

**ERF 3941, 266 EIGHT STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY AND DEPARTURE: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF LF BIDEN**

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) that an application has been received for the following:

- the determination of an administrative penalty in terms of Section 16(2)(q);
- departure in terms of Section 16(2)(b) for the following:
  - relaxation of the northern lateral building line from 2m to 0m to accommodate the change of use (existing en-suite bedroom and laundry room) and a new roof section addition to the laundry room on the 0m rear building line;
  - relaxation of the western lateral building line from 2m to 0m to accommodate the change of use on the 0m western lateral building line (existing en-suite bedroom);
  - deviate from the minimum parking bay length of 5m to 4,5m as stipulated in Section 17.1.5(a) of the Overstrand Municipality's Land Use Scheme (2020) to accommodate parking bays no. 2 and 3.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) on or before **20 August 2021**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to **Mr P Roux** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

**ERF 3941, AGTSTESTRAAT 266, VOËLKLIP, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK VIR BEPALING VAN 'N ADMINISTRATIEWE BOETE EN AFWYKING: MNRE PLAN ACTIVE STAD- EN STREEKSBEPLANNERS NAMENS LF BIDEN**

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) dat 'n aansoek ontvang is vir die volgende:

- die bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q);
- afwyking ingevolge Artikel 16(2)(b) vir die volgende:
  - verslapping van die noordelike laterale boulyn vanaf 2m na 0m om die gebruikverandering (bestaande en-suite slaapkamer en waskamer) en 'n nuwe dakafdeling by die waskamer op die 0m agterste boulyn te akkommodeer;
  - verslapping van die westelike laterale boulyn van 2m na 0m om die verandering van gebruik aan die 0m westelike syboulyn (bestaande en-suite slaapkamer) te akkommodeer;
  - afwyking van die minimum parkeerlengte van 5m tot 4,5 m soos uiteengesit in Afdeling 17.1.5 (a) van die Overstrand Munisipaliteit Soneringskema regulasies (2020) om parkeerplekke nr. 2 en 3.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) voor of op **20 Augustus 2021**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan **Mnr P Roux** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

**ISIZA ESINGU-ERF 3941, 266 EIGHT STREET, VOËLKLIP, HERMANUS, KUMMANDLA KAMASIPALA WASEOVERSTRAND: ISICELO SOKUQIKELELA IPENALTHI YOLAWULO NGOKWAHLULA:MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS EGAMENI LIKA-LF BIDEN**

UMasipala waseOverstrand ukhuphe isaziso esimayela nemiba yeSoloty lama48 Ngokuhlomela Umthethwana kaMasipala waseOverstrand Ngeziwangciso Zokusetyenziswa koMhlaba ku2020 (Umthethwana) isaziso sithi kufunyenwe isicelo esingale miba ilandelayo:

- ukuqikelelwa kwepenalthi yolawulo ngokwemiba yoSoloty le16(2)(q);
- ukwahlula ngokwemiba yeSoloty le16(2)(b) ngoluhlobo lulandelayo:
  - ukunyenysiswa komgca omelene nesakhiwo kwicala elisemntla ukusuka kwimitha ezi-2m ukuya kwi-0m ukulungiselela utshintsho ngokusetyenziswa(kwegumbi elinokulala ne-en-suite nendawo yokuhlambela impahla) nokongeza icandelo lwephahla elikwicala lendawo yokuhlambela impahla kwimitha ezingu-0m kwicala elingasemva komgca wesakhiwo;
  - ukunyenysiswa komgca wesakhiwo omelene necala elisentshona ukusuka kwimitha ezi2m ukuya kwimitha ezingu-0m ukulungiselela utshintsho kwindlela yokusebenzisa lo mgama ukusuka kwimitha ezingu0m kwicala elimelene nomgca wesakhiwo kwicala elisentshona (kwegumbi lokulala esikhona neline- en-suite);
  - ukushenxa kancinci kubude bendawo yokupaka ukusuka kwimitha eziyi-5m ukuya kweziyi-4,5m njengoko kuchaziwe kwiSoloty le-17.1.5(a) leSkim Sokusetyenziswa koMhlaba nguMasipala waseOverstrand (2020) ukulungiselela iindawo zokupaka eziyibhe nomb. 2 no 3.

Inkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku eziphakathi evekini ukususela phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Leziwangciso ngeDolophu, 16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo zingangeniswa ngokwezibonelelo zeSoloty lama-51 nelama-52 Omthethwana kaMasipala ochazwe ngentla (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngomhla okanye ngaphambi **20 uAgasti 2021**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla. Iimbuzo ngefowuni ingabuzwa ku**Mnu P Roux** kwa028-313 8900. UMasipala angala ukwamkela izimvo ezifunyenwe emva komhla wokuvula. Nabani na ongakwazi ukufunda okanye ukubhala angaya kwiSebe Leziwangciso ZeDolophu apho igosa liza kumnceda afake izimvo zakhe ngokusemthethweni.



**PROPOSED DETERMINATION OF AN ADMINISTRATIVE  
PENALTY APPLICATION**

**AND PROPOSED DEPARTURES**

**ERF 3941 HERMANUS**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Plan Active Town & Regional Planners has been appointed by L.F. Biden, the owner of erf 3941 Hermanus, to apply for the determination of an administrative penalty and departures of the subject property.

Erf 3419 Hermanus is 495m<sup>2</sup> in extent and is held by title deed no. T29243/2013.

There is an existing double storey dwelling with a single garage situated on the subject property.

An application for a departure on erf 3941 Hermanus was partially approved on 9 April 2021 (refer to a copy of the decision letter attached). The previous application approved the following:

- To relax the western lateral building line from 2m to 1,325m and 0,2m respectively to accommodate alterations on the ground floor and first floor; and
- To exceed the permissible height restriction applicable to boundary walls / fencing from 2,1m to 2,235m.

The departure described below, that was included in the previous application, was refused:

- To relax the rear building line from 2m to 0m in order to accommodate the proposed improvements to the building.

The reasons for the non-approval of the rear building line relaxation are described on page 2 of the decision letter dated 9 April 2021.

To allow the property owner to keep the existing As Built structures on the subject property, this application intends to address the following As Built structures with proposed additions (roof section) that encroach the Land Use Scheme Regulations (2020):

- The change of use (from approved carport to As Built bedroom, bathroom and laundry room) with new additions (roof section) within the 2m Land Use Scheme rear and western lateral building lines.

In addition, the layout of the existing structures on the subject property does not allow enough parking space to accommodate one parking bay in front of the existing garage to meet the parking requirement (two parking bays per dwelling). The length of the proposed parking bays no. 2 and 3 deviates from the minimum parking bay length and will be addressed with this application.

