



GEWYSIGDE AANSOEK

MUNISIPALITEIT OVERSTRAND

**ERF 338, HOTELSINGEL 4, ROOIELS: AANSOEK
OM OPHEFFING VAN 'N BEPERKENDE
TITELAKTEVOORWAARDE, AFWYKING EN
BEPALING VAN 'N ADMINISTRATIEWE BOETE:
PLAN ACTIVE NAMENS HMMM BELEGGINGS
TRUST**

Kennis word hiermee gegee ingevolge Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) van die volgende aansoeke van toepassing op Erf 338, Rooi Els, naamlik:

Opheffing van Beperkende Titelaktevoorwaarde

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaarde F.(4)(d) soos vervat in Titelakte Nr. T73556/2014 van die eiendom om die oorskreiding van die bestaande strukture op die eiendom te akkommodeer.

Afwyking

Aansoek ingevolge Artikel 16(2)(b) van die Verordening ten einde die:

- westelike syboullyn vanaf 2m na 0m te verslap om 'n bestaande blombak en 'n hangbetonblad te akkommodeer, beide is hoër as 1,0m bo grondvlak.
- maksimum toelaatbare hoogte van 2,1m te oorskry om die bestaande grensmuur te akkommodeer wat ook teenstrydig is met die erfenisbeskermingsoorlegsoone- regulasies.
- maksimum toelaatbare hoogte van die bestaande invul van die oop terras vanaf 1m na ± 1,6m te oorskry.
- maksimum toelaatbare hoogte van 2,1m oorskry om drie bestaande watertenke te akkommodeer.

Bepaling van 'n Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die ongemagtige boulynoorskreidings soos bo uiteengesit.

Besonderhede aangaande die voorstel lê ter insae gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus, by die Bettysbaai Biblioteek, Clarencerylan, Bettysbaai, en by die RESA Kantoor, Anemoneweg, Rooi Els.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **1 September 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. 118/2023

AMENDED APPLICATION

OVERSTRAND MUNICIPALITY

**ERF 338, 4 HOTEL CRESCENT, ROOIELS:
APPLICATION FOR REMOVAL OF A RESTRICTIVE
TITLE DEED CONDITION, DEPARTURES AND
DETERMINATION OF ADMINISTRATIVE PENALTY:
PLAN ACTIVE ON BEHALF OF HMMM
BELEGGINGS TRUST**

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 338, Rooi Els, 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) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property.

Departure

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

- Relax the western lateral building line from 2m to 0m to accommodate an existing planter and a suspended concrete slab, both are higher than 1,0m above ground level.
- exceed the maximum permissible height of 2,1m to accommodate the existing boundary wall which is also in contravention with the heritage protection overlay zone regulations.
- exceed the maximum permissible height of the existing infill of the open terrace from 1m to ±1,6m.
- exceed the maximum permissible height of 2,1m to accommodate three existing water tanks.

Determination of an Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the unauthorized building line encroachments as stipulated above.

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 at the RESA Office, Anemone Road, Rooi Els.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **1 September 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, Ms. 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. 118/2023

ISICELO ESILUNGISIWEYO

UMASIPALA WASE-OVERSTRAND

**ISIZA ESINGU-ERF 338, 4 HOTEL CRESCENT, ROOIELS:
ISICELO SOKUSHENXISA KWEMEEMKO EZIYIMIQOBO,
ULWAHLULO NENGQIKELELO
YOMDLIWO/YEPHENALHI YOBHALISO:
NGABAKWAPLAN ACTIVE EGAMENI LE- HMMM
BELEGGINGS TRUST**

Kkhutshwe isaziso esimayela nemiba yeSolotya lama-47 nelama-48 loMthethwana kaMasipala wase-Overstrand OngeZicwangciso ZokuSetyenziswa koMhlaba kaMasipala ku2020 (UMthethwana) mayela nezicelo ezilandelayo nezisebenza kwisiza esingu-Erf 338, Rooi Els, ezaziwa:

Ukushenxiswa Kweemeko eziyiMiqobo kwiitayitile Zobunini

Isicelo ngokwemiba yeSolotya le16(2)(f) loMthethwana ongokushenxiswa kweemeko eziyiMiqobo kwiitayitile zobuni F.(4)(d) njengoko ziqulethe kwiTayitile YoBunini Nomb. T73556/2014 yesiza/yomhlaba ukulungiselela ukungenelela nokuphumela ngaphandlela kwemida yesakhiwo esesikhona.

Ulwahlulo

Isicelo esi simayela nemiba yeSolotya le16(2)(b) oMthethwana:

- ukunyenya umgca omelene nesakhiwo kwicala elisentshona ukusuka kwiimitha ezi-2m ukuya kwezi-0m ukulungiselela iplanta(umatshini wokuplanta) osele ukhona nesilebhu esixhonyiweyo, zombini zingaphezulu kwemitha e-1,0m ukuphakama kumgangatho womhlaba.
- ukudlula ngaphezulu kubude obuvumelekileyo obuzi-2,1m ukulungiselela idonga elenza umda nesele likhona neliphikisana okhusela ilifa lemveli nemiqathango ehambelana nezowuni engumlinganiselo womgangatho.
- ukudlulela kumlinganiselo wokuphakama ovumelekileyo ukuzalisa indawo engumngxuma evulekileyo ukusukelela kwi-1m ukuya kwi ±1,6m.
- ukudlulela ngaphaya komlinganiselo wokuphakama ovumelekileyo ngeemitha ezi-2,1m ukulungiselela amatanki amanzi amathathu nasele ekhona.

