDER

Report attached

4.1

ERF 5559, 243 FIFTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF THE KIEPERSOL BELEGGINGSTRUST

5559 HVK

P Roux

9 September 2022

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 20 January 2021 from Messrs Interactive Town and Regional Planning on behalf of the Kiepersol Beleggingstrust for a departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 5559, Voëlklip, Hermanus for the relaxation of the height restriction from 8m to 8,7m to accommodate an existing roof ridge.

Application is also made for the determination of an administrative penalty in terms of Chapter IV, 16(2)(q) & Section 90 of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Letter from the applicant in support of the application is attached as Annexure B, while the Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 5559 is situated in Voëlklip, Hermanus and is zoned Single Residential Zone 1. The subject property is situated in a predominant residential area. Erf 5559 measures 1400m² in extent. The subject property is developed with a double storey dwelling and a loggia. Building plans was approved in 2014. Erf 5559 gains access from Thirteenth Avenue west of the property. The roof of the main dwelling exceeds the height limit provided by the Land Use Scheme, 2020.

4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- ❖ In terms of the building plan in 2014 the ridge height of the roof would have been 7,98m. However, a height certificate was issued on the property, and it was found that the 8m height restriction was exceeded. Thus, the application entails for the relaxation of the building height restriction from 8m to 8.7m to accommodate the roof.
- ❖ The reason for the roof exceeding 8m is that the building contractor made a calculation error with the base level during the cut and fill process, and the natural ground level was filled which led to the base level being higher than indicated on the approved building plan.

- ❖ The application is considered desirable, for the following reasons:
 - the transgression is a calculation error by the building contractor of the physical mean level/average natural ground level on site during the cut and fill phase,
 - the owner wishes to bring the dwelling in line with the statutory requirements,
 - the proposal is considered to be most cost-effective, practical and least destructive solution to the calculation error,
 - to the best of our knowledge no objections have ever been lodged regarding the potential of obstruction of ocean views,
 - the white colour of the roof blend in with the skyline and therefore supports the aesthetical value of the environment, and
 - the proposal will have no impact on the environment.
- ❖ There are no title deed restrictive conditions that prohibit the applicant to proceed with the application.
- ❖ The owner does not plan to make changes to the land use of the property and the property will be utilised for residential purposes only.
- ❖ Overstrand Municipal Spatial Development Framework, 2020: Erf 5559 falls within the urban edge.
- ❖ Overstrand Municipality Growth Management, 2010: Erf 5559 is located in a 10 to 20 Dwelling Unit per Hectare Densification Zone. The proposed application does not contribute to any densification therefore the application is in line with the Overstrand Municipality Growth Management, 2010.
- ❖ The application is motivated to be in line with the planning principles as set out in terms of SPLUMA.

Application is also made for administrative penalty:

- ❖ The nature, duration, gravity and extent of the contravention

The height of the dwelling exceeds the 8m height restriction by 0.7m. The dwelling was built in 2014. The dwelling house is 7.2m high from the ground level; however the ground level is higher than the mean/base level which caused the roof ridge to be 0.7m above 8m the height restriction. The extent of the footprint is 71m².

- ❖ The conduct of the person (allegedly) involved in the contravention

The building contractor committed a calculation error regarding the physical mean level/ average natural ground level on site during the cut and fill phase and that the dwelling was therefore built too high.

- ❖ Report by a quantity surveyor in matters of unauthorised building/construction

A building contractor's quote was requested for the cost of the roof exceeding the height restriction which will be provided to the municipality on receipt thereof.

- ❖ Whether the unlawful conduct was stopped

The building has not been demolished or amended. Due to the nature of the contravention being a height transgression not causing a material impact on the environment, the most practical, non-destructive and cost-efficient way to stop

the unlawful conduct is by legalising the contraventions, for which the applicant/owner is in the process of applying through this application.

- ❖ Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

During the construction of the dwelling which resulted in this application, a loggia was built which exceeded the street building line. An application was submitted to legalise the loggia. Besides the loggia, we are not aware of any other previous contraventions.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Internal Departments	Yes	24 May 2021	02 July 2021
Ward councillor	Yes	24 May 2021	02 July 2021
Notices	Yes	24 May 2021	02 July 2021
Total number of letters	None		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes

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

Name	Date received	Summary of comments
Building Department	24/05/2021	No objection. A building plan application must comply with all applicable law.
Local Heritage	24/05/2021	No objection.
Engineering Services	28/05/2021	Annexure D.
Fire Services	07/07/2021	No objection.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Overstrand Heritage Committee indicated that they have no objection.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

N/A

9. MUNICIPAL ASSESSMENT OF COMMENTS

The comments from the various departments have been positive.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is of a small scale and therefore the planning objectives applicable in terms of SPULMA and LUPA cannot be adequately discussed.

The objectives relating to:

Spatial Justice

The proposal will not further perpetuate historic spatial imbalances.

Spatial sustainability

The sustainability principle, entails ensuring the protection of prime and unique agricultural land. This application will be in line with this principle as it will not hinder or remove any prime or unique agricultural land. Erf 5559 is located within the urban edge and therefore does not contribute to urban sprawl.

Efficiency

The efficiency principle, entails optimizing the use of existing resources and infrastructure. The proposed application entails existing roof and therefore the proposed application makes use of existing resources and will be aligned with this principle. The proposal will facilitate the optimal use of the property and will not adversely impact the natural environment.

Spatial resilience

The proposal is consistent with the Site Development Plan that addresses to the principle of efficiency.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

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

Same as above.

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

N/A

10.4 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.5 Impact on Municipal engineering services

The proposed application will not require additional services.

10.6 Outcomes of investigations/applications i.t.o other legislation

N/A

10.7 Existing and proposed zoning comparisons and considerations

The subject property is zoned Single Residential Zone 1 and therefore Single Residential Zone 1 parameters as prescribed in the Overstrand Municipal Zoning Scheme, 2020 are applicable. This includes an 8m height restriction.

10.8 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

11. THE DESIRABILITY OF THE PROPOSAL**Departure**

The application entails the departure for the relaxation of the height restriction to accommodate the 8,7m roof. From a town planning perspective to approve the encroachment of the 8m height restriction to 8,7m is not considered desirable. The applicant states in the motivation that the building plans were submitted to the Building Department and were approved in accordance with the 8m height restriction. The applicant states that the contractor made a calculation error during the cut and fill process. However, this is not the full picture as there are several inconsistencies between the plans submitted with the application and the plans approved.

Firstly, the building plans approved were amended to indicate the base level and the 8m height restriction. However, at the time the architect did not correctly amend the building plans in order to account for the change in the height profile and indicated the base level without taking account of the filling that was proposed for the site. This is evident when scaling the height on section AA and BB of the approved plan dated 10/01/2014.

Secondly, the base level calculations differ between what was approved on the approved building plan in 2014 and the proposed revision. The base levels on the approved building plan dated 10/01/2014 was indicated as 41m, whilst the new proposed plans indicate the base level as 41.3m. No record could be found on the approved plans of a contour survey and therefore the applicant was required to provide an overlay with the contours as indicated by the architect and contours by a land surveyor. Due to lack of information on the approved building plan one need to work with the most accurate data and that is with the information from the land surveyor. Unfortunately, even though the new correctly calculated base level is 41,3m the dwelling was still constructed over the 8m height restriction.

