

**ERF 338, 4 HOTEL CRESCENT, ROOIELS: APPLICATION FOR DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLAN ACTIVE (obo HMMM BELEGGINGS TRUST)**

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 as follows:

- In terms of Section 16(2)(b) of the By-Law for a departure to exceed the maximum permissible boundary wall height from 2,1m to 2,07m; 2,30m; 3,571m and 3,95m respectively; and also to exceed the maximum permissible height of the existing infill of the open terrace from 1m to ±1,6m.
- In terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for unauthorised land use as mentioned above.

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, at the Betty's Bay Library, Clarence Drive, Betty's Bay and at the RESA Office, Anemone Road, Rooiels. Any written comments must 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) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before **3 September 2021**, quoting your name, address, contact details, interest in the application and reasons for comments. 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 comment.

**ERF 338, HOTEL SINGEL 4, ROOI ELS: AANSOEK OM AFWYKING EN BEPALING VAN ADMINISTRATIEWE BOETE: PLAN ACTIVE (obo HMMM BELEGGINGS TRUST)**

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

- Ingevolge Artikel 16(2)(b) van die Verordening vir 'n afwyking om die maksimum toelaatbare hoogte van 'n grensmuur te oorskry vanaf 2,1m na onderskeidelik 2,07m; 2,30m; 3,571m en 3,95m; en ook om die maksimum toelaatbare hoogte van die bestaande invul van die oop terras vanaf 1m na ± 1,6m te oorskry.
- Ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete vir ongemagtigde grondgebruik soos hierbo genoem.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus; by die Bettysbaai Biblioteek, Clarencerylaan, Bettysbaai en by die RESA kantoor, Anemoneweg, Rooiels. Enige kommentaar moet skriftelik ingedien word in terme van Artikels 51 en 52 van die bogenoemde Verordening aan die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) voor of op **3 September 2021**, stipuleer u naam, adres, kontak besonderhede, belang in die aansoek en 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 ten einde hul kommentaar te formuleer.

**ISIZA ESINGU-ERF 338, 4 HOTEL CRESCENT, ROOI ELS: ISICELO SOKWAHLULA NOQIKELELO LOMDLIWO (LWEPENALTHI) YOLAWULO: NGABAKWAPLAN ACTIVE (egameni leHMMM BELEGGINGS TRUST)**

Kukhutshwe isaziso ngokwemiba yeSoloty lama-48 nguMasipala waseOverstrand esingoMthethwana wokuHlomela uMthethwana ongeZicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana) isaziso eso sithi kufunyenwe isicelo esimayela ngoku kulanelayo:

