



MUNISIPALITEIT OVERSTRAND
ERF 1872, CHARLIE VAN BREDA-RYLAAN,
PEARLY BEACH: AANSOEK OM OPHEFFING VAN
BEPERKENDE TITELAKTEVOORWAARDES,
AFWYKING EN BEPALING VAN 'N
ADMINISTRATIEWE BOETE: PLAN ACTIVE STAD-
EN STREEKSBEPLANNERS NAMENS GD VAN ZYL

Kragtens Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die volgende aansoeke wat ontvang is van toepassing op die bogenoemde eiendom, naamlik:

Opheffing Van Beperkende
Titelaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes, 6 (b) soos vervat in Titelakte T1756/2018 ten einde bestaande strukture te wettig.

Afwyking

Aansoek om afwyking ingevolge Artikel 16(2)(b) van die Verordening vir die volgende:

- verslapping van die straatboulyn (Perlemoenstraat) vanaf 4m na (±3.920m) en verslapping van die straatboulyn (Charlie van Breda-rylaan) vanaf 4m na (±3.084m) ten einde 'n gedeelte van die houtdek te akkommodeer; en
- verslapping van die laterale boulyn vanaf 2m na (0.650m) om 'n gedeelte van die braaikamer te akkommodeer.

Bepaling van 'n Administratiewe Boete

Bepaling van 'n administratiewe boete in terme van Artikel 16(2)(q) van die Verordening.

Besonderhede aangaande die voorstel lê ter insae gedurende wekedae tussen 08:00 and 16:30 by die Departement Stadsbeplanning te Patersonstraat 16, Hermanus en by die Gansbaai Biblioteek, Hoofweg, Gansbaai.

Enige kommentare moet skriftelik ingedien word ingevolge die bepaling van Artikels 51 en 52 van die Verordening en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za bereik voor of op **24 September 2021**, met u naam, adres en kontak besonderhede, belang in die aansoek en redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Mnr. SW. Van der Merwe** 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 ten einde hul kommentaar te formuleer.

Munisipale Bestuurder, Overstrand
Munisipaliteit, Posbus 20, **HERMANUS**, 7200

Munisipale Kennisgewing Nr. 114/2021

OVERSTRAND MUNICIPALITY
ERF 1872, 111 CHARLIE VAN BREDA DRIVE,
PEARLY BEACH: APPLICATION FOR REMOVAL
OF RESTRICTIVE TITLE DEED CONDITIONS,
DEPARTURE AND DETERMINATION OF AN
ADMINISTRATIVE PENALTY: PLAN ACTIVE
TOWN & REGIONAL PLANNERS ON BEHALF OF
GD VAN ZYL

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) that the following applications have been received applicable to the above-mentioned property namely:

Removal of Restrictive Title Deed Conditions

Application in terms of Section 16(2)(f) of the By-Law for the removal of restrictive title deed conditions, 6 (b) as contained in Title Deed T1756/2018 in order to legalise existing structures.

Departures

Application for departure in terms of Section 16(2)(b) of the By-Law for the following:

- relaxation of the street building line (Perlemoen Street) from 4m to (±3.920m) and relaxation of the street building line (Charlie van Breda Street) from 4m to (±3.084m) in order to accommodate a portion of the timber deck; and
- relaxation of the lateral building line from 2m to (0.650m) to accommodate a portion of the braai room.

Determination of an Administrative Penalty

Determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law.

Details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department Town Planning at 16 Paterson Street, Hermanus and at the Gansbaai Library, Main Road, Gansbaai.

Any written comments must be submitted in accordance with the provisions of Sections 51 and 52 of the said By-law and reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za on or before **24 September 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Mr. SW van der Merwe** 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 comment.

Municipal Manager, Overstrand Municipality,
P.O. Box 20, **HERMANUS**, 7200

Municipal Notice No.114/2021

UMASIPALA WASE-OVERSTRAND
ISIZA ESINGU-ERF 1872, 111 CHARLIE VAN
BREDA DRIVE, PEARLY BEACH: ISICELO
ESINGOKUSHENXISA IIMEKO EZIYIMIQOBO
KWITAYITILE ZOBUNINI, UKWAHLULA
NOOIKELELO LWEPENALTHI YOLAWULO:
NGABAKWAPLAN ACTIVE TOWN & REGIONAL
PLANNERS EGAMENI LIKA GD VAN ZYL

Kukhutshwe isaziso esimayela nemiba yeSoloty lama-47 nelama-48 nguMasipala waseOverstrand esingokuHlomela uMthethwana kaMasipala Ongokuhlomela iZicwanciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana) isaziso eso sithi kufunyenwe ezi zicelo zilandelayo ezisebenza kwesi siza sichazwe ngentla esibizwa:

Ukushenxswa Kweemeko eeziviMiqobo
kwiTayitile Zobunini

Isicelo ngokwemiba yeSoloty le16(2)(f) loMthethwana ongokushenxiswa kweemeko eziyimiqobo kwitayitile, 6 (b) njengoko iqulethwe kwiTayitile Yobunini Eyaziwa ngoT1756/2018 ukuze izakhiwo esezikhona zenziwe zibe semthethweni.

Ukwahlula

Isicelo sokwahlula ngokwemiba yeSoloty le16(2)(b) loMthethwana ilandelayo:

- ukunyenisa umgca wesitrato omelene nomgca wesakhiwo (Perlemoen Street) ukusuka kwiimitha ezi-4m ukuya (±3.920m) nokunyeniswa komgca wesitrato sokwakhiwa (Charlie van Breda Street) ukusuka kwiimitha ezi4m ukuya kwimitha ezi(±3.084m) ukulungiselela isabelo senqwanqwa(idekhi yomthi); kunye
- nokunyeniswa yomgca omelene nesakhiwo ukusuka kwiimitha ezi2m ukuya kwimitha eziyi(0.650m) ukulungiselela inxalenye yegumbi lokubhaya (igumbi lokoja inyama).

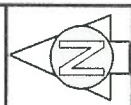
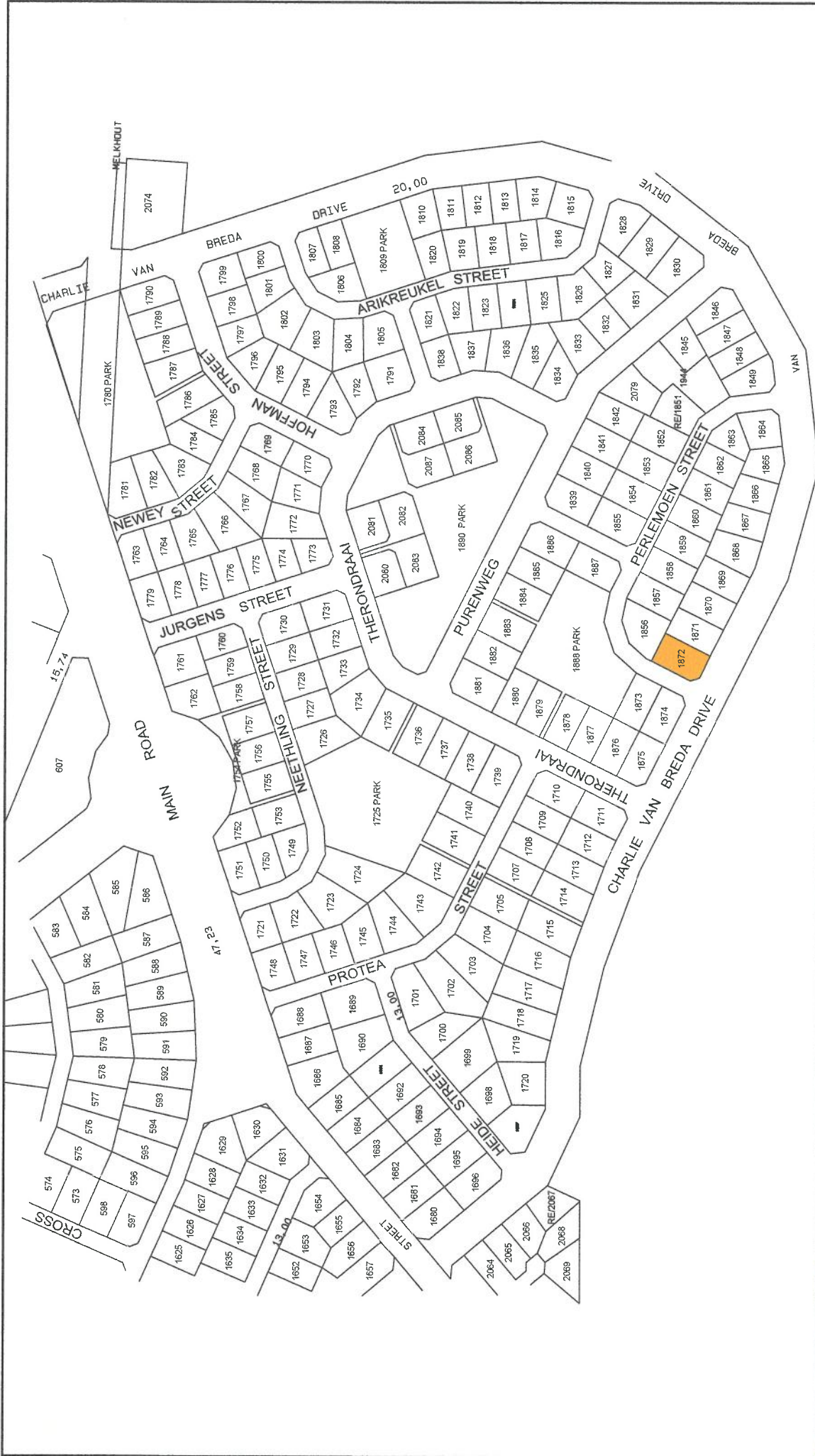
Uqikelelo loLawulo lomdlwoliwePenalithi

