

PORTION 76 (PORTION OF PORTION 4) OF THE FARM HERMANUS RIVER NO. 542, ARABELLA COUNTRY ESTATE, DIVISION OF CALEDON: APPLICATION FOR DEPARTURE, DEVIATION FROM ARABELLA COUNTRY ESTATE ARCHITECTURAL GUIDELINES AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLAN ACTIVE (obo CL LE GRANGE)

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

- Departure in terms of Section 16(2)(b) of the By-Law to relax the western lateral building line from 2,0m to 1,6m to accommodate an as-built bedroom 1.
- Deviation from the Arabella Country Estate Architectural Guidelines in terms of Section 16(2)(l) of the By-Law to relax the western lateral building line from 2,0m to 1,6m to accommodate an as-built bedroom 1, and to relax the 5m golf course boundary line to 4,8m to accommodate an as-built bedroom 2.
- Determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the unauthorised land use activities stipulated above.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, Paterson Street, Hermanus and at the Kleinmond Library, Fifth Avenue, Kleinmond. 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) loretta@overstrand.gov.za) on or before **29 October 2021**, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to **Ms. H van der Stoep** 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.

GEDEELTE 76 ('N GEDEELTE VAN GEDEELTE 4) VAN DIE PLAAS HERMANUS RIVER NR. 542, ARABELLA COUNTRY ESTATE, GEDEELTE CALEDON: AANSOEK OM AFWYKING, AFWYKING VAN DIE ARABELLA COUNTRY ESTATE ARGITEKTONIESE RIGLYNE EN BEPALING VAN ADMINISTRATIEWE BOETE: PLAN ACTIVE (nms CL LE GRANGE)

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

- Afwyking ingevolge Artikel 16(2)(b) van die Verordening om die westelike syboullyn te verslap vanaf 2,0m na 1,6m om 'n bestaande slaapkamer 1 te akkommodeer.
- Afwyking vanaf die Arabella Country Estate argitektoniese riglyne ingevolge Artikel 16(2)(l) van die Verordening om die westelike syboullyn te verslap vanaf 2,0m na 1,6m om 'n bestaande slaapkamer 1 te akkommodeer, en om die 5m gholffbaan grenslyn na 4,8m te verslap ten einde 'n bestaande slaapkamer 2 te akkommodeer.
- Bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening vir ongemagtigde grondgebruik aktiwiteite soos uiteengesit hierbo.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en by die Kleinmond Biblioteek, Vyfdelaan, Kleinmond. 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) loretta@overstrand.gov.za) voor of op **29 Oktober 2021**, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan **Me. H van der Stoep** 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.

INXALENYE EBIZWA IPORTION 76 (INXALENYE YENXALENYE 4) YEFAMA I-HERMANUS RIVER NO. 542, ARABELLA ENGUMHLABA WEZINDLU ZAMAPHANDLE, ELICANDELO LECALEDON: ISICELO SOKWAHLULA, UKUSHENXA KWI-ARABELLANE- IZIKHOKELO ZOBUCHULE BOKWAKHA IZAKHIWO EZIKULOMHLABA NENGINISEKISO YENTLAWULO/UMDLIWO WOBHALISO: NGABAKWAPLAN ACTIVE (egameni likaCL LE GRANGE)

Kukhutshwe isaziso esingemiba emayela neSoloty lama48 esiNgokuhlomela uMthethwana kaMasipala waseOverstrand ngeZicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 esithi kufunyenwe isaziso esingale miba ilandelayo:

- Ukwahluka ngowemiba yeSoloty le16(2)(b) loMthethwana ukushenxisa umgca wesakhiwo omelene nesakhiwo kwicala elisentshona ukusuka kwiimitha ezi-2,0m ukuya kwi-1,6m ukulungiselela igumbi lokulala (1) lokuqala nelakhelwe yonke into ngaphakathi.
- Ukushenxa kwiZikhokelo eziyiMigaqo yoKwakhiwa kwezindlu ezikuMhlaba i-Arabella Country Estate ngokwemiba yeSoloty le16(2)(l) loMthethwana ongokushenxisa imigca emelene nesakhiwo kwicala eliseNtshona ukusuka kwiimitha ezi-2,0m ukuya kwi-1,6m ukulungiselela igumbi lokulala elakhelwe ngaphakathi (igumbi lokulala 1), nokunyenya umgca owenza umda ozimitha ezi-5m zekhosi yegalufa ukuya kwiimitha ezi-4,8m ukulungiselela igumbi lokulala lesibini elakhelwe yonke into ngaphakathi (igumbi lokulala 2).
- Inginiseko yentlawulo/umdlivo wobhaliso ngokwemiba yeSoloty le16(2)(q) loMthethwana ohambelana nezenzo zokusetyenziswa komhlaba okungagunyaziswanga njengoko kuchaziwe ngasentla.


linkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Izicwangciso zeDolophu, Paterson Street, Hermanus naseKleinmond Library, Fifth Avenue, Kleinmond. Naziphi na izimvo ezibhaliweyo zingangeniswa ngokwezibonelelo zeSoloty lama51 nelama52 zoMthethwana osowuchaziwe ngentla zifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) ngomhla okanye ngaphambi komhla wama **29 Okthobha 2021**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla kwakho. Imibuzo ngefowuni ingathunyelwa kuMchwangcisi weDolophu, **Nkszn. H van der Stoep** kwa-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angandwendwela kwiSebe LeziCwangciso zeDolophu apho igosa likaMasipala liza kumnceda ukufaka izimvo zakhe ngokusemthethweni.