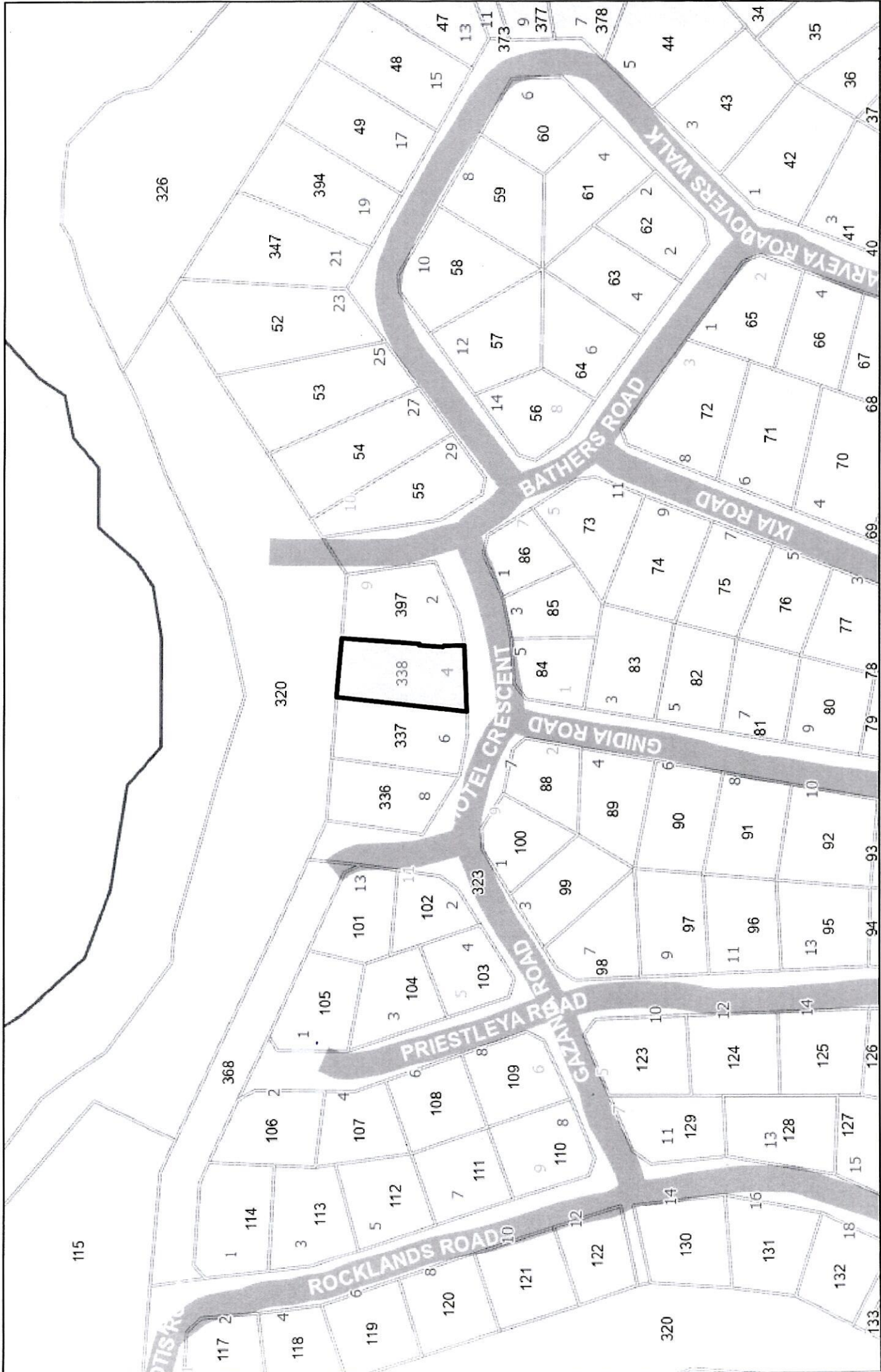
- Ngokwemiba yeSoloty le16(2)(b) loMthethwana wokwahlula ukudlula ukuphakama kodonga olwahlula umda ovunyelweyo nophakame ngeemitha ezi-2,1m ukuya kwezi-2,07m; 2,30m; 3,571m nezi-3,95m ngokulandelelana; kunye nokudlula ukuphakama okuvumelekileyo ngokwakha kwindawo elungqameko olubupavumente evulekileyo ukusuka kwimitha e-1m ukuya kwimitha e-1m to ±1,6m.
- Ngokwemiba yeSoloty le16(2)(q) loMthethwana woqikelelo lomdlwo (ipenalthi) yolawulo lokusetyenziswa komhlaba kamasipala ochazwe ngasentla, ungagunyaziswanga.

linkcukacha ezimayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini phakathi kwentsimbi ye-08:00 neye-6:30 kwiSebe: LeZicwangciso zeDolophu, 16 Paterson Street, Hermanus, Betty's Bay Library, Clarence Drive, Betty's Bay naseRESA Office, Anemone Road, Rooiels. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zeSoloty lama-51 nelama-52 loMthethwana kaMasipala ochazwe (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ngomhla okanye ngaphambi komhla **wama-3 kuSeptemba ka2021**, uchaze igama lakho, idilesi, iinkcukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla kwakho. Imibuzo ngeowuni ingabuzwa kuMcowangcisi Omkhulu weDolophu, **Nkszn. H. van der Stoep** kwa-028-313 8900. UMasipala angala ukwamkela izimvo zakho emva komhla wokuvula. Nabani na ongakwazi ukufunda okanye ukubhala angahambela kwiSebe leZicwangciso zeDolophu apho igosa likamasipala liza kunceda ukuze ufake isicelo sakho ngokusemthethweni.