Uqikelelo lolawulo lomdlwoliwe(ipenalithi) lemiba yeSoloty le16(2)(q) loMthethwana.

linkcukacha ezimayela nesiphakamiso ziyafumaneka ukuze sihlolwe kwiintsuku zaphakathi evelini Phakathi kwentsimbi ye-08:00 neye- 16:30 kwiSebe Lezicwanciso zeDolophu kwa16 Paterson Street, Hermanus naseGansbaai Library, Main Road,e Gansbaai.

Naziphi na izimvo mazingeniswe ngokwezibonelelo zeSoloty lama51 nelama52 oMthethwana zifike zikaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za ngomhla okanye ngaphambi komhla **wama- 24 uSeptemba2021**, uchaze igama lakho, idilesi neenkukacha ofumaneka, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa kuMchwangcisi oMkhulu weDolophu, uMnu. **SW van der Merwe** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva kokuvala. Nabani na ongakawazi ukufunda nokubhala angaya kwiSebe Lezicwanciso zeDolophu apho igosa likamasipala liza kumnceda ukuze akwazi ukufaka izimvo zakhe ngokusemthethweni.

Municipal Manager, Overstrand Municipality,
P.O. Box 20, **HERMANUS**, 7200



Scale: **NTS**
 Drawing Nr: **ERF_1872_PBL.dwg**
 Date: **JUNE 2021**

Plan Description:
LOCALITY MAP

Property Description:
ERF 1872
PEARLY BEACH

All distances approximate
 and subject to survey.
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PLAN Stads- en Streeksbeplanners
 Town & Regional Planners

**PROPOSED REMOVAL OF RESTRICTIVE TITLE
DEED CONDITIONS, DEPARTURE AND THE
DETERMINATION OF AN ADMINISTRATIVE
PENALTY**

ERF 1872 PEARLY BEACH

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

1. **BACKGROUND**

The owner of Erf 1872 Pearly Beach, Mr. G. D. van Zyl, has instructed the company Plan Active to apply for the removal of restrictive Title Deed conditions, building line departure and the determination of an administrative penalty, of Erf 1872 Pearly Beach.

The owner intends to legalise the existing structures that include a timber deck constructed on the subject property within the prescribed street and lateral building lines. In order to address the existing structures encroaching the building lines, an administrative penalty also needs to be determined. There is also a Title Deed restriction that needs to be removed in order for the proposed application to be approved.

Erf 1872 Pearly Beach has recently been transferred into the name of Mr. van Zyl who wants to legalise the encroachment he inherited. Please refer to the enclosed confirmation letter from the transferring attorneys, Giliomee Inc. Attorneys for record purposes. The new Title Deed number for the subject property reflecting the new owner is not yet available.

Erf 1872 Pearly Beach is 880m² in extent, the Title Deed reflecting the new owner is not available at this moment but will be provided as soon as the new Title Deed becomes available.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

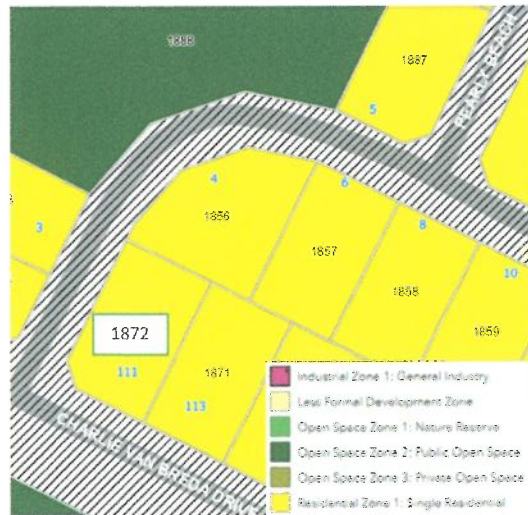
3. DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 1872 Pearly Beach is located on the corner of Perlemoen Street and Charlie Van Breda Drive, Pearly Beach. Erf 1872 Pearly Beach is 880m² in extent. Please refer to the enclosed locality plan.

3.2 ZONING

Erf 1872 Pearly Beach is zoned Residential Zone 1 and it is utilized as such. The surrounding properties are also zoned for single residential purposes, public roads and public open spaces.



3.3 LAND USE

Erf 1872 Pearly Beach is used for residential purposes. A single storey dwelling and garage are established on the subject property. Access to Erf 1872 Pearly Beach is obtained from Charlie Van Breda Drive, Pearly Beach.

Land uses that surround Erf 1872 Pearly Beach are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 1872 Pearly Beach is situated within a predominantly single residential area.

3.4 PROPOSAL

The following are proposed in terms of:

- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the departure from the prescribed building lines.
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

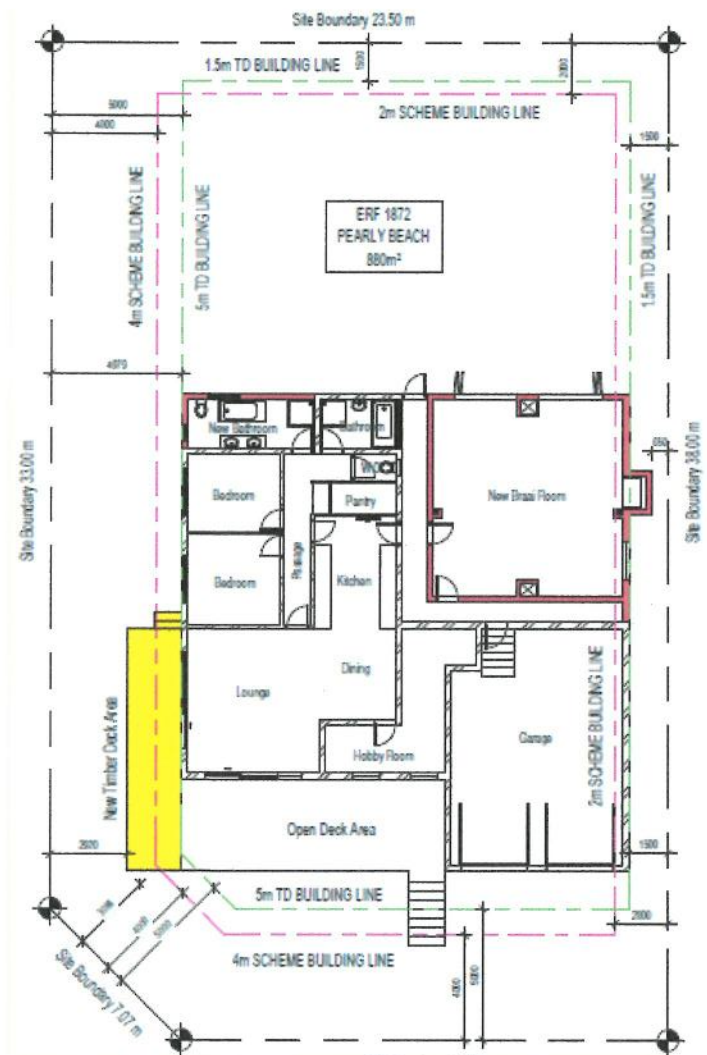
Erf 1872 Pearly Beach is 880m² in extent. The intention of the owner of the subject property is to legalise existing structures that encroach the building lines on the subject property. These structures are the existing braai room and the timber deck.