Thirdly the dwelling is built higher as what was previously indicated on the building plans. On the approved building plan dated 10/01/2014 the dwelling measured approximately 7,7m from the finished floor level to the top of the roof. However, on

the rider plan dated 24/02/2014 the height is measured approximately 7,98m from the finish floor level to the top of the roof; this is also reflected on the new plans. What is of note is this increase of height was not indicated on the rider plan and it would not have been queried as the rider plan was for minor internal changes.

Considering the above points, it is clear that the architect made miss representations on the original building plans which led to the current building being built higher than the 8m height restriction. This indicates that the encroachment could have been prevented and was caused by negligence.

What is of concern is that the dwelling was built over the width of the property (from west to east) and therefore the majority of the roof which extends over the 8m height restriction spans over the width of the property and will contribute to a higher cumulative impact. Around 71² of the roof encroaches the restricted 8m height limit with 0,7m, with a length of approximately 15,5m.

Although no objection was received from the adjoining property owners the size and position of the dwelling weighs negatively on the character of the area. Therefore, from a Town Planning perspective, the size of the encroachment is considered extensive and can therefore not be supported.

Considering the abovementioned the application is considered as undesirable.

Administrative Penalty

It should be noted that this application was originally considered by the MPT on 24 February 2022, the item was referred back for additional information i.e. application for the determination of an administrative penalty. The evaluation of the additional information is added to the item below.

The application for the determination of an administrative penalty is discussed below:

- ❖ The nature, duration, gravity and extent of the contravention

As stated in this report the height of the dwelling exceeds the 8m height restriction by 0.7m and the extent of the encroachment is approximately 71m².

- ❖ The conduct of the person (allegedly) involved in the contravention

The applicant maintains that the building contractor committed a calculation error regarding the physical mean level/average natural ground level on site during the cut and fill phase and that the dwelling was therefore built too high. However, as stated in this report, there are several inconsistencies with the information obtained during the evaluation of the application.

- ❖ Report by a quantity surveyor in matters of unauthorised building/construction

A building contractor's quote was submitted by the applicant for the roof's construction. The maximum cost for the roof is R224 846,65. It should be noted that the costing was not provided by a quantity surveyor but the consultants at Coastal Trusses who provided the material for the original roof. In addition to this the quote does not specify the labour cost for the installation of the roof; this would also escalate the cost by two or three times.

Due to the information received not being from a quantity surveyor the fee on the Municipality's Budget for illegal building work will be used. In terms of the Overstrand Budget the fee for illegal building work is R18 026,25 per m² (including VAT). It should be noted that the amount per square is for the whole structure and not just for the roof structure. When considering the amount to be fined the Municipality has regards towards the actions of the property owner and the background as provided in the motivation. The maximum amount which can be fined is therefore R1 279 863,75 (71m² x R18 026,25). However, considering the owner came forward to rectify the situation on site and to resolve the issue and the application is only for a portion of the roof which exceeds the building height it can be considered that an admin penalty of 10% may be considered which amounts to R127 986,38 (including VAT).

❖ Whether the unlawful conduct was stopped

The building was completed prior to the submission of the application, the encroachment of the height restriction was only discovered when the land surveyor did a height certificate on the property.

❖ Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

During the construction of the dwelling which resulted in this application, a loggia was built which exceeded the street building line. An application was submitted to legalise the loggia. Besides the loggia, the applicant is not aware of any other previous contraventions.

Conclusion

As stated in this report the application is considered undesirable from a town planning perspective (due to the misrepresentation made on the building plans, calculation errors and fact that the structure was built higher than shown on the approved building plans), however, should the application be approved then the opinion is held that an administrative penalty is fined.

12. RECOMMENDATION

1. that the departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 5559, Hermanus (Voëlklip), for the relaxation of the 8m height restriction to accommodate an 8,7m roof, **not be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the Building Control Office be informed of the decision;
3. that the necessary building plans, in line with the above, be submitted to the Building Department for consideration within 60 days from the date of the final decision and that structure be rectified within 6 months; and
4. that the applicant be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

13. REASONS FOR THE RECOMMENDATION

- ❖ Around 71m² of the roof encroaches the restricted 8m height limit, which is considered as an extensive encroachment, not in line with the character of the area and is undesirable.
- ❖ The dwelling is constructed over the width of the property which causes a large amount of the dwelling to be over the 8m height restriction.
- ❖ The architect made misrepresentation on the original building plans (including the rider plan) with regards to the base level and 8m height restriction, and the architect did not account for the changes in the height.
- ❖ The 8m height encroachment could have been prevented with careful planning from the building contractor and the architect.

14. ANNEXURES

- Annexure A: Locality Plan
 Annexure B: Motivation Letter dated July 2022
 Annexure C: Site Development Plan
 Annexure D: Approved building plan dated 10/01/2014 and 24/02/2014
 Annexure E: Services Report

SIGNATURES**AUTHOR**

Name: **P ROUX**

SACPLAN Reg No: **A/2246/2015**

Signature: _____

Date: _____

REGISTERED PLANNER

Name: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

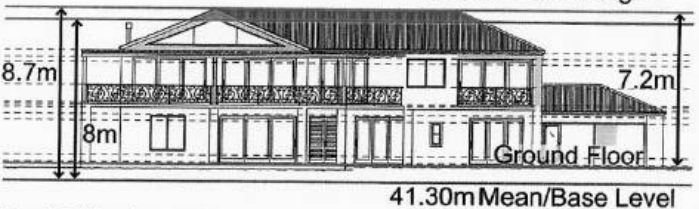
Date: _____



Date: 2021/05/24

Locality Map
Erf 5559, Voelklip



1. Introduction	
<p>a. Brief Refer to Annexure B for the Power of Attorney.</p>	<p>Interactive Town and Regional Planning was appointed by the owner of the property Kiepersol Beleggingstrust to prepare and submit an application for a height departure on Erf 5559, Voëlklip as well as the determination of an administrative penalty in terms of the relevant legislation.</p>
<p>b. Development Objective & Application Proposal</p>	<p>The development objective is to legalize the unapproved height of the roof ridge to allow for the existing dwelling on the application area.</p>  <p>Figure 1: Building plan extract</p> <p>Subsequently the application proposal is for:</p> <ul style="list-style-type: none"> • a <u>departure</u> to relax the roof ridge height from 8m to 8.7m to allow for the existing dwelling on the application area. • <u>determination of an administrative penalty</u>
<p>c. Background</p>	<p>The application area consists of a double-storey single residential dwelling with an <u>unapproved roof ridge height of 8.7m</u> and a separate approved loggia at nr 243 Fifth Street, Voëlklip.</p> <p>Resulting from a site inspection by ITRP, the analysis of the 2014 building plan and current measurements on the erf by the architect, it is concluded that the building contractor committed a calculation error regarding the physical mean level/ average natural ground level on site during the cut and fill phase and that the dwelling was therefore built too high.</p>

