



OVERSTRAND MUNISIPALITEIT
ERF 204, PARKWEG 33, FISHERHAVEN: AANSOEK
OM OPHEFFING VAN BEPERKENDE
TITELAKTEVOORWAARDES, AFWYKING EN
BEPALING VAN ADMINISTRATIEWE BOETE: WRAP
(nms S SHANAHAN)

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 204, Fisherhaven (die eiendom), naamlik:

Opheffing van Beperkende Titelaktevoorwaardes
Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes D.4.(b), D.4.(c) en D.4.(d), soos vervat in Titelakte T49199/2011 van die eindom om 'n tweede wooneenheid te akkommodeer, boulyne en dekking te verslap.

Afwyking

Aansoek ingevolge Artikel 16(2)(b) van die Verordening om die volgende te verslap:

- noordelike syboullyn vanaf 2m na 1,9m om 'n watertenk te akkommodeer;
- suidelike syboullyn vanaf 2m na 1,0m om 'n tuinhuis te akkommodeer;
- agterboullyn vanaf 2m na onderskeidelik 1,15m en 1,25m om 3 watertenke te akkommodeer, en om dieselfde agterboullyn vanaf 2m na 1,0m te verslap om 'n tuinhuis te akkommodeer.

Bepaling van Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening ongemagtigde oorskrydings op die eiendom.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 and 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **25 Februarie 2022**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr. H Olivier** 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.

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

Munisipale Kennisgewing Nr. 3/2022

OVERSTRAND MUNICIPALITY
ERF 204, 33 PARK ROAD, FISHERHAVEN:
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE
DEED CONDITIONS, DEPARTURE AND
DETERMINATION OF ADMINISTRATIVE PENALTY:
WRAP (obo S SHANAHAN)

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 applications applicable to Erf 204, Fisherhaven (the 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 D.4.(b), D.4.(c) and D.4.(d), as contained in Title Deed T49199/2011 of the property to accommodate a second dwelling unit, building line relaxations and increased coverage.

Departure

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

- northern lateral building line from 2m to 1,9m to accommodate a water tank;
- southern lateral building line from 2m to 1,0m to accommodate a wendy house;
- rear building line from 2m to 1,15m and 1,25m respectively to accommodate 3 water tanks, and to relax the same rear building line from 2m to 1,0m to accommodate a wendy house.

Determination of Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the unauthorised encroachments 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.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **25 February 2022**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr. H Olivier** 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.

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

Municipal Notice No. 3/2022

UMASIPALA WASE-OVERSTRAND
ISIZA 204, 33 PARK ROAD, FISHERHAVEN: ISICELO
SOKUSUSA IZITHINTELO ZETAYITILE YOBUNINI,
UKUYEKA NESOHLWAYO : I-WRAP PROJECT OFFICE
(EGAMENI LIKA S SHANAHAN)

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 kwi- Erf 204, i-Fisherhaven (isakhiwo), ngale ndlela:

Ukususwa kwezithintelo kwiSivumelwano soBuninimhlaba

Isicelo ngokuvumelana neCandelo - 16(2)(f) ngeMithetho Yedolophu yokususa imibandela eluqilima yetayitile yobunini- D.4.(b), D.4.(c) ne- D.4.(d), equkiweyo kwiTayitile Yobunini i- T49199/2011 yesakhiwo ukuze kuhlaliswe enye indawo yokuhlala, ngokubhekiselele kwimida eyongezelweyo kunye nokwandiswa kwezakhiwo.

Ukuphambuka

Isicelo ngokuvumelana neCandelo -16(2)(b) lweMithetho Yedolophu ukuze kubhekiswe le mida ilandelayo:

- umda osecaleni wesakhiwo esisemantla ukususela kwiimitha eziyi-2m ukuya kweziyi-1,9m ukuze kubekwe itanki lamanzi;
- umda osecaleni wesakhiwo esisezantsi ukususela kwiimitha eziyi-2m ukuya kweziyi-1,0m ukuze kubekwe indlu yamaplanga;
- umda wesakhiwo esingasemva ukususela kwiimitha eziyi-2m ukuya kweziyi-1,15m neziyi-1,25m ukuze kubekwe amatanki amanzi amathathu nokuze kubhekiswe kwalo mda umnye ukususela kwiimitha eziyi-2m ukuya kweziyi-1,0m ukuze kubekwe indlu yamaplanga.

Ukumiselwa kweZohlwayo zoLawulo

Ukugqitywa kwesohlwayo ngokuvumelana neCandelo 16(2)(q) lweMithetho Yedolophu xa kutyenziswe umda womhlaba ngokungekho mthethweni

inkcukacha mayela nesindululo siyafumaneka ukuze sihlolwe phakathi evekini ngamaxesha omsebenzi ukusuka kwintsimbi ye08:00 ukuya kweye16:30 kwiSebe: Izicwangciso Zedolophu kwanombolo 16 Paterson Street, eHermanus.

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, **25 EyoMdumba 2022**, ukhankanye igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokunika izimvo. Imibuzo ngefowuni ingabhekiswa ku**Mphathi kuCwangciso lweDolophu, uMnu. H Olivier** ku-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuhlala. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiCandelo leDolophu apho igosa likamasipala liza kumnceda avakalise izimvo zakhe ngokusemthethweni.