3.4.1. Determination of an administrative penalty

The unauthorised building work was already established on the subject property and was inherited by the new owner, **Mr. G.D. Van Zyl**. The intention of the new owner is to legalise the following existing structures on the subject property:

- **The existing braai room.**
- **The existing timber deck.**

The intention of the current owner is to rectify the unauthorised building work that was inherited from the previous owner of the subject property. Please refer to the floor plan below depicting the above-mentioned structures:



In terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 an application is made for the determination of an administrative penalty for unauthorised land use.

In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of Chapter 9, Section 90(3), of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must to the satisfaction of the municipality, provide the following:

3.4.1.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

a) The Nature, duration, gravity, and extent of the contravention

Mr. van Zyl, the new owner, recently purchased the property and it was transferred to him on 30 April 2021, with the unauthorised building work already established on the subject property. The new owner became aware that some of the structures were not legally constructed and intends to rectify the matter.

The extent of the unauthorised work that encroaches the building lines are as follows:

Structure	Extent of unauthorised building work encroaching building lines
Existing braai room	±4.5m ²
Timber deck	±10m ²
Total	±14.5m ²

The current owner intends to rectify the unauthorised building work on the subject property which was erected by the previous owner. The new owner of the subject property intends to provide his full co-operation to the Overstrand Municipality to rectify the illegal building work.

The position and nature of the unauthorised portion of braai room, and timber deck on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners have been received. A building line departure and removal of Title Deed restrictions application are also submitted to rectify the building line encroachment on the subject property.

b) The conduct of the person involved in the contravention

The current unlawful encroachments are as a result of the structures erected by the previous owner without the relevant approvals. When the property was purchased by the current, new owner the building work was already completed and in use on the subject property. The current owner is now in the process of rectifying the unauthorised building work that is in contravention of the zoning scheme regulations.

c) Whether the unlawful conduct was stopped

The owner is in the process of rectifying the contravention by applying for the removal of restrictive Title Deed conditions, building line departures and determination of an administration penalty. The building work was already completed by the previous owner of the subject property and inherited by the new owner.

d) A report by a quantity surveyor in matters of unauthorised building/construction

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building work, **erected by the previous owner**, we will submit a report from a quantity surveyor with reference to the value of the unauthorised building work. The reason being is that the owner already has to spend a considerable amount to rectify the contraventions inherited and does not want to incur any unnecessary costs.

e) **Whether a person involved in the contravention has previously contravened this By-Law or a previous planning law**

To the best knowledge of the applicant and as confirmed by the current landowner, he has never previously contravened this By-Law or any other planning law.

We appeal to the Overstrand Municipality to take into consideration the fact that the illegal building work was inherited and the low impact the unauthorised building work has on the surrounding area. It should also be considered that no complaints from surrounding property owners have been received with regards to the illegal structures. The owner intends to provide his full cooperation to the Overstrand Municipality to rectify the defaults as the onus is now on him to ensure that all the structures on the subject property are legalised. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

3.4.2. Building line departure

The Overstrand Scheme Regulations stipulate that a 4m street building line and a 2m lateral building line apply to Residential Zone 1: Single Residential properties larger than 400m² in extent.

The existing timber deck and braai room encroaches the street building line and lateral building line, respectively. The proposed departures can be described as follow:

- Relaxation of the street building line from 4m to $\pm 2.920\text{m}$ to accommodate a portion of the timber deck (Perlemoen Street);
- Relaxation of the street building line from 4m to $\pm 3.084\text{m}$ to accommodate a portion of the timber deck (Charlie Van Breda Street);
- Relaxation of the lateral building line from 2m to 0.650m to accommodate a portion of the braai room.

The **braai room** was constructed without obtaining building plan approval from the Overstrand Municipality by the previous owner. The majority of braai room is located $\pm 1.5\text{m}$ from the eastern lateral boundary with the exception of the braai only, that is located $\pm 0.650\text{m}$ from the eastern lateral boundary. The braai room is

a single storey structure and therefore it does not have a negative impact on the neighbouring property. The length of the existing braai room that encroaches the eastern lateral building line is $\pm 8,685\text{m}$ in extent, that includes a service passage.

The timber deck was constructed on the ground floor without obtaining building plan approval from the Overstrand Municipality by the previous owner. The existing timber deck is located $\pm 2.920\text{m}$ from the street boundary adjacent to Perlemoen Street and $\pm 3.084\text{m}$ from the boundary adjacent to Charlie Van Breda Street. The timber deck does not have a negative impact on the neighbouring properties or the street fronts. The length of the timber deck that encroaches the western street building line is $\pm 9.220\text{m}$ in length, $\pm 1.08\text{m}$ in width and higher than 1m measured from natural ground level. Only a small portion of the deck encroaches the street building line adjacent to Charlie Van Breda Street.

The proposed building line departures will not have a negative impact on the neighbouring properties or the character of the greater Pearly Beach area. With the mentioned encroachments, a building line still exists and are the existing structures not situated right up to the mentioned street and lateral boundary lines. Please refer to the enclosed as built building plans for the detail of the above-mentioned structures.

3.4.3. Proposed Removal of a Title Deed restriction

The enclosed (previous) Title Deed, T1756/2018 contains the following Title Deed restriction that has to be addressed:

- **Page 3, paragraph (6)(b):**

“Geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings, mag behalwe met die toestemming van die Administrateur nader as 5 meter van die straatlyn wat ‘n grens van hierdie erf uitmaak, asook binne 3 meter van die agtergrens of 1.5 meter van die sygrens geneem aan enige aangrensende erf opgerig word nie, met dien verstande met die toestemming van die plaaslike owerheid”

The reasons to have the above-mentioned Title Deed restriction removed is mainly because it is more restrictive than the development rules as prescribed in the Zoning Scheme Regulations for properties with a Residential Zone 1: Single Residential Zoning and that the existing wooden deck was constructed within this prescribed street building line.

The detail can be described as follows:

Street building line

The street building line is determined in accordance with the erf size, as listed in the table below:

Net erf area	Street building line
Less than 150 m ²	1,0 m
Less than 400 m ²	2,0 m
400 m² and greater	4,0 m

Where a garage obtains direct access from the street, a 4,0 m building line applies. The street building line of even of 400 m² and greater is 4,0 m, provided that:

- an erf with an average depth of 20,0 m or less has a 3,0 m street building line;

Side and rear building line

The side and rear building lines are determined in accordance with the erf size, as listed in the table below:

Net erf area	Side and rear building lines
Less than 150 m ²	At least 1,0 m one side and 0 m on the other side. Rear = 1,0 m.

Up to 400 m ²	1,0 m
Greater than 400 m²	2,0 m

It is clear that the restriction in the Title Deed with regards to the Street building line is more restrictive than the development rules in the Zoning Scheme Regulations. Removing the Title Deed restriction, the owner will be able to develop the property in future as per the development rules as stipulated in the Zoning Scheme Regulations for properties with a Residential Zone 1 zoning and also to make provision for the wooden deck.