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

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**PROPOSED DETERMINATION OF AN  
ADMINISTRATIVE PENALTY  
AND DEPARTURES**

**ERF 338 ROOI ELS**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

1. **BACKGROUND**

Mrs. C.U. Coetzee the owner of Erf 338 Rooi Els, on behalf of HMMM Beleggings Trust, has instructed the company Plan Active to apply for the determination of an administrative penalty and departures of Erf 338 Rooi Els.

After a survey was carried out by Van Dyk Land Surveyors it became evident that the height of some of the boundary walls exceed the maximum allowable height of 2.1m for boundary walls. It also became clear that the infill of the open terrace is also higher than 1m above ground level within the building line and that a portion of the dwelling is erected on a suspended concrete slab, of which the slab encroaches the lateral building line and is higher than 1m. It is the intention to correct these encroachments by applying for the determination of an administrative penalty and departures.

Erf 338 Rooi Els is 1208m<sup>2</sup> 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.
- 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 1208m<sup>2</sup> 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 public open space.

### **3.3 LAND USE**

Erf 338 Rooi Els is used for residential purposes. A dwelling and a garage are situated on the subject property.

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 single residential area.

### **3.4 PROPOSAL**

The following are proposed:

- The departure from the prescribed building lines in terms of Chapter 4, Section 16(2)(b) 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 1208m<sup>2</sup> in extent. The intention of the owner of the subject property is to legalise 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. It is also clear that the suspended concrete slab, on which the existing dwelling is erected, encroaches the lateral building line and is more than 1m in height. The intention of the owner is to legalise these encroachments that are addressed in the proposed application.

#### **3.4.1. Determination of an administrative penalty**

A topographical survey was conducted of the subject property. The mentioned survey confirmed that the boundary walls were 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 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 building line that is higher than 1m.

The owner now intends to legalise the encroachments and to submit as built building plans after the land use approval is obtained.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

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

#### **3.4.1.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY**

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

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. All these encroachments became clear with the topographical survey carried out by a professional land surveyor. The encroachments do not have a major impact on the surrounding properties.

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

##### **Erf 338 Rooi Els**

<b>Structure</b>	<b>Extent of unauthorised building work</b>
Infill of open terrace within the building line	<b>±23m<sup>2</sup></b>
Boundary walls	<b>±4.84m<sup>2</sup></b>
Suspended concrete slab	<b>±35m<sup>2</sup></b>

The owner of the subject property intends to provide their full co-operation to the Overstrand Municipality to rectify the encroachments as it was always their responsibility to ensure that the structures are constructed according to 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, as no complaints from surrounding property owners have been received. A departure application is also submitted to rectify the encroachments on the subject property.

**b) The conduct of the person involved in the contravention**

A topographical survey confirmed the encroachments on the subject property, the owner started investigations on how to rectify these defaults on the subject property.

**c) Whether the unlawful conduct was stopped**

The owner is in the process of rectifying the contravention by applying for the determination of an administration penalty and departures. The building work is already completed.

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

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

We appeal to the Overstrand Municipality to take into consideration the low impact the unauthorised building work has on the surrounding area. It should also be considered that **no** complaints from surrounding properties have been made with regards to the illegal building work. A topographical survey determined that the boundary walls were higher than the permissible height of 2.1m and that the infill within the building line of the open terrace is more than 1m above ground level. The dwelling were also erected on a suspended concrete slab that encroaches the lateral building line and is higher than 1m above ground level. These encroachments are in contravention with the development rules of the Overstrand Scheme Regulations, 2020.

