



OVERSTRAND MUNISIPALITEIT
ERF 234, PORTERRYLAAN 20, ROOIELS:
AANSOEK OM OPHEFFING VAN
BEPERKENDE TITELAKTEVOORWAARDE, EN
AFWYKING: A VON MALTITZ NAMENS A
VON MALTITZ & L KAESTNER

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoek van toepassing op Erf 234, Rooiels (die eiendom), naamlik:

Opheffing van Beperkende Titellaktevoorwaarde

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titellaktevoorwaarde F.4.(d) en G.(b) soos vervat in Titellakte T44343/2021 van die eiendom om die voorgestelde nuwe woonhuis te akkommodeer.

Afwyking

Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die straatboulyn te verslap vanaf 4m na $\pm 2,97m$ om die voorgestelde nuwe woonhuis op die eiendom te akkommodeer.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 and 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus, by die Betty'sbaai Biblioteek, Clarencerylaan, Betty'sbaai en die RERA kantoor, Anemoneweg, Rooiels.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **23 Junie 2023**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Me. H van der Stoep** by 028-3138900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word om hul kommentare te formuleer.

DGI O'Neill, Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, HERMANUS, 7200

Munisipale Kennisgewing Nr. 84/2023

OVERSTRAND MUNICIPALITY
ERF 234, 20 PORTER DRIVE, ROOIELS:
APPLICATION FOR REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS AND
DEPARTURE: A VON MALTITZ ON BEHALF OF
A VON MALTITZ & L KAESTNER

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), of the following application applicable to Erf 234, Rooiels (the property), namely:

Removal of Restrictive Title Deed Condition

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed condition F.4.(d) and G.(b) as contained in Title Deed T44343/2021 of the property to accommodate the proposed new dwelling.

Departure

Application in terms of Section 16(2)(b) of the By-Law to relax the street building line from 4m to $\pm 2,97m$ to accommodate the proposed new dwelling on the property.

Details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department : Town Planning at 16 Paterson Street, Hermanus, at the Betty's Bay Library, Clarence Drive, Betty's Bay and the RESA Office, Anemone Road, Rooiels.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **23 June 2023**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Mrs. H van der Stoep** at 028-313 8900. The Municipality may refuse to accept comment received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comments.

DGI O'Neill, Municipal Manager, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

Municipal Notice No. 84/2023

UMASIPALA WASE-OVERSTRAND
ISIZA SAMA- 234, 20 PORTER DRIVE,
EROOIELS: ISICELO SOKUSUSWA
ESITHINTELA IMIQATHANGO YETAYITILE
NOKUPHAMBUKA: A VON MALTITZ
EGAMENIM LIKA-A VON MALTITZ & L
KAESTNER

Esi saziso sikhutshwe ngokuvumelana neCandelo- 47 nele 48 loMthetho kaMasipala wase- Overstrand Otshintshiweyo omalunga Nokuceba Kokusetyenziswa Komhlaba kaMasipala (2020) ukuba kufunyenwe ezi zicelo zilandelayo eziqukiweyo isiZa sama- 234, eRooiels (Ipropati), ngale ndlela:

UkuSuswa kwesiThintelo kumQathango weTayitile

Isicelo ngokuphathelele kwiCandelo le- 16(2)(f) loMthetho kaMasipala sokususwa kwesithintelo somqathango weTayitile F.4.(d),G.(b) njengoko kuqulethwe kwiTayitile engunombolo T44343/2021 yomhlaba ukulungiselela indawo entsha yokuhlala endululwayo.