According to **Chapter 4 Section 35(4)** of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 and **Section 39(5)** of the Land Use Planning Act, 2014, when the Municipality considers the removal, suspension or amendment of a restrictive condition the municipality must consider the following:

- **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 vests in the person as the owner of a dominant tenement.**

The removal of the Title Deed restriction will allow the property to be developed according to the existing policies and also to legalise the wooden deck that was constructed within the prescribed Title Deed building line. The removal will also provide an opportunity for the owner to make alterations and additions to the existing structures on the subject property within the land use restrictions imposed by the Zoning Scheme Regulations. This will increase the market value of the area and attract investment opportunities. Future owners will also be able to develop the subject property according to the land use restrictions as set out in the Zoning Scheme Regulations of the Overstrand Municipal Area.

- **The personal benefit which accrue to the holder of rights in terms of the restrictive conditions.**

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township gain anything personally by having the restriction removed. The proposal will have an impact on the existing built form in the area however such changes have been supported in the area. 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 condition will also allow the current owner to legalise the street building line encroachment of the wooden deck.

- **The personal benefit which will accrue to the person seeking the removal of the restrictive conditions if it is removed.**

The property owner will benefit from the removal of the mentioned Title Deed restriction as it will allow him to legalise the wooden deck that encroaches the prescribed street building line. The removal of the restrictive Title Deed condition will increase the development rights available on the subject property with reference to the applicable street building lines in terms of the Overstrand Municipal Zoning Scheme Regulations.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions remaining in place.**

This particular part of the township has already changed with approved departures within the township. If the condition remains in place, the status quo will remain. If the type of condition to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit.

The retention of the restriction will add another layer to be enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations land use restrictions.

- **The social benefit of the removal, suspension or amendment of the restrictive conditions.**

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for the extensions to the existing structures on the subject property will be positive. Removing the condition will enable the better utilization of the property in terms of modern city development.

Furthermore, the removal of the Title Deed condition is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

- **Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of the rights**

The removal of the restriction will not remove the rights completely, as the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to Section 47 of the **Spatial Planning Land Use Management Act, 2013**, the removal of restrictive Title Deed restriction will not deprive any person in the subject area of Pearly Beach contemplated in Section 25 of the **Constitution of the Republic of South Africa**. By denying the removal of the Title Deed restriction, it will deprive the current owner from utilizing the subject property to its full potential and to legalise the inherited structures that encroach the building lines as described in this report.

The removal of the Title Deed restriction application is made in the prescribed manner as per the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**.

The proposed removal of the restriction will be in the interest of the current landowner. In relation to the above, the benefit of removing the Title Deed restriction outweighs the benefits of keeping the restriction in place.

The reason to have the above-mentioned Title Deed restriction **Page 3, paragraph (6)(b)**: removed is mainly to give the owner the opportunity to utilise the property to its fullest potential in terms of the development rules under the current zoning of Residential Zone 1 and to legalise the inherited structures that encroach the building lines as described in this report.

The Title Deed restriction, **Page 3, paragraph (6)(b)** above prescribes the following building lines.

Street	5m
Lateral	1.5m
Rear	3m

According to Chapter 16, Sections 16.1.1 and 16.1.2 of the Zoning Scheme Regulations for the Overstrand Municipality the following additional development rules apply with regard to general encroachments of building lines:

16.1 GENERAL ENCROACHMENTS

Encroachment of building lines permitted

16.1.1. *The following additional development parameters apply with regard to encroachment of building lines:*

General encroachments permitted

a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:

- (i) boundary walls, retaining walls, screen walls, fences and gates not exceeding 2,1 m in height above the existing ground level abutting such wall;***

- (ii) open and uncovered stoeps, pools and filling lower than 1,0 m above the existing ground level;**
- (iii) entrance steps, landings and entrance porches lower than 1,0 m above the existing ground level;**
- (iv) a covered and uncovered pedestrian entrance or gatehouse constructed on the street boundary and has a footprint and/or roof area not exceeding 5,0 m² and a height not exceeding 3,0 m from natural ground level to the highest point of the structure;**
- (v) eaves, awnings and canopies projecting no more than 1,0 m from the wall of the building;**
- (vi) chimney breasts, flower boxes, water pipes and drain pipes not projecting more than 500 mm from the wall of the building;**
- (vii) minor decorative features not projecting more than 250 mm from the wall of the building;**
- (viii) swimming pools, if closer than 1,0 m from the erf boundary, an engineering certificate is required;**
- (ix) pool pumps/pump houses not exceeding 1,0 m above existing ground level;**
- (x) a refuse room that has a footprint not exceeding 5 m² and, if covered, a roof height not exceeding 3,0 m or as required by the Municipality in terms of 17.4;**
- (xi) built braais up to a maximum of 1,0 m in height above the existing ground level, with the consent of affected neighbours;**
- (xii) water tanks and gas bottle storage enclosures not exceeding 2,1 m in height and screened behind a boundary wall/screen to the same height; and**
- (xiii) any encroachment or structure which causes additional impact will be subject to compliance with the applicable policy or legislation.**

Encroachment of side and rear building lines permitted

c) The Municipality may approve the construction of a structure used for the housing of vehicles that encroaches onto the side and rear building lines, provided that:

- (i) written consent from the immediate neighbours is obtained;***
- (ii) no building that encroaches the building line may be higher than 3,5 m above the existing ground level on the common boundary, provided that the height may increase at a 40 degree angle away from such boundary;***
- (iii) the length and width of the structure does not exceed one third of the lateral and rear boundary concerned or 9,0 m, whichever is the most restrictive (except in cases as prescribed in point (iv) below);***
- (iv) where the lateral/rear boundary of the property is less than 19,5 m in width, the structure will have a maximum width of 6,5 m on the rear boundary;***
- (v) no doors and windows shall be permitted in any wall closer than 1,0 m to the rear or side boundary;***
- (vi) a 1,0 m wide access may be required to the satisfaction of the Fire Department;***
- (vii) no runoff of rainwater from a roof shall be discharged directly onto adjoining properties;***
- (viii) the garage/carport shall be included in the calculation of coverage on the land unit; and***
- (ix) the Municipality is satisfied that the structure does not pose a fire hazard and is constructed of appropriate material to its satisfaction.***

Should any of the above-mentioned not be complied with, an application will be applicable.

Encroachment of the street building line

d) Upon an application, the Municipality will also take the following principles into account:

- (i) if, in its opinion, the architectural effect of the building line relaxation will enhance the appearance of a street;***
- (ii) if, in its opinion, there are special circumstances, motivated to its satisfaction by the property owner, such as the topography of the site;***
- (iii) all other buildings and outbuildings are to comply with the street building line applicable within the zone concerned; and***
- (iv) in the case of a garage or carport, 16.1.2 will apply.***

Garages and carports within street building lines

16.1.2

a) Upon an application, the Municipality will also take the following principles into account:

- (i) The Municipality may permit the construction of a garage over a street building line if, in the Municipality's opinion, the garage cannot reasonably be sited at the prescribed distance due to the slope of the land unit or for other reasons provided.***
- (ii) The height of such garage from the natural ground level to the top of the structure does not exceed 4,5 m.***
- (iii) The front elevation of the garage may not be closer than 5,0 m to the road kerb or surface.***

b) The Municipality may permit the construction of a carport over the street building line, provided that:

- (i) the width of such carport shall not exceed 6,5 m;***
- (ii) the roof of the carport shall be supported by a metal or timber post or brick, concrete or masonry pillars;***
- (iii) the carport shall not be enclosed on any side, except by:***
 - a boundary fence or wall;***

- ***a wall which forms the external wall of a building; or***
- ***a security or automated gate.***

the height of such carport, measured from the natural ground level to the highest point of the structure over the building line, may not exceed 3,0 m on the street boundary, but the height may increase at a 40-degree angle away from such boundary (roof).

If the mentioned Title Deed restriction is not removed the owner of the subject property will not be able to utilize the subject property to its fullest potential as set out in Chapter 16, Sections 16.1.1 and 16.1.2 of the Zoning Scheme Regulations. He will also not be in a position to legalise the inherited structures that encroach the building lines as described in this report.