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

Municipal Notice No. 3/2022

Locality Plan Erf 204 - Fisherhaven

 Subject property

Plan prepared by: Thian Jansen

Tel: 028 313 1411

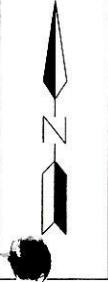
Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



Project Office
Team Planning & Project Management

Inset



211

204

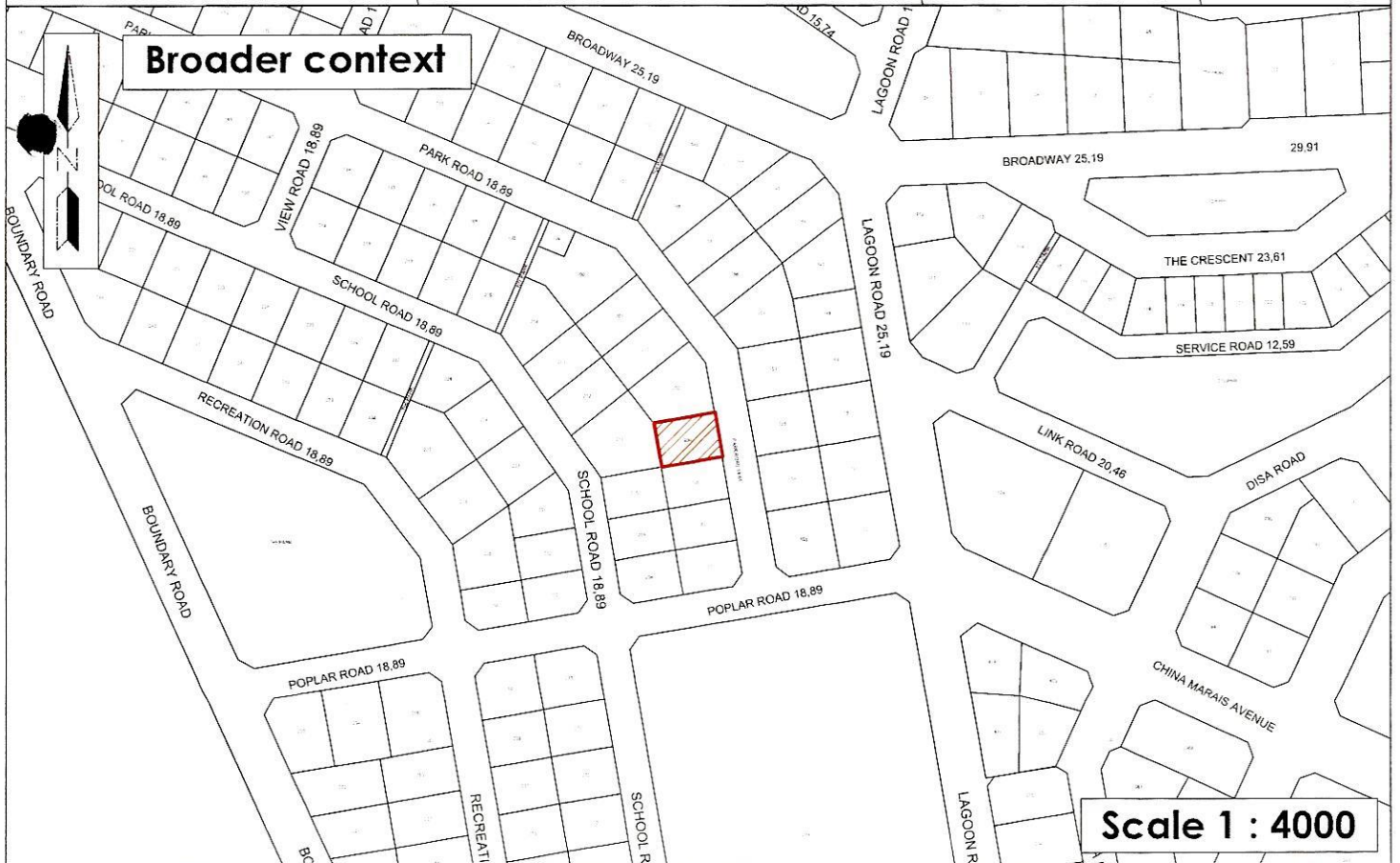
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PARK ROAD 18,89

155

Scale 1 : 500

Broader context



Scale 1 : 4000



1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015, as amended
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020
SDP	Site Development Plan
SRI	Residential Zone 1: Single Residential

2. PROPERTY DETAILS

Consultant	WRAP Project Office
Erf Number	Erf 204 Fisherhaven
Restrictive title deed conditions	Condition 4(b), (c) and (d)
Extent	872m ²
Zoning	Residential Zone 1: Single Residential

3. BACKGROUND AND INTENT

Erf 204 Fisherhaven, hereafter referred to as the subject property, is located at 33 Park Road Fisherhaven (refer **Plan 1**). The property owner (Samantha Shanahan) – hereafter referred to as the applicant, bought the property several years ago, improved with a small dwelling. She is now in the position to construct a new primary residence on the subject property and to utilise the current dwelling as a second dwelling.

A second dwelling is a primary right in the OMLUS on a property zone SRI. The title deed however contains a restrictive condition, which allows only one dwelling unit on the subject property. The applicant approached WRAP Project Office to submit the required application to remove the restrictive title deed conditions.

It was further established that there have been past building line encroachments that have occurred over the years, all of which were done without any malintent. These include placing water tanks over the rear building line and a wendy house encroaching on the side and rear building lines. These encroachments are also required to be addressed in terms of the By-Law.

In addition to these departure applications required, an application for the determination of administrative penalty is also required to be submitted as these contraventions have already occurred. (Refer **Plan 4** for the SDP).

As a result, the following applications are required:

- Removal of restrictive title deed conditions 4(b), (c), (d);
- Departure from the northern 2m side building line to 1,9m and 2m rear building line to 1,25m to allow an existing water tank;
- Departure from the 2m rear building line to 1,15m to allow two existing water tanks;



- Departure from the southern 2m side building line to 1m and 2m rear building line to 1m to allow an existing wendy house; and
- Determination of an administrative penalty.