Ukuphambuka

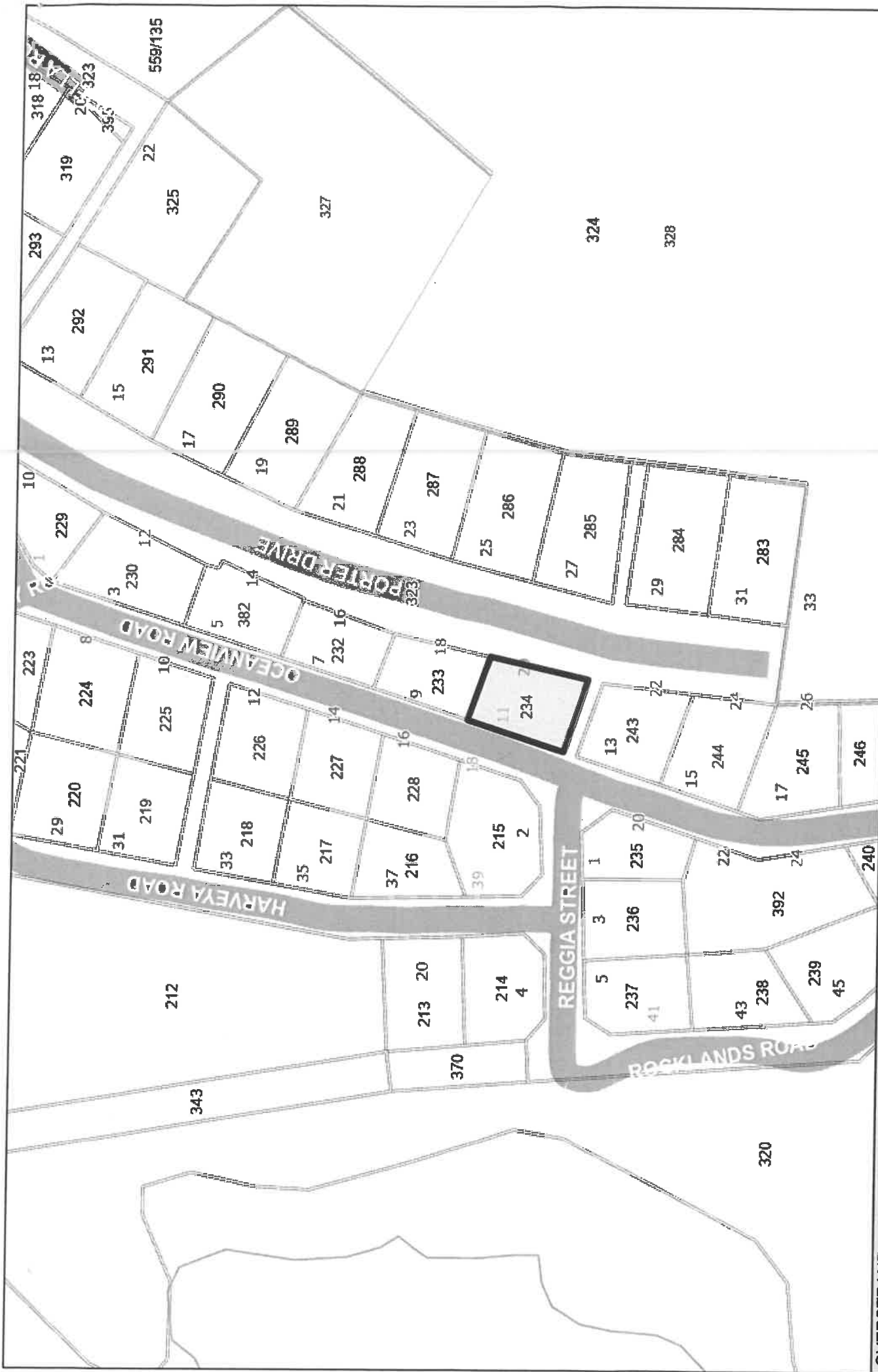
Isicelo ngokuphathelele kwiCandelo le- 16(2)(b) loMthetho kaMasipala ukunyenisa umda wokwakiwa wesitalato ukusuka kwisi- 4m ukuya kwisi- $\pm 2,97m$ ukulungiselela indawo yokuhlala entsha endululwayo kumhlaba.

Inkcukacha mayela nesindululo siyafumaneka ukuze sikhulwe phakathi evelini ngamaxesho omsebenzi ukusuka kwintsimbi ye08:00 ukuya kweye16:30 kwiSebe: Izicwangciso Zedolophu kwanombolo 16 Paterson Street, eHermanus kwithala leencwadi laseeBetty's Bay, eClarence Drive, eBetty's Bay nase-RESA Office, Anemone Road, eRooiels.