Inqikelelo yomdlivo/yepenathi yobhaliso

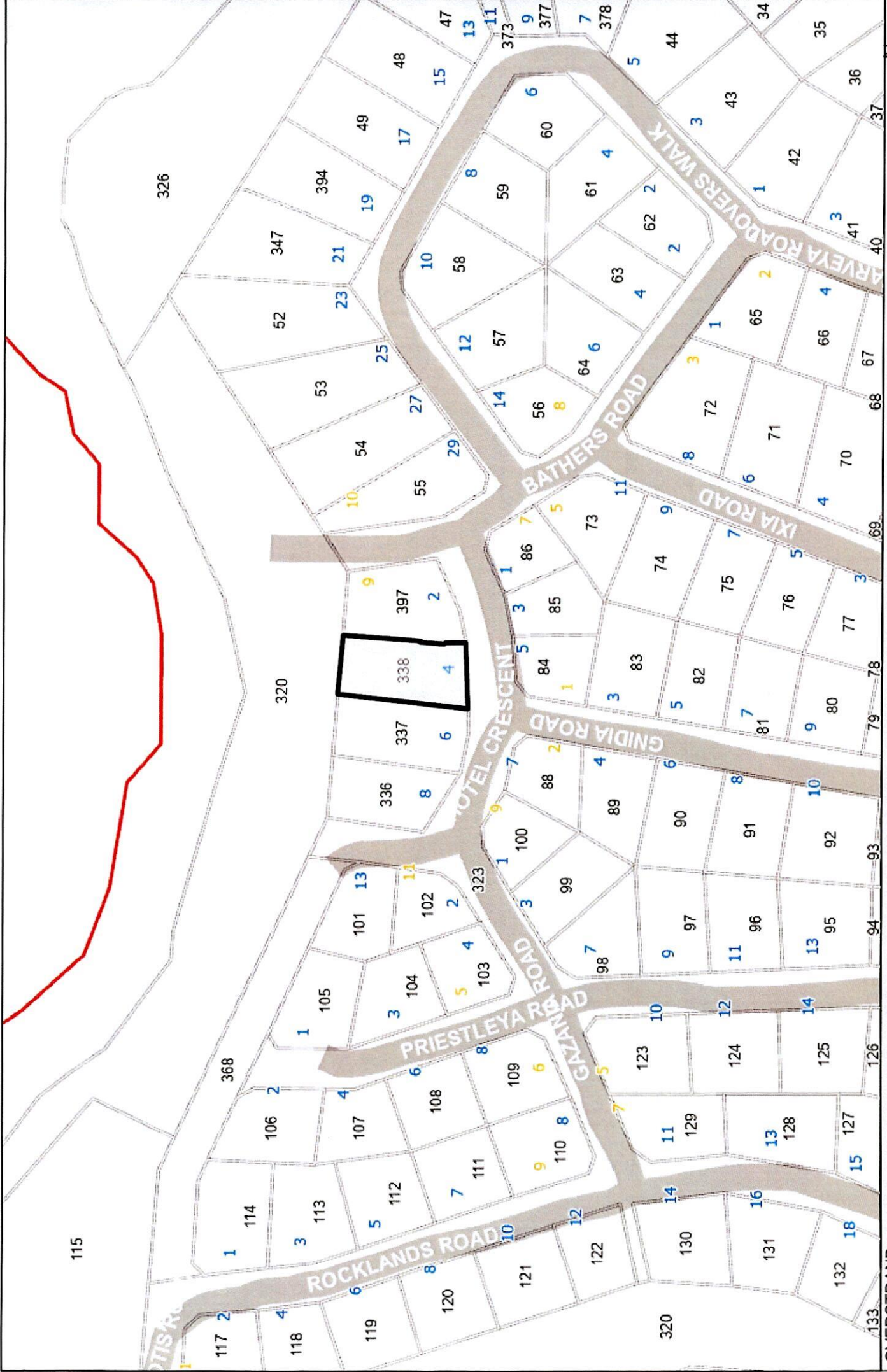
Isicelo esi sihambelana nemiba yeSolotya le16(2)(q) loMthethwana wokungenelela nokudlulela ngaphaya kwemilinganiselo yomgca wesakhiwo, engagunyaziswanga.

linkcukacha ezimayela nesi siphakamiso siyafumaneka ukuze zihlolwe kwiintsuku zaphakathi eveleni kwixesha eliphakathi kwentsimbi ye-08:00 neye-16:30 kwiSebe: Lezicwangciso zeDolophu kwa16 Paterson Street, Hermanus, eBetty's Bay Library, Clarence Drive, Betty's Bay, naseRESA Office, Anemone Road, Rooi Els.

Naziphi na izimvo ezibhaliweyo mazingeniswe kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngomhla okanye ngaphambi komhla wama-1 uSeptemba 2023, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo, nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa kuMchwangciso Omkhulu weDolophu, **Nkszn. H van der Stoep** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvula. Nabani na ongakwazi ukufunda nokubhala angahambela kwiSebe LeziCwangciso zeDolophu apho igosa likaMasipala liza kukunceda ubhale izimvo zakho ngokusemthethweni.

DGI O'Neill, Umlawuli kaMasipala, Overstrand Municipality, P.O. Box 20, **HERMANUS**, 7200

Inothisi kaMasipala Nomv. 118/2023



**PROPOSED DETERMINATION OF AN
ADMINISTRATIVE PENALTY,
REMOVAL OF A RESTRICTIVE TITLE
DEED CONDITION
AND DEPARTURES**

ERF 338 ROOI ELS

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. **BACKGROUND**

Mrs. C.U. Coetzee, on behalf of the **HMMM Beleggings Trust**, the owner of Erf 338 Rooi Els has instructed the company Plan Active Town Planners to apply for the determination of an administrative penalty, removal of a restrictive Title Deed condition and departures of Erf 338 Rooi Els.

The owner of the subject property appointed professional consultants in order to design, oversee and erect the new dwelling on the subject property. A professional land surveyor was appointed to conduct a topographical survey of the subject property before any work was done and the architect, Mr Pieter Wasserman used the topographical survey to compile the building plans for the new dwelling. After the building plans were approved, the land surveyors were instructed to attend to the setting out of the dwelling. The dwelling was constructed by a professional building contractor. During the process of obtaining an occupancy certificate the owner was made aware that the dwelling was raised above ground level and therefore a occupancy certificate could not be obtained from the building control department.

A survey by Van Dyk Land Surveyors, after the house was completed and as-built building plans by Pieter Wasserman Architects confirmed that the height of some of the boundary walls exceed the maximum allowable height of 2.1m for boundary walls. The mentioned survey also confirmed that the infill of the open terrace is also higher than 1m above ground level within the rear building line. The existing dwelling was erected on a suspended slab, of which the suspended slab is higher than 1m within the lateral building line which triggers a building line encroachment. An application was submitted for the aforementioned contraventions in 2021.

During the public participation process a few other encroachments came to light and therefor an amended application, to address all the encroachments on the subject property, is submitted. The additional encroachments are as follow:

The form and height of the existing boundary walls are in contradiction with the Heritage Protection Overlay Zoning Regulations, 2020. Water tanks were also placed within the prescribed building lines that are also higher than 2.1m in height. This application also includes the determination of an administrative penalty.

It should be noted that the garage situated on the subject property was indicated on the boundary line and the building plan was approved as such. Discussions with the municipality during the application process was that the Title Deed Building line had been addressed during the boundary re-alignment application between Erf 338 and 397 Rooi Els. **This being the reason why it was not addressed in our previous application.**

After obtaining the Government Gazette notice to verify that the removal of restriction was done, it became evident that the removal of the restriction was done on only Erf 397 Rooi Els, the adjacent erf, and therefore we are now including an application for the removal of a restrictive Title Deed restriction with reference to the prescribed Title Deed building lines.

Erf 338 Rooi Els is 1208m² in extent and is held by Title Deed Number 73556/2014.

2. APPLICATION DETAILS

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 prescribed building lines and Heritage Protection Overlay Zoning Regulations, 2020.
- **Chapter 4, Section 16(2)(f)** of the Overstrand Municipality's Amended Bylaw on Municipal Land Use Planning, 2020, for the removal of a restrictive Title Deed condition.
- **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 338 Rooi Els is located at Hotel Crescent and is 1202m² in extent and is held by Title Deed Number 73556/2014. Please refer to the enclosed locality plan.

3.2 ZONING

Erf 338 Rooi Els is zoned Residential Zone 1 and is utilized as such. The surrounding properties are zoned for single residential purposes, public roads and Open Space Zone 1: Nature Reserve.

3.3 LAND USE

Erf 338 Rooi Els is used for residential purposes. The following land uses are established on the subject erf within 2 structures:

- A dwelling and a garage, outdoor entertainment area, open stoep and court yards;
- a double story building consisting of a storeroom, laundry, personal gym, and wine cellar.