## **2. APPLICATION DETAILS**

Application is made in terms of:

- 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 for the unlawful land use of the As Built bedroom, bathroom and laundry, positioned in the north-western corner of the subject property;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for a departure from the Overstrand Land Use Scheme Regulations' building lines and parking requirements.

### **3. NEED AND DESIRABILITY**

#### **3.1 PROPERTY DESCRIPTION**

Erf 3941 Hermanus is situated at 266, 8<sup>th</sup> Street, Voëlklip. Refer to the locality plan attached.

Erf 3941 Hermanus is 495m<sup>2</sup> in extent and is held by title deed no. T29243/2013.

The subject property gently slopes from north to south and is characterized by residential structures (double storey dwelling with single garage) and a garden area. The existing structures have a combined footprint of 241m<sup>2</sup> in extent.

#### **3.2 ZONING**

Erf 3941 Hermanus has the following land use rights:

<b>ERF NUMBER</b>	<b>ZONING</b>
Erf 3941 Hermanus	Residential Zone 1: Single Residential

Surrounding properties are zoned for single residential, public road and public open space purposes.

#### **3.3 LAND USE**

There is an existing double storey dwelling with single garage and garden area situated on erf 3941 Hermanus. The subject property is therefore used for single residential living purposes.

Land uses that surround the subject property are single residential dwellings, beaches, public open spaces and public roads.

### 3.4 PROPOSAL

The following is proposed:

1. 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;
2. The **departure** of erf 3941 Hermanus in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
  - Relax the northern lateral (rear) building line from 2m to 0m to accommodate the change of use (existing en-suite bedroom and laundry room) and a new roof section addition to the laundry room on the 0m rear building line;
  - Relax the western lateral building line from 2m to 0m to accommodate the change of use on the 0m western lateral building line (existing en-suite bedroom).
  - Deviate from the minimum parking bay length of 5m to 4,5m as stipulated in Section 17.1.5 (a) of the Overstrand Municipality's Land Use Scheme (2020) to accommodate parking bays no. 2 and 3.

The potential of the subject property is discussed in detail in *Section 3.5 Potential of the property*.

The property owner proposes to make alterations to the existing laundry, bathroom and bedroom situated in the north-western corner of the subject property by adding a roof section to the laundry which will encroach upon the 2m rear building line. The change of use of a carport in the north-western corner to a garage and later a laundry with en-suite bedroom was never formally approved on any of the subject property's building plans, as was gathered from the following information:

- In 1973 a building plan was approved which only indicated the main dwelling with the garage. All buildings were to comply with the respective building lines.
- In 1974 a carport was constructed on the north western corner.
- In 1995 the carport was indicated as a garage (i.e. change of use) on the building plan.
- With the building plan submission in 1999 a laundry and the en-suite bedroom were indicated in the space of the garage (i.e. once again change of use), however the

building plan was not coloured in correctly to indicate the change of use or that the approved carport will be enclosed / converted into a garage and later an en-suite bedroom and laundry.

Our client bought the subject property in 1999 with the en-suite bedroom and laundry room As Built. Some additions and alterations to the existing dwelling were made, as indicated on the 1999 approved building plan. The 1999 approved building plan (dated 29 July 1999) indicates a portion of the dwelling unit situated on the northern rear boundary and western side boundary. This portion of the dwelling contains a bedroom, bathroom and laundry room. This portion is considered interleading and forms part of the main dwelling unit, as it is directly accessible from the rest of the dwelling unit via two doors.

The municipal report / evaluation for the 2020 / 2021 departure application indicated the following:

- Building control confirmed that the validity of the use change and the structure itself cannot be confirmed. In terms of the National Building Regulations Act 103 of 1977 all new work not previously approved must be coloured in on the building plan. As evident in recent court cases if the building or structure is not coloured in then the building / structures were never formally approved.
- As a result, the As Built en-suite bathroom and laundry room in the north-western corner of the subject property are considered illegal structures / use on the subject property.
- Since the As Built en-suite bathroom and laundry room are considered illegal structures, this must be addressed first / simultaneously before additions / alterations to these structures are proposed.
- A formal application must be submitted to legalise the existing encroachments prior to considering more / new encroachments of the rear building line.
- A simultaneous application for the determination of an administrative penalty must be submitted.

To allow the property owner to retain the existing As Built en-suite bedroom and laundry room and to simultaneously allow the new roof section addition to the laundry room, an application is submitted for the following:

- The determination of an administrative penalty for the existing en-suite bedroom and laundry room to allow the owners to keep these structures with its current use;
- The departure to:

- Relax the northern lateral (rear) building line from 2m to 0m to accommodate the change of use (existing en-suite bedroom and laundry room) and a new roof section addition to the laundry room on the 0m rear building line;
- Relax the western lateral building line from 2m to 0m to accommodate the change of use on the 0m western lateral building line (existing en-suite bedroom).

#### **3.4.1 Rectification of contravention**

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), 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.

As the application is for the rectification of a contravention of the By-Law (due to the existing As Built en-suite bedroom and laundry room, not being permitted by the current zoning scheme regulations), an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee.

In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

- **The Nature, duration, gravity and extent of the contravention**

Our client bought the subject property in 1999 with the en-suite bedroom and laundry room As Built. A land use application was considered in 2020 / 2021 for a departure to relax the western lateral building line, the rear building line and the permissible height restriction to accommodate alterations and additions on both the ground and first floors as well as the boundary walls / fencing. The land use application was partially approved due to a lack of desirability and illegal As Built encroachments that were not addressed in the application. Since the As Built encroachments on the rear and western lateral building lines were not

addressed in the previous application (en-suite bedroom and laundry room), the new roof section addition to one of the structures (laundry room) could not be considered favourably.

The history of the As Built en-suite bedroom and laundry room was previously described. These structures are indicated on the 1999 approved building plan but are deemed invalid since it was never shown as new additions / alterations or as a change of use with any of the previously building plan submissions.

The As Built en-suite bedroom and laundry room are combined  $\pm 27,5\text{m}^2$  in extent. There are no windows in the en-suite bedroom and laundry room positioned on the 0m western lateral and rear building lines and facing the neighbours to the west and north. In addition, almost a third of the structure is positioned below the original natural ground level (as shown on the western and eastern elevations). The impact on the neighbouring properties, if the use would have remained for storage / outbuilding purposes, would therefore have been the same since there are no windows and no roofs that impact on the light penetration or privacy. The slope of the subject property also mitigates the impact that the As Built structures might have.

The position and nature of the As Built en-suite bedroom and laundry room on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. A building line departure application to accommodate the As Built en-suite bedroom and laundry room on the 0m rear and 0m western lateral building lines is included in this application.