The building line restriction in Title Deed T1756/2018 (previous deed) is more restrictive than the land use restriction prescribed in the Overstrand Municipality Zoning Scheme. In terms of the Zoning Scheme certain structures may be constructed within the street, lateral and rear building lines as prescribed in Chapter 16, Sections 16.1.1 and 16.1.2 of the said Zoning Scheme mentioned above. If the restriction in the Title Deed is not removed the property owner will not have the opportunity to legalise and make use of the structures situated in the building lines.

Please take note that the proposed removal of the restrictive Title Deed condition is mainly because it is more restrictive than the land use restriction under the current zoning of the property that is Residential Zone 1.

3.5 ACCESS

Vehicular and pedestrian access to Erf 1872 Pearly Beach and the existing dwelling are gained from Charlie Van Breda Street. The access to Erf 1872 Pearly Beach will be retained after the proposed application has been concluded.

3.6 SERVICES

All services on Erf 1872 Pearly Beach already exist. No additional services are required in order for the proposed application to be approved.

3.7 TITLE DEED

The Title Deed T1756/2018 (previous deed) has a restriction that needs to be removed in order for the owner to legalise the additions and timber deck that were erected by the previous owner on the subject property.

The enclosed Title Deed, T1756/2018 contains the following Title Deed restriction that have to be addressed:

Page 3, paragraph (6)(b): “Geen gebou of struktuur of enige gedeelte daarvan, behalwe grensmure en heinings, mag behalwe die toestemming van die Administrateur nader as 5 meter van die straatlyn wat ‘n grens van hierdie erf uitmaak, asook binne 3 meter van die agtergrens of 1.5 meter van die sygrens geneem aan enige aangrensende erf opgerig word nie, met dien verstande met die toestemming van die plaaslike owerheid”

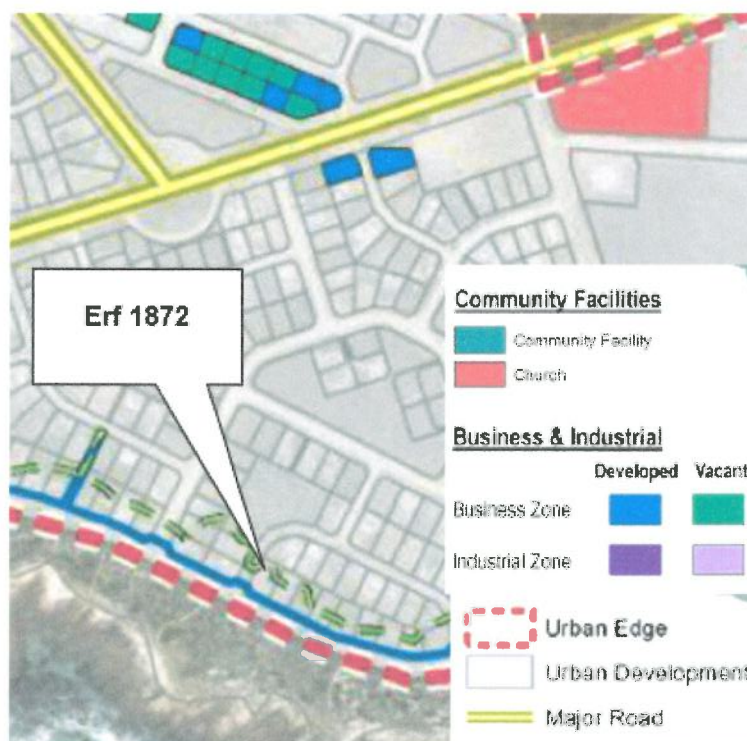
The reasons for the removal of the restrictive Title Deed condition have already been covered as per paragraph 3.4.3 above.

There is no bond registered against Erf 1872 Pearly Beach.

3.8 FORWARD PLANNING

Overstrand Municipal Spatial Development Framework (2020).

In terms of the Overstrand Wide Spatial Development Framework the subject property is earmarked for urban development purposes. The residential zoning of the subject property will be retained after the removal of the restrictive Title Deed condition and departure application have been concluded.



Overstrand Growth Management Strategy (2010)

With reference to the Overstrand Growth Management Strategy the subject erf falls within Planning Unit 3 which consists of the current Pearly Beach built-up area. Incremental densification through subdivision to allow a second dwelling unit is proposed for an assumed 20% of the area in this planning unit.

With reference to the *Overstrand Growth Management Strategy (2010)*, the proposal will not have any impact on the proposed density for the area. Therefore, the proposed removal of restrictive Title Deed condition and departure can be supported.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 1872 Pearly Beach is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is

not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

The subject property is not associated with any important persons or groups or important events and activities. The subject property has no association with the history of slavery and is not used for living heritage.

In light of the above mentioned it is evident that the proposed removal of the restrictive Title Deed condition and departure will not have a negative impact on the heritage value of the subject property or the greater area of Pearly Beach.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of the Title Deed restriction does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.10 PLANNING PRINCIPLES

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

Spatial Justice: The proposed removal of the Title Deed restriction and building line departures are in line with the current land use tendencies in the vicinity, within the Pearly Beach area. The proposed removal of the restrictive Title Deed condition will create an opportunity for the owner to develop the subject property according to the land use restrictions imposed by the zoning scheme regulations and to legalise the inherited structures that encroach the building lines as described in this report.

Spatial sustainability: The proposed removal of the Title Deed restriction and departure are in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Pearly

Beach. The proposal does not have any impact on the residential character for the specific area of Pearly Beach.

Efficiency: The proposed application for the removal of the restrictive Title Deed condition and departure will promote the optimisation of the use of space within a developed residential area.

Spatial Resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

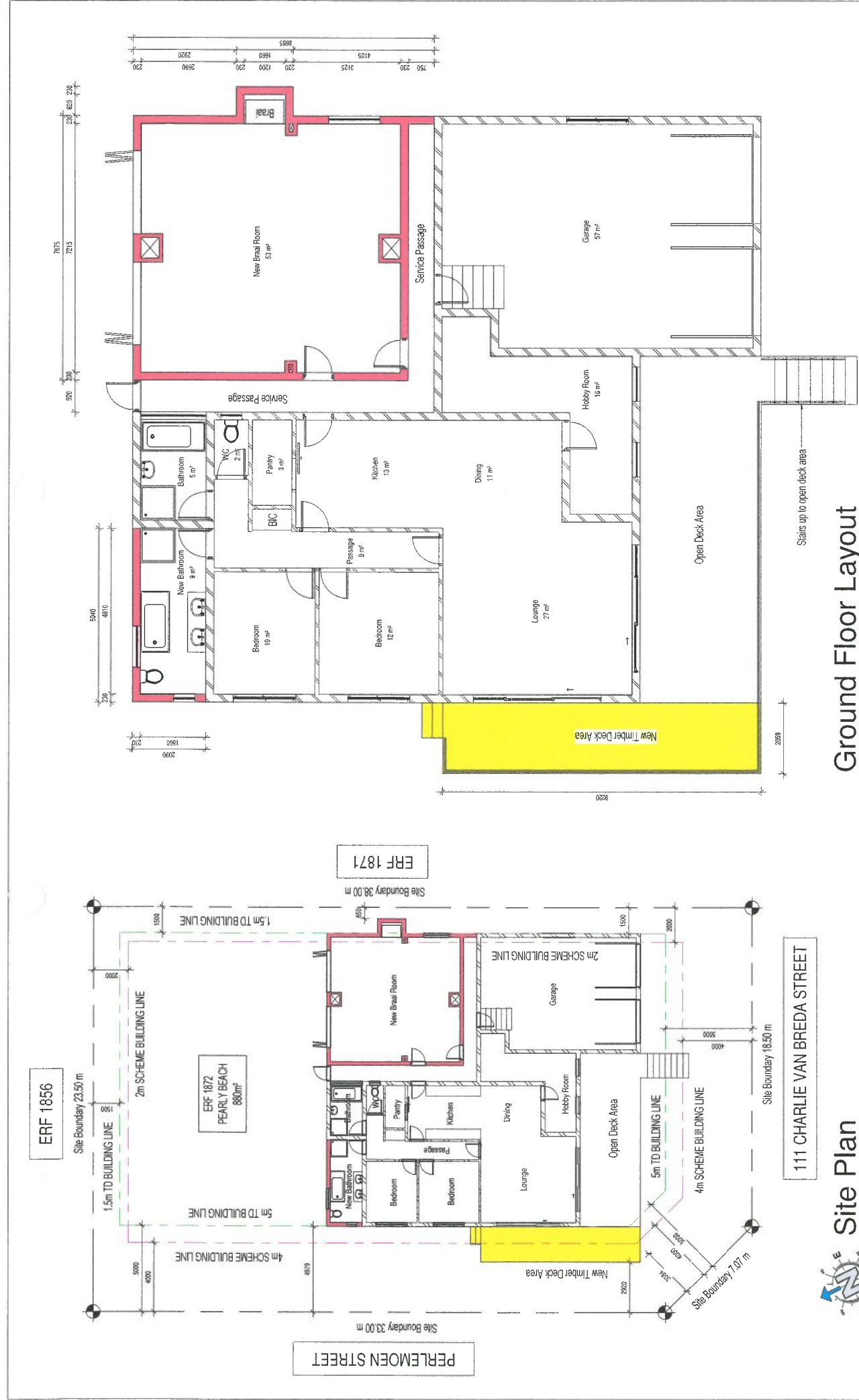
Good administration: Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