2. The Application				
<p>a. Analysis: Title Deed Refer to Annexure D for the Conveyancer Certificate.</p>	<p>The Conveyancer Monica Korf issued a certificate confirming that no restrictive title deed conditions exist against the proposal on Erf 5559 Voëlklip.</p>			
<p>b. Analysis: Development Criteria:</p> <p>The development parameters for Erf 5559 Voëlklip, Hermanus as per the Overstrand Municipality Land Use Scheme Regulations, 2020, are summarised as follows:</p>	Parameters	Existing Zoning:	Proposal:	Comments
	Zoning	Residential Zone 1: Single Residential (SR1)	Residential Zone 1: Single Residential (SR1)	Consistent
	Primary Use	Day care centre, dwelling house, guest rooms, home occupation, second dwelling unit;	Dwelling house	Consistent
	Consent Uses	Crèche, green house, guest house, house shop, institution, place of instruction, place of worship, residential building, tourist accommodation.	None	Consistent
	Coverage	50%	30%	Consistent
	Height	8m	8.7m	Application is for a departure
	Heights	Street	4m	4m north 3m west
		Side	2m	Consistent
		Rear	2m	Consistent
	Parking	Dwelling house: 2 bays	Dwelling house: 2 bays	Consistent
<p>c. Application:</p> <p>The application form is attached as Annexure A.</p>	<p>Application is subsequently made in terms of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020, for:</p> <ul style="list-style-type: none"> • a <u>departure</u> to relax the roof ridge height from 8m to 8.7m to allow for an existing dwelling on the application area in terms of Chapter IV, Section 16(2)(b). • <u>determination of an administrative penalty</u> in terms of Chapter IV, 16(2)(c) & Section 90 of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020. 			

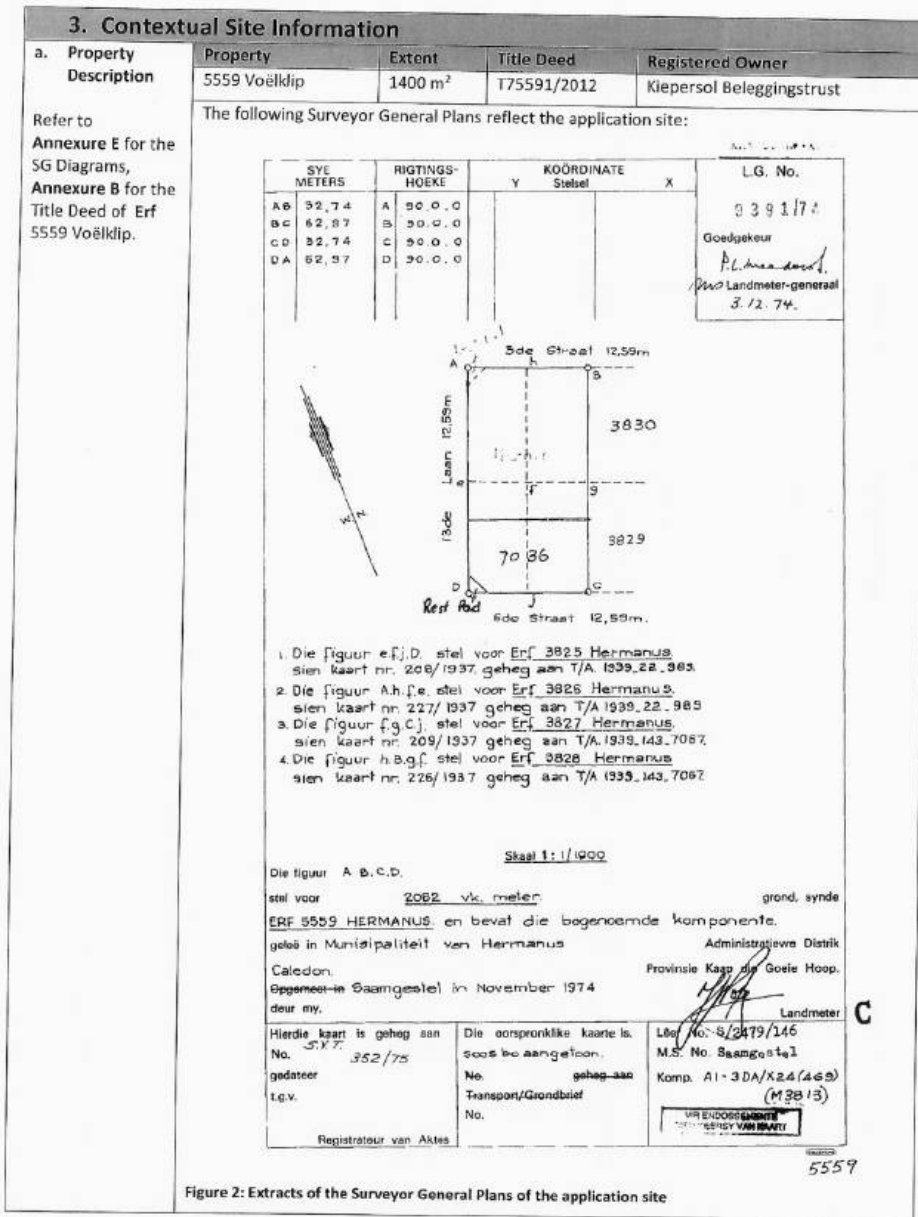


Figure 2: Extracts of the Surveyor General Plans of the application site

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b. Location:

For the Locality Plans refer to Annexure F

Regional Context:

Within the regional context, the application area is located within Voëlklip residential suburb. Voëlklip is located on the Eastern side of Hermanus.

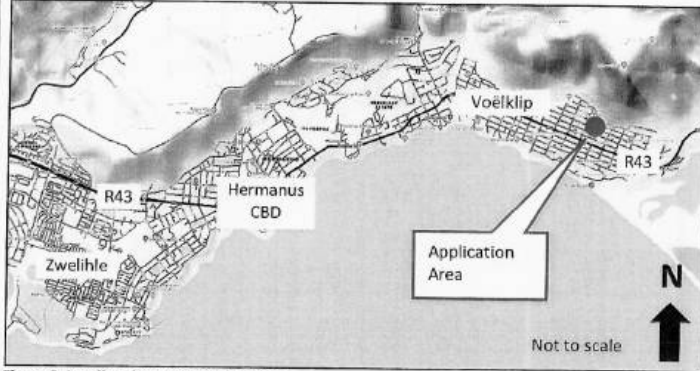


Figure 3: Locality Plan – Regional Context

Local Context:

Within the local context the application area consists of a residential erf within Voëlklip that forms part of the larger Hermanus West area. The application area is located at number 243 Fifth Street.