With the proposed application the owner intends to rectify the encroachments on the subject property and will also submit as built building plans in order to obtain the necessary approvals 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 given above.

#### **3.4.2. Proposed departures**

A topographical survey was carried out by Van Dyk Land Surveyors to determine the position of the structures in relation to the actual boundaries and the existing height of the structures on the subject property. It became evident that the existing infill of the open terrace is higher than 1m within the building line. The height of the boundary walls also 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 1m above ground level.

The applicable restrictions in the Overstrand Municipality Zoning Scheme, Sections 16.1(i)(ii) and 16.6.1 read as follows:

#### **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:**

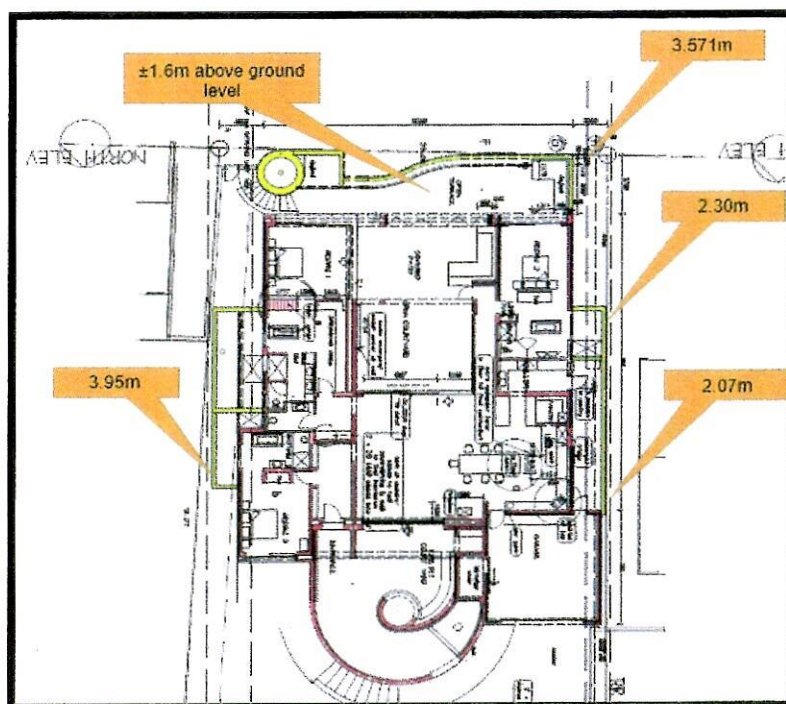
**(i) boundary walls, retaining walls, screen walls, fences and gates not exceeding 2,1 m in height above the existing ground level abutting such wall;**

**(ii) open and uncovered stoeps, pools and filling lower than 1,0 m above the existing ground level;**

### **16.6 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 have the same height on the boundaries of the subject property. The walls vary in height from 2.07m to 3.95m as seen in the picture below. The infill in the open terrace is also higher than 1m within the building line. The intention of the owner of Erf 338 Rooi Els is to legalise the encroachments on the subject property.