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: loretta@overstrand.gov.za

PO Box 20 | **HERMANUS 7200**

www.overstrand.gov.za



 Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey. COPY RIGHT RESERVED	Property Description: PTN 76 OF FARM HERMANUS RIVER NO. 542	Plan Description: LOCALITY MAP	Scale: NTS
		Drawing Nr: arabella.dwg	Date: AUGUST 2021	



**PROPOSED DETERMINATION OF AN ADMINISTRATIVE
PENALTY, DEPARTURE & DEVIATION FROM THE
ARABELLA COUNTRY ESTATE ARCHITECTURAL
GUIDELINES**

**PORTION 76 OF THE FARM HERMANUS RIVER NO. 542
(ARABELLA COUNTRY ESTATE)**

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by C.L. Le Grange, the owner of Portion 76 of the farm Hermanus River No. 542 (also referred to as erf 76 Arabella), to apply for the departure and deviation from the Arabella Country Estate Architectural Guidelines on her behalf.

A building plan for the construction of a dwelling with an outbuilding was approved on 24 April 2017. Plan Active was approached by the architect who must now amend the plans for the house on Portion 76 of the farm Hermanus River no. 542 in Arabella Country Estate, which is currently being built. There have been some minor changes to the dwelling of which one of them is an encroachment of 380mm over the 2m western lateral building line and 180mm over the golf course boundary building line. Our client bought the subject property in 2020 with only the ground floor of the dwelling constructed. She was advised of the encroachments after the transfer of the property took place and appointed Van Dyk Land Surveyors to undertake a topographical survey indicating the As Built structures. The encroachments were done by the previous owner during the construction of the ground floor of the dwelling and the current owner now intends to rectify the encroachments to allow them to submit the final building plan for approval.

This application intends to address the following As Built unauthorised structures that encroach the Arabella Country Estate Architectural Guidelines' (dated 23 March 2018) building lines and the Overstrand Land Use Scheme's building lines applicable to Residential Zone 1: Single Residential properties:

- To deviate from the architectural guidelines' western lateral estate building line and Land Use Scheme's western lateral building line from 2m to 1,6m to accommodate a portion of the existing As Built dwelling (bedroom);
- To deviate from the golf course boundary building line as stipulated in the Arabella Country Estate Architectural building lines Guidelines' (dated 23 March 2018 from 5m to 4,8m to accommodate the existing As Built dwelling (bedroom).

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**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the **departure** (building lines) of Portion 76 of the farm Hermanus River No. 542;
- Chapter 4, Section 16(2)(l) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the permission required in terms of an existing approval / approved architectural guidelines to **deviate from the Arabella Country Estate Architectural Guidelines**.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Portion 76 of the farm Hermanus River No. 542 is situated at 76 Milkwood Street in the Arabella Country Estate south of the R44 travelling from Hermanus to Kleinmond. Refer to the locality plan attached.

Portion 76 of the farm Hermanus River No. 542 is 715m² in extent and is held by title deed no. T45086/2020.

The subject property slopes in a south-easterly direction and is characterized by residential structures (dwelling under construction and double garage with golf cart parking) and a garden area.

The subject property overlooks the Arabella Golf Course to the north and south.

3.2 ZONING

Portion 76 of the farm Hermanus River No. 542 has the following land use rights:

ERF NUMBER	ZONING
Portion 76 of farm Hermanus River No. 542	Residential Zone 1: Single Residential

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

3.3 LAND USE

There is an existing dwelling (under construction), a double garage with golf cart parking and a garden area situated on the subject property.

Land uses that surround the subject property are single residential dwellings, private open spaces, private roads, a golf course, recreational uses (such as the hotel and spa in the estate) and farms.

3.4 THE POTENTIAL OF THE PROPERTY

The zoning and 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 (in future) for low impact land uses only. The proposed departure and deviation from the architectural guidelines will not hinder any future land use applications on Portion 76 of the farm Hermanus River No. 542.

The subject property has the potential and allows for the deviations being applied for. The following factors confirm the potential of the property to accommodate the proposed lateral and golf course boundary building line deviations:

- Good quality materials were used in line with the requirements of the architectural guidelines.
- Building plans were approved on 24 April 2017. During the construction of the dwelling sections of two bedrooms were moved slightly into the western lateral estate and scheme regulations' building lines and golf boundary building line (but still constructed as per the approved building plan as far as the layout of the structures are concerned).
- The architectural style is in line with the requirements of the architectural guidelines.
- The existing As Built structures have a low impact on the streetscape and neighbouring properties due to the slope of the subject property.
- The impact on the adjacent properties is minimal since the window placements visible from the neighbouring properties where the western lateral building line and golf boundary building line are encroached are as per the size, shape and placement of the approved building plan. No windows are placed closer than 1m from any erf boundary.

- The neighbour (Erf 75) gave his consent for the proposed building line deviations.

3.5 PROPOSAL

The following is proposed:

- 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;
- The **departure** of Portion 76 of the farm Hermanus River No. 542 in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
 - Deviate from the western lateral building line from 2m to 1,6m to accommodate the existing As Built dwelling (bedroom);
- The permission required in terms of the zoning scheme to **deviate from the Arabella Country Estate Architectural Guidelines** in terms of Chapter 4, Section 16(2)(l) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, as follows:
 - To deviate from the western lateral building line from 2m to 1,6m to accommodate the existing As Built dwelling (bedroom);
 - To deviate from the golf course boundary building line from 5m to 4,8m to accommodate the existing As Built dwelling (bedroom);

The potential of the subject property is discussed in detail in *Section 3.4 Potential of the property*.

A building plan for the construction of a dwelling with an outbuilding was approved on 24 April 2017. Plan Active was approached by the architect who must amend the plans for the house on Portion 76 of the farm Hermanus River no. 542 in Arabella Country Estate, which is currently being built. There have been some minor changes to the dwelling of which one of them is an encroachment of 380mm over the 2m western lateral building line and 180mm over the golf course boundary building line. Our client bought the subject property in 2020 with only the ground floor of the

dwelling constructed. She was advised of the encroachments after the transfer of the property took place and appointed Van Dyk Land Surveyors to undertake a topographical survey indicating the As Built structures. The encroachments were done by the previous owner during the construction of the ground floor of the dwelling and the current owner now intends to rectify the encroachments to allow them to submit the final building plan for approval.