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

WRAP compiled this report to ensure the applicant's vision is achieved and that the past transgressions are legalised. The following is proposed:

4.1 Removal of restrictive title deed conditions in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

There are three title deed conditions that prohibit the land use rights sought by the applicant as described in Section 3 and the rationale for the removal of these conditions are discussed below:

Restrictive Title Deed Conditions
Condition 4(b) – <i>“it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”</i>
Condition 4(c) – <i>“not more than 30% of the area thereof shall be built upon;”</i>
Condition 4(d) – <i>“no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf not within 3,15 meters of the rear or 1,57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3,15 metres in height measured from 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. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;”</i>

The rationale for the removal of the restrictive title deed conditions is to enable the applicant to achieve the development intent highlighted in Section 3. The title deed conditions are more restrictive than what is allowed in terms of the OMLUS. The applicant has the vision to construct a second dwelling that is being restricted by the conditions above.

The rationale for the removal of these restrictive title deed conditions will be discussed in detail in Section 7 of this report.

4.2 Departure from the 2m northern side building line to 1,90m and the 2m rear building line to 1,25m to accommodate the existing water tank in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Departure from the 2m rear building line to 1,15m to accommodate the existing water tanks in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The applicant is an environmental enthusiast and collects rainwater and stores the water in large 5000l storage tanks with a diameter of 1,8m and a height of 2,3m. The water is then used to water the applicant's garden and for other irrigation purposes.



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The tanks were placed in a location (behind the current dwelling house) to be out of sight from the street. The tanks encroach on the rear building. Water tanks are allowed inside of the building line, on condition it is lower than 2,1m. In this case, the water tanks are 2,3m high and necessitates a departure from the building line is approved to allow these tanks to encroach the rear and side building line.

The water tanks are not seen as obtrusive to the residential environment, and it is also not a noise generating land use. The tanks use gravity to funnel the water to the required irrigation point.

4.3 Departure from the 2m rear building line to 1m and the 2m southern building line to 1m to accommodate the existing wendy house in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The wendy house was erected by professionals, 1m away from the rear and side boundary line and in terms of the provisions of the OMLUS it is also required to apply for a departure from the relevant building lines. The applicant uses the wendy house as a storage room for her garden equipment and other miscellaneous objects. It is important to note no habitable space was created and the only function of the wendy house is storage.

The wendy house is constructed from wood and is supported by bricks as a makeshift foundation. The total encroachment area is only 5m² which is a non-habitable space only used for storage as indicated above. The wendy house has a height of ±2,6m. (Refer to **Figure 1** for illustration purposes).

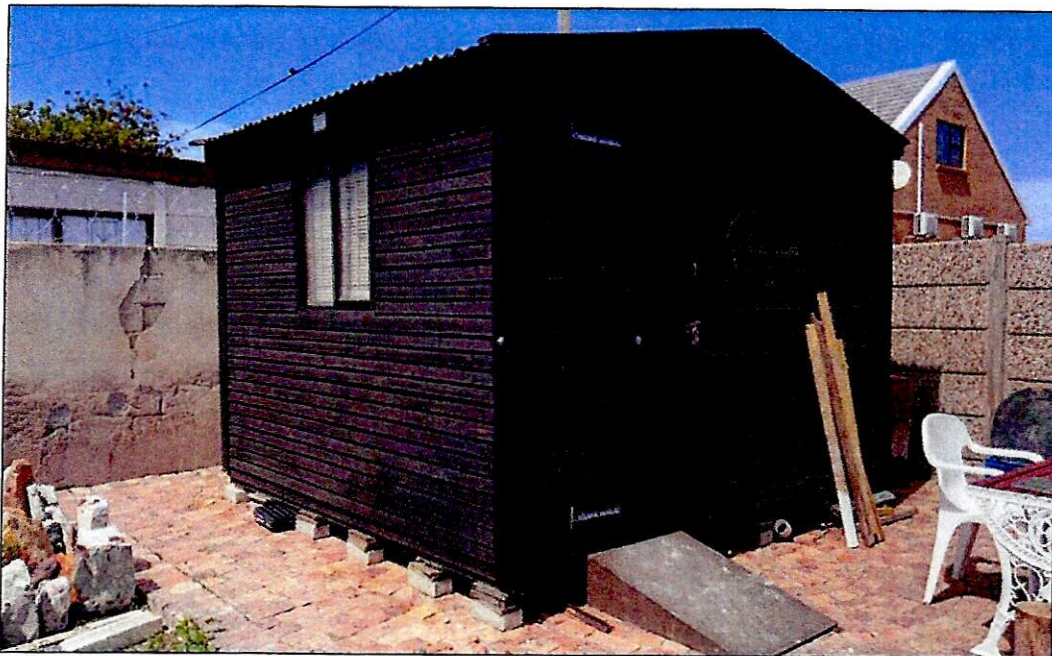


Figure 1: Existing wendy house.



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4.4 Determination of an administrative penalty in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

The existing wendy house and water tanks are encroaching on the side and rear building lines and to ensure compliance with the Overstrand Municipality By-Law on Municipal Land Use Planning 2015 as amended, it is necessary to include an application for the determination of an administrative penalty.

We however request that the administrative penalty be waived as the encroachments were not done deliberately. The applicant stated that she never knew a wendy house and water tanks required departures from the building lines.

The contravening structures on the subject property are not obtrusive and are not seen as having a negative impact on the surrounding properties as none of them are noise-generating land uses. Also, important to note that none of the direct neighbours complained about the encroachments.

The nature, duration, gravity and extent of the contravention

The nature, duration, gravity and extent are explained in Section 4.2 and 4.3 above.

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

The construction and placement were approved and completed by the applicant, but it was however done without the knowledge that it was in contravention of OMLUS.