The As Built en-suite bedroom and laundry room are interleading with the existing dwelling. To demolish these structures will therefore not only have a great financial cost implication, but also be detrimental to the aesthetical and property value of erf 3941 Hermanus.

- **The conduct of the person involved in the contravention**

The owner was unaware that the As Built en-suite bedroom and laundry room in the north-western corner of the subject property were never previously approved. She bought the property in 1999 and as a result this portion of the dwelling with its current use has been on the property for more than 20 years. The property owner was also unaware that the land use application previously submitted by the appointed consultant had to address the

existing encroachments before new additions / encroachments could be considered. Once the previous land use application was refused, the property owner immediately appointed Plan Active Town Planners to assist in the matter.

- **Whether the unlawful conduct was stopped**

The owner was unaware that the As Built en-suite bedroom and laundry room in the north-western corner of the subject property were never previously approved. These structures were indicated as per the existing use on the 1999 approved building plan; hence it is understandable that she was under the impression that all existing structures on the 1999 building plan have been previously approved. The owner now attempts to rectify the contravention by submitting the administration penalty application in order to legalise the As Built structures on the subject property and to allow her to add a new roof section to the laundry room.

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

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised building works, we will submit a report from a quantity surveyor with reference to the unauthorised building works. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.

- **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, she has never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built en-suite bedroom and laundry room have had and will continue to have on the surrounding area. In addition, the new roof section to be added to the As Built laundry room (ground floor roof) will not negatively impact on the neighbouring properties since the room will be spanning between existing walls and will not protrude above any existing structures.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built en-suite bedroom and laundry room. The owner was unaware of the fact that the en-suite bedroom and laundry room were illegal uses of a previously approved structure. If this was known, she would have addressed the existing encroachments together with the proposed new roof section for the laundry encroachment in the 2020 / 2021 application.

Once the previous land use application to accommodate the new roof section to the laundry room was refused and the way forward was determined (to apply for both the existing encroachments and proposed new roof section), the owner immediately gave instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal penalty fee not be imposed on the property owner for the reasons given above.

#### **3.4.2 Departure (building line relaxations)**

As explained in the previous Sections and paragraphs the previous land use documentation (2020 / 2021) refused the new roof section to the laundry room since the history of the building plan approvals indicated that the en-suite bedroom and laundry room were not previously approved. It is now proposed to address the existing As Built and new proposed encroachments.

An application is submitted for a departure to relax the western lateral building line from 2m to 0m to accommodate the As Built en-suite bedroom (i.e. bedroom and bathroom).

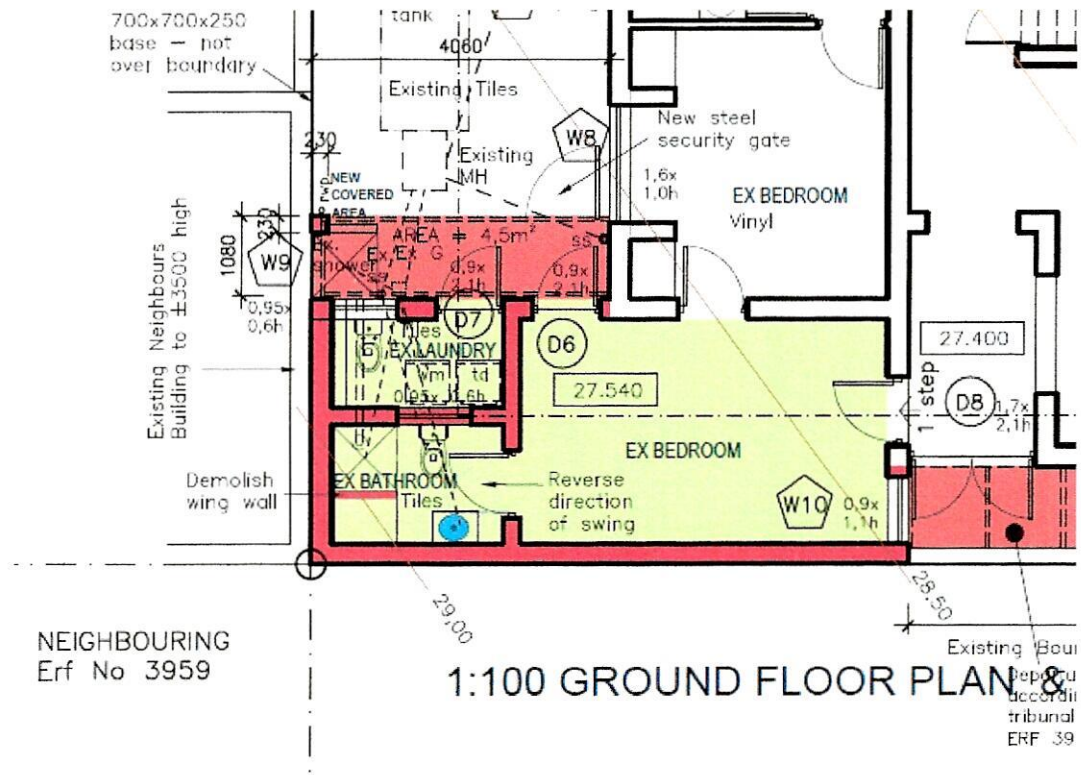
An application is also submitted for a departure to relax the rear building line from 2m to 0m to accommodate the As Built en-suite bedroom (bathroom specifically), the As Built laundry room and a new roof section for the existing laundry room. Refer to the site development plan attached.

The As Built en-suite bedroom and laundry room combined is  $\pm 27,5\text{m}^2$  in extent. There are no windows in the en-suite bedroom and laundry room positioned on the 0m western lateral and rear building lines and facing the neighbours to the west and north. In addition, almost a third of the structure is positioned below the original natural ground level (as shown on the western and eastern elevations). The impact on the neighbouring properties, if the use would have remained for storage / outbuilding purposes, would therefore have been the same since there are no windows and no roofs that impact on the light penetration or privacy. The slope of the subject property also mitigates the impact that the As Built structures might have.