Take note that the double garage with golf cart parking / storage area was approved on the 3m street building line with the building plan approval of 24 April 2017. A departure is therefore not required to accommodate the garage.

This application intends to address the following As Built unauthorised structures that encroach the Arabella Country Estate Architectural building lines Guidelines' (dated 23 March 2018) and the Overstrand Land Use Scheme's building lines applicable to Residential Zone 1: Single Residential properties:

- To deviate from the architectural guidelines' western lateral estate building line and Land Use Scheme's western lateral building line from 2m to 1,6m to accommodate a portion of the existing As Built dwelling (bedroom);
- To deviate from the golf course boundary building line as stipulated in the Arabella Country Estate Architectural building lines Guidelines' (dated 23 March 2018) from 5m to 4,8m to accommodate the existing As Built dwelling (bedroom).

Here follows the detail of the proposed application for consideration:

3.5.1 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 bedrooms [ground floor] not being permitted by the current zoning

scheme regulations and architectural guidelines), 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.

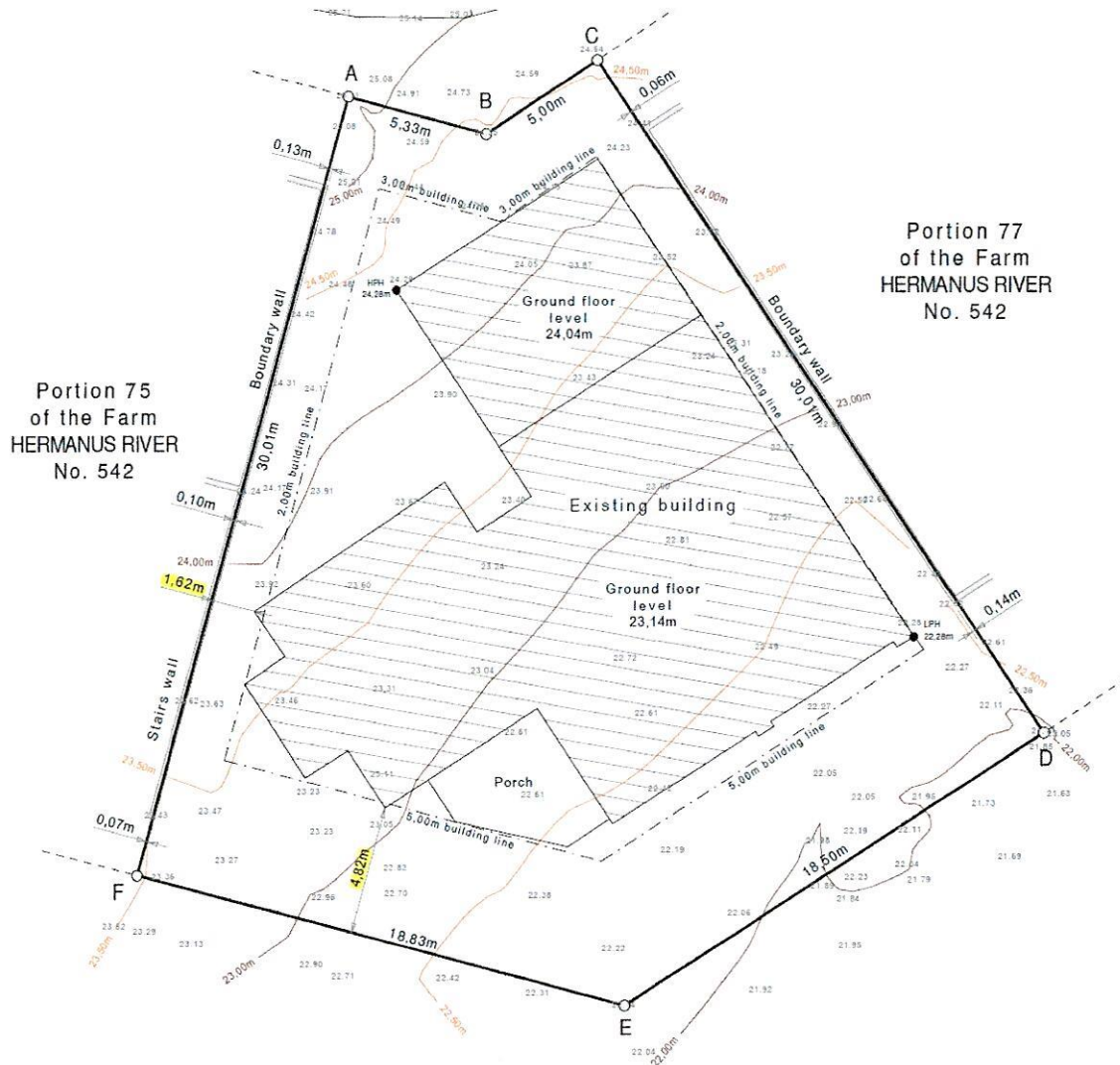
In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

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

Our client bought the subject property in 2020 with only the ground floor of the approved dwelling already constructed. There was an approved building plan for the subject property when our client purchased it. Refer to a copy of the approved building plan dated 24 April 2017 attached. Plan Active was approached by the architect who must amend the plans for the house on Portion 76 of the farm Hermanus River no. 542 in Arabella Country Estate, which is currently being completed by the new owner. It came to her attention that there have been some minor changes to the dwelling of which are an encroachment of 380mm over the 2m western lateral building line and 180mm over the golf course boundary building line respectively.

The footprint and layout of the dwelling remained as per the approved building plan. It seems that the dwelling was however shifted slightly to the west and south during construction. This resulted in the sections of two bedrooms that encroach the western lateral zoning scheme and architectural guidelines' and the golf boundary building lines.