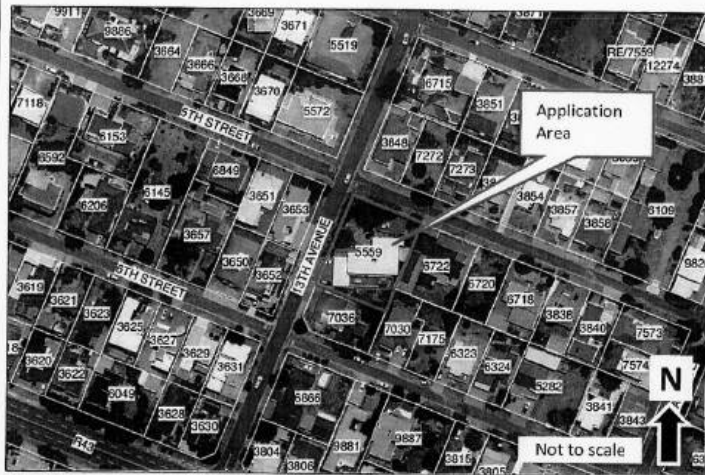


Figure 4: Locality Plan – Local Context

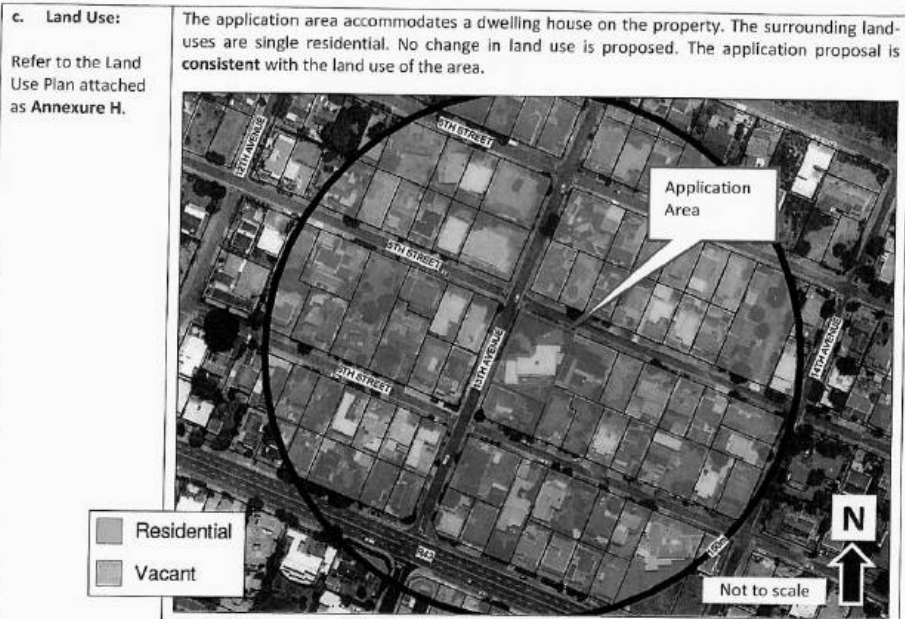


Figure 5: Google Image illustrating the residential land-use activities of the application area and surrounding properties

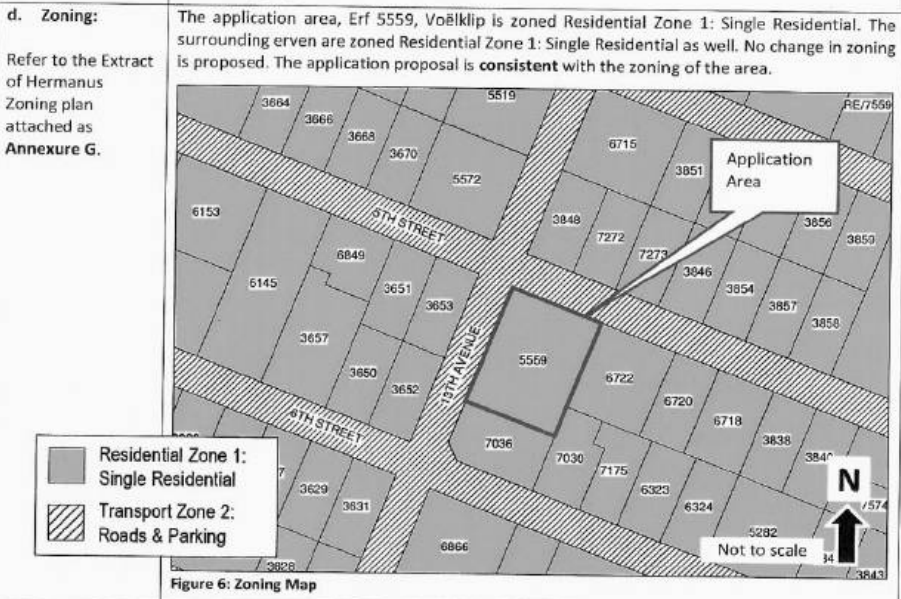


Figure 6: Zoning Map

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

The following policy is applicable to the application area.

i. **Overstrand Municipal Spatial Development Framework, 2020**
 The application area falls within a core urban residential area.

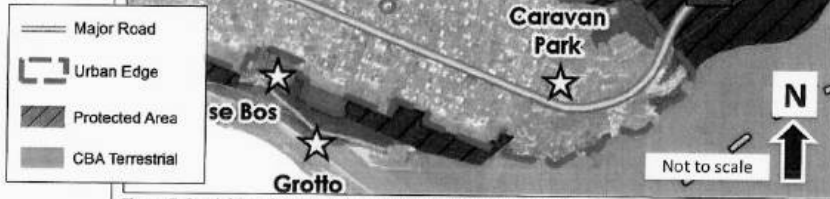


Figure 7: Spatial Development Framework Spatial Proposals Plan

The application is consistent with the Overstrand Municipal Spatial Development Framework, 2020.

ii. **Overstrand Municipal Spatial Wide Development Framework, 2006**
 In section 5.5.5 (i) it is mentioned that the SDF is inter alia concerned with the optimum use of land. The clause further mentions the need to provide satisfactory residential environments and further that a full range of residential needs must be catered for.

The application is consistent with the Overstrand Municipal Spatial Wide Development Framework, 2006.

iii. **Overstrand Municipality Growth Management Strategy, 2010**
 The application area is within a 10 to 20 Dwelling Units Per Hectare Densification Zone.

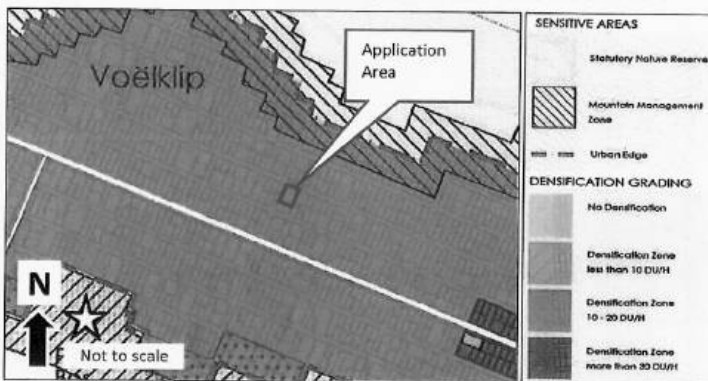


Figure 8: Extract from the Overstrand Municipality Growth Management Strategy, 2010 reflecting the envisaged land-uses for the area.

The application is consistent with the Overstrand Municipality Growth Management Strategy, 2010.