4. **RECOMMENDATION**

When this application is evaluated, it is important to take note of the following:

- The proposed removal of the restrictive Title Deed condition and departure to accommodate an existing braai room and timber deck fall within the existing land use tendencies in the area;
- The proposal is will not have a negative impact on the residential character of the area;
- The proposal will not have a negative impact on the existing services;
- The proposed removal of the restrictive Title Deed condition and building line departure will not have a negative impact on the land values of the surrounding erven.
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the removal of a restrictive Title Deed condition and building line departure of Erf 1872 Peary Beach.



Site Plan

1 : 200

Ground Floor Layout

1 : 100

No.	Date	Description	By	Revision Schedule	PROJECT:					
					Existing Dwelling on Erf 1872 - Pearly Beach					
SHEET DESCRIPTION:					DRAWING #					
Site Plan & Ground Floor Layout					HD/0/0					
SCALE:					As indicated		DRAWN		AK	
DWG DATE:					2020/06/16		REVISION #			
PLOT DATE:					2021/04/13 14:15:11		DRAWN		AK	

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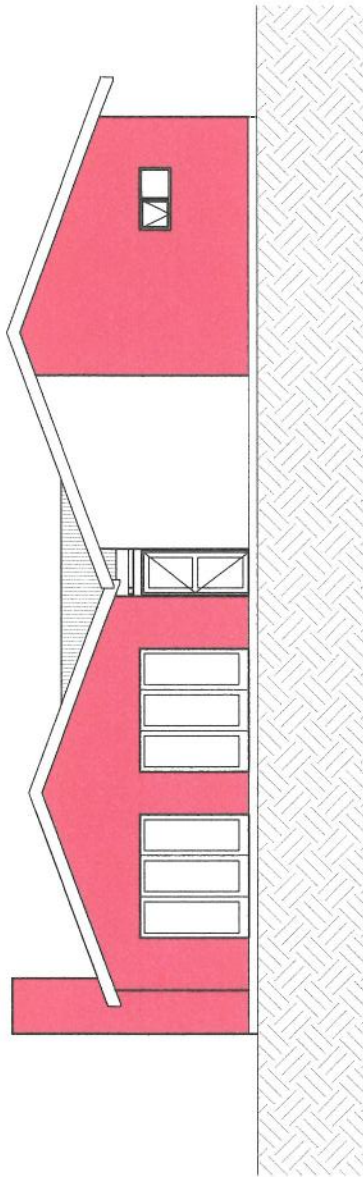
GENERAL:

- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- Habitat rooms to have min. 1.5% floor area cross ventilation.
 - Vertical D.P.C. to all changes in floor levels.
 - All dimensions and levels to be checked on site before any work commences. This drawing is not to be used as a guide and only for information purposes to be used in conjunction with the relevant local authority requirements.
 - All levels unless otherwise indicated are finished floor levels.
 - Finished floor levels are to be min. 150mm above N.G.L.
 - Any discrepancies are to be reported to the offices of the Architects.
 - All glazing is to comply with part N of the NBR.

LEGEND:

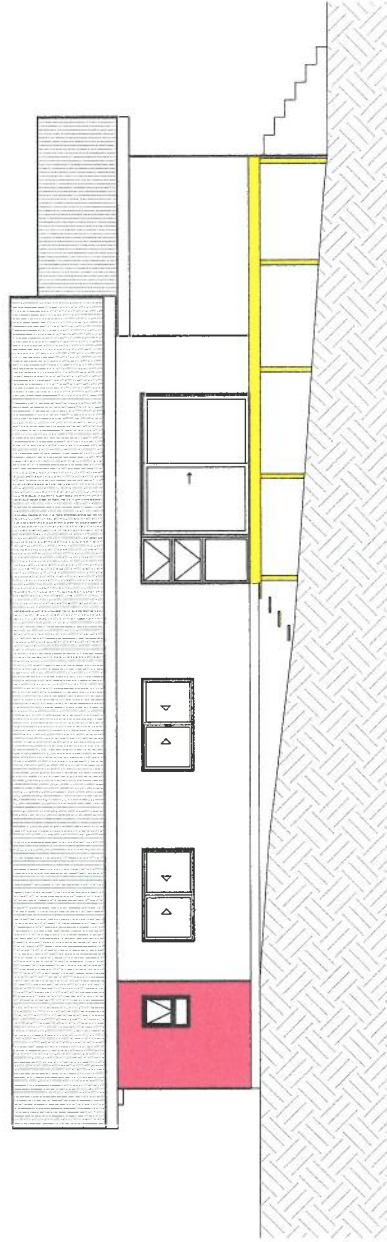
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- New Timberwork
- New Steel
- New Foundation/ Concrete
- New Soil pipe
- New Waste Pipe
- New Stormwater Line

Revision Schedule	
No.	By



North East Elevation

1 : 100



North West Elevation

1 : 100

PROJECT:
Existing Dwelling on Erf 1872 - Pearly Beach

DESCRIPTION:

Elevation Details 1

SCALE:
1 : 100

DRAWING DATE:
2020/06/16

DRAWN:
AK

CHECKED:
JG

PLOT DATE:
2021/04/13 14:15:11

DRAWING #:
HD/0/1

REVISION #:

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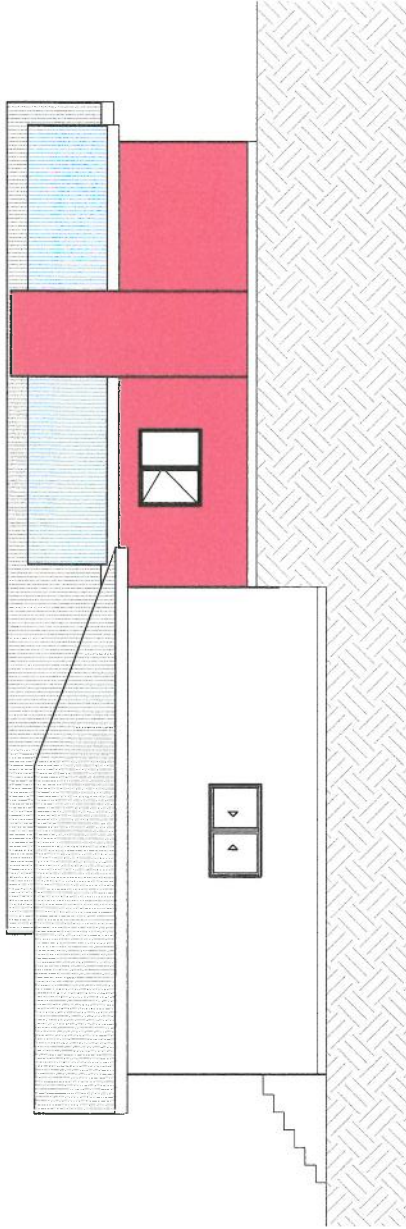
GENERAL:

- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- Habitable rooms to have min. 1.5% floor area cross ventilation.
 - Vertical D.P.C. to all changes in floor levels.
 - All dimensions and levels to be checked on site before any work commences.
 - This drawing is not to be used for any other purpose without the written permission of the architect.
 - All levels unless otherwise indicated are finished floor levels.
 - Finished floor levels are to be min. 150mm above N.G.L.
 - Any discrepancies are to be reported to the offices of the Architects.
 - All glazing is to comply with part N of the NBR.