The As Built / Topographical Survey Plan compiled by Van Dyk Land Surveyors dated February 2021 indicates the existing encroachments as per the abstract of the plan below:



Portion 77
of the Farm
HERMANUS RIVER
No. 542

Portion 75
of the Farm
HERMANUS RIVER
No. 542

A copy of the Topographical Plan is also attached. The extent of the existing structures that encroaches the most restrictive building lines (in this case the land use scheme and architectural guidelines' building lines) is insignificant compared to the total extent of the dwelling.

The two encroachments are both to accommodate existing bedrooms. Although these are habitable areas, it is merely the corner sections of the bedrooms that encroach the relevant building lines. The layout with reference to the placement of windows, etc. remains unchanged as per the approved building plan. In addition, the slope of the subject property mitigates the impact that the As Built structures might have.

The position and nature of the As Built bedrooms 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 and deviation from the architectural guidelines to accommodate the As Built structures is included in this application.

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

The As Built structures that encroach the relevant building lines were constructed by the previous owner of the property. Since the dwelling was incomplete with the purchase of the property in 2020 by the current owner, the encroachments were detected when the current owner proceeded with finishing the building work on the subject property. The copy of the latest approved building plan (2017) indicates the bedrooms, but not at the exact same position as it currently stands. As a result, the As Built structures that encroach the relevant scheme and architectural guidelines building lines have been on the property for at the past ±3 years.

- **Whether the unlawful conduct was stopped**

The current owner was unaware that the As Built structures encroached the relevant building lines when she bought the subject property. The owner now attempts to rectify the contravention by submitting the administration penalty application and subsequent departure and deviation from the architectural guidelines application in order to legalise the As Built structures on the subject property and to allow her to finish the construction of the dwelling and outbuildings on the subject property.

- **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 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 dwelling (bedrooms) has had and will continue to have on the surrounding area. In addition, the As Built structures will not negatively impact on the neighbouring properties since the footprint of the structures that encroach the relevant building lines will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures. The current owner was unaware of the fact that there were structures constructed by the previous owner over the relevant building lines. She only became aware of the latter once development of the subject property commenced to finalize the incomplete dwelling.

The owner never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure, deviation from the architectural guidelines and a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owner for the reasons given above.

3.5.2 Departure & deviation from the Arabella Country Estate Architectural Guidelines

A building plan for the construction of a dwelling with outbuilding was approved on 24 April 2017. Plan Active was approached by the architect who must amend the plans for the house on Portion 76 of the farm Hermanus River no. 542 in Arabella Country

Estate, which is currently being built. There have been some minor changes to the dwelling of which one of them is an encroachment of 380mm over the 2m western lateral building line and 180mm over the golf course boundary building line. Our client bought the subject property in 2020 with only the ground floor of the dwelling was constructed. The encroachments were done by the previous owner during the construction of the dwelling and the current owner now intends to rectify the encroachments to allow her to submit the final building plan for approval.

This application intends to address the following As Built unauthorised structures that encroach the Arabella Country Estate Architectural building lines Guidelines' (dated 23 March 2018) and the Overstrand Land Use Scheme's (2020) building lines applicable to Residential Zone 1: Single Residential properties as follows:

- The departure of Portion 76 of the farm Hermanus River No. 542 in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
 - Deviate from the western lateral building line from 2m to 1,6m to accommodate the existing As Built dwelling (bedroom);
- Permission required in terms of the zoning scheme to deviate from the Arabella Country Estate Architectural Guidelines in terms of Chapter 4, Section 16(2)(l) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, as follows:
 - To deviate from the western lateral building line from 2m to 1,6m to accommodate the existing As Built dwelling (bedroom);
 - To deviate from the golf course boundary building line from 5m to 4,8m to accommodate the existing As Built dwelling (bedroom).

Refer to the site development plan attached. The footprint and layout of the dwelling remain as per the approved building plan. It seems that the footprint of the dwelling was however shifted slightly to the west and south during construction. This resulted in the sections of two bedrooms to encroach the western lateral zoning scheme and architectural guidelines' and the golf boundary building lines.

The extent of the existing structures that encroaches the most restrictive building lines (in this case the land use scheme and architectural guidelines' building lines) is insignificant compared to the total extent of the dwelling.

The two encroachments are both to accommodate existing bedrooms on ground floor level. Although these are habitable areas, it is merely the corner sections of the bedrooms that encroach the relevant building lines. The layout with reference to the placement of windows, etc. remains unchanged as per the approved building plan. In addition, the slope of the subject property mitigates the impact that the As Built structures might have.