4. Motivation

Motivation for the application:

Refer to **Annexure I** for the Building Plan and **Annexure K** for the southern neighbour's consent.

a. Introduction and Background

The application area consists of a double-storey single residential dwelling with an unapproved roof ridge height of 8.7m and a separate approved loggia at nr 243 Fifth Street, Voëlklip.

The architect appointed by the owner to draw up plans for the approval of additions on the application area, found the existing roof ridge height of the residential building to be lower than the permitted 8m maximum height of 8m by 0.7m, thus resulting in a height of 8.7m.

According to the architect, the original plans for the residential dwelling submitted in 2014 by a previous architect and subsequently approved, indicated the height of the roof ridge to be lower than the permitted 8m maximum height namely 7.98m but the residential building was constructed higher than the height indicated on the plans as well as a further 0.7m over the maximum permitted 8m height.

According to the Height Restriction Certificate extract in Figure 9 below, the highest natural ground-level for the house is 42.20m and the lowest natural ground-level is 40.40m, thus resulting in a mean natural ground level of 41.30m.



geomatics africa
LAND SURVEYING CONSULTANTS

PO Box 2245
Hermanus, 7200
Tel: 028-313 1236
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info@geomaticsafrica.co.za

Date: 31 March 2020

To Whom It May Concern:

Height Restriction of Erf 5559 Hermanus

A topographic survey was completed to determine natural ground level. The building has been surveyed and various levels taken.

The results are as follows:

House	
Highest natural ground level	42.20m
Lowest natural ground level	40.40m
Mean Natural Ground Level	41.30m
Maximum allowable height (8.0m restriction)	49.30m
Roof Pitch	49.97m

Figure 9: Height Restriction Certificate

According to the 41.30m mean natural ground-level, the maximum height allowable for the roof pitch would be 49.30m. The actual roof pitch is 49.97m, thus exceeding the maximum allowable height by 0.7m.

It is thus concluded that the building contractor committed a calculation error regarding the physical mean level/ average natural ground level on site during the cut and fill phase and that the dwelling was therefore built too high.

b. Proposal

The objective therefore includes to legalize the existing non-approved 8.7m roof ridge height of the residential dwelling, which is not only higher than on the approved 2014 building plans but furthermore exceeds the maximum permitted height of 8m by 0.7m, all due, as is concluded, to a calculation error during the construction phase.

The proposal is thus for a departure to relax the height from 8m to 8.7m to legally accommodate the existing single residential dwelling on the application area as well as the determination of an administrative penalty.

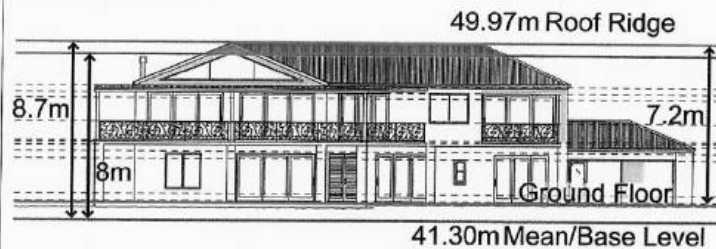


Figure 10: Development Proposal

Determination of Administrative Penalty

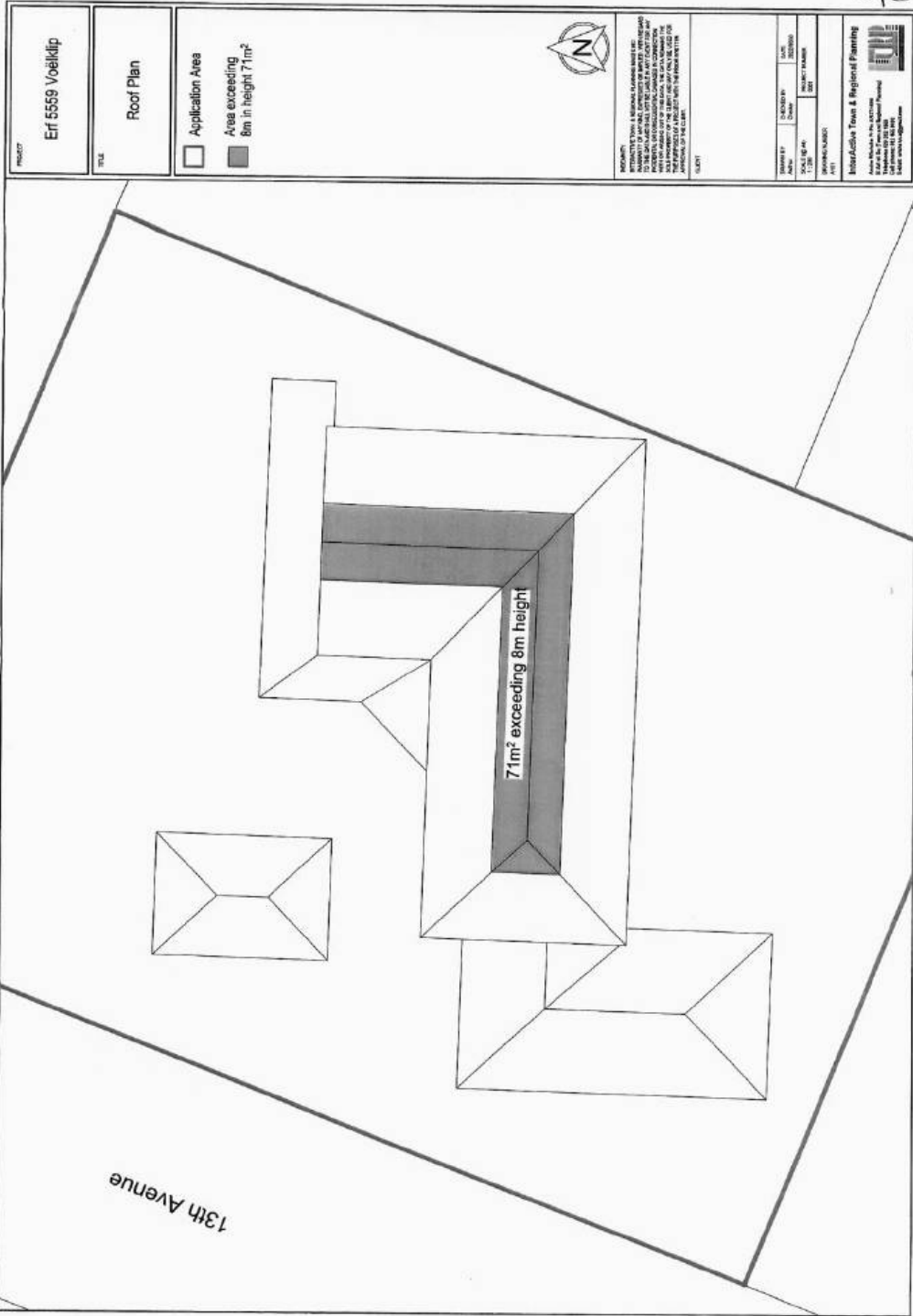
The following information with regards to the administrative penalty is provided as required according to Section 90(3):