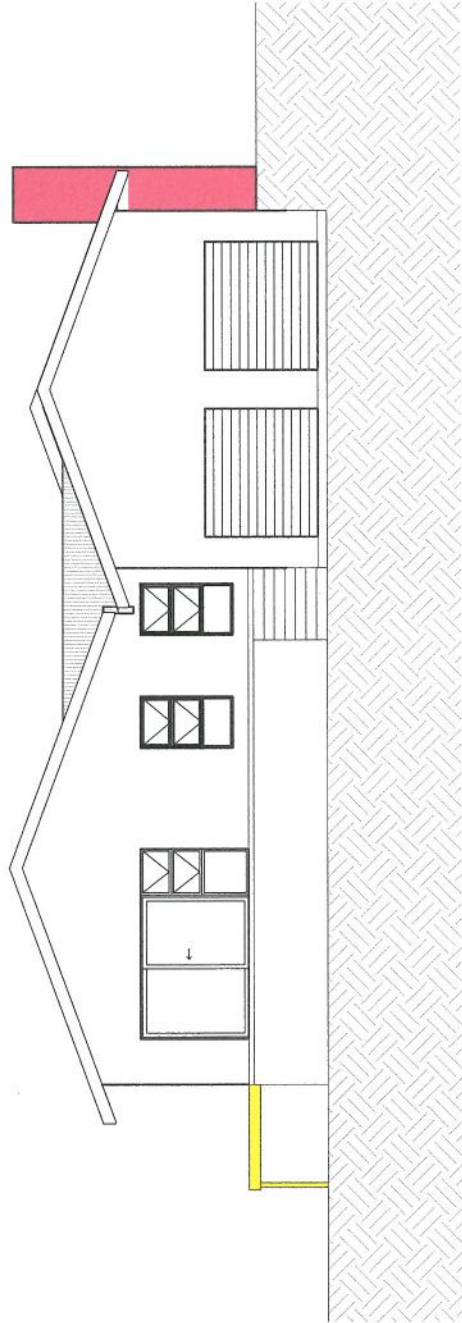
LEGEND:

- New Brickwork
- New Timberwork
- New Steel
- New Foundation/ Concrete
- New Soil pipe
- New Waste Pipe
- New Stormwater Line

Revision Schedule		By	
No.	Date	Description	



South East Elevation
1 : 100



South West Elevation
1 : 100

PROJECT:
Existing Dwelling on Erf 1872 - Pearly Beach

DESCRIPTION:

Elevation Details 2

SCALE:	DRAWING #:
1 : 100	HD/0/2
DRAWING DATE:	
2020/06/16	
DRAWN:	REVISION #:
AK	
CHECKED:	PLOT DATE:
JG	2021/04/13 14:15:12

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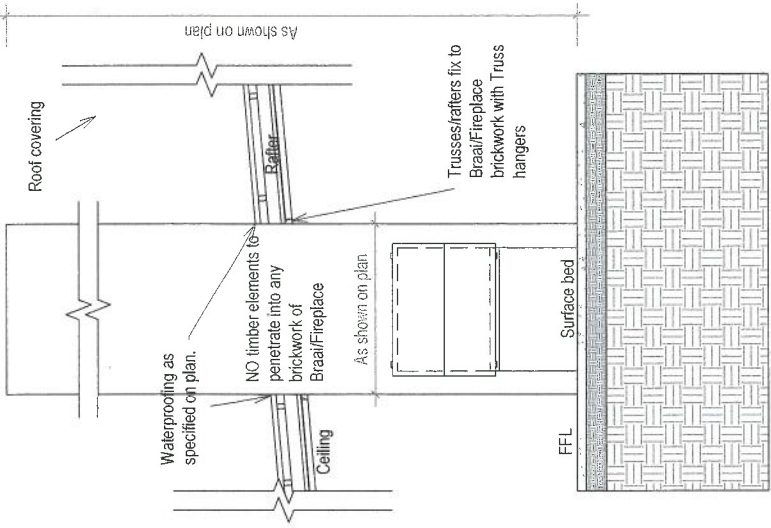
GENERAL:

- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- Habitable rooms to have min. 1.5% floor area cross ventilation.
 - Vertical D.P.C. to all changes in floor levels.
 - All dimensions and levels to be checked on site before any work commences.
 - Levels to be indicated on drawings for all floors, including sub-floors.
 - All work to be done in accordance with local authority requirements.
 - All levels unless otherwise indicated are finished floor levels.
 - Finished floor levels are to be min. 150mm above N.G.L.
 - Any discrepancies are to be reported to the offices of the Architects.
 - All glazing is to comply with part N of the NBR.

LEGEND:

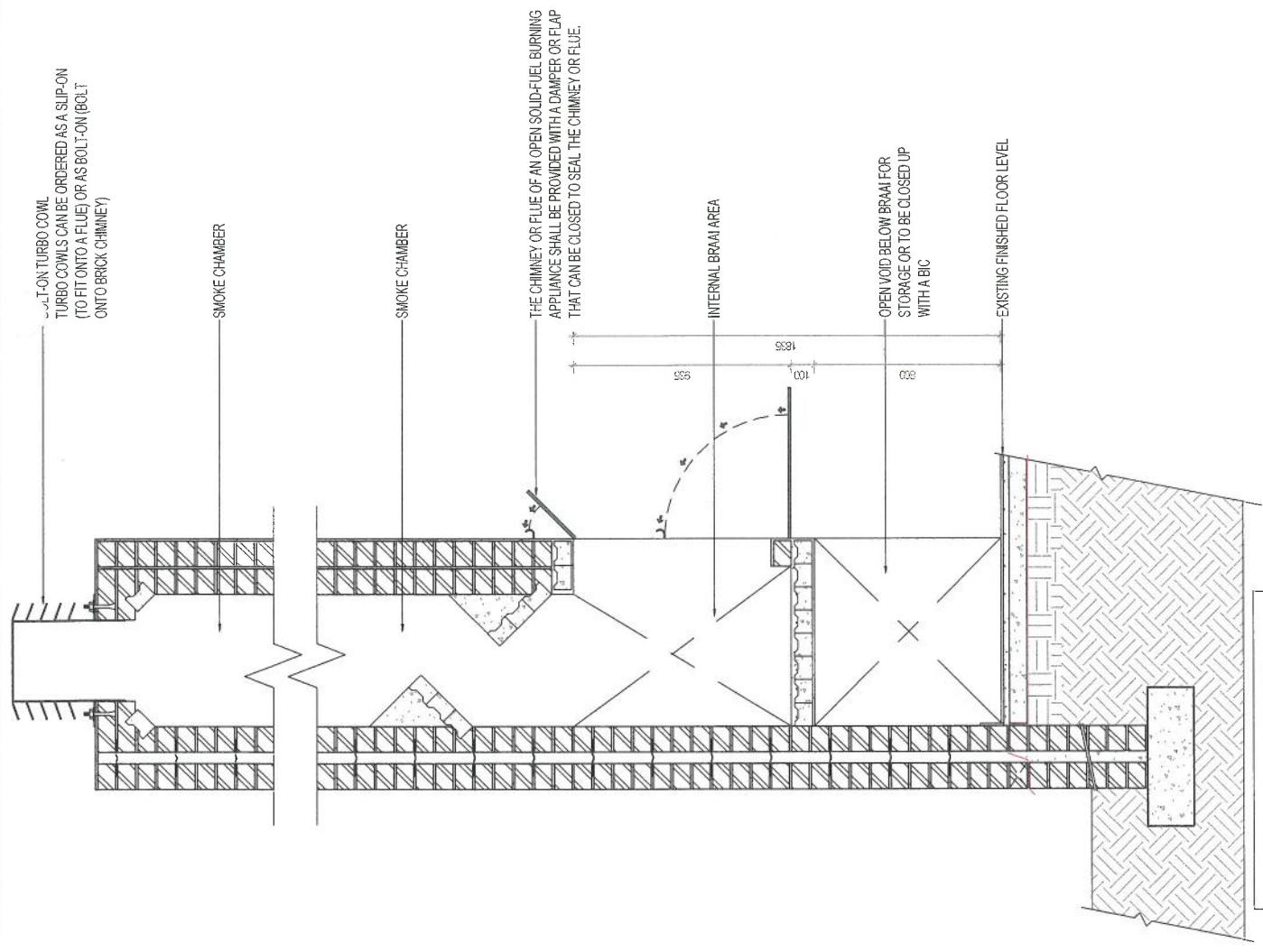
- New Brickwork
- New Timberwork
- New Steel
- New Foundation/ Concrete
- New Soil pipe
- New Waste Pipe
- New Stormwater Line