Land uses that surround Erf 338 Rooi Els are single dwellings, public roads, and public open spaces. It is therefore evident that Erf 338 Rooi Els is situated within a predominantly developed single residential area.

3.4 **PROPOSAL**

The following are proposed:

- The departure from the prescribed building lines and Heritage Protection Overlay Zone Regulations, in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;
- The removal of a restrictive Title Deed condition in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.
- The determination of an administrative penalty in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

Erf 338 Rooi Els is 1208m² in extent and is held by Title Deed Number 73556/2014. The intention of the owner of the subject property is to address the encroachments on the subject property.

As per the amended Overstrand Municipal Land Use Scheme Regulations, 2020, certain structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit. An as-built survey confirmed that some of the boundary walls on the subject property are higher than the prescribed height of 2.1m and that the infill of the existing open terrace is higher than 1m above the existing ground level, within the rear building line.

The dwelling has been constructed on a suspended concrete slab that encroaches the lateral building line and is more than 1m above ground level as determined by Van Dyk

Land Surveyors. According to Chapter 16, Section 16.1.1(a)(xii) of the zoning scheme regulations water tanks not exceeding 2.1m in height may be erected over the prescribed building lines. 3 Water tanks have been placed within the lateral building line, which exceed the permissible height of 2.1m within the western lateral building line. A courtyard and planter are also constructed within the western building line which are higher than 1 meter above ground level. The infill at the seafront of the subject property is also higher than 1m above ground level within the rear building line. The afore-mentioned structures also encroach the Title Deed building lines.

The intention of the owner is to address these encroachments in order to submit as built building plans for approval by the Overstrand Municipality.

This application also includes an application for the determination of an administrative penalty, as per **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.**

3.4.1. Determination of an administrative penalty

An as built survey was conducted of the subject property. The mentioned survey confirmed that the boundary walls are higher than 2.1m and that the infill of the open terrace is higher than 1m above ground level within the rear building line. The elevation and ground floor plan provided by Pieter Wasserman Architects also indicate that a portion of the dwelling was erected on a suspended concrete slab that encroaches the lateral and rear scheme building lines and the prescribed Title Deed building lines, being higher than 1m above ground level.

An additional survey carried out by Van Dyk Land surveyors also confirmed that 3 water tanks (**2x 10 000l and 1x 20 000l**) are situated within the western lateral scheme building line and the lateral Title Deed building line and that the mentioned water tanks are higher than 2.1m in height. The survey also confirm that these water tanks are located *within* the boundaries of Erf 338 Rooi Els. There is also an existing planter that forms part of a small courtyard established on the western side of the subject property which encroaches the lateral scheme and Title Deed building lines, being higher than 1m above ground level.

It was always the intention of the owner to legalise the aforementioned encroachments by applying for the determination of an administrative penalty, removal of a Title Deed

restriction and departures from the scheme regulation's building lines and will submit as-built building plans as soon as the land use application has been concluded.

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 10, 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 10, 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

As previously mentioned, an as built survey was conducted that confirmed that the boundary walls were constructed higher than the permissible height of 2.1m. The height of the open terrace and the suspended concrete slab is also more than 1m above ground level within the applicable scheme and Title Deed building lines. On the western side of the subject property a planter box, which is part of a small courtyard, was also constructed within the scheme and Title Deed building lines, being higher than 1m above ground level.

Three water tanks have been placed on the western side of the subject erf, between the existing structures and the property boundary, which are subsequently within the prescribed Scheme and Title Deed lateral building lines that exceed the permissible height of 2.1m for such tanks as described in Chapter 16, Section 16.1.1(a)(xii) of the zoning scheme regulations.

After additional surveys were conducted these encroachments can now be confirmed with the combination of the as-built building plans drawn up by Mr. Pieter Wasserman.

A site meeting was held on the 17th of February 2023 with the owner, Me. M. Muller, Me. Hanneen van der Stoep (OM Town Planning Department) and Mr. Sherwin Rossouw (OM Building Control Office). Mr. Sherwin Rossouw was the building inspector at the time of the construction of the dwelling on Erf 338 Rooi Els and is knowledgeable about the history of the building plan approval and building processes that were followed.

Mr. Rossouw mentioned that during the building plan approval process it was recommended that the dwelling be raised above ground level as a precaution for flooding due to the topography of the site. Subsequently the building contractor raised the dwelling as recommended.

The extent of the unauthorised building work that encroaches the building lines can be tabled as follows:

Erf 338 Rooi Els

Structure	Extent of unauthorised building work
Infill of open terrace within the building line	±23m ²
Boundary walls	±4.84m ²
Suspended concrete slab and existing planter within a small courtyard	±35m ²
Water tanks	±13m ²

The owner of the subject property intends to provide full co-operation to the Overstrand Municipality to address the encroachments and to obtain approved building plans. **Cognisance should be taken of the fact that the owner appointed a building contractor to construct the new dwelling according to the approved building plans and was under the impression that the structures were compliant with the approved building plans.**

The position and nature of the unauthorised encroachments on Erf 338 Rooi Els are unobtrusive in nature and do not impact negatively on the surrounding properties.

The height of the **boundary walls** is as a result of the dwelling being constructed on top of a suspended concrete slab. The dwelling was constructed on the suspended slab because the property is situated in a natural depression well below the street level, to prevent flooding during heavy rainstorms and as previously mentioned, the building inspector confirmed that the aforementioned came to light during building plan discussions as part of the building plan approval process, before construction took place.

The boundary walls provide privacy to the property owner as well as neighbouring property owners. From inside the house the walls are perceived to be the correct height, but from the neighbour's side it is higher.

The boundary walls are compliant with the National Building Regulations and Buildings Act, 1977 (Act No. 103 of 1977) (see certification of completion of the structural, fire protection of fire installation system in terms of Section 14(2A) of the Act, by TN Consulting, Tielman Nieuwoudt) and do not pose any risk to the subject property or the neighbouring properties.

As mentioned above, the reason for erecting the higher boundary walls is for the provision of privacy in relation to the height of the floor level of the existing single storey dwelling, that is raised above natural ground level. As further described later in this section, the walls are higher if viewed from the neighbouring properties but are perceived as standard, viewed from inside of the dwelling constructed on Erf 338 Rooi Els.

If the boundary walls were constructed at a height of 2.1m, the owner, and the neighbour would have privacy issues. The courtyard and planter would also have been exposed. The courtyard and planter currently create a privacy buffer between the bedroom and bathroom that have large windows facing in a western direction, located on the western side of the subject erf.

The infill at the seafront of the subject property where the open terrace is situated, was also constructed more than 1 meter above ground level within the scheme and Title Deed building lines. The plan from the land surveyor and the as built building plan confirm that the height of the open terrace measures approximately 1.6m above ground level.

As seen from the photograph below the open terrace does not have any impact on the sea views except for the wall adjacent to Erf 397 Rooi Els on the open terrace, that has a partial impact on the views from Erf 397 Rooi Els.