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

Due to the scale of the contraventions, a report from a quantity surveyor was not obtained.

Whether the unlawful conduct was stopped

The construction has been concluded and after the land-use requirements were explained to the applicant, they will not conduct any further building work without the required consent.

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

To the knowledge of this office, the applicant has not previously contravened the By-Law.



5. APPLICATION

Considering the above, application is made for the following:

- 5.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.2 Departure** from the 2m northern side building line to 1,90m and the 2m rear building line to 1,25m to accommodate the existing water tank in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.3 Departure** from the 2m rear building line to 1,15m to accommodate the existing water tanks in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 5.4 Departure** from the 2m rear building line to 1m and the 2m southern building line to 1m to accommodate the existing wendy house in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 5.5 Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

6. LAND USE ENVIRONMENT

The properties surrounding the subject property are predominantly zoned for single residential purposes. The surrounding area's zonings are illustrated in **Plan 2** (zoning plan). The proposed second dwelling and approval of encroachments are not out of the ordinary and is allowed in terms of the OMLUS.

7. TITLE DEED

Title deed T49199/2011 (refer **Annexure B**) was perused and there are several restrictive conditions that were inserted into the original title deed and transferred to the current title deed. These title deed conditions prohibit that the applicant's intent for the subject property can be realised.

7.1 Title deed restrictions

Condition 4(b) – “it shall be used only for the purpose of erecting thereon one dwelling, together with such outbuildings as are ordinarily required to be used therewith;”

Condition 4(c) – “not more than 30% of the area thereof shall be built upon;”

Condition 4(d) – “no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 meters to the street line which forms a boundary of this erf not within 3,15 meters of the rear or 1,57 meters of the lateral boundary common to any adjoining erf, provided that with the consent of the Local Authority, an outbuilding not exceeding 3,15 metres in height measured from floor to the wall plate and no portion of which will be used for human



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<p>habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidation area as one erf;"</p> <p>Motivation</p> <p>The rationale for the proposed removal</p> <p>The subject property is currently being used for a single dwelling unit with a garage and a carport. The applicant has the vision to expand on her primary right of a Residential Zone 1 property by building a second dwelling unit that will become the main dwelling house. The proposed development of the property is restricted by these conditions mentioned above and therefore require removal.</p> <p>Title deed condition background</p> <p>The restrictive title deed conditions were originally intended to protect the residential character of the Fisherhaven area. Any amendment or removal of this condition requires the consent of the Administrator. This authority now vests with the Overstrand Municipality.</p> <p>Status quo</p> <p>The current OMLUS has clear development guidelines in place to ensure the whole of the Overstrand Area's residential properties are managed in a similar manner. The title deed conditions are more restrictive than the OMLUS and the applicant has a vision and plans to expand beyond these conditions.</p> <p>The new dwelling house will increase the coverage above 30% and encroach on the title deed building lines. These conditions made sense when no clear development guidelines existed. With the restrictive conditions being more restrictive than the policies of the Overstrand Municipality, the applicant is not able to utilise her property to its full extent.</p>

In terms of the requirements of LUPA, the following information is addressed in terms of Section 39(5)(a-f):

LUPA, Section 39(5) (a-f)	
<i>(a) the financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vest in the person as the owner of a dominant tenement;</i>	No person or entity will be affected financially by the removal of these restrictive title deed conditions.
<i>(b) the personal benefits which accrue to the holder of rights in terms of the restrictive condition;</i>	No person is personally benefitting from these conditions as these conditions are only restricting the applicant.
<i>(c) the personal benefits which will accrue to the person seeking the removal, suspension or amendment of the restrictive condition if it is removed, suspended or amended;</i>	The applicant will be gaining from the removal of the restrictive condition as it will allow her to utilise her property to its full extent.
<i>(d) the social benefit of the restrictive condition remaining in place in its existing form;</i>	The restrictive condition does not have a social benefit.



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<i>(e) the social benefit of the removal, suspension or amendment of the restrictive condition; and</i>	The restrictive condition does not have a social benefit.
<i>(f) whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.</i>	There is no specific beneficiary of these conditions, and no person or entity will be affected if these are removed.

8. ZONING

The following zoning parameters were assessed in conjunction with the SR1 OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:



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RESIDENTIAL ZONE 1: SINGLE RESIDENTIAL			
Land Use Restrictions			
	Parameters	Proposal	Comply/ deviate
Primary use	Crèche, Dwelling House, Guest Rooms, Home Occupation, Second Dwelling Unit and Self-Catering.	Dwelling House and Second Dwelling Unit	Comply
Consent use	Day Care Centre, Green House, Guest House, House Shop, Institution, Place of Instruction, Place of Worship, Residential Building, and Intensive Horticulture.	N/A	N/A
Development parameters			
Coverage	The maximum coverage for all buildings on the land unit is determined in accordance with the net erf area: 400m ² and greater = 50%	<u>Area of site = 872m²</u> Existing Dwelling (Proposed second dwelling) = 69m ² Existing Garage = 44,4m ² Existing Shade port = 36m ² Existing Wendy House = 9m ² New Primary Dwelling Ground Floor = 80,4m ² First Floor = 80,4m ² Covered Verandah = 10,1m ² Covered Patio = 20,0m ² Coverage = 268,9sqm / 30,8%	Comply
Building lines	(i) The street building line is determined in accordance with the net erf area: 400 m ² and greater = 4m	Northern Side Building Line – 1,9m (To allow water tank) Rear Building Line – 1,15 & 1,25 m (To allow water tanks) Rear Building Line – 1m (To allow wendy House) Southern Side Building Line – 1m (To allow wendy House)	Deviation required: Applied for and motivated



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	(ii) The side and rear building lines are determined in accordance with the net erf area: Greater than 400 m ² = 2m		
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m.	Existing - Single Storey Proposed - Double Storey below 8,0m	Comply
Garages and carports	Garages and carports may be constructed within building lines in accordance with Chapter 16.1.2.	Double Garage and two parking bays in front of garage	Comply



9. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Electricity, Water, Sewage and Solid Waste

The subject property is connected to the OM's networks, these include electricity, water and sewage. The proposal of this application will not affect these networks.