Naziphi na izimvo ezibhaliweyo zingangeniswa ngokwezibonelelo zamaSolotyama-51 nama-52 kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngoLwesihlanu okanye ngaphambi kolwesihlanu, **23 Juni 2023**, ukhankanye igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Imibuzo ngefowuni ingabhekiswa **UMcwangcisi weDolophu oMkhulu, uNksz H van der Stoep** ku-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvula. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiCandelo leDolophu apho igosa likamasipala liza kumnceda avakalise izimvo zakhe ngokusemethethweni.

DGI O'Neill, Umlawuli kaMasipala, Masipala waseOverstrand, P.O. Box 20, HERMANUS, 7200

Isaziso Sikamasipala No. 84/2023



Locality Map
Erf 234 Rooiels



Date: 2022/12/13

Application for the departure and the removal of restrictive title deed conditions

Site: Erf 234, Oceanview road, Rooi-Els

Applicants & Owners: Adrian von Maltitz & Lisa-Ann Kaestner

Date: 25 November 2022 (updated 1 March 2023)

Application

This application consists of the removal of title conditions as well as departures to the building setbacks as per the zoning scheme. The application is made in terms of:

- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the departure from the Land Use Scheme Regulations' (2020) building lines of erf 234 Rooi-Els;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive title deed conditions of erf 234 Rooi-Els.

The departure: To relax the street building line on the southern boundary between erven 234 and 243 from 4,0m to 2,97m.

The title deed conditions: Removal of conditions F(4)(d) and G(b) on page 4 of title deed no T44343/2021 for the erf 234, Rooi-Els.

Title deed and street building line setback

With reference to the Schedule of By-law, Overstrand Municipality Land Use Scheme, 2020, it is stated under Residential Zone 1 that: The street building line of erven of 400 m² and greater is 4,0m.

With reference to the title deed T44343/2021 for the erf 234, Rooi-Els, it is stated that:

- F(4)(b): No building or structure except boundary walls and fences, shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf provided that with the consent of the Local Authority an outbuilding not exceeding 3,05 metres in height measured from the floor to the wall plate and no portion of which will be used for human habitation may be erected within the above prescribed rear space and provided further that a garage may be erected up to such street line, if in the opinion of the Local Authority the level of the erf is such as to make that necessary
- G(b): No wood and iron buildings of any description, shall be erected on this erf, nor shall corrugated iron be used for roofing purposes.

Motivation

The design of the house and building operations have been planned with specific instruction and objective to reduce the footprint of the house and building operations on the delicate Fynbos and mountain landscape. With the current design more than 70% of the existing plot will remain untouched by the house construction. As per the plans, the house has been positioned on the southern side of the plot away from the most sensitive Fynbos and water run-off (very visible during winter months) down the northern side of the plot. Further, the house has been positioned in such a way to leave the large granite boulder in the center of the plot intact. As a result, both the house and garage (main bedroom on top of garage) are transgressing the building lines. The access point was chosen as Oceanview road, as access from Porter drive would have much larger impact because of excavations on the steep slope to build a drive-way. All of these considerations were made to minimize the impact on nature, both Fynbos growth and the geography.

With reference to the footpath between erven 234 and 243. This path is currently zoned as a road, and as such cannot be deemed a common boundary with the neighbour on erf 243. We are however of the opinion that the slope of this path is extremely steep, starting with a slope of 10 degrees that increases to at least 17 degrees, and as a result is unlikely to be built as a road in the future. This also brings into question why this pathway was originally zoned as a road.

The precedent of relaxing the building line on similar footpaths exist in Rooi-Els between erven 248 and 276, as well as erven 218 and 219.

The plans have been presented to the neighbours on erf 243, Oceanview road, Mr & Mrs du Plessis.

Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restructure condition" on a title deed:

- 1) The financial or other value of the rights in terms of the restrictive conditions 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 value of condition in clause G(b) was historically intended to prevent low quality houses from being built, but with the enhancement of wood and iron materials over time, these materials can now complement, enhance and increase the value of structures that are mainly built with brick, as well as help to integrate the structure into the surrounding environment.
 - The removal of the restrictive condition in clause F(4)(b) intends to allow for the best positioning of the house to permit the minimum impact on the natural environment.
 - There is no financial or other value to the conditions enjoyed by other persons.
- 2) The personal benefits which accrue to the holder of rights in terms of the restrictive conditions