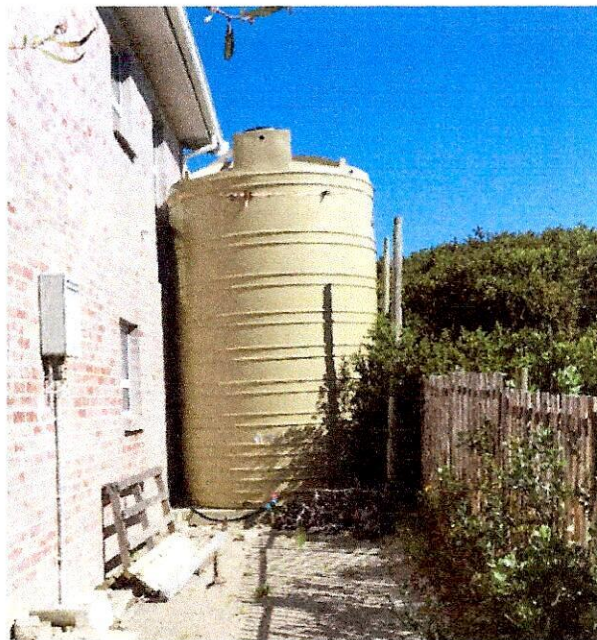
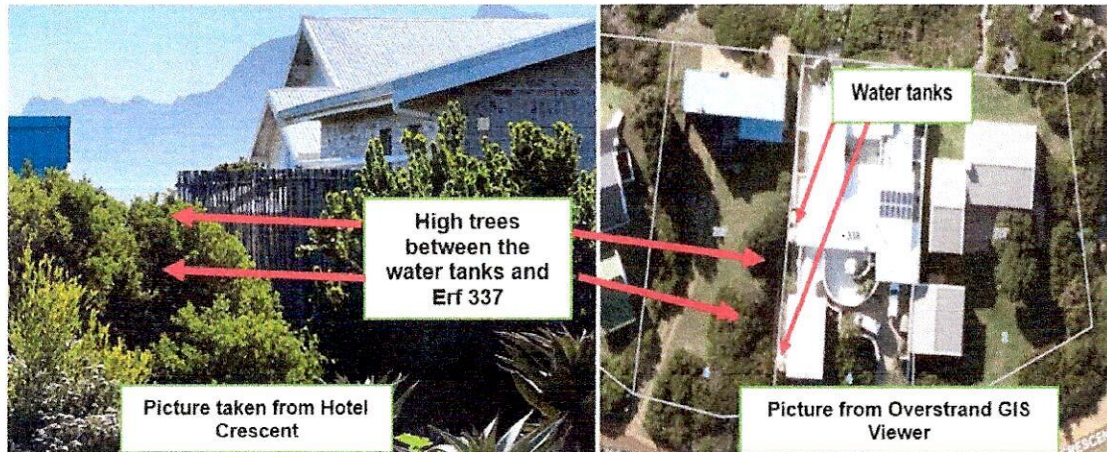


The **water tanks** are situated on the western side of the subject property. As seen in the photographs below the water tanks are barely visible from the neighbouring erf, Erf 337 Rooi Els. Natural vegetation established on Erf 337 Rooi Els obscures the view of these tanks and you will have to walk towards the common boundary of erven 337 & 338 Rooi Els, beyond the natural vegetation to have a clear view of the water tanks. Subsequently the last-mentioned water tanks do not have any impact on the neighbouring property, Erf 337 Rooi Els. Discreet wooden screens have been erected to further blend the tanks.

The water tanks that are situated within the boundary of the subject property (as confirmed by the survey) but encroaching the scheme and Title Deed building lines are used to collect all the rainwater from the roofs of all the structures on Erf 338 Rooi Els, that is used for household purposes.

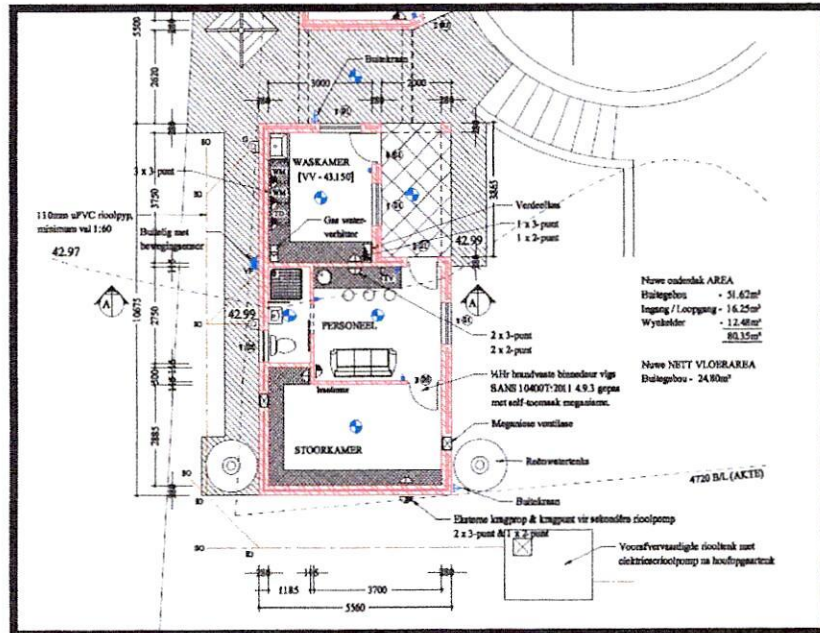
It is important to note that **no** Municipal storm water systems exist in Rooi Els. The topography of the area is also of such a nature that storm water in the road flows naturally to the lowest point, which is thus erven 337 and 338 Rooi Els. The collection

of the rainwater in the 3 water tanks has a positive impact on the neighbouring erven due to the fact that it catches all the runoff water from the structures located on Erf 338 Rooi Els, eliminating additional stormwater discharge onto the said erf and also on the neighbouring lower laying Erf 337 Rooi Els. The water tanks have a similar function as that of a retention pond.



It should also be noted that an approved building plan does exist (as confirmed by the Overstrand Building Department) for two water tanks, but the location of the tanks has since changed, and they are not situated in the same position anymore, as indicated on the approved building plan. An email by the Overstrand Building Department in Kleinmond also confirmed that the double storey building situated on the property

which consist of a storeroom, laundry and personal gym was approved on **29 November 2017** (correspondence attached as Annexure A).