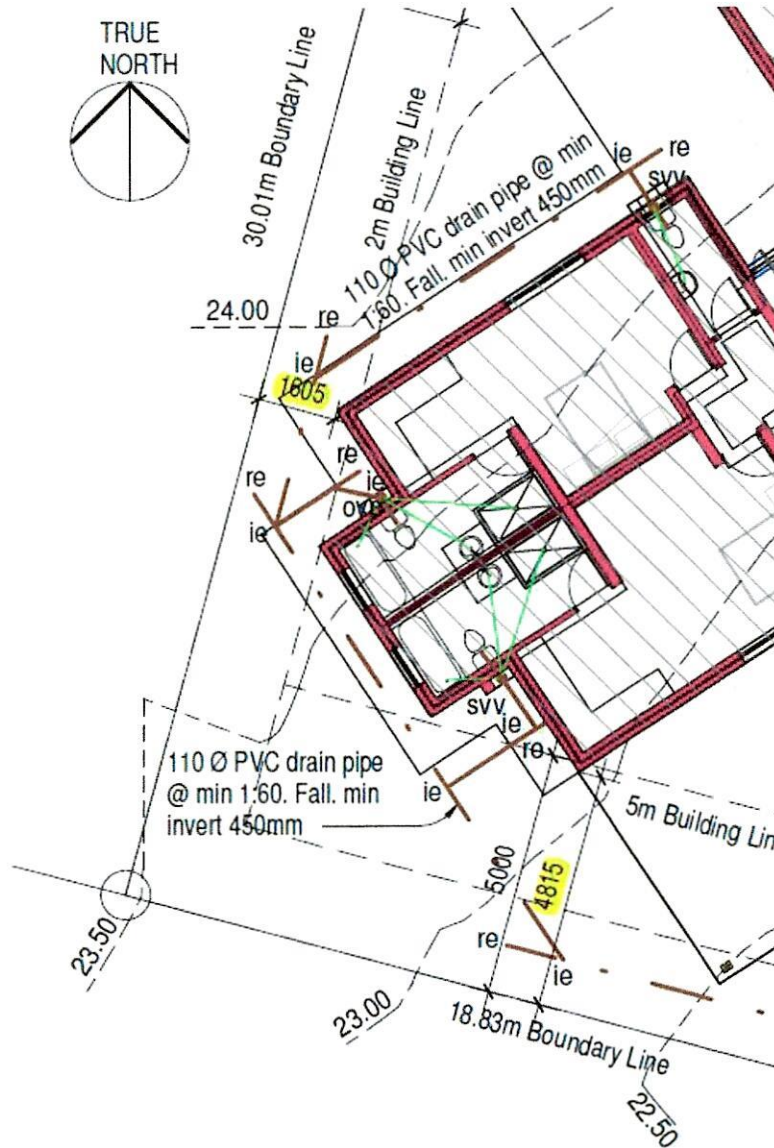
The position and nature of the As Built bedrooms on the property are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date. A building line departure and deviation from the architectural guidelines to accommodate the As Built structures are included in this application.

The following should be noted when considering the departure and deviation from the architectural guidelines' application:

- There is an approved building plan for the existing dwelling with the exact same layout for the two bedrooms that encroach the relevant building lines. The window placements also remain unchanged from the approved building plan. The footprint of the dwelling was merely slightly shifted during construction – hence the encroachments.
- No alterations are proposed to the existing As Built bedrooms;
- The visual impact of the As Built bedrooms on ground floor level will be minimal since it was constructed in line with the approved building plan, but merely shifted slightly during construction.
- The slope of the subject property mitigates the impact the encroachments have on the neighbouring properties.
- The neighbouring property owner (Portion 75) gave his consent for the proposed encroachments (email consent dated 30 April 2021 attached).
- The Home Owner's Association (HOA) gave their consent for the proposed encroachments (email consent from Mr Dirk Uys, Arabella Country Estate Manager, dated 25 February 2021 attached).
- It is merely small sections / corners of the respective bedrooms on ground floor level that encroach the western lateral and golf boundary building lines. To demolish portions thereof to make the structures compliant to the building lines, will diminish the aesthetic value of the dwelling.

The images below indicate the encroachments of the two As Built bedrooms on ground floor level:

1. Site development plan – encroachments of two existing bedrooms over the western lateral and golf boundary building lines



All the structures meet the height requirements as stipulated in the architectural guidelines and the land use scheme regulations.

The existing As Built structures do not create an infringement to any passing traffic or public activity. The placement of the windows and room layouts for the As Built bedrooms are as per the approved building plan. No windows or doors were placed closer than 1m from the respective erf boundaries. It is therefore evident that the

existing As Built structures meet the requirements for the consideration of these structures within the respective western lateral and golf boundary building lines and can be favourably considered.

It is noteworthy that the As Built structures are visible from both the street as well as the neighbouring properties. It is however submitted that the massing and height of the sections of the existing structures that encroach the western lateral and golf boundary building lines will remain unchanged. The visual impact on the adjacent property owners and the passers-by will be marginally higher than if construction proceeded as per the approved building plan. The encroachments are therefore considered to have a low impact.

The zoning of Portion 76 of the farm Hermanus River No. 542 will remain unchanged (Residential Zone 1: Single Residential).

Once complete the dwelling will consist of a basement, ground floor and first floor. The approved covered area (footprint) for all structures on the subject property is 331,36m² which amounts to a coverage of 46,38m² (refer to a copy of the approved building plan dated 24 April 2017). The footprint and coverage of the amended plans might slightly differ but will not exceed the maximum allowable coverage of 50% for SR1 zoned properties.

It is submitted that the existing As Built structures 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. The neighbouring property owner (Portion 75 of the farm Hermanus River no. 542) gave his consent for the proposed departures and deviations to accommodate the As Built structures (email consent dated 30 April 2021 attached).

The proposed application for Portion 76 of the farm Hermanus River No. 542 is 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.

3.6 ECONOMIC IMPACT

The proposed departure and deviation from the architectural guidelines are to accommodate the existing As Built structures and uses thereof on the subject property only. No new structures or additions are proposed. The proposed departure and deviation from the architectural guidelines will allow the owners to retain and legalise the existing structures and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the existing As Built structures will save our client the cost of demolishing the structures to comply with the development rules for the Arabella Country Estate. The proposed building line deviations and deviations from the architectural guidelines therefore has a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departure and deviation from the architectural guidelines will have no impact on the social status quo of the area. The approval of this application will however allow the owners to keep the existing As Built structures and ensure an aesthetically pleasing and safe finish to their development.

No negative impact on the social wellbeing of the surrounding community is anticipated.

It is submitted that the As Built structures are 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 country estate. 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 mostly double storey dwellings and the use of the surrounding properties are for permanent residences and holiday houses. The scale of the As Built structures on Portion 76 of the farm Hermanus River No. 542 merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built structures will contribute towards the value of the subject property and consequently have a positive impact on the area as a whole. It is therefore submitted that the proposed encroachments and deviations are compatible with the character of the area and do not impact negatively on the rights of anyone else.