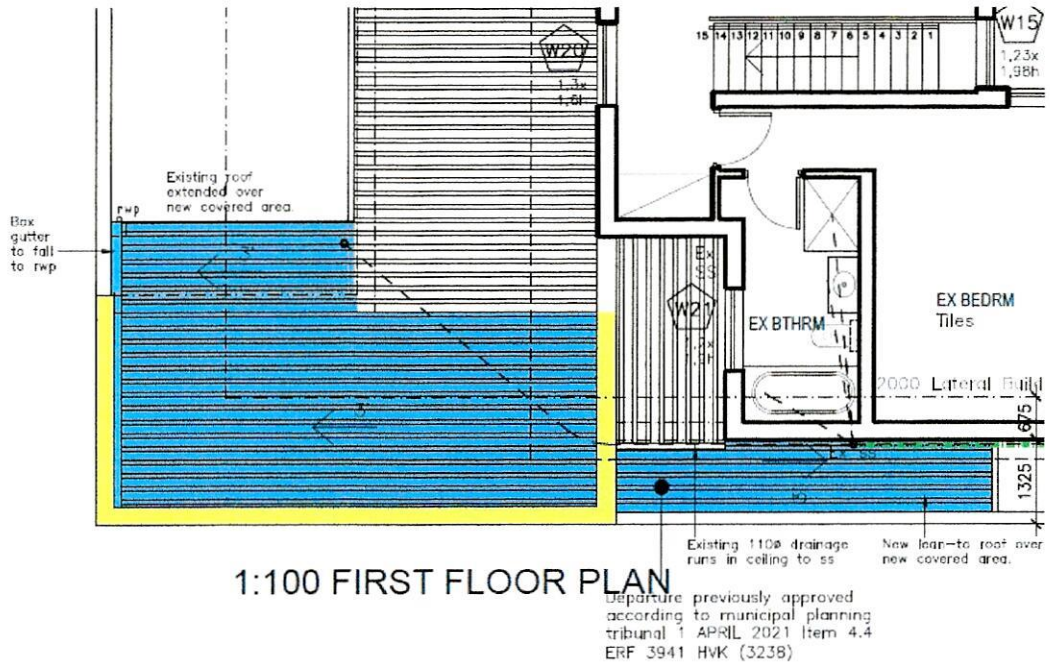
The new roof section proposed for the existing laundry room will be spanning between existing walls and will not protrude any existing structures. The new roof section will create a covered area of  $\pm 4,5\text{m}^2$ . When considering the elevation plans, the neighbours have no views of these roofs and will not be affected by any shading or reduced light penetration and privacy. The new roof section will be 2,59m high (from -0.5 base level to top of roof) and will match the existing corrugated roof. The pitch of the roof will be  $\pm 3^\circ$ . The new gutter and downpipe will be positioned on erf 3941 Hermanus and no rainwater will be discarded on the neighbouring property. Refer to the northern and eastern elevation plans attached and extract of the images above.

The position of the en-suite bedroom and laundry room is indicated in the images from the site development plan below:

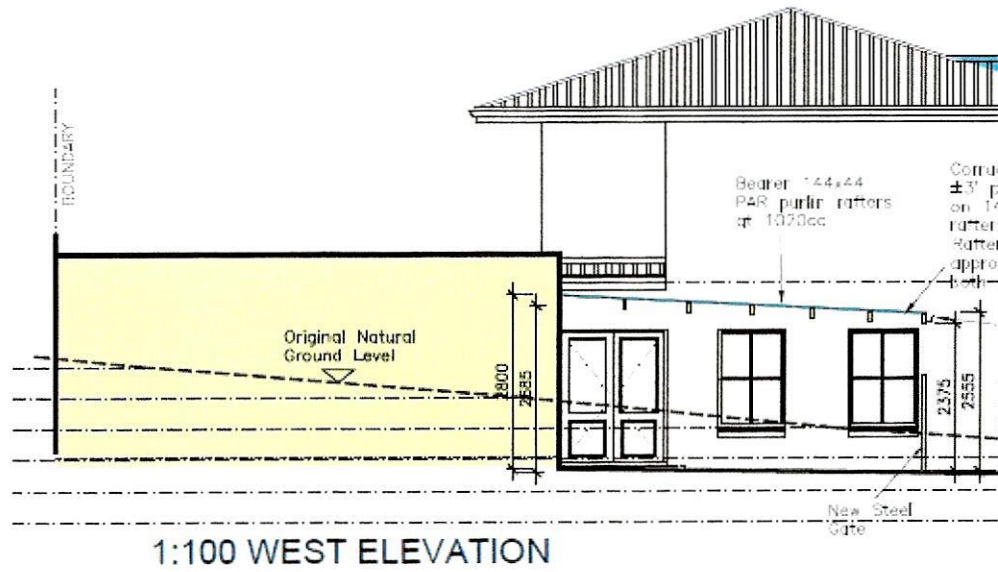
1. Position of en-suite bedroom and laundry room on ground floor plan



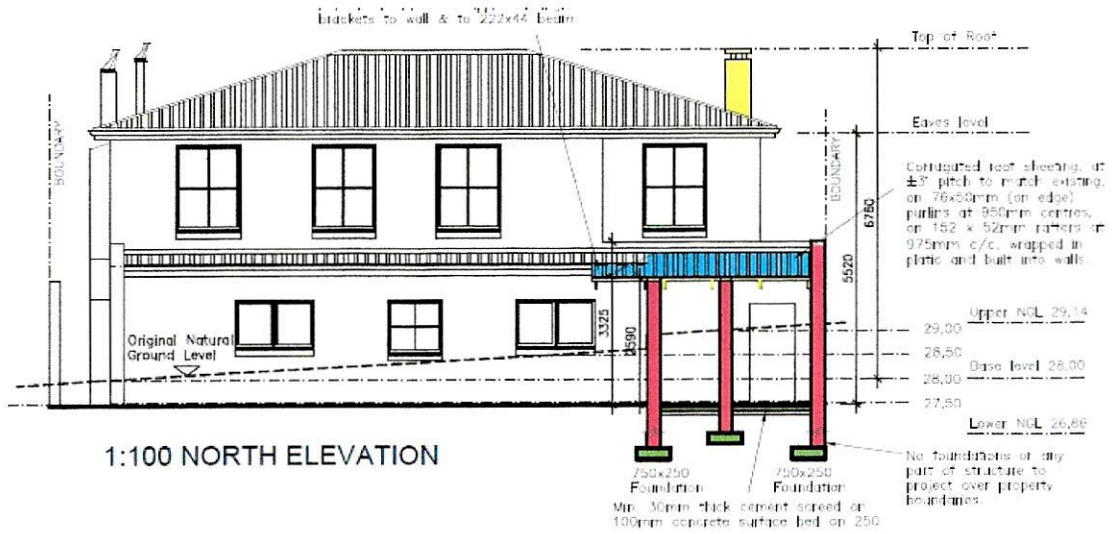
2. Position of the bathroom, bedroom and laundry room on the site plan