Solid waste is collected every week by the OM.

Access and Egress

Access and egress to the subject property is gained from Park Road and the proposal will not affect this.

10. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability

The need for the land use application was a result to legalise past contraventions and ensuring the property meets all the needs of the applicant. The desirability is more often a personal feeling of the applicant. The applicant has an intent to build a new primary dwelling house and utilise the existing dwelling as a second dwelling. The new primary dwelling will not benefit any other users or person, but it will increase the property value and in the future, may yield additional income for the OM.

To achieve their vision, the applicant has appointed WRAP Project Office to submit this application to ensure the proposed development is not in contradiction to any policies, legislation, or title deed conditions.

Impact on views, sunlight and character of the area

The subject property is located in a residential setting and the proposed primary dwelling house will comply with the OMLUS's development parameters ensuring no views, sunlight, or the character of the area is affected.

The wendy house and water tanks were built and installed without knowing that it encroach on building lines and that approval for a departure from building lines is required. These buildings are also not out of character or will affect the view and sunlight of the area.

Economic impact

There is little to no impact on the economy. The building of the proposed primary dwelling house will temporarily employ a contractor that will use workers to assist in the construction phase.

Opportunity cost

An opportunity cost in the context of land use planning refers to a development proposal that leads to the devaluation or foregoing of valued land use rights of interested and



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affected parties when an application is approved. The development will not affect the property values of surrounding properties.

Impact on heritage

The subject property is not listed in the OM Heritage Register.

Environmental impact

The subject property is not located within an environmentally important area.

11. POLICIES AND REGULATIONS

11.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

The subject property is located within the Coastal Protection Zone and to ensure compliance with the guidelines set out in the EMOZ, the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A
Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond	X	N/A



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areas designated, demarcated and signposted by the Municipal Council for such purposes.		
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	There are approved building plans indicating a dwelling house.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	N/A

SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A



MOTIVATION

Removal or destruction of vegetation which is protected and/or of conservation concern.	X	N/A
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	N/A
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	This is noted and all water will be managed on-site.
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.	X	N/A
C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Coastal	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated	X	N/A



MOTIVATION

with the seaweed harvesting, collection, drying, transport and processing fishery.		
Encroachment of private buildings, structures, infrastructure, access routes.	X	The entire proposed development is within the coastal protection zone.
Commercial Harvesting/collection and removal of any natural resource.	X	N/A
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	The entire proposed development is within the coastal protection zone.

11.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The subject property is not located within this zone.

11.3 Spatial Planning Policies

This proposal is not in conflict with any provisions of the Western Cape Provincial Spatial Development Framework, 2014 or the Overstrand Spatial Development Framework, 2020.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

Spatial justice refers to planning proposals that do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for a second dwelling and legalisation of historic building line encroachments will not contribute to spatial injustices.

Spatial sustainability

Spatial sustainability refers to planning proposals that result in communities that are viable. This proposal to construct a second dwelling will add housing opportunities into the Fisherhaven area, densifying an existing property,

Efficiency

This proposal is intended to maximise the usage of the subject property and ensure the applicant's requirements are met.

Spatial resilience

This proposal is not in conflict with any spatial planning policies or other OM regulations which is a hallmark of resilience.

Good administration

The OM has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.



13. EVALUATION

Once the applicant realised that there have been contraventions, they appointed WRAP Project Office to apply for rectification of these contraventions in terms of the By-Law. The application also includes the determination of an administrative penalty. The applicant understands the land use process and will in the future ensure all structures adhere to the provisions of OMLUS. In addition to the rectification side of the application, the applicant envisioned constructing a dwelling unit that requires the removal of certain restrictive title deed conditions. The removal of the restrictive title deed conditions was motivated according to SPLUMA and LUPA.

The land uses are not out of the context of the surrounding area and are not seen as nuisance land uses. The wendy house will only be used for storage and the water tanks will be used to collect rainwater for irrigation purposes. The departures will also not impede on views, sunlight or negatively affect the character of the area.