The HOA gave their consent for the proposed land use application and the owner of the neighbouring property (Portion 75) gave his consent for the proposed application to accommodate the As Built structures.

The As Built bedrooms are habitable structures, but due to the slope of the subject property and the way which the dwellings on specifically Portions 75 and 76 are positioned, the impact on the neighbouring properties' privacy will be kept to a minimum. As previously mentioned, no windows or doors are placed 1m or closer to the erf boundary and the window sizes, shapes and placement are the same as per the approved building plan.

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

All services on the subject property already exist. The proposed departure and architectural guidelines deviation 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.

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 departure and deviation from the architectural guidelines will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that one family will continue to occupy the subject property.

To retain the As Built structures with minor encroachments prove to be the best option for the site without having a detrimental impact on the aesthetic value, safety and privacy of the estate.

Since the proposed departure and deviation from the architectural guidelines 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 000m². Consequently, the proposed application for the departure and deviation from the architectural guidelines do not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Portion 76 of the farm Hermanus River No. 542 is not situated within the Heritage Overlay Zone as determined by the Overstrand Heritage Report (2009). 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 located within a Heritage Protection Overlay Zone (2020).

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 departure and deviation from the architectural guidelines will not have a negative impact on the heritage value of the Arabella Country Estate.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure and deviation from the architectural guidelines do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to Portion 76 of the farm Hermanus River No. 542 will remain unchanged and will be from the private access road (Milkwood Street) within the estate. No new access points are proposed. Refer to the site development plan indicating the position of the vehicle entrance.

The Overstrand Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house. The architectural guidelines stipulate that at least three parking bays should be provided on site for erven in the Arabella Country Estate. Provision is made for a double garage with golf cart bay / storage and an additional parking bay on the western erf boundary on Portion 76 of the farm Hermanus River No. 542 - refer to the site development plan. The main dwelling on the subject property therefore complies with the minimum parking requirements for SR1 zoned properties as stipulated in the zoning scheme regulations as well as the architectural guidelines.

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

3.14 TITLE DEED

Title deed no. T45086/2020 has no restrictive conditions that prohibit the existing As Built structures or the uses thereof. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl from Van Zyl Kruger Attorneys dated 17 August 2021 with pivot title deed no. T15085/1998 attached thereto.

There is a bond registered against Portion 76 of the farm Hermanus River No. 542. The bondholder's consent was requested and will follow.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The ***Overstrand Spatial Development Framework (2020)*** earmarks the area where Portion 76 of the farm Hermanus River No. 542 is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). The unique village / rural character of the area will be maintained. In addition, the urban footprint will be maintained within the existing urban edge. As a result, the impact of the proposed departure and deviation from the architectural guidelines on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The proposal will promote land development in a location that is sustainable. The proposed departure and deviation from the architectural guidelines 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 the Arabella Country Estate will remain unchanged since the proposed application still promotes a low-density rural-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 1998.

This principle addresses the need to address the past imbalances regarding opportunity. This application is for an erf as per the establishment of the existing Arabella Country Estate and this principle does therefore not apply to this application.

Spatial sustainability: The proposed departure and deviation from the architectural guidelines will have a low impact on the visual elements of the subject property and surroundings since it is considered minor encroachments that occurred during the construction of the dwelling. It is only the corners of two bedrooms that encroach the western lateral and golf boundary building lines. In addition, the As Built bedrooms' visual impact are low due to the slope of the subject property. It is submitted that the existing As Built structures are compatible with the character of the area and many examples of similar deviations granted to property owners in the estate exist. It is submitted that the As Built structures will not impact negatively on the rights of anyone else. The impact on the biophysical environment will also be kept to a minimum.

The bedrooms (habitable areas) that encroach the respective western lateral and golf boundary building lines can be favourably considered due to factors such as the good quality materials used and no changes to window placements for the respective bedrooms as per the approved building plan. The footprint of the dwelling was merely shifted in error during construction that lead to the encroachments. All the

aforementioned promotes the desirability and sustainability of the proposal and allows for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area.

Efficiency: The subject property is easily accessible and conveniently located close to Kleinmond, Hermanus and major routes. The massing and height of the As Built structures that deviate from the respective building lines and the architectural guidelines are in line with the relevant zoning scheme regulations and architectural guidelines. It proves to be resourceful to approve the As Built structures since it is compatible with the existing built environment and the way the development was done is aesthetically pleasing.

It proves to be efficient to accommodate the existing As Built structures by approving the proposed departure and deviation from the architectural guidelines of Portion 76 of the farm Hermanus Rivier No. 542 instead of demolishing / partially demolishing the existing structures to accommodate the latter elsewhere on the already topographically challenged property.

The proposed departure and deviation from the architectural guidelines 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.