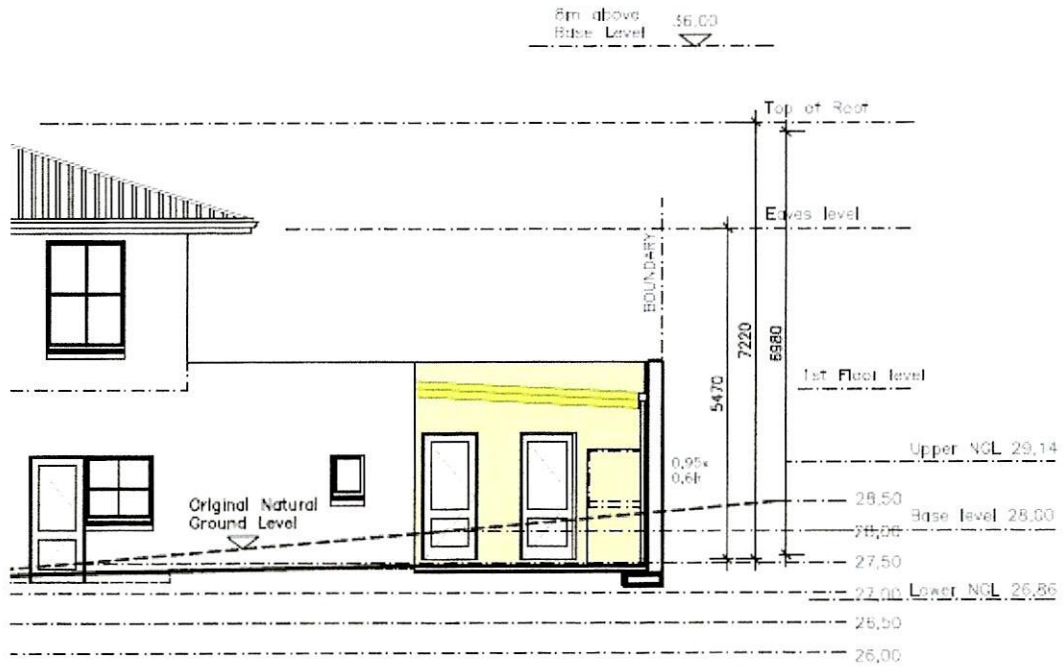
3. Western elevation of the en-suite bedroom



4. Northern elevation of the en-suite bedroom and laundry room



5. Eastern elevation of the laundry room



The reason for keeping the As Built en-suite bedroom and laundry room was already discussed in the previous paragraphs.

**3.4.3 General**

The proposed application has a nominal impact on the character and property values of the surrounding properties.

The position and nature of the As Built en-suite bedroom and laundry room on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date.

The As Built structures (en-suite bedroom and laundry room) and proposed alterations / additions (new roof section to the laundry room) on the subject property do not create an infringement to any passing traffic or public activity due to the position of the structures on the site, the change of use already shown on the 1999 building plan, placement of no windows on the boundary lines of the As Built en-suite bedroom and laundry room, the

slope of the property (and as a result the height of the structure above original natural ground level and base level and the impact on the views of neighbours), etc.

It is submitted that the massing and height of the existing structures with the new roof section are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 3941 Hermanus will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). All buildings and uses thereof as indicated on the site development plan already exist. The en-suite bedroom and laundry room were in existence for more than 20 years (as per its current use). The As Built structures, with the proposed new roof section addition, blend in well with the existing architectural style and massing of the structures. The subject property will comply with all other land use restrictions once the development is complete.

The area schedule and coverage for the subject property are as follows:

<b>AREAS:</b>	
<b>ERF AREA:</b>	<b>- 496m<sup>2</sup></b>
<b>Existing Gr Fl dwelling</b>	<b>- 181m<sup>2</sup></b>
<b>Existing 1st Fl dwelling</b>	<b>- 85m<sup>2</sup></b>
<b>Existing garage</b>	<b>- 33m<sup>2</sup></b>
<b>New Covered Areas Gr Fl</b>	<b>- 11m<sup>2</sup></b>
<b>New Covered Areas 1st Fl</b>	<b>- 24m<sup>2</sup></b>
<b>Coverage = 241m<sup>2</sup></b>	<b>- 48,6%</b>

The total coverage of 48,6% does not exceed the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing structures and additions / alterations are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed deviations, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departures of erf 3941 Hermanus are not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

### **3.5 THE POTENTIAL OF THE PROPERTY**

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed for low impact land uses only in future (such as bed-and-breakfast establishments, day care, guest house and home occupation uses). The proposed departure will not hinder any possible future land use applications on erf 3941 Hermanus.

The subject property has the potential and allows for the deviations being applied for when considering the potential of the subject property:

- The slope of the subject property minimalizes the potential impact of the existing As Built structures and new roof section addition;
- The As Built structures and new roof addition is ground floor level and height;
- The structures (except for the new roof section addition to the laundry room) have been on the property as per the current use for more than 20 years.
- Most Voëlklip erven are a mere 495m<sup>2</sup> in extent and keeping within the prescribed building lines remains a challenge in this area. It should also be considered that less stricter building lines applied between 1995 and 1999 (when the laundry and en-suite bedroom were constructed / change of use took place).
- The existing encroachment (en-suite bedroom and laundry room) and proposed encroachment (new roof section addition to the laundry room) are positioned in the north-western corner of the subject property – hardly visible from both 8<sup>th</sup> and 7<sup>th</sup> Street. The impact on the street interface will therefore be kept to a minimum.

The scale of the surrounding built environment, the low impact on the streetscape, the compliance with all other land use parameters, the slope of the subject property, building materials used, the roof height of the proposed roof section addition, the existence of the As Built en-suite bedroom and laundry room for more than 20 years, etc. are also factors that have to be considered when contemplating the potential of the property to accommodate the departures. The following factors confirm the potential of the property to accommodate the proposed building line deviations:

- good quality materials were used;
- the architectural style of the As Built alterations / additions match the architectural style of the existing approved structures.
- As Built alterations / additions indicated on the proposed site development plan will not encroach the Land Use Scheme's (2020) coverage.
- The dwelling will be used for residential purposes only (no change of use proposed – merely structural alterations).
- The As Built en-suite bedroom and laundry room with proposed alterations / additions (new roof section at the laundry room) adds value to the subject property as well as the area.

### **3.6 ECONOMIC IMPACT**

The proposed Land Use Scheme relaxation of the rear and western lateral building lines are to accommodate the As Built en-suite bedroom and laundry room with alterations / additions (new roof section to laundry room). The proposed departures will allow the owner to keep and legalise all structures on the subject property while simultaneously adding to the existing (what was thought to be approved) structures. This will favour the resale of the property in the future and have a positive impact on the adjacent properties. In addition, to demolish the As Built en-suite bedroom and laundry room will have a great cost implication for the property owner. By accommodating the As Built structures this existing extension of the dwelling (since the en-suite bedroom is interleading with the rest of the dwelling) can remain intact. The aesthetical and property value of the subject property will therefore remain unchanged. As discussed in previous sections the As Built encroachment (en-suite bedroom and laundry room) and new roof section addition to the

laundry room do not have a negative impact on the surrounding property owners.