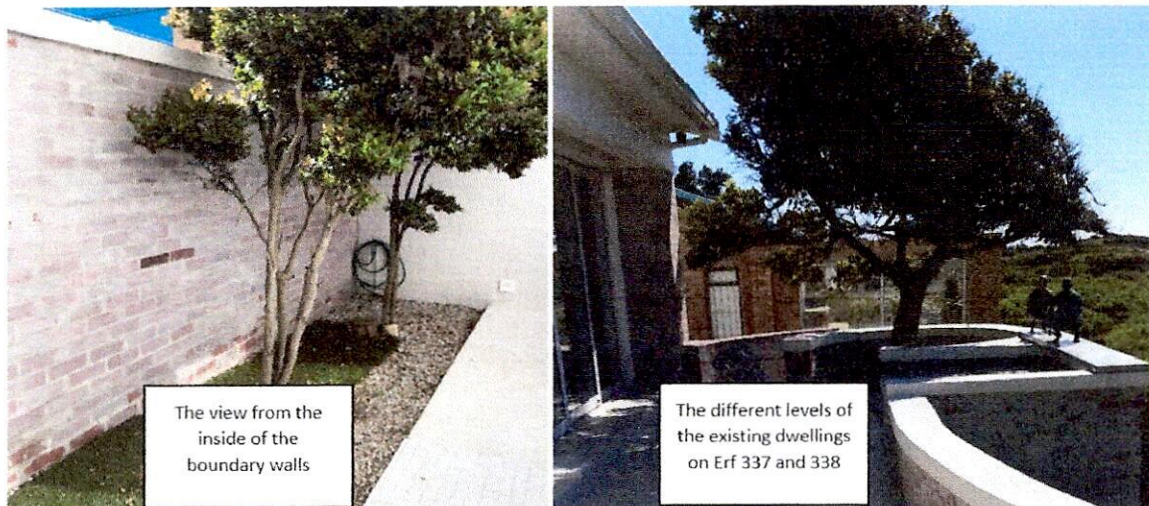


With reference to the photograph below it is clear that the untarred road in front of the property has no kerbs and the roads in general are being used to channel stormwater naturally to the lower laying areas. During heavy rains the stormwater cannot be contained within the current road infrastructure, causing water to run into lower laying residential erven, such as erven 337 & 338 Rooi Els, causing flooding of these properties. This was the reason for the comments received during the building plan submission that the dwelling proposed on Erf 338 Rooi Els should be raised to overcome the possibility of future flooding.



As mentioned earlier in this report, the dwelling on the subject property was erected on a suspended concrete slab to prevent flooding, as the erf is situated within a natural depression well below the road level. The arrows on the photograph above indicate the direction of the storm water runoff during heavy rain falls. Furthermore, the water tanks that are strategically placed on Erf 338 Rooi Els hold a large amount of rainwater, being $\pm 40\ 000\text{l}$ which could contribute to even more storm water problems for neighbouring properties, if they were not installed.

As seen in the photographs below the height of the boundary wall does not seem to be excessive viewed from the inside of the subject property but exceeds the maximum height allowed for boundary walls that is 2.1m. Even though the boundary walls exceed the height restriction it does comply with safety regulations as mentioned earlier. A safety compliance certificate was issued for the boundary walls constructed on the subject property. The constructed height of the walls provides privacy and security to the subject property owner as well as the neighbouring property owners.

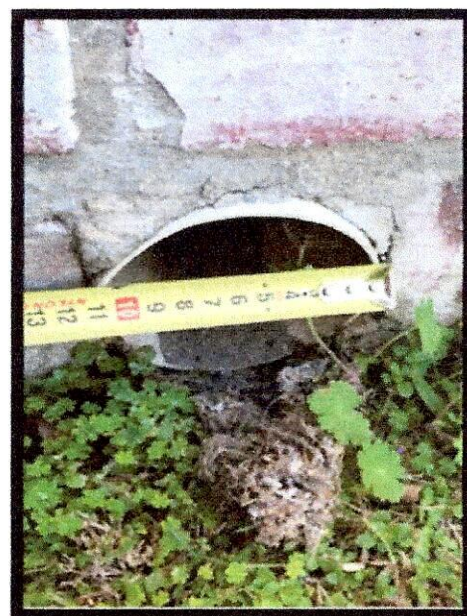
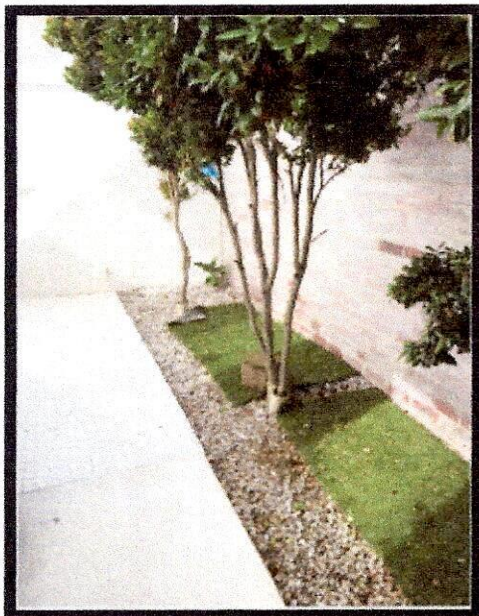


The existing planter situated within the western lateral boundary scheme building line and Title Deed building line of the subject property, which is part of a small low maintenance courtyard, does not have any impact on the neighbouring properties but however constitutes as a structure.

The existing planter that is higher than 1m above ground level is a low maintenance garden with artificial grass. Two 110mm planter drainage pipes flow from beneath the planter through the boundary wall towards the neighbouring property. Because the planter is a waterwise planter the outflow of water through these 110mm pipes is

minimal. **These pipes are not stormwater runoff pipes or pipes for the transfer of water from the roof of the dwelling and can be closed off, if required to do so.**

Water from the roof of the dwelling is channelled to the 3 holding tanks as previously mentioned. Due to the fact that the boundary wall on the western side of the property is not parallel to the actual boundary the water from the 2 above mentioned 110mm pipes exit onto Erf 338 Rooi Els and not onto Erf 337 Rooi Els as it is perceived. Please refer to the enclosed site plan and the photographs below depicting the small courtyard with the garden and the 110mm pipes exiting the wall, which are situated within the property boundary.



b) The conduct of the person involved in the contravention

The surveys carried out, confirmed the encroachments on the subject property. The owner of Erf 338 Rooi Els has given full cooperation to obtain approval for the encroachments since being made aware of the encroachments in 2018, while in the process of obtaining an occupancy certificate from the Overstrand Municipality. It was mentioned in the objections that correspondence was emailed to the Overstrand Municipality during 2016, none of which was forwarded to the owner. To the knowledge of Ms Muller her late husband who passed away in 2017 was also not aware.

Various professional consultants were appointed by the owner to oversee the building process on Erf 338 Rooi Els. The owner also appointed professional consultants to address these encroachments in order to be able to obtain an occupancy certificate, but the process was never completed. It should be reiterated that such a process is costly and since the previous application, submitted by another town planning consultant, was withdrawn the owner had to recover financially and restart the process.

c) Whether the unlawful conduct was stopped

The owner is in the process of addressing the contraventions by applying for the determination of an administration penalty, removal of a restrictive Title Deed condition and departures. The building work is already completed on the subject property and is of a high quality in nature.

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 be enforced for the unauthorised building work, we will submit the required report. The reason being that if there is a chance that no penalty fee is imposed the report will be unnecessary at this stage.

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 landowner, they have never previously contravened this By-Law or any other previous planning law, except for the current encroachments on the subject property, Erf 338 Rooi Els. It should be reiterated that the landowner has previously attempted to address the contraventions as mentioned earlier in this motivation and provides full co-operation to address the encroachments.

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. The boundary walls that are higher than the permissible 2.1m are only to protect the privacy of the landowner as well as the neighbouring properties.

It should be **reiterated** that the main cause for the higher walls is because of the suspended slab on which the dwelling is situated as a precautionary measure to counter flooding due to the subject erf being situated within a lower laying area. It is also important to take into consideration the confirmation of the building inspector for the area during an on-site meeting on the 17th of February 2023 where he confirmed the discussions to raise the dwelling as a precaution for stormwater flooding.

The water tanks are not clearly visible from the neighbouring property as there is a row of trees situated between the water tanks and the neighbour's dwelling. The water tanks play a huge role in catching rainwater run off that otherwise would have been dispersed of naturally on the subject erf. These tanks offer the same function than retention ponds and are to the benefit of the surrounding landowners, especially the adjacent lower laying residential erf.