- The personal benefit accumulated to the home owners in the Rooi-Els village is insignificant insofar as the title deed conditions are concerned. Surrounding property owners are still protected by the policies in place for the area such as the Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. The proposed removal of the restrictive title deed conditions will limit the impact on the natural environment by placing the house in a position with minimum impact, which will benefit the overall community in its vision to conserve the natural splendour of Rooi-Els.
- 3) The personal benefits which accrue to the person seeking the removal of the restrictive conditions, if they are removed
 - The owners gain the benefit of preserving the most sensitive and unique natural features of the site, including the large boulder in the center of the plot.
 - 4) The social benefit of the restrictive conditions remaining in place in its existing form
 - It is doubtful that the retention of the conditions would have any significant social benefit.
 - 5) The social benefit of the removal or amendment of the restrictive conditions
 - The removal of the restrictive title deed conditions will allow the owners to position the house with minimum negative impact to the natural environment, enhancing community social cohesion and supporting the village vision of a community united by our passion to conserve the natural splendour of Rooi-Els and share our appreciation of the environment with others.
 - 6) Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of those rights
 - The removal of the restrictive conditions will not remove the rights completely as the Zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, will still provide control and guide the way the property is both used and developed.
 - The existing footpath to the south of the property will not be affected by the removal of the restrictive conditions or the rest of this application, other than being moved slightly south where it has veered onto the property.

What we are proposing will preserve the natural features of the terrain to its maximum effect. The zoning and primary land use of the subject property will remain unchanged. The proposal is compatible with the existing built character of the area. The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013). We trust that you will find this motivation favourable.

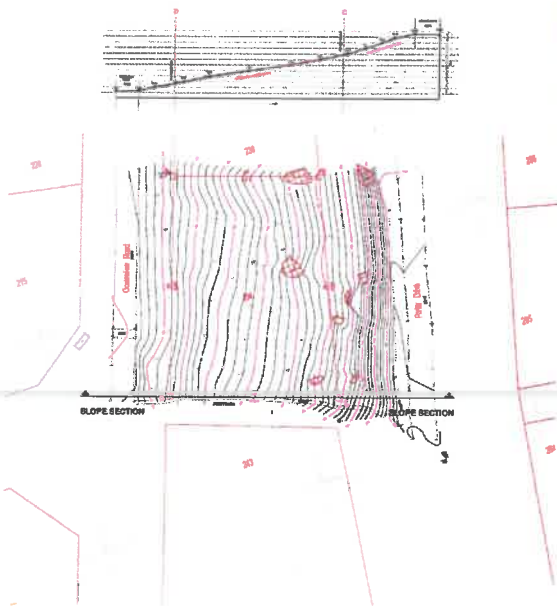
Regards,



Adrian von Maltitz
2023-03-09



Lisa-Ann Kaestner



VIEW LOOKING UP EXISTING FOOTPATH



VIEW LOOKING DOWN THE MIDDLE OF THE SITE



VIEW LOOKING DOWN THE FOOTPATH

Figure 3: Survey and slope section; photos of the footpath



N

14 DEC 2022

ROOI ELS HOUSE
ERF 234
SITE PLAN
SCALE 1:200 © AS



SITE SIZE = 1098 m²
GROUND LEVEL FOOTPRINT = 124 m²
STOEPS & COURTYARDS = 100 m²
DRIVEWAY = 84 m²
TOTAL AREA OF DEVELOPMENT = 318 m² @ 29% OF ENTIRE SITE
SITE REMAINING FOR NATURAL FYNBOES = 780 m²