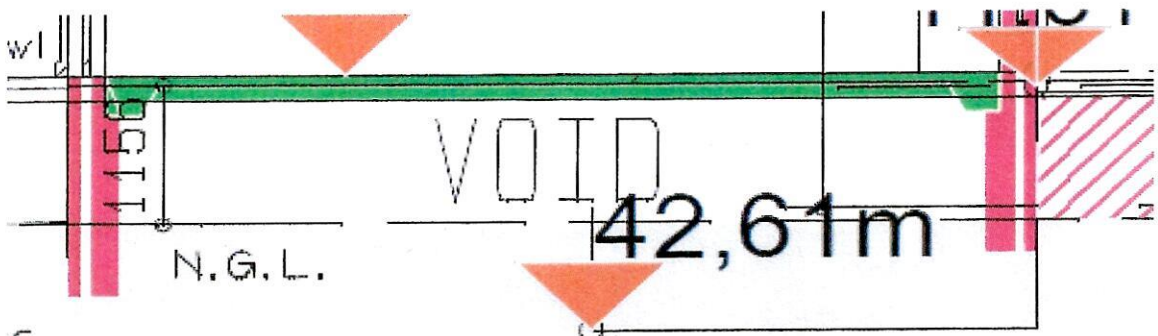


In terms of Section 16.6.1, a departure application needs to be submitted for boundary walls that exceed a height of 2.1m. It is proposed that the 2.1m height restriction be relaxed to  $\pm 3.571\text{m}$  at the highest point on the eastern side,  $3.95\text{m}$  at the highest point on the western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

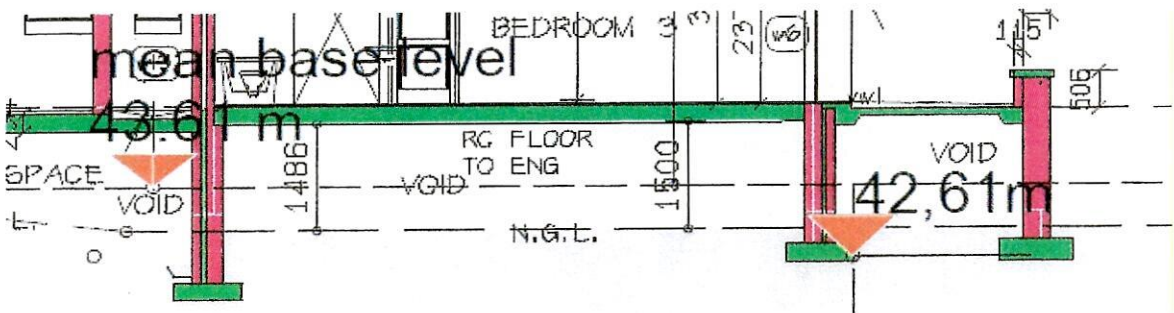
In terms of Section 16.6.1, without prior consent of the council, no boundary wall or fence shall exceed  $2.1\text{m}$  above the existing ground level.

It is also clear from the western and eastern elevation plan and the picture below, that a portion of the dwelling was constructed on a suspended concrete slab. The height between the natural ground level and the suspended concrete slab varies between  $1.156\text{m}$  and  $1.5\text{m}$  within the eastern and western building lines. In terms of **Section 16.6.1(a)(ii)** filling of lower than  $1\text{m}$  above the existing ground may be erected over the prescribed building lines. The suspended concrete slab is higher than  $1\text{m}$  above the ground level and therefore the encroachment needs to be addressed.

**Eastern elevation**



**Western elevation**



The proposed application will not have a negative impact on the surrounding properties in the Rooi Els area. All the structures on the subject property have already been erected and the owner intends to rectify the encroachment by means of this departure application. A determination of an administration penalty is also submitted for the encroachments. The existing open terrace does not have any impact on the privacy or views of the surrounding property owners.

The proposed departures will not have a negative impact on the character of the greater Rooi Els area. Please refer to the enclosed as built plans for the detail of the above-mentioned departures. No complaints have been received by the surrounding property owners after the erection of any of the structures. The application only constitutes the departures from the permissible height of 2.1m for boundary walls and the infill higher than 1m above ground level within a building line. The dwelling is also constructed on a suspended concrete slab that encroaches the lateral building line is higher than 1m.

### **3.5 ACCESS**

Vehicular and pedestrian access to Erf 338 Rooi Els is from Hotel Crescent and will be retained. No new accesses are proposed with the proposed application.

### **3.6 SERVICES**

All services on Erf 338 Rooi Els already exist. No additional services are required in order for the proposed application to be approved.