With the proposed application the owner intends to obtain approval for the encroachments on the subject property and will also submit as built building plans in order to obtain the necessary approval from the building control department as soon as the land use application has been concluded. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons stated above.

3.4.2. Proposed Removal of Title Deed restrictions

The enclosed Title Deed, T73556/2014 contains the following restriction that must be addressed:

- **Page 4 paragraph F(4)(d)** *“no building or structure except boundary wall and fences shall be erected nearer than 4.72 metres to the street line which forms a boundary of this erf within 1.57 metres of any other boundary”.*

The reason for addressing the above-mentioned Title Deed restriction, **Page 4 paragraph F(4)(d)** is because the restriction contains a 4.72m street building line and a 1.57m common and rear building line. The existing structures that were erected by

the building contractor encroach the aforementioned common and rear building lines as stipulated in the applicable Title Deed.

If the mentioned Title Deed restriction is **not** removed the structures situated on the subject property cannot be legalised with building plan approval as the structures encroach the common and rear Title Deed building lines

The conveyancer's certificate compiled by **STBB** dated **20 June 2022** also confirmed the aforementioned restriction needs to be removed from the said Title Deed in order for the proposed building line encroachments to be approved. the removal of the restrictive Title Deed condition was not applied for during the previous application.

In terms of **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 existing structures to be approved in the current positions. It is important to note that the Title Deed building line encroachments are due to the fact that the house was raised above ground level as a precaution for flooding in the area and the erection of 3 water tanks that serve as a retention pond.

The removal of the restrictive Title Deed condition will place the owner in a position to obtain approved building plans and an occupation certificate. This developed property increases the market value of the area and attracts investment opportunities as the existing structures were aesthetically designed and developed and are of high quality. Future owners will also be able to purchase a property with approved building plans and an occupancy certificate in place.

- **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, which prevents the property to be developed to its full potential and according to the development rules as set out in the zoning scheme regulations. 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 increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

- **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 the existing structures can be legalised. The removal of the restrictive Title Deed condition will also grant the owner an opportunity to obtain approved building plans and an occupation certificate.

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

The particular township has already changed with approved departures within the township and the removal of restrictive Title Deed conditions. 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' requirements.

- **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 mentioned building line departures will be positive. Removing the condition will enable building plan approval after the land use application is concluded.

Removing the condition will also enable the legal utilization of the property in terms of modern city development. It is also the opinion that the current design and layout are as a precaution for flooding in the area and maintaining privacy between neighbours. The existing structures are also of high quality and do not have a negative visual impact on the surrounding area of Rooi Els.

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 curtails urban sprawl, and 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 the restrictive Title Deed restriction will not deprive any person in the subject area of Rooi Els as contemplated in **Section 25** of the **Constitution of the**

Republic of South Africa. By denying the removal of Title Deed restriction, will also deprive the current owner from legally utilizing the subject property to its full potential.

The application for the removal of a Title Deed restriction 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 Title Deed restriction will therefore be in the interest of the property owner in order to obtain approved building plans and subsequently an occupation certificate. It is important to note that such proposals have been approved in the past within the township.

3.4.3. Proposed departures

A survey was carried out by Van Dyk Land Surveyors to determine the position of the As Built structures in relation to the cadastral boundaries and the existing height of the structures on the subject property. The following became evident:

- The existing infill of the open terrace is higher than 1m (± 1.6 m) within the rear building line.
- The height of the boundary walls exceeds the permissible height of 2.1m;
- The suspended concrete slab on which the dwelling was erected also encroaches the lateral building line and is more than 1m above ground level;
- A planter situated in the western building line that forms part of a small courtyard which is situated higher than 1m above ground level;
- Three water tanks situated within the western lateral building line that exceed the permissible height for water tanks of 2.1m;
- The height of the existing boundary walls is also in contravention with the Heritage Protection Overlay Zone Regulations.

The Overstrand Municipality Zoning Scheme, Sections 16.1(i)(ii) and 16.6.1 read as follow:

Encroachment of building lines permitted

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

General encroachments permitted

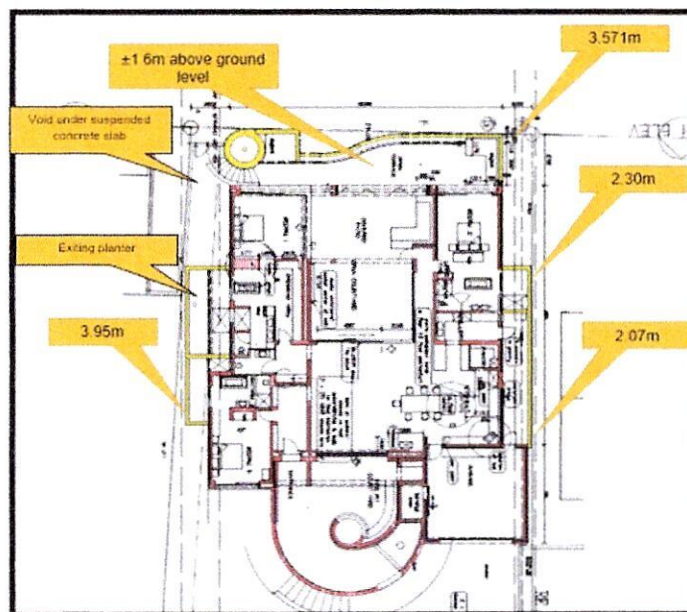
a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:

- (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;

Boundary Walls

Without the prior written permission of the Municipality, no boundary wall or fence shall exceed 2,1 m in height above the existing ground level abutting such wall or fence (unless other heights are required by Fire Regulations), provided that where the ground levels on opposite sides of the wall or fence are unequal, the height of the wall or fence shall be measured from the higher of the two levels.

With reference to the enclosed building plans compiled by Pieter Wasserman Architects, dated 15 January 2021 and the topographical/building footprint survey compiled by Van Dyk Land surveyors, the boundary walls do not all have the same height on the boundaries of the subject property. The walls vary in height from $\pm 2.07\text{m}$ to $\pm 3.95\text{m}$. The infill of the open terrace is also higher than 1m above ground level within the building line. The detail of the encroachments of the boundary walls and open terrace can be seen in the illustration below:



In terms of Section 16.6.1, a departure application needs to be submitted for boundary walls that exceed a height of 2.1m. It is proposed that the 2.1m height restriction be relaxed to $\pm 3.571\text{m}$ at the highest point on the eastern side, $\pm 3.95\text{m}$ at the highest point on the western side and $\pm 3.571\text{m}$ on the rear side of the subject property as illustrated above.

In terms of Section 16.6.1, without prior consent of the council, no boundary wall or fence shall exceed 2.1m above the existing ground level. The height of the existing boundary walls should be taken into consideration with the fact that the dwelling on the subject property has been constructed on top of a suspended concrete slab which elevates the height of the dwelling. The height of the boundary walls provides privacy to the property owner as well as neighbouring properties and also provides security. Without these boundary walls the dwelling will lose its functionality due to the lack of privacy.