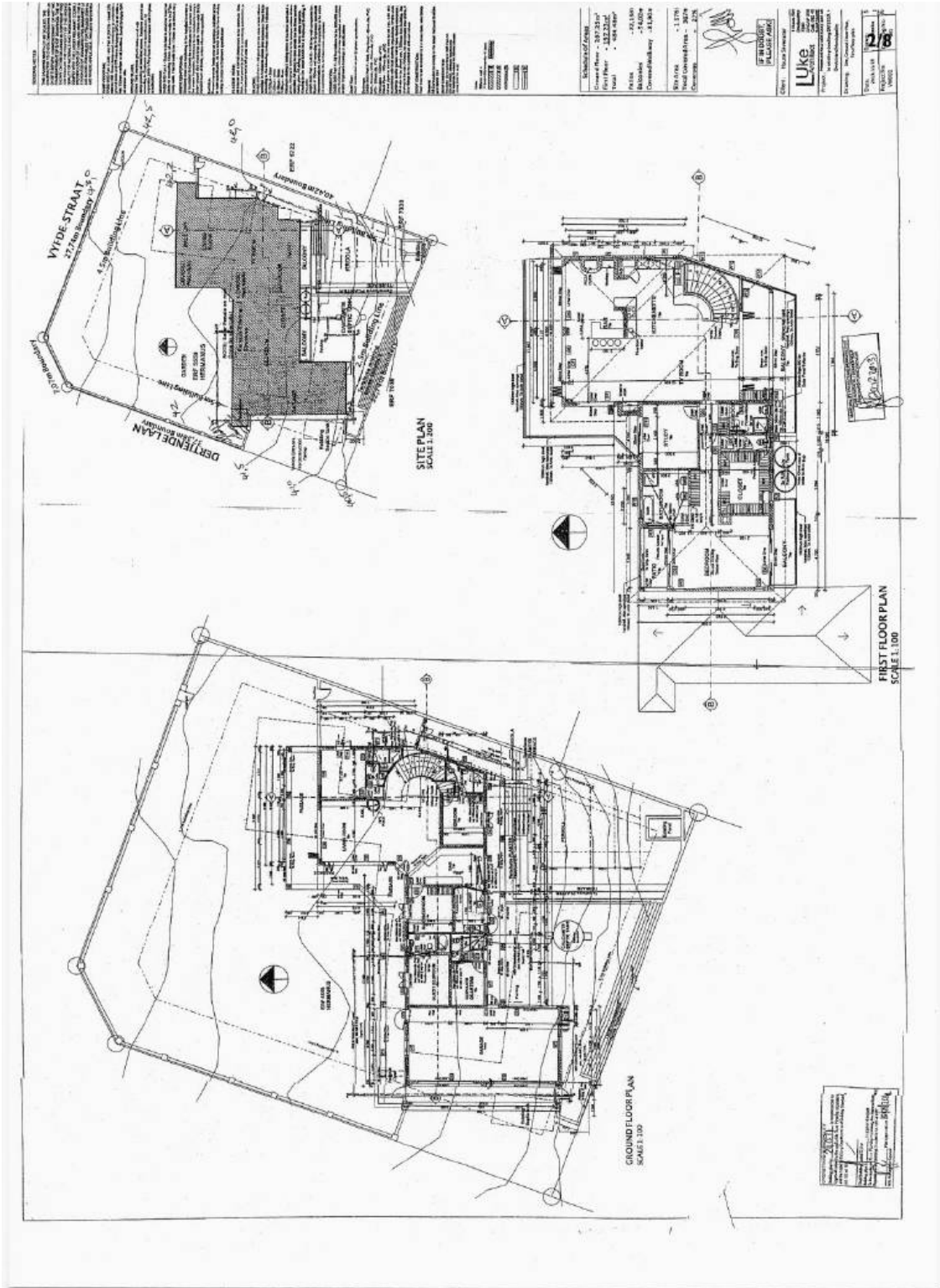
- (a) The nature, duration, gravity and extent of the contravention;
The height of the dwelling exceeds the 8m height restriction by 0.7m. The dwelling was built in 2014. The dwelling house is 7.2m high from the ground level, however the ground level is higher than the mean/base level which caused the roof ridge to be 0.7m above 8m the height restriction.
- (b) The conduct of the person (allegedly) involved in the contravention;
The building contractor committed a calculation error regarding the physical mean level/average natural ground level on site during the cut and fill phase and that the dwelling was therefore built too high.
- (c) Report by a quantity surveyor in matters of unauthorised building/construction;
A building contractor's quote was requested for the cost of the roof exceeding the height restriction which will be provided to the municipality on receipt thereof.
- (d) Whether the unlawful conduct was stopped
The building has not been demolished or amended. Due to the nature of the contravention being a height transgression not causing a material impact on the environment, the most practical, non-destructive and cost-efficient way to stop the unlawful conduct is by legalising the contraventions, for which the applicant/owner is in the process of applying through this application.
- (e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law

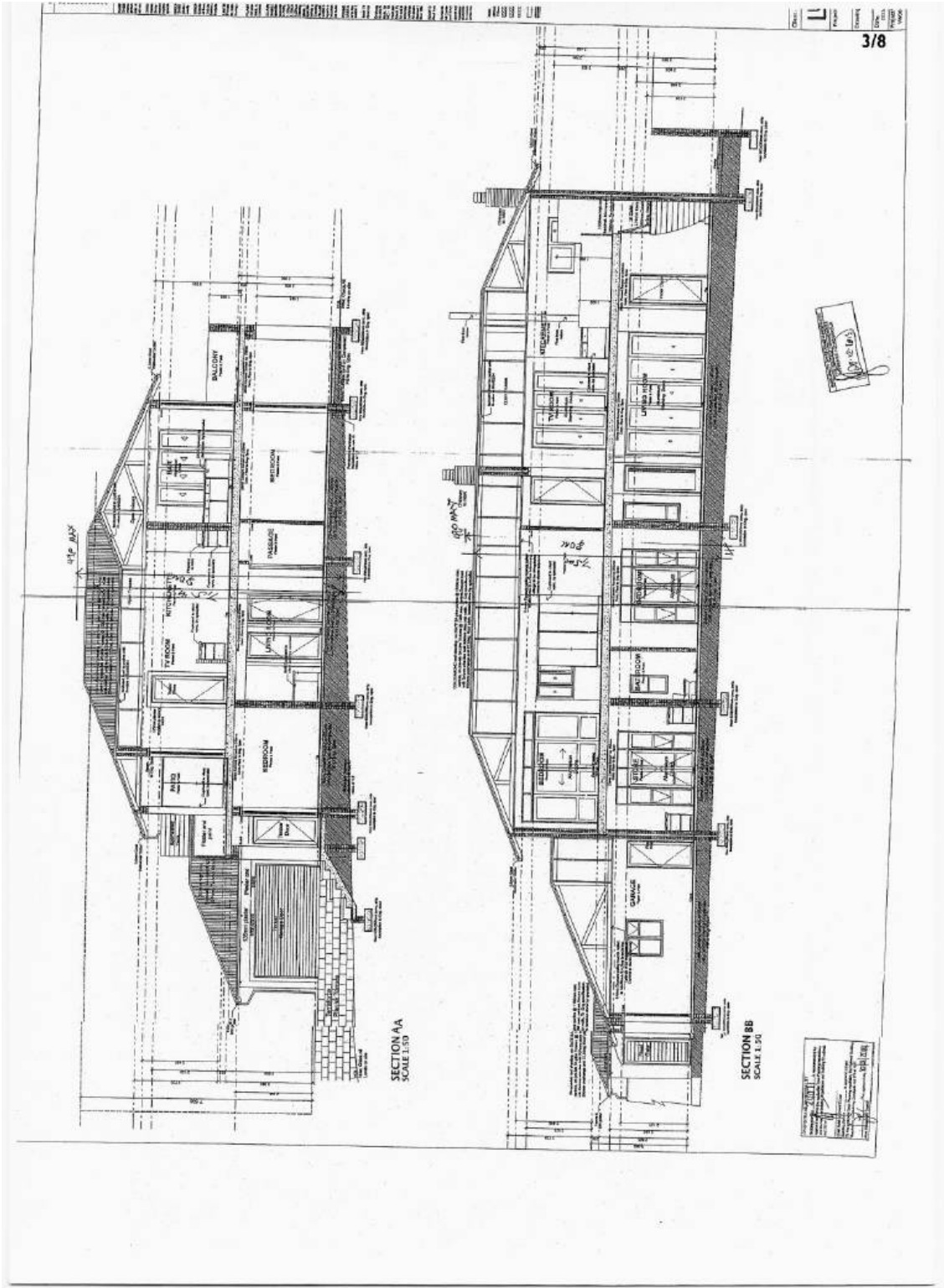
During the construction of the dwelling which resulted in this application, a loggia was built which exceeded the street building line. An application was submitted to legalise the loggia. Besides the loggia, we are not aware of any other previous contraventions.