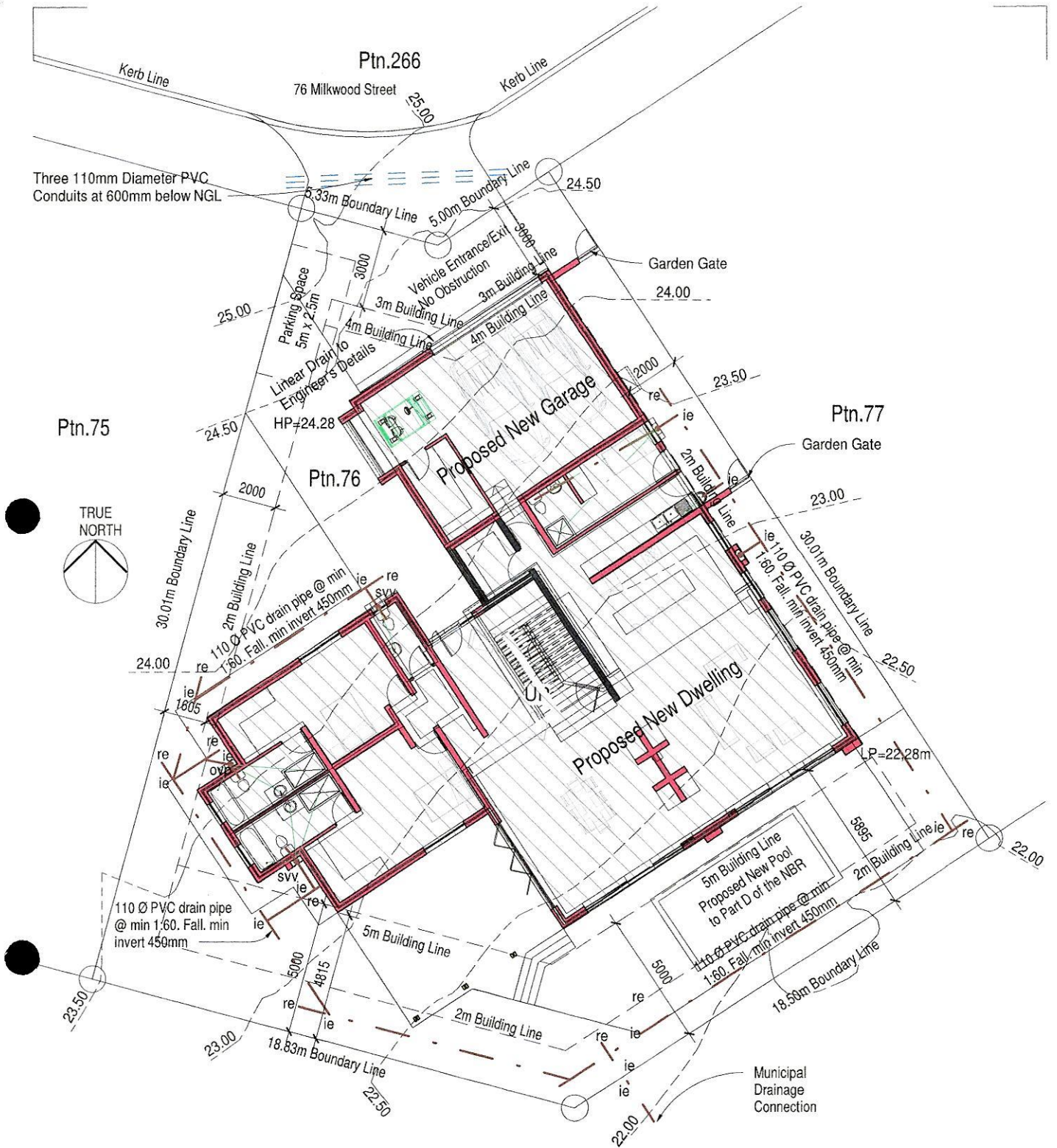
Good administration: Our firm is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw 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:

- There is an approved building plan indicating the existing bedrooms. The footprint of the dwelling was however shifted in error during construction that lead to the encroachment of the corner sections of two bedrooms. It is proposed to accommodate these existing encroachments only;
- The Homeowner's Association gave their consent for the encroachments;
- The immediate neighbouring property owner gave his consent to the proposed land use application;
- 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 land use of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations' building lines and estate building lines are to accommodate the As Built structures only;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will 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 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).

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.



Name: Jerry & Carmen

1

01 Site Plan @ A4

1 : 200

Project: Proposed New Dwelling
Portion 76, Arabella Country Estate

Date: 13/08/21



architecture (pty) ltd

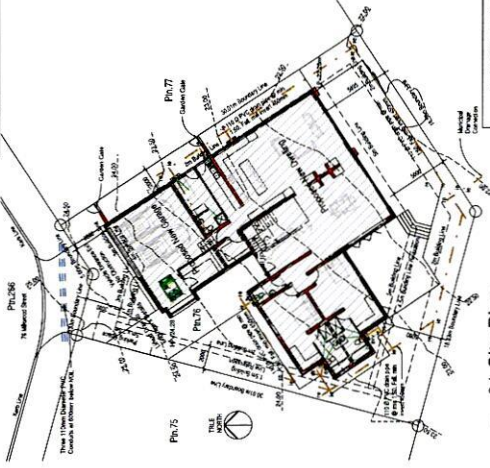
Tel: 072 371 6452

Fax: 086 672 6067

E-mail: brett@frond.co.za

URL: www.frond.co.za

1. ALL DIMENSIONS ARE IN METERS UNLESS OTHERWISE SPECIFIED.
 2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.



01 Site Plan
1:200

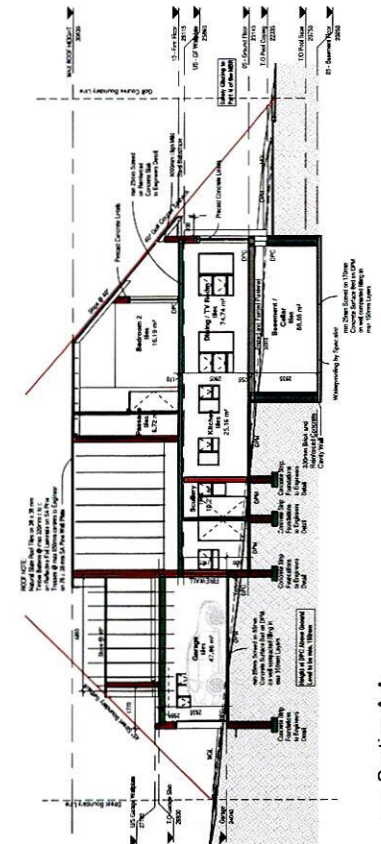
SITE AREA: 71,562
 COVERED AREA: 339,802
 COVERAGE: 47.35%
 GROUND FLOOR: 288,620 (Including Garage)
 LOFT: 86,382
 LOFT AREA: 30,00%
 BALCONY AREA: 2702
 FLATROOF AREA: 46,0002