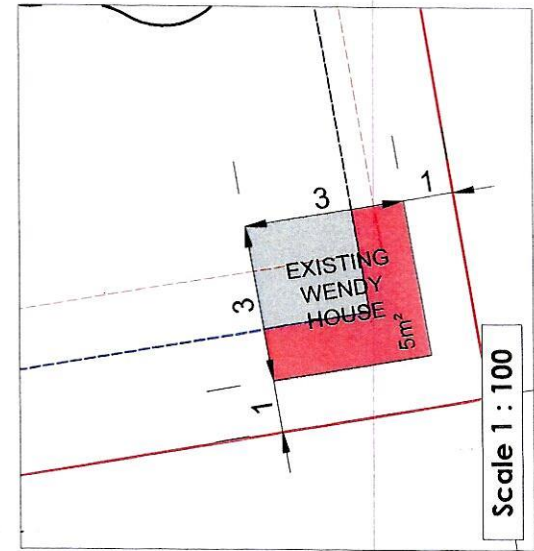
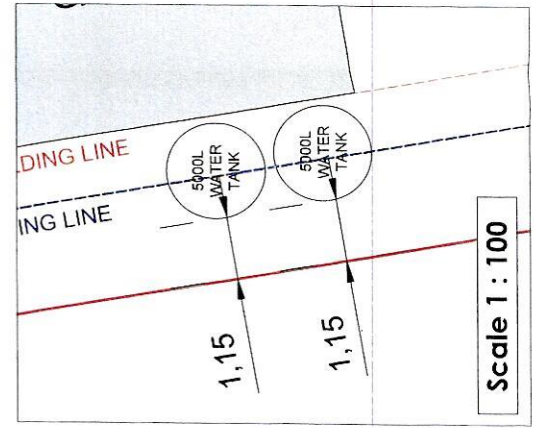
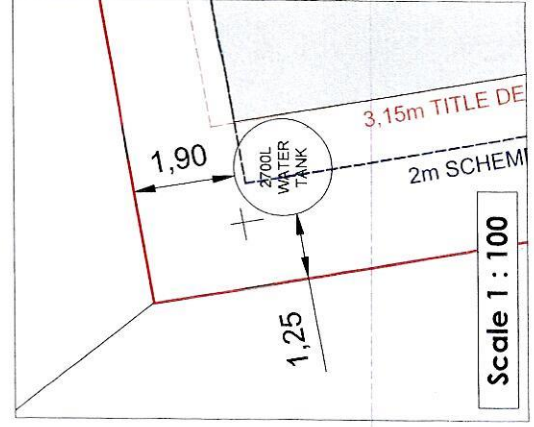
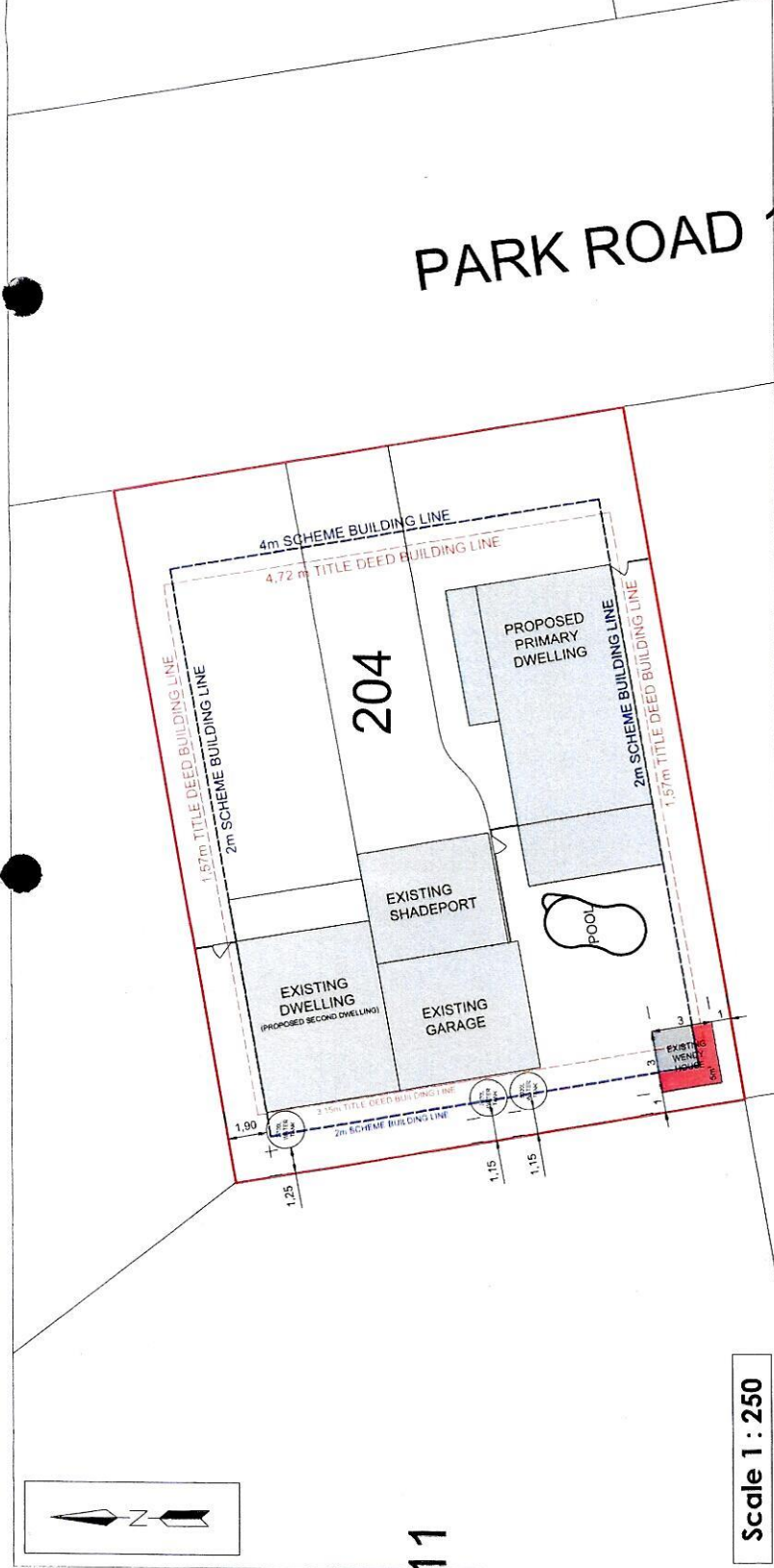
The proposal for a second dwelling is in harmony with all relevant spatial planning policies which illustrates that the tenants did not arbitrarily invent this proposal but had due consideration for relevant spatial planning policies.