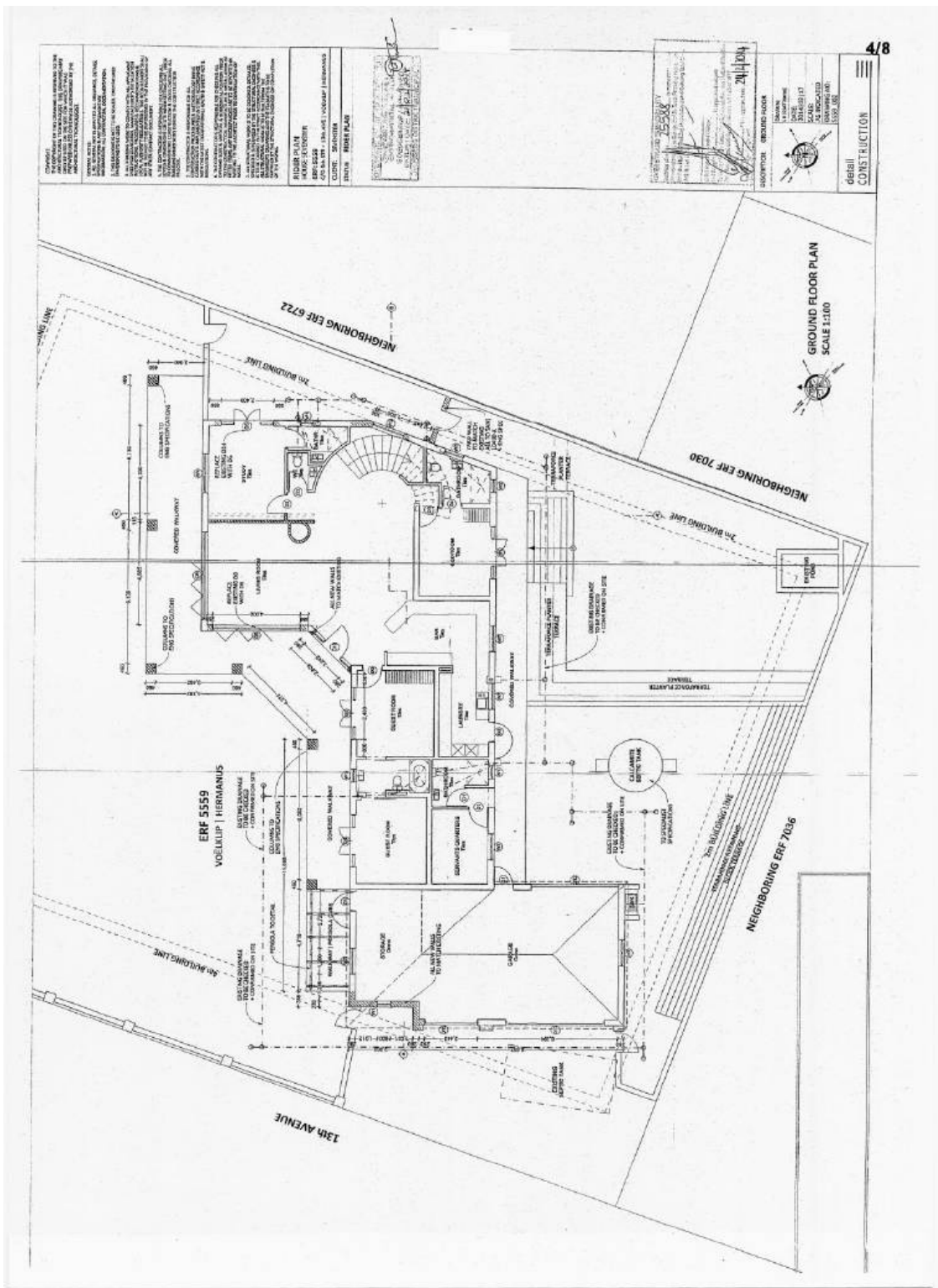
	<p>c. Desirability</p> <p>The application is considered desirable, for the following reasons:</p> <ul style="list-style-type: none"> • The transgression is concluded to be a result of a calculation error by the building constructor of the physical mean level/ average natural ground level on site during the cut and fill phase • The owner wishes to bring the dwelling in line with the statutory requirements • The proposal is considered to be the most cost-effective, practical and least destructive solution to the calculation error • To the best of our knowledge no objections have ever been lodged by neighbours regarding the potential obstruction of ocean views by the proposal • The white colour of the roof blends in well with the skyline and therefore supports the aesthetical value of the environment • It is concluded that no material impact on the environment is caused by the proposal <p>d. Planning Principles</p> <p>In terms of Chapter VI of the Spatial Planning and Land Use Management Act, 2013 the following Planning Principles have been applied to the application site:</p> <p>1) Spatial Justice which refers to the need for redressing the past apartheid spatial development imbalances and aims for equity in the provision of access opportunities, facilities, services and land.</p> <p>Possible results of the development</p> <p>The proposed height relaxation will not in any way contribute to perpetuation of past apartheid spatial development imbalances as the application proposal will accommodate the legalization of a statutory requirement of an existing house. Furthermore, the previous Overstrand Municipal Spatial Wide Development Framework, 2006 is concerned with the optimal use of land and mentions the need to provide satisfactory residential environments and that a full range of residential needs be catered for.</p> <p>The application proposal is consistent with spatial justice.</p> <p>2) Spatial Sustainability which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.</p> <p>Possible results of the development</p> <p>The proposal will allow for the legalization of an existing single residential dwelling within the urban edge and will therefore have no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas.</p> <p>The application proposal can thus be deemed to be spatially sustainable.</p> <p>3) Efficiency which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.</p> <p>Possible results of the development</p> <p>The proposal represents the most practical, cost-efficient and least destructive solution to the roof ridge height which exceeds the maximum permitted height for a single residential dwelling, without causing any material impact on the environment.</p> <p>The application proposal is consistent with the efficiency principle.</p>
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	<p>4) Spatial Resilience which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.</p> <p>Possible results of the development The proposed development will not lead to any economical and/or environmental shocks as the application allows for an existing building within a residential suburb.</p> <p>The application proposal is consistent with the principle of spatial resilience.</p> <p>5) Good Administration which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.</p> <p>Possible results of the development Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the relevant government tiers and the general public to participate in the eventual decision-making process.</p> <p>The application proposal is consistent with the principle of good administration.</p>
<p>5. Conclusion</p>	
<p><u>The proposal represents the most practical, cost-efficient and least destructive solution to the roof pitch which exceeds the maximum allowable height, without causing any material impact on the environment.</u></p> <p>The application as motivated in this report is regarded desirable within its local context and well-integrated within the existing community land-use activities. It is therefore recommended that the application be approved in terms of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020, as follows:</p> <ul style="list-style-type: none"> • a <u>departure</u> to relax the roof ridge height from 8m to 8.7m to allow for an existing dwelling on the application area in terms of Chapter IV, Section 16(2)(b). • <u>determination of an administrative penalty</u> in terms of Chapter IV, 16(2)(q) & Section 90 of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020. 	