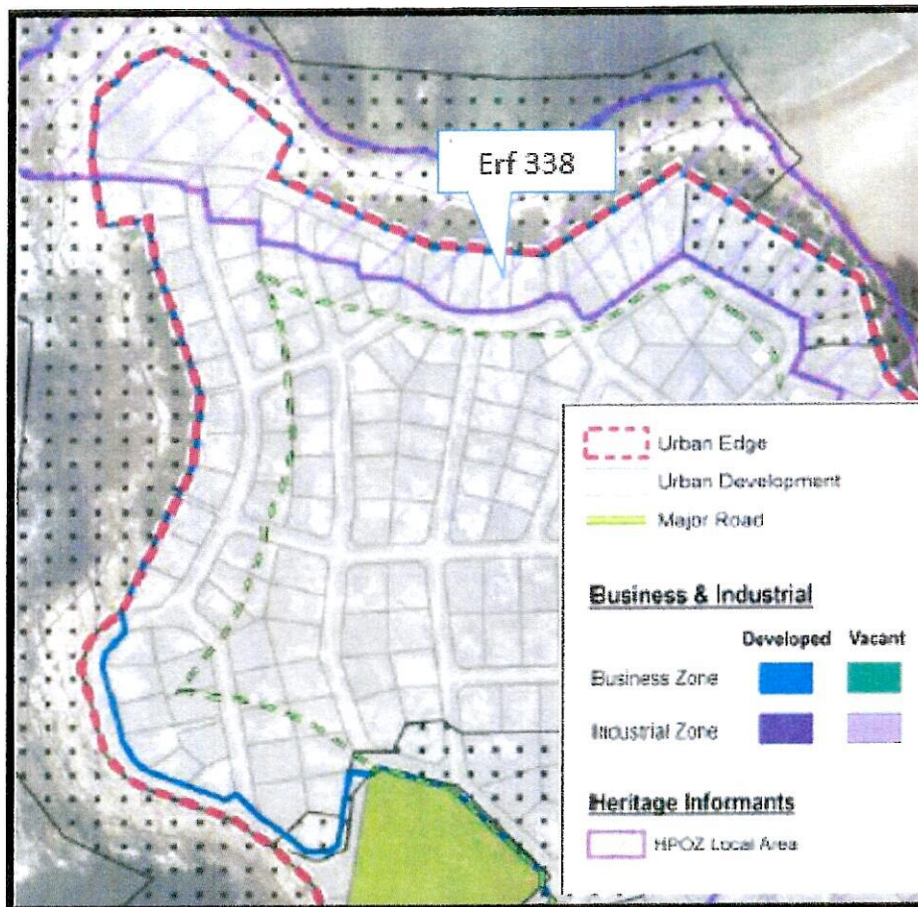
### **3.7 TITLE DEED**

There are no restrictive Title Deed conditions in Title Deed No. T73556/2014, that needs to be addressed in order to accommodate the proposed departures on the subject property.

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 and departure application 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 falls 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 not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

In light of the above mentioned it is evident that the proposed 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 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 determination of an administrative penalty and departures are in line with the current land use tendencies in the vicinity within the Rooi Els area. The proposed departures are in order to rectify encroachments and the owner will provide their full cooperation.

**Spatial sustainability:** The proposed 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 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.