PORTER DRIVE

ERF 234

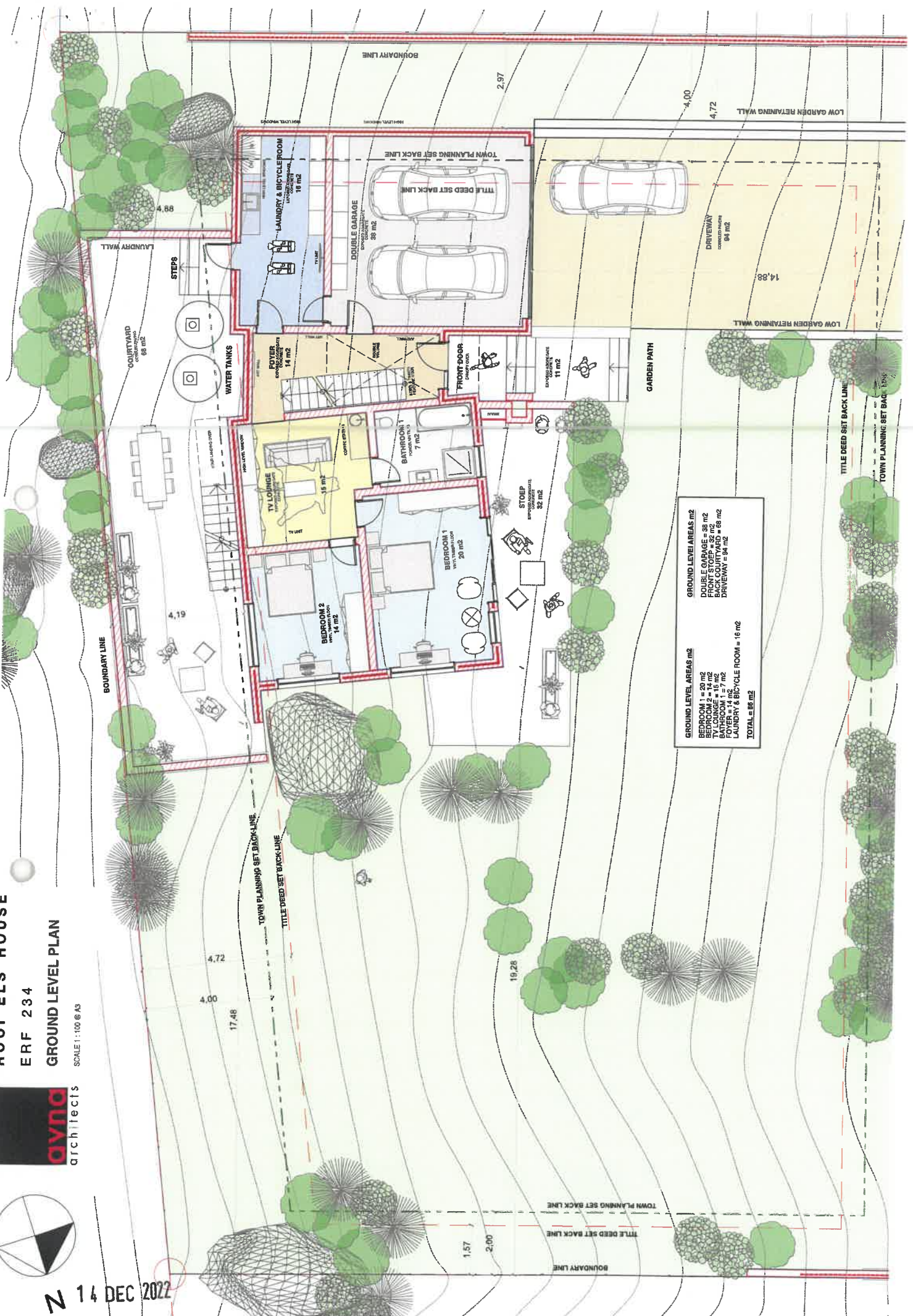
OCEAN VIEW ROAD

ROOI ELS HOUSE
ERF 234
GROUND LEVEL PLAN

SCALE 1:100 @ A3



14 DEC 2022



GROUND LEVEL AREAS m ²	
DOUBLE GARAGE	= 38 m ²
FRONT STOEP	= 32 m ²
TV LOUNGE	= 15 m ²
BATHROOM 1	= 7 m ²
FOYER	= 14 m ²
LAUNDRY & BICYCLE ROOM	= 16 m ²
TOTAL	= 85 m²