GENERAL NOTES:
 1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
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 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.

PROJECT INFORMATION:
 PROJECT NAME: ERF 5559
 PROJECT ADDRESS: 13th Avenue
 PROJECT TYPE: RESIDENTIAL
 PROJECT STATUS: PRELIMINARY

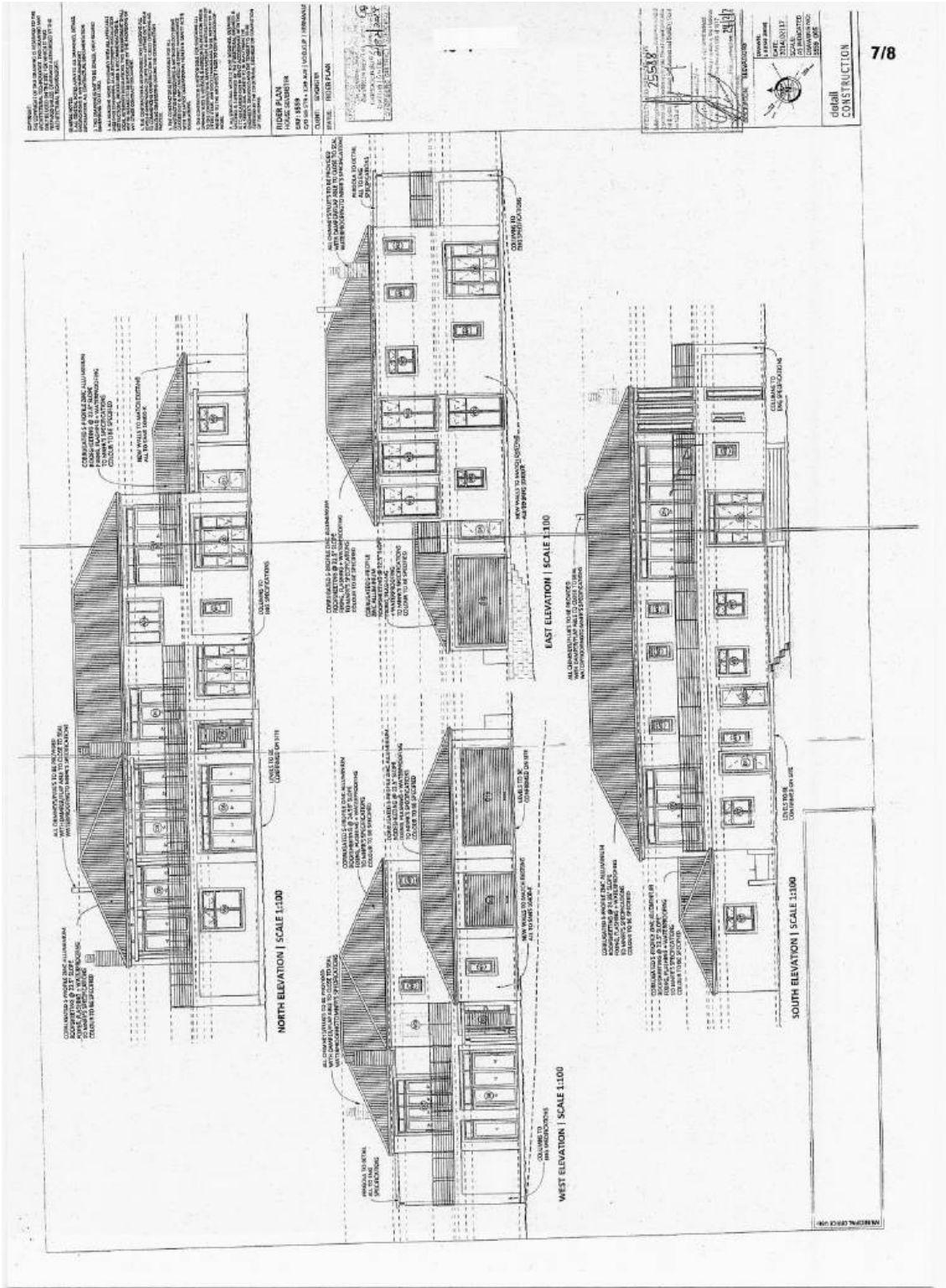
DESIGNER:
 NAME: HOFMANN
 ADDRESS: 13th Avenue
 PHONE: 011 43 7 312 34 34 34
 FAX: 011 43 7 312 34 34 34
 EMAIL: hofmann@hofmann.at
 WEBSITE: www.hofmann.at

DATE: 2010.08.10
SCALE: 1:100
PROJECT NO.: 13th Avenue
PROJECT NAME: ERF 5559

PROJECT INFORMATION:
 PROJECT NAME: ERF 5559
 PROJECT ADDRESS: 13th Avenue
 PROJECT TYPE: RESIDENTIAL
 PROJECT STATUS: PRELIMINARY

GROUND FLOOR PLAN
SCALE 1:100

4/8



ANNEXURE E

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE: ERF 5559, VOELKLIP**

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

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 - P: 2010: Drainage*;
4. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Hermanus for written approval;
5. that any additional and / or extended vehicle entrances will be for the owner's account;
6. that stormwater be allowed to discharge through Erf 5559, Voelklip, unobstructed;
7. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

28.05.2021
DATE