Revision Schedule		By
No.	Date	Description



Typical Braai Elevation Details

1 : 50



CHIMNEY DETAIL

PROJECT: Existing Dwelling on Erf 1872 - Pearly Beach

DESCRIPTION: Construction Details

SCALE: As indicated

DRAWING DATE: 2020/06/16

DRAWN: AK

CHECKED: JG

PLOT DATE: 2021/04/13 14:15:13

REVISION #:

DRAWING #: HD/0/3

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GENERAL:

- ALL WORK TO COMPLY WITH NATIONAL BUILDING REGULATIONS.
- Habitable rooms to have min. 15% floor area cross ventilation.
 - Vertical D.P.C. to all changes in floor levels.
 - All dimensions and levels to be checked on site before any work commences.
 - The drawing is not to be scaled and only figured dimensions are to be used.
 - Dimensions to be taken to the face of the work unless otherwise indicated.
 - All work to be done in accordance with the relevant standards.
 - Finished floor levels are to be min. 150mm above N.G.L.
 - Any discrepancies are to be reported to the office of the Architects.
 - All glazing is to comply with part N of the NBR.

LEGEND:

- New Brickwork
- New Timberwork
- New Steel
- New Foundation/Concrete
- New Soil pipe
- New Waste Pipe
- New Stormwater Line

No.	Date	Description	By

PROJECT: Existing Dwelling on Erf 1872 - Pearty Beach

DESCRIPTION: Foundation Details

SCALE: As indicated

DRAWING DATE: 2020/06/16

HD/0/4

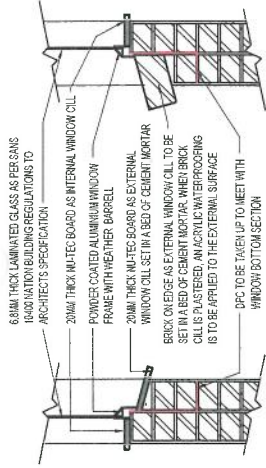
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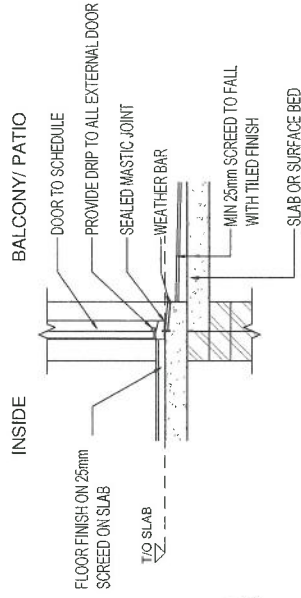
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PLOT DATE: 2021/04/13 14:15:13

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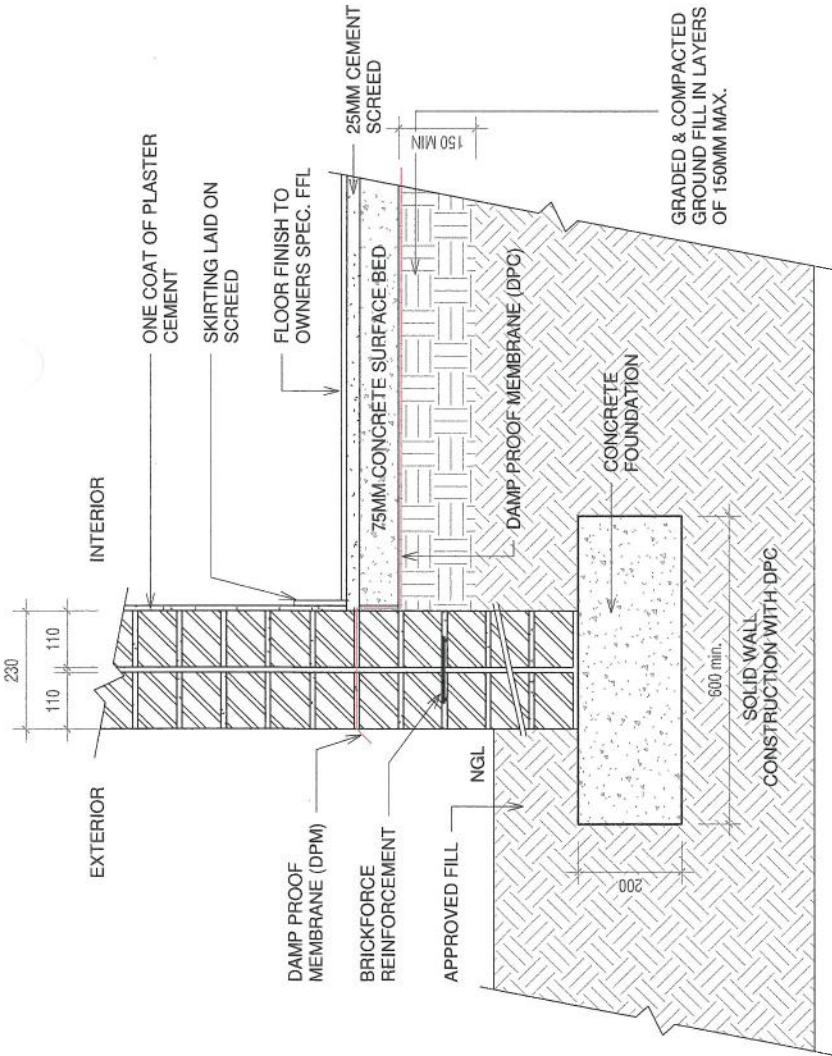


TYPICAL EXTERNAL WINDOW CILL DETAILS

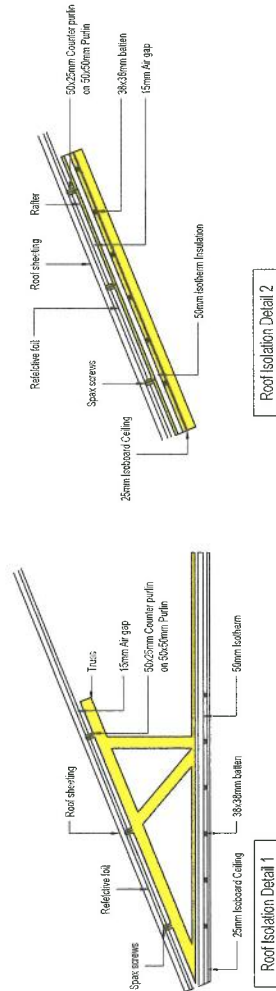


Door Threshold Detail

1 : 20



APPLICATIONS OF DPC AND DMP IN SOLID WALL CONSTRUCTION



Roof Isolation Detail

1 : 50