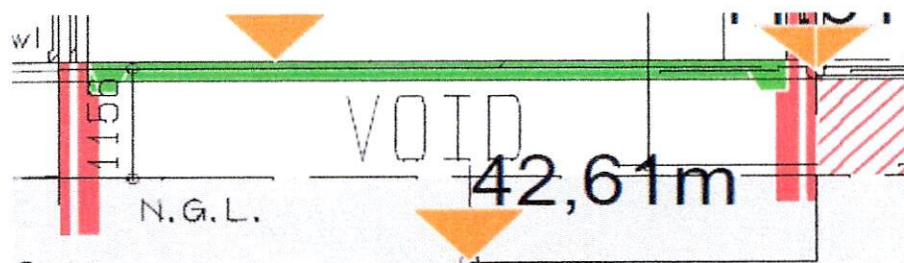
The **infill** at the seafront of the subject property where the **open terrace** is situated, was also constructed more than 1 meter (**$\pm 1.6\text{m}$**) above ground level within the scheme and Title Deed building lines. The plan from the land surveyor and the as built building plans confirm that the height of the open terrace measures approximately 1.6m above ground level and therefore an application for the **departure from the height restriction** in order to accommodate the existing open terrace is being submitted. The open terrace does not have any impact on the views of the neighbouring properties or the character of the Rooi Els area.

It is clear from the photographs below that excavations were done on the subject property during the construction phase. These excavations lowered the natural ground level at the time. **When the dwelling was thus raised during the construction phase it was executed from below natural ground level. Subsequently the structures viewed from the neighbouring properties are perceived to be higher than what they actually are because of the excavations that were carried out. As mentioned earlier, during the building plan approval discussion with the building inspector there was a concern of flooding because of the topography of the area and therefore it was recommended that the dwelling be raised as a precaution.**

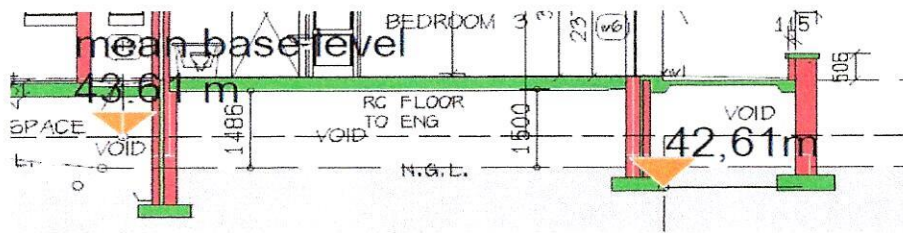


The height between the natural ground level and the suspended concrete slab varies between 1.156m and 1.5m within the eastern and western building lines as illustrated below.

Eastern elevation

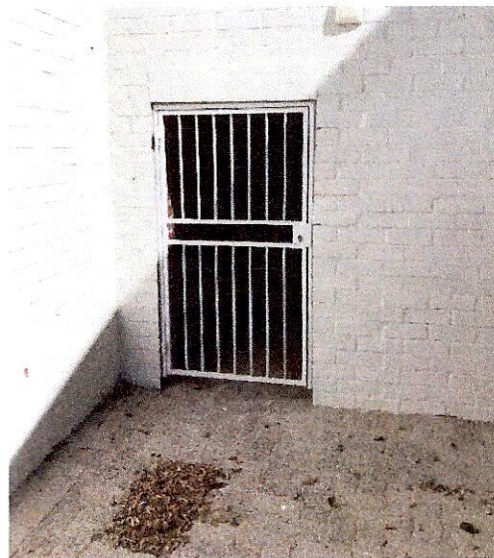


Western elevation



The dwelling was constructed on a suspended concrete slab in order to prevent flooding as mentioned earlier in this motivation. The suspended concrete slab does not have any impact on the surrounding properties and was merely erected in order to raise the dwelling above natural ground level.

Certain sections of the void under the concrete slab can also be accessed and are used as storage for canoes etc. Please refer to the photograph below depicting the access to the store area.

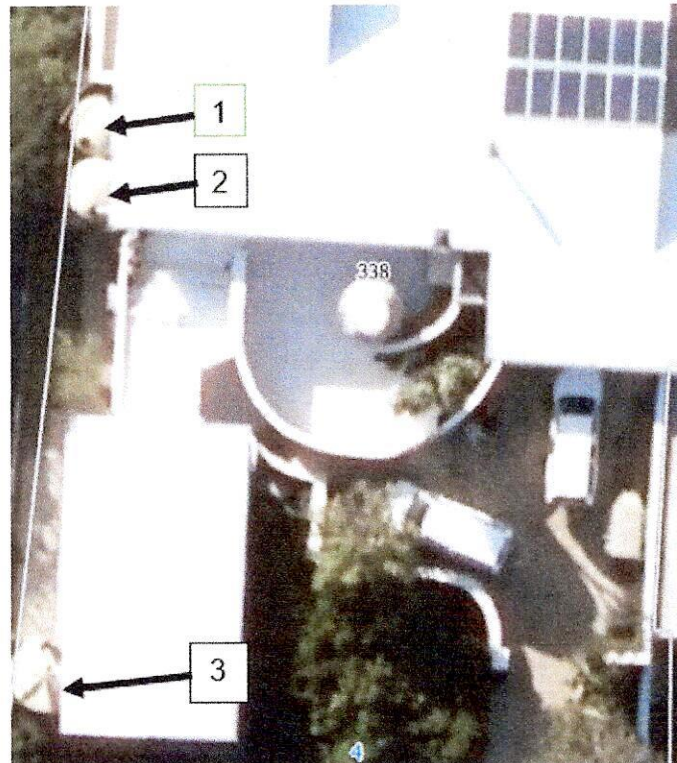


It should be reiterated that the void areas are **not** used as habital space. The space is below the water table and the floor/ceiling height is not desirable as little to no headspace exists.

According to Chapter 16, Section 16.1.1(a)(xii) water tanks not exceeding 2.1m in height may be erected over the prescribed building lines. Three water tanks are established within the western building line that exceed the permissible height of 2.1m allowed for water tanks located within the prescribed building lines.

The water tanks are established and the distances from the western boundary line can be tabled as follows:

Number	Distance from boundary	Specifications
1	±0.2m	10 000l
2	±0.32m	10 000l
3	±0.15m	20 000l



The position of the existing **water tanks** do not have any negative impact on the neighbouring property, Erf 337 Rooi Els. As mentioned earlier in this report, there is a row of trees established between the water tanks located on Erf 338 Rooi Els and the dwelling on Erf 337 Rooi Els.

Wooden lattice type screens have also been erected to screen the water tanks from the road. It is clear that the neighbouring property has very little sight of the existing tanks and therefore we are of the opinion that the existing tanks do not pose any negative impact on the neighbouring property. The colour of the 3 tanks are also compatible with the natural environment.

The **±40 000l** of stormwater available in the holding tanks is being used by the owner for household purposes. The water tanks act as retention ponds during the wet winter

months and have a positive impact on the adjoining low laying erven because most of the runoff water from the existing buildings is harvested in these water tanks. If these water tanks were not placed on the erf the rainwater runoff would have accumulated in the lower laying areas that could cause even worse flooding. The owner is also willing to cover these water tanks with environmentally friendly materials should it be required by the Overstrand Municipality.