The proposed deviations will have a low but positive impact on the local economy. One family will continue to reside on the property who will continue to invest in the local economy of the area.

### **3.7 SOCIAL IMPACT**

The proposed departures will have no impact on the social status quo of the area. The deviations will however allow the owner to retain all existing structures with their current uses on the subject property. The new roof addition to the As Built laundry room will have no impact on the social status quo of the area.

No negative impact on the social wellbeing of the surrounding community is anticipated. It is submitted that the property will be compatible with the character of the area and does not impact negatively on the rights of anyone else.

### **3.8 COMPATIBILITY WITH SURROUNDING LAND USES**

The subject property is situated in an existing low-density residential area. The application does not propose to change the zoning or land use of the subject property and therefore the proposal is compatible with the surrounding land uses.

The surrounding properties are developed with single and double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 3941 Hermanus (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate the As Built structures and new addition / alteration will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will primarily remain for residential purposes (dwelling with outbuilding).

There is no substantial impact on the streetscape as discussed in detail in Sections 3.4, 3.5 and 3.11 of this report.

### **3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES**

All services on the subject property already exist. The As Built structures with additions / alterations will have no impact on the scale and usage of the existing available services since no additional loading of the existing civil infrastructure is anticipated.

The new gutter and downpipe for the new roof section at the laundry room will be positioned on erf 3941 Hermanus and no rainwater will be discharged on the neighbouring property.

Additional services (if required) will be provided to the satisfaction of the Overstrand Municipality.

### **3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY**

The proposed departures will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of one family will continue to occupy the subject property. Although the As Built en-suite bedroom and laundry room are considered habitable areas, these structures have been used as habitable areas for more than 20 years. No windows on the common boundaries with the neighbouring properties and the ground floor level height of these As Built structures mitigate the possible impact the As Built structures with additions / alterations have on the neighbouring properties.

To keep the As Built encroachments (en-suite bedroom and laundry room) with added roof section to the laundry room does not compromise the safety and privacy of the

adjacent property owners. The As Built structures with the roof addition still ensure that the dwelling remains aesthetically pleasing.

Since the proposed departures are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

### **3.11 IMPACT ON HERITAGE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. Consequently, the proposed application for the departures does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 3941 Hermanus is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme Heritage Overlay Zone (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

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

In the light of the above mentioned it is evident that the proposed departures will not have a negative impact on the heritage value of the Hermanus area.

### **3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Overlay Zone (2020).

### 3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 3941 Hermanus will remain unchanged and will be from 8<sup>th</sup> Avenue. Refer to the site development plan.

The Overstrand Municipality Land Use Scheme Regulations (2020) stipulate that a minimum of two parking bays are required for a dwelling house. There is an existing single garage on the subject property. In addition, there are an additional two parking bays in front of the garage. Due to the position of the existing single garage and gate, the space available for the two parking bays are only 4,5m in length. Our client confirmed that both his vehicles can park with ease in the single garage and in front of the garage. The total available width in front of the garage ( $\pm 6,65\text{m}$  or at least  $2,65\text{m}$  per bay) allows for sufficient space to park the vehicle behind the closed gate (at a slight angle if required). However, since the length of parking bays no. 2 and 3 is only 4,5m, a departure is submitted to deviate from the section 17.1.5 a) as follows:

- To deviate from the minimum length of a parking bay of 5m to 4,5m.

The size and position of the existing approved structures on the subject property must be considered. The existing garage was approved in its current position in 1999. In addition, the prerequisite to provide a minimum of two parking bays on site is applicable to even larger than  $400\text{m}^2$ . The subject property is a mere  $495\text{m}^2$  in extent.

Although a deviation from the minimum length of a parking bay is proposed, two vehicles can easily park on the subject property (one inside the single garage and one in front of the garage). Regardless of the deviation being applied for, the impact on the traffic and services will still be kept to a minimum.

The subject property will still be used primarily for single residential purposes and therefore the impact on the traffic flow in the area will remain unchanged.

### 3.14 TITLE DEED

Title Deed no. T29243/2013 has no restrictions that need to be removed for this application for the departure of the prescribed building lines to be approved.

There is no bond registered against erf 3941 Hermanus.

### 3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 3941 Hermanus is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departures on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 3941 Hermanus forms part of Planning Unit no. 6 for Hermanus East. Densification from 8,6du to 11,6du is proposed for this planning unit. No additional portions or second dwelling units are proposed with this application. The status quo of the area (low density residential) will remain unchanged. The land use application for the subject property therefore falls within the existing planning for the Hermanus East area.

The proposal will promote land development in a location that is sustainable. The proposed departures are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment.

The impact on the overall density of this part of Hermanus will therefore be kept to a minimum since the proposed application still promotes a low-density residential area.

From the above it is evident that the proposed development **adheres and complies** with the relevant municipal spatial planning policies.

### 3.16 PLANNING PRINCIPLES

The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1937.

The proposed application will not further promote the spatial development imbalances. This application is for an erf as per the establishment of the existing Hermanus Township. The proposed application is in character with the existing area (Voëlklip – Hermanus East) where similar applications have been approved in the past and therefore, the approval of the proposed application will not be spatially biased.

Spatial sustainability: The proposed departure will have no impact on the visual elements of the subject property and surroundings since the As Built en-suite bedroom and laundry room already exist. The impact of the extension of the roof / new roof section at the laundry room will be minimal as described in the previous sections of this report. It is submitted that the existing As-built en-suite bedroom and laundry room with new roof section are compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the western lateral and rear building lines has no impact on the massing of the buildings and the impact on the streetscape or passers-by is considered minimal. The As-built structures merge well with the area. The impact on the biophysical environment will also be kept to a minimum since the structures already exist. The new roof section at the laundry room will have no impact on the biophysical environment.

Factors such as the good quality materials used, the overall layout of the structures on the subject property, the existence of the As Built structures and the use thereof for the past 20 years, the scale of the surrounding built environment, the low impact on the streetscape, the slope of the subject property with due consideration of the existing height of the As Built structures and height of the new roof addition to the laundry room, etc.

allow for the consideration and approval of the proposed deviation without having an adverse impact on the spatial sustainability of the area. The As-Built structures with alterations / additions as described in this report are to an improved erf within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment. The deviation from the minimum parking requirements has no impact on the spatial sustainability of the area.

The application is considered spatially sustainable as the existing property will be more optimally utilised. The existing structures are compatible with the character of the area and do not impact negatively on the rights of any adjacent property owner.