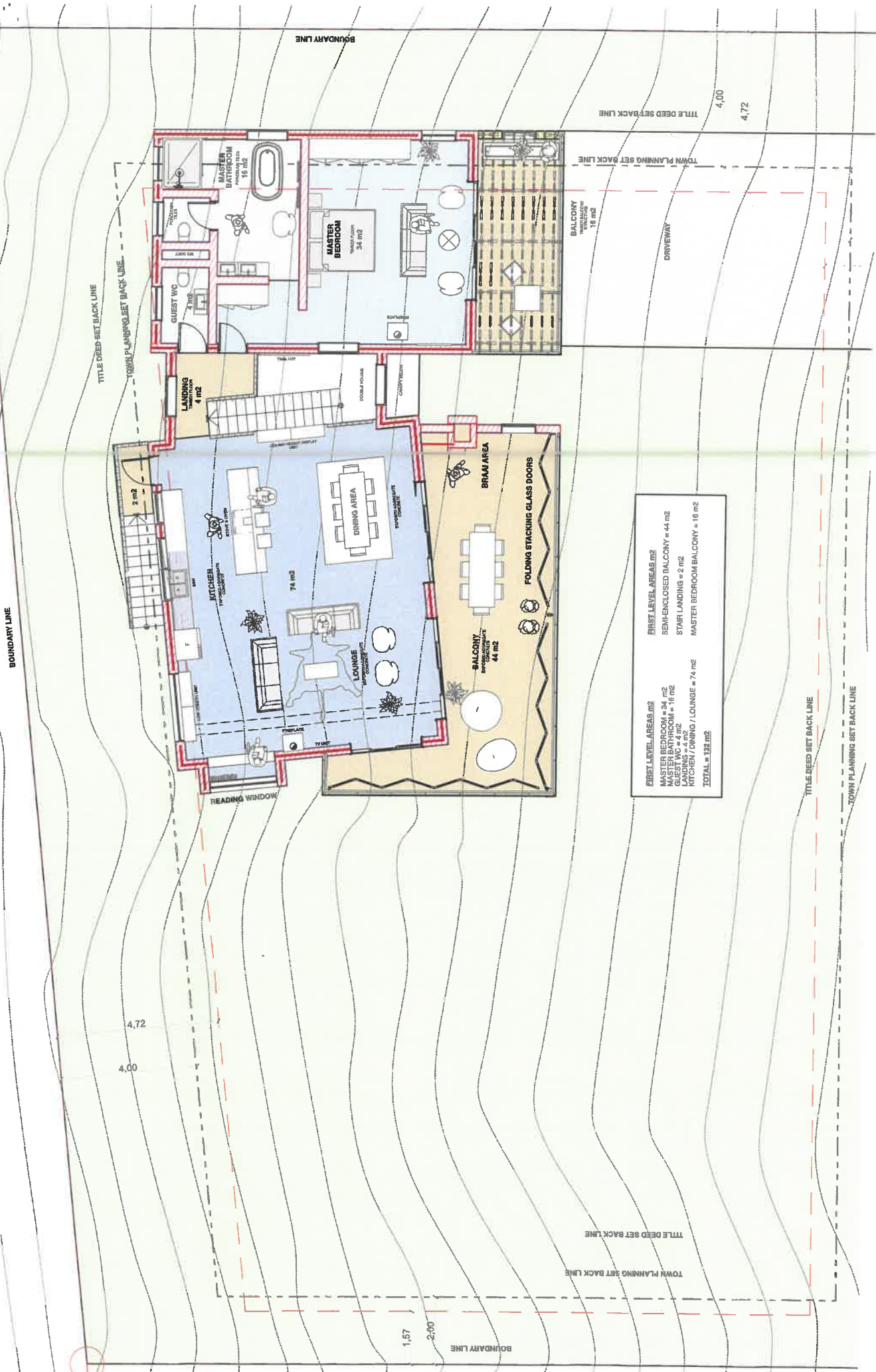
GROUND LEVEL AREAS m ²	
DOUBLE GARAGE	= 38 m ²
FRONT STOEP	= 32 m ²
TV LOUNGE	= 15 m ²
BATHROOM 1	= 7 m ²
FOYER	= 14 m ²
LAUNDRY & BICYCLE ROOM	= 16 m ²
TOTAL	= 85 m²



ROOI ELS HOUSE
ERF 234
FIRST LEVEL PLAN
 SCALE 1:100 @ A3



14 DEC 2022



FIRST LEVEL AREAS m2	FIRST LEVEL AREAS m2
MASTER BEDROOM = 24 m2	SEMI ENCLOSED BALCONY = 44 m2
GUEST WC = 4 m2	STAIR LANDING = 2 m2
KITCHEN / DINING / LOUNGE = 74 m2	MASTER BEDROOM BALCONY = 16 m2
TOTAL = 132 m2	