The existing **planter** within the western building line is also higher than 1m above natural ground level. The reason for the height of the existing planter is because of the height of the suspended slab on which the dwelling was erected. The existing planter does not have any impact on the neighbouring property. The planter forms part of a small waterwise courtyard that is partially paved and partially covered with artificial grass and stones. 3 water wise trees have also been established in the planter. The planter does not have any impact on the neighbouring property. Please refer to the photograph below:



As mentioned earlier in this motivation, the two 110mm planter drainage pipes are situated beneath the planter through the boundary wall. Because the planter has waterwise plants the outflow of water through these 110mm pipes is minimal. These pipes are not stormwater runoff pipes from the roof of the dwelling. Only rain that falls within the ambit of the small courtyard drains via the planter through the 110mm pipes.

Water from the roof of the dwelling is channelled to the 3 water holding tanks previously mentioned. Due to the alignment of the boundary wall on the western side of the property, which is not parallel to the actual boundary, the 2 above mentioned 110mm pipes exit onto Erf 338 Rooi Els. A survey by Van Dyk land surveyors confirms the last mentioned statement: that the water transferred by the two pipes situated in the western wall exit within the boundaries of the subject property.

Departure from the Heritage Protection Overlay Zoning Regulation (HPOZ) 2020.

According to **Chapter 2 Section 12.8.1**, “*No solid, visually impermeable boundary treatments above 2.1m will be permitted*”. The existing boundary walls, exceed the permissible height of 2.1m as determined by a professional land surveyor, which is in contravention of the Heritage Protection Overlay Zone Regulation (HPOZ) 2020. As previously motivated the height of the existing boundary walls is the result of the suspended slab on which the house is situated.

The high boundary walls as perceived by the neighbouring landowner provides privacy and security due to the neighbouring structures being established on a much lower level than the dwelling on Erf 338 Rooi Els. The street boundary wall is in line with the Heritage Protection Overlay Zoning Regulations, 2020. Cognisance must also be taken of the fact that the boundary walls that exceed the 2.1m height restriction in terms of the Zoning Scheme were constructed well before the implementation of the Heritage Protection Overlay Zone regulations.

The departures do not have a negative impact on the character of the greater Rooi Els area. The dwelling and all its features are of high-quality finishes and are an asset to the area. Please refer to the enclosed as built plans for the detail of the above-mentioned departures.

It should be reiterated that the main reason for the proposed departures is the fact that due to the topography of the site it was necessary to construct the dwelling on a suspended slab to eliminate possible flooding. This resulted in the boundary walls being higher than 2.1m in height and having structures such as the planter located within the building line being higher than 1 meter. The water tanks, planter and infill in the open terrace also do not propose any impact or risks for the neighbouring properties. A certificate was issued by a professional engineer for the structures that include:

- concrete foundation;
- retaining wall;
- surface bed fill compaction testing;
- RC beams and slabs;
- timber roof trusses and rafters.

The mentioned certificate indicates that the above listed structures have been designed and constructed in accordance with Section 7 of the National Building Regulations and Building Standards Act.

3.5 ACCESS

Vehicular and pedestrian access to Erf 338 Rooi Els is from Hotel Crescent and will be retained.

3.6 SERVICES

All services on Erf 338 Rooi Els already exist. No additional services are required.

3.7 TITLE DEED

As previously mentioned, Title Deed No. T73556/2014 has a restrictive Title Deed condition that needs to be removed in order for this application to be approved.

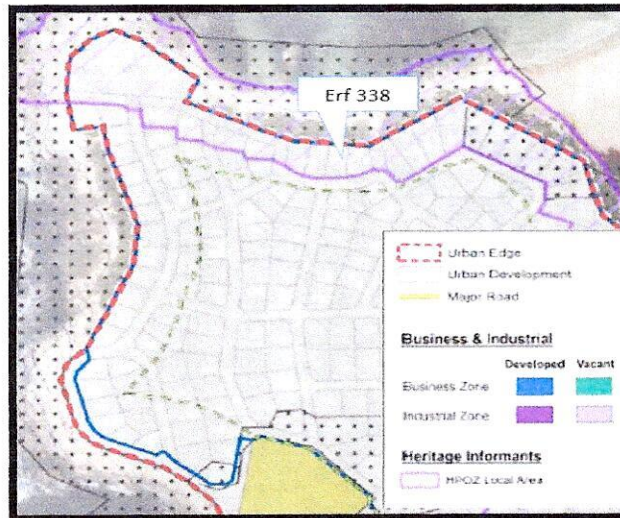
For detail pertaining to the removal of the restrictive Title Deed condition refer to **Section 3.4.2** of this report. Please refer to the conveyancer's certificate compiled by **STBB Attorneys** dated **20 June 2022**.

There is no bond registered against the property, Erf 338 Rooi Els.

3.8 FORWARD PLANNING

In terms of the **Overstrand Wide Spatial Development Framework, 2020** the subject property is earmarked for urban development purposes. The residential zoning of the subject property will be retained after the determination of an administrative penalty,

removal of a restrictive Title Deed condition and departure applications have been concluded.



Overstrand Growth Management Strategy

With reference to the Overstrand Growth Management Strategy the subject property falls within Planning Unit 1 that consists of Rooi Els as a whole. No densification proposals are made for this planning unit.

With the proposal, the densification for the Rooi Els area will not be impacted in any way. Therefore, the proposed departures fall within the prescribed guidelines for the specific area of Rooi Els.

3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

Erf 338 Rooi Els is 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.

The existing boundary walls are in contravention with the Heritage Protection Overlay Zone Regulations, 2020 and therefore a departure application to depart from the aforementioned policy is included in the proposed application.

In light of our motivation, it is evident that the proposed removal of restrictive Title Deed condition and departures will not have a negative impact on the heritage value of the subject property or the greater area of Rooi Els.

3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of a restrictive Title Deed condition and departures do 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 removal of a Title Deed restriction and departures are in line with the current land use tendencies in the vicinity within the Rooi Els area. The proposed applications are in order to address encroachments and the owner intends to provide full cooperation with the Overstrand Municipality.

Spatial sustainability: The proposed removal of a restrictive Title Deed condition and departures 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 Rooi Els.

Efficiency: The proposed application for the removal of a restrictive Title Deed condition and departures will promote the optimisation of the use of space within a developed residential area. The subject property is also situated close to the CBD of Rooi Els.

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 Amendment 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 a restrictive Title Deed condition and departures will not have a negative impact on the current character and land values of the surrounding erven;
- The main reasons for the proposed departures are because of the topography of the site and the low-lying area where Erf 338 Rooi Els and the adjacent erven are situated;
- The existing water tanks that can hold up to 40 000l of water are an asset to the neighbour due to the fact that it also acts as a water retention system during heavy rain fall;
- The boundary walls create privacy and security for both the owner and the neighbours;
- The statement made by the **building inspector, Mr Sherwin Rossouw**, during a site meeting on the 17th of February 2023, that confirmed that during building plan

discussions it was recommended that the structures be raised above ground level as a flooding preventative precaution;

- No additional services are required;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA);
- We request that a minimal penalty fee **not** be imposed.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would consider the application favourably for the dismissal of an administrative penalty, the Removal of a Title Deed Restriction and the departures of Erf 338 Rooi Els.