Efficiency: The subject property is easily accessible and conveniently located close to Hermanus CBD and major routes. It proves to be resourceful to consider the alterations to the subject property since it is compatible with the existing built environment and the way the As Built structures were built is aesthetically pleasing.

It proves to be efficient to accommodate the As Built en-suite bedroom and laundry room with the proposed roof section at the laundry room since the impact on the whole look and feel of the subject property will add value to the property and the area as a whole.

The proposed departures prove to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

Good administration: Our firm 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 owner intends to legalise the encroachments and obtain approved building plans from the building control department;
- The approved building line and height deviations as per the decision letter dated 9 April 2021 will remain applicable;
- The As Built en-suite bedroom and laundry room exist for more than 20 years as per the current use (habitable area);
- The only new encroachment proposed with this application is to accommodate a new roof section at the laundry room positioned on the rear boundary;
- The proposed determination and exemption of an administrative penalty is to accommodate the As Built en-suite bedroom and laundry room only;
- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification status quo of the area will remain unchanged;
- The zoning and primary land use of the subject property will remain unchanged;
- The proposal is compatible with the existing built character of the area;
- Although a deviation from the minimum length of a parking bay is proposed, two vehicles can easily park on the subject property (one inside the single garage and one in front of the garage). Regardless of the deviation being applied for, the impact on the traffic and services will still be kept to a minimum;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The impact on the heritage value of the dwelling and site will be minimal;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

The application can be supported for your favourable evaluation. The opinion is held that this application will have no negative impact on the land values, privacy, built environment and character of the area.

**GENERAL NOTES**

1. General dimensions to be taken in accordance to scaling. All dimensions, sizes and levels to be checked on site by the contractor and any discrepancies to be reported to the architect for resolution before any work is put in hand.

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**GENERAL WORK:** TO COMPLY WITH SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**FOUNDATIONS:** ALL FOUNDATIONS OR ANY PART OF STRUCTURE TO PROJECT OVER EXISTING FLOOR FINISH TO BE MIN. 200mm THICK & PROJECT MIN. 100mm FROM EXISTING EXTERIOR WALL FINISH.

**CONCRETE:** ALL CONCRETE TO BE 20MPa UNLESS OTHERWISE SPECIFIED.

**WALLS:** ALL WALLS TO BE TIED TOGETHER WITH 2.5 WIRE TIES PER 500mm VERTICALLY.

**ROOFING:** ALL ROOFING TO BE 12% FALL UNLESS OTHERWISE SPECIFIED.

**CEILING:** ALL CEILING TO BE 2.4m HIGH UNLESS OTHERWISE SPECIFIED.

**FLOORING:** ALL FLOORING TO BE 100mm THICK UNLESS OTHERWISE SPECIFIED.

**DOORS:** ALL DOORS TO BE 2100mm HIGH AND 900mm WIDE UNLESS OTHERWISE SPECIFIED.

**WINDOWS:** ALL WINDOWS TO BE 2100mm HIGH AND 1200mm WIDE UNLESS OTHERWISE SPECIFIED.

**GLAZING:** ALL GLAZING TO BE 6mm THICK UNLESS OTHERWISE SPECIFIED.

**INSULATION:** ALL INSULATION TO BE 100mm THICK UNLESS OTHERWISE SPECIFIED.

**PAINTS:** ALL PAINTS TO BE AS SPECIFIED IN THE SCHEDULE OF MATERIALS.

**FINISHES:** ALL FINISHES TO BE AS SPECIFIED IN THE SCHEDULE OF MATERIALS.

**MECHANICAL:** ALL MECHANICAL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**ELECTRICAL:** ALL ELECTRICAL SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**PLUMBING:** ALL PLUMBING SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**HEATING:** ALL HEATING SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Cooling:** ALL COOLING SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Security:** ALL SECURITY SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Fire:** ALL FIRE SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Acoustic:** ALL ACOUSTIC SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

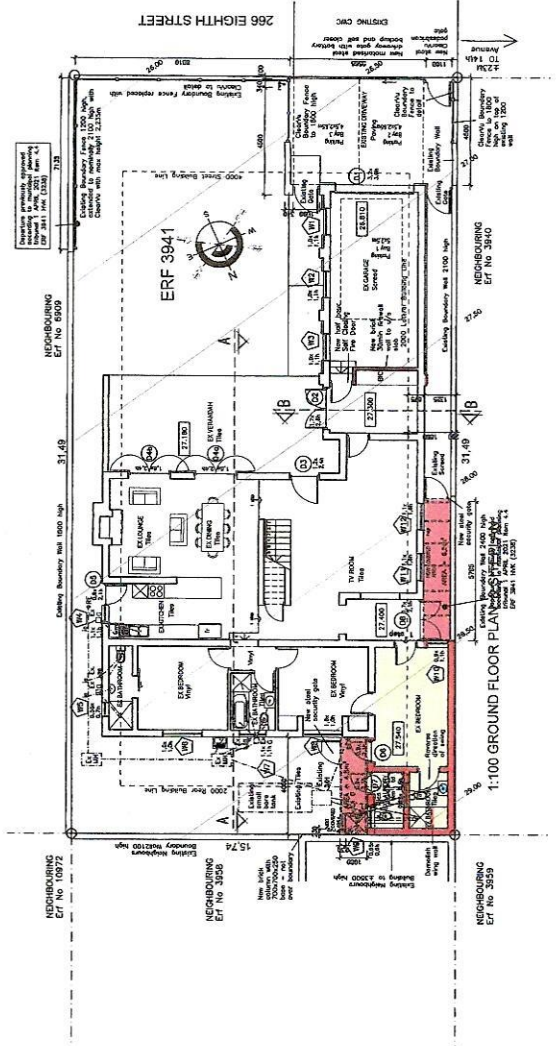
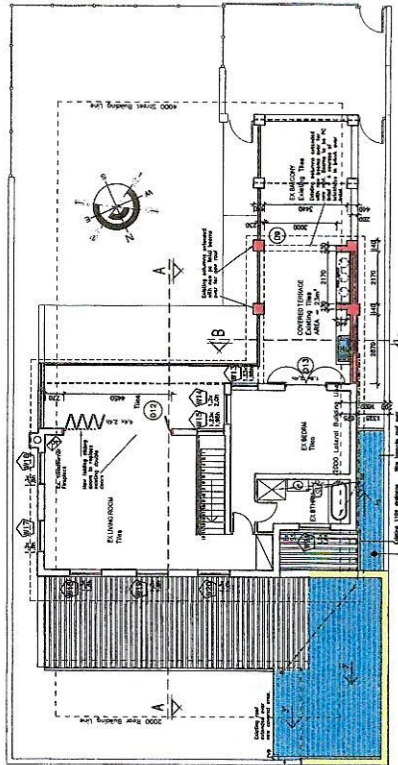
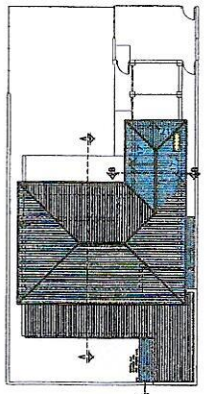
**Lighting:** ALL LIGHTING SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Signage:** ALL SIGNAGE SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