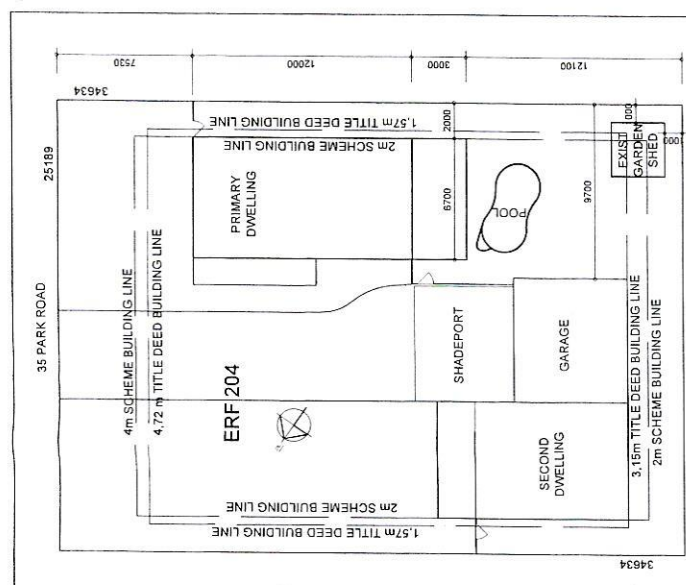
14. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 14.1 Removal of restrictive title deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.2 Departure** from the 2m northern side building line to 1,90m and the 2m rear building line to 1,25m to accommodate the existing water tank in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.3 Departure** from the 2m rear building line to 1,15m to accommodate the existing water tanks in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 14.4 Departure** from the 2m rear building line to 1m and the 2m southern building line to 1m to accommodate the existing wendy house in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 14.5 Determination of an administrative penalty** in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

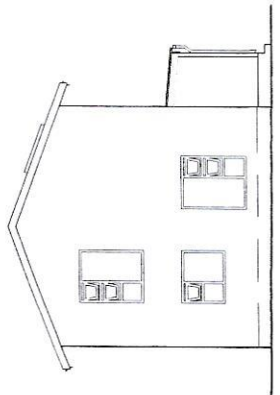
Site Development Plan Erf 204 - Fisherhaven
Existing Wendy House Dimensions - 3m x 3m Area - 9m ²
Existing Dwelling Unit Area - 149.4m ²
Proposed Primary Dwelling Unit Area - 190.9m ²
Coverage Site Area - 873m ² Wendy House - 9m ² Existing Dwelling Unit - 149.4m ² Proposed Primary Dwelling Unit - 190.9m ²
Total Coverage - 349.3m²/40.1%
Plan prepared by: Thion Jansen Based on plans drawn by: LA DESIGN STUDIO All distances are approximate and subject to a survey Tel: 028 313 1411 Email: admin@wrapgroup.co.za Unit 8, Standard House, Corner of Royal and Dirkie Uys Street Hermanus, 7200
Project Office Town Planning & Project Management



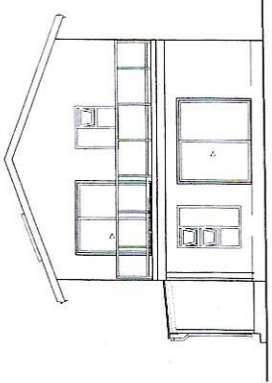


SITE PLAN
SCALE 1:200

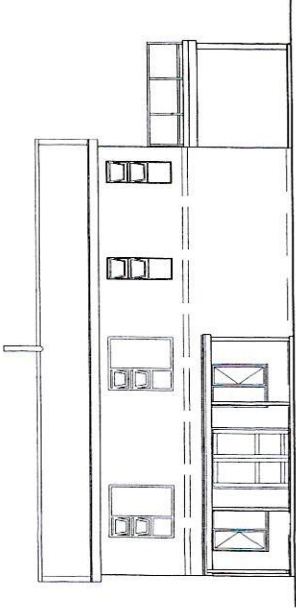
AREAS	
SITE	= 872.75sqm
EXISTING DWELLING	= 69sqm
EXISTING GARAGE	= 44.45sqm
EXISTING SHADEPORT	= 35sqm
EXISTING GARDEN SHED	= 9sqm
NEW PRIMARY DWELLING	= 80.45sqm
GROUND FLOOR	= 80.45sqm
FIRST FLOOR	= 10.15sqm
COVERED VERANDAH	= 20.05sqm
COVERED PATIO	= 20.05sqm
OPEN BALCONY	= 20.05sqm
BULK AREA	= 369.35sqm
COVERAGE	= 268.85sqm
	= 30.8%