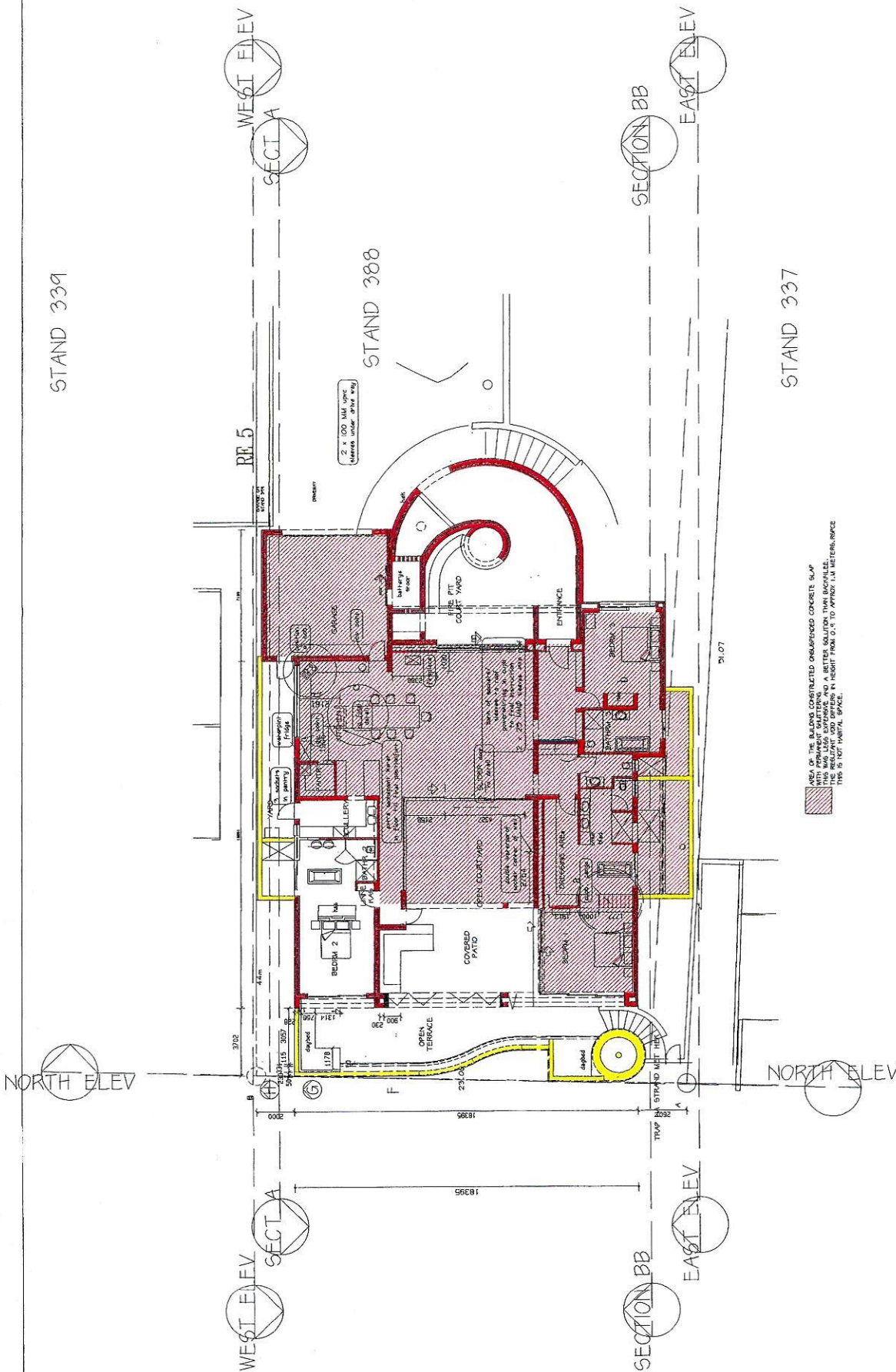
#### 4. **RECOMMENDATION**

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

## Motivation report

- The proposed departures fall within the existing land use tendencies in the area;
- The proposed departures will not have a negative impact on the current character and land values of the surrounding erven;
- No additional services is needed for the proposed application to be approved;
- 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 and the departures of Erf 338 Rooi Els.



STAND 339

STAND 388

STAND 337

WEST ELEV

EAST ELEV

WEST ELEV

EAST ELEV

SECT A

SECTION BB

SECT A

SECTION BB

NORTH ELEV

NORTH ELEV

AS-BUILD PLAN  
BASED ON  
EXISTING  
ROBBLES



AS-BUILD PLAN SHOWING  
WALLS ON BOUNDARIES (IN YELLOW)