**Other:** ALL OTHER SERVICES TO BE INSTALLED IN ACCORDANCE WITH THE SANS 10400 AND LOCAL AUTHORITY BY-LAWS.

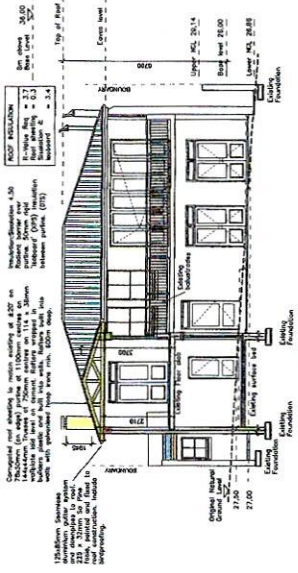
<b>REVISION DATE</b>	
A	22-05-2018 Council Submission
B	19-05-2018 Revised Council Submission
C	15-05-2018 Revised Council Submission
D	24-04-2021 Updated Council Submission
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DESIGNER:	DATE:
PROJECT:	
HOUSE BIDEN	
266 EIGHTH STREET	
ERF 3941 HERMANUS	
DRAWING:	
COUNCIL SUBMISSION DRAWING	
SCALE:	FORMAT BY:
1:100	DPS
DRAWING NUMBER:	REV:
MB-H-100	D

<b>AREAS:</b>	
EXISTING AREA	- 480m <sup>2</sup>
NEW COVERED AREA	- 85m <sup>2</sup>
EXISTING GARAGE	- 33m <sup>2</sup>
NEW COVERED AREA OF FI	- 11m <sup>2</sup>
NEW COVERED AREA OF FI	- 405m <sup>2</sup>
Coverage	- 2,41m <sup>2</sup>

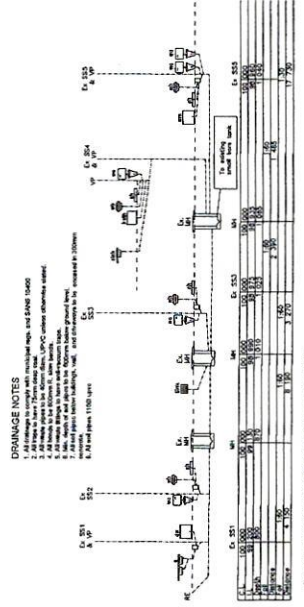
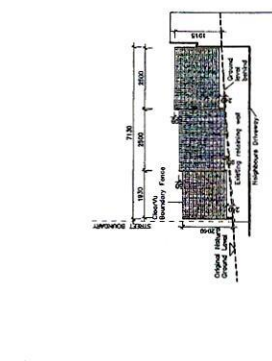
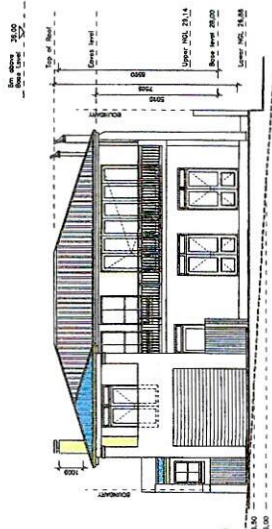
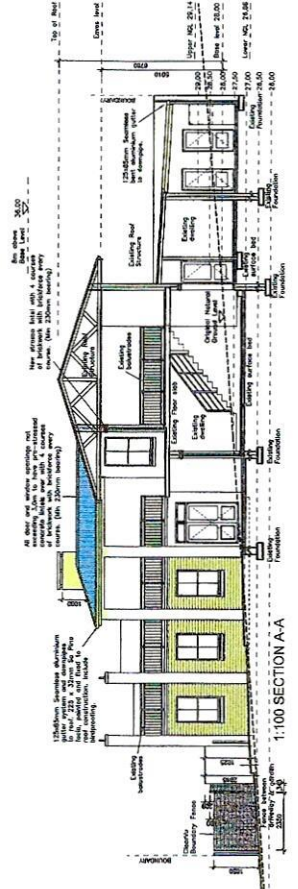


**GENERAL NOTES**

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**1:100 SECTION A-A**



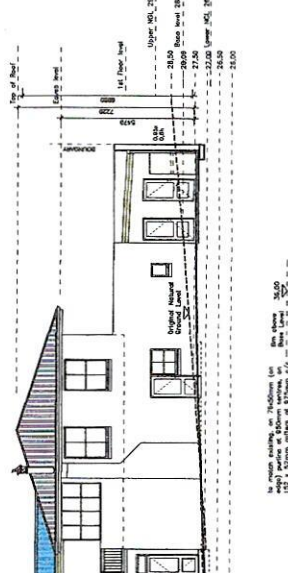
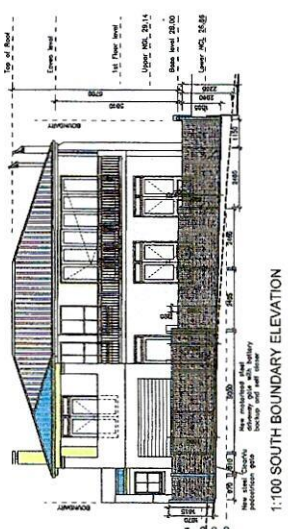
1:100 SOUTH ELEVATION

1:100 EAST BOUNDARY ELEVATION

DIAGRAMMATIC DRAINAGE SECTION

1:100 SECTION B-B

1:100 SECTION A-A



1:100 SOUTH BOUNDARY ELEVATION

1:100 EAST ELEVATION

1:100 NORTH ELEVATION

1:100 SECTION B-B

1:100 SECTION A-A

**REVISION DATE**

- A 22-05-2018 Create Submission
- B 18-08-2018 Revised Ground Submission
- C 28-04-2021 Updated Council Submission

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**OWNER:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**PROJECT:**  
 HOUSE BIDEN  
 266 EIGHTH STREET  
 ERF 3941 HERMANUS

**DRAWING:**  
 COUNCIL SUBMISSION DRAWING

SCALE:	DRAWN BY:	REV:
1:100	BPS	D
DRAWING NUMBER:		
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