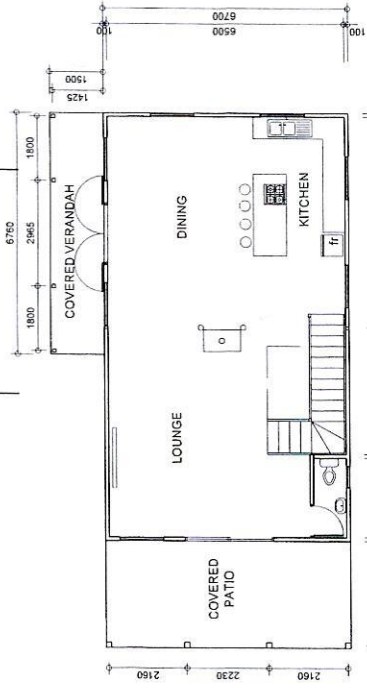
NORTH EAST ELEVATION
SCALE 1:100



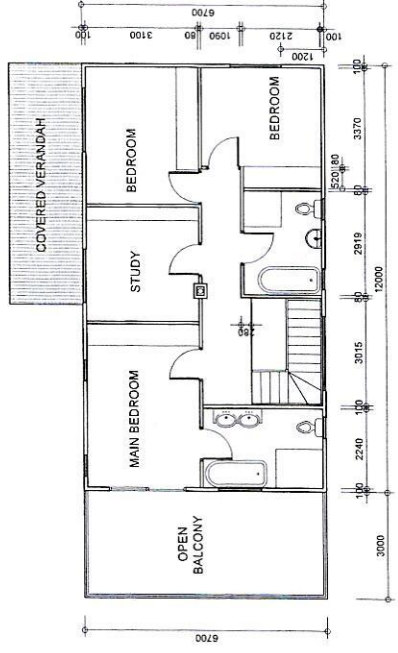
SOUTH WEST ELEVATION
SCALE 1:100



NORTH WEST ELEVATION
SCALE 1:100



GROUND FLOOR PLAN
SCALE 1:100



FIRST FLOOR PLAN
SCALE 1:100

Drawing title	GENERAL DETAILS	Date	01/01/2000
Project No.	492-18	Scale	1:
Drawing No.	C01	Revision	
Designed	L. Abbott	Drawn	
Checked		Plotted	

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Les Abbott
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Client: **HOUSE SHANAHAN**
Park Road
FISHERHAVEN
Signed

Project: **NEW DWELLING**
ERF 204
FISHERHAVEN

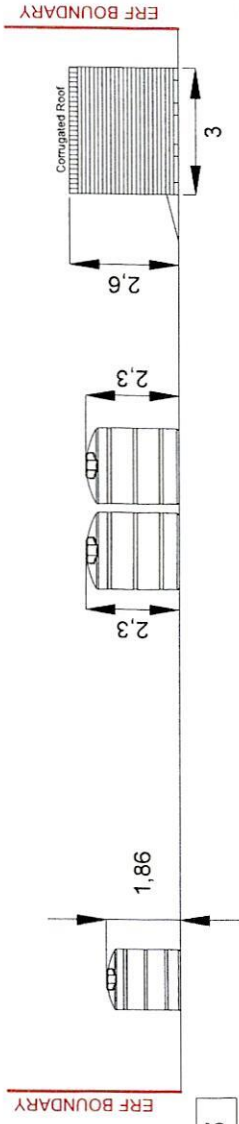
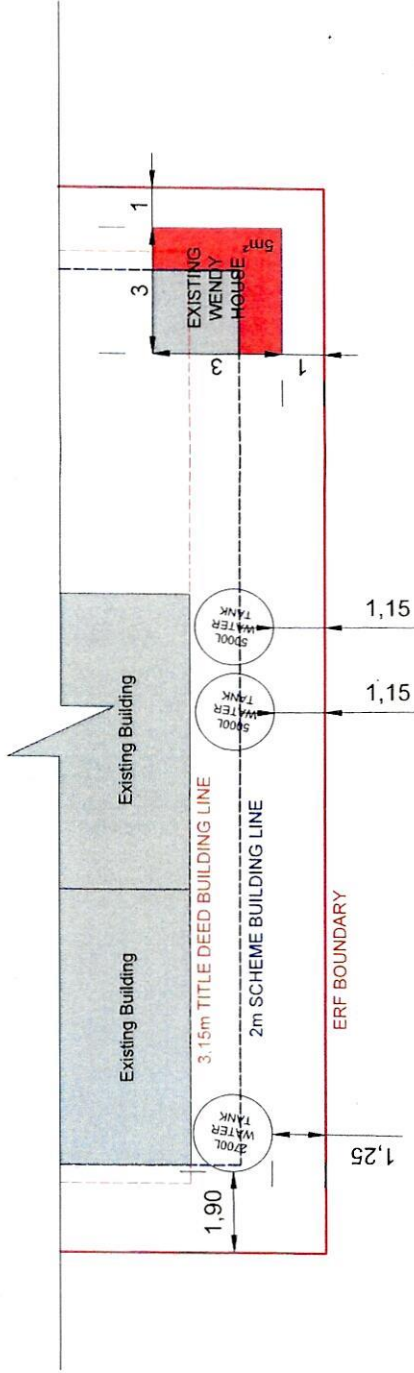
Revisions	Rev. No.	Date	Description

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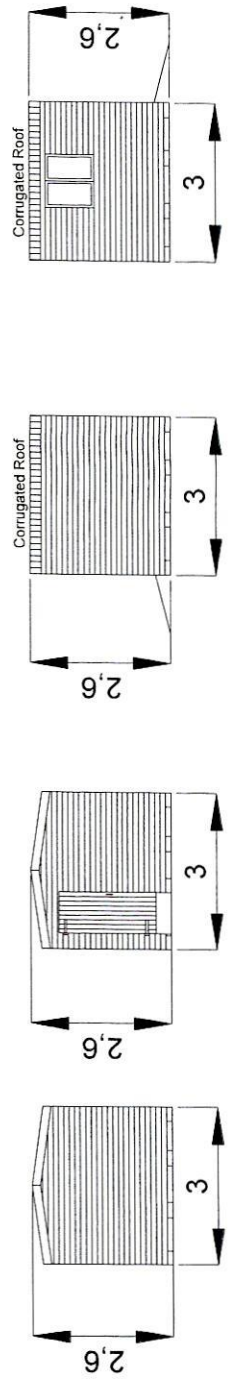
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L.A. Abbott, Pr. Arch.

SOUTHERN ELEVATION (WENDY HOUSE AND WATER TANKS)



Scale 1 : 125



WEST ELEVATION NORTH ELEVATION SOUTH ELEVATION EAST ELEVATION

Scale 1 : 100

Elevations
Erf 204 - Fisherhaven

Existing Wendy House
Dimensions - 3m x 3m
Area - 9m²

Plan prepared by: Thian Jansen
All distances are approximate
and subject to a survey
Tel: 028 313 1411

Email: admin@wrapgroup.co.za
Unit B, Standard House, Corner of Royal and Dirkie Uys
Street Hermanus, 7200