Area	Area	Area
01 - Ground Floor	288,620	40.20%
02 - Loft	86,382	12.07%
03 - Balcony	2,702	0.38%
04 - Flat Roof	46,000	6.43%
05 - Total	339,802	47.35%

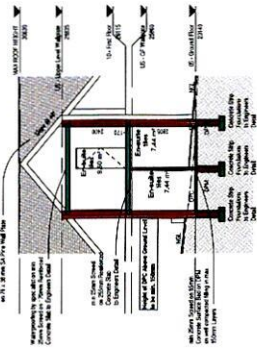
frond architecture (pty) ltd
 101 271 7445
 101 271 7445
 email: info@frond.co.za
 255 Ponds Street
 Wynberg Park
 7801
 2151

Project: **Carmen Le Grange**
 Proposed New Residence on Portion 76 Arabella Country Estate

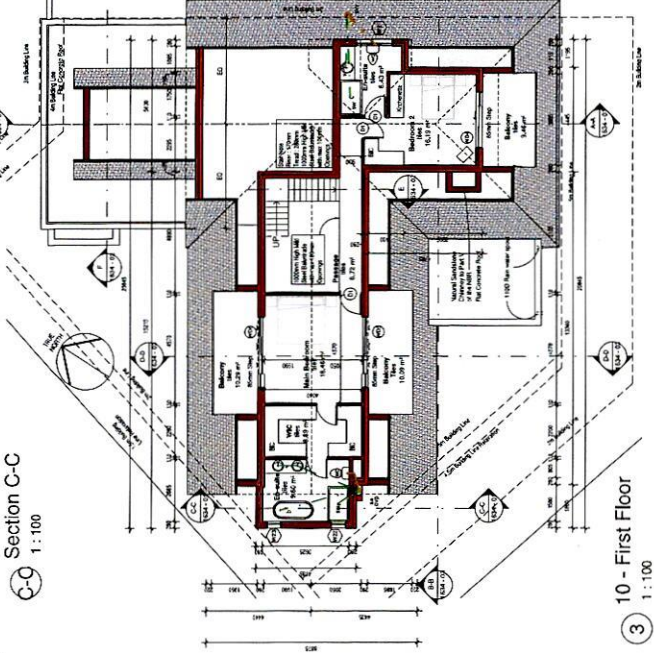
Date: 13/09/2021
 Scale: As shown @ A1
COUNCIL SUBMISSION
 Drawing number: 1634 - 01



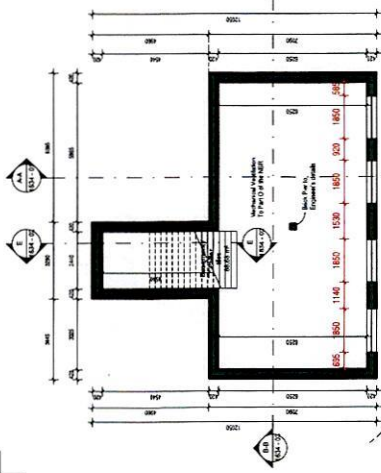
Section A-A
1:100



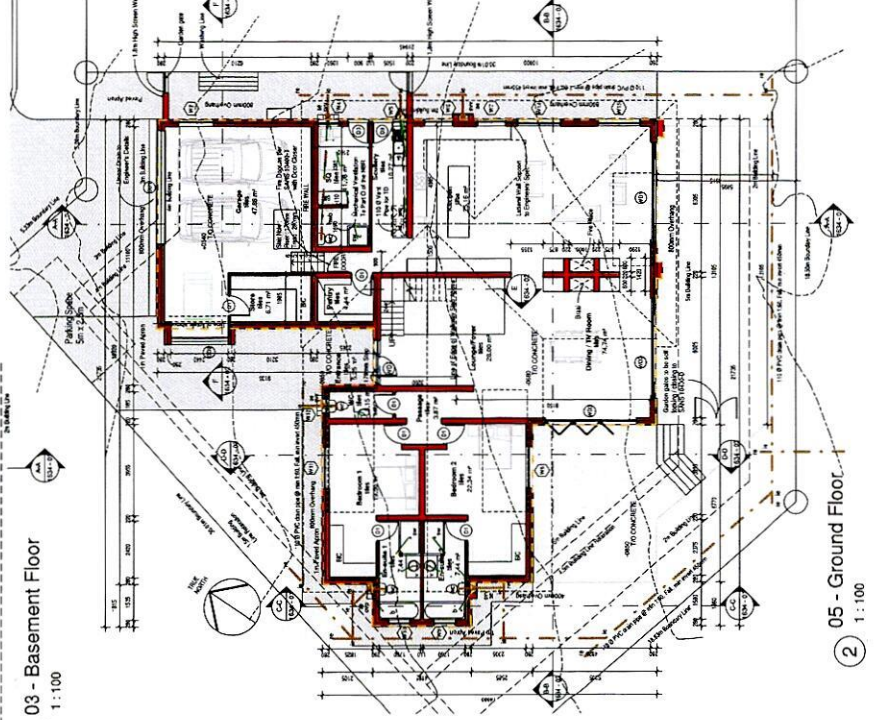
Section C-C
1:100



10 - First Floor
1:100



03 - Basement Floor
1:100



05 - Ground Floor
1:100

PROVIDE THE FOLLOWING INFORMATION TO THE ELECTRICAL CONTRACTOR TO BE OBTAINED BY THE CLIENT. THIS INFORMATION IS TO BE PROVIDED TO THE CONTRACTOR IN WRITING AND IS TO BE USED TO GUIDE THE CONTRACTOR IN THE DESIGN AND CONSTRUCTION OF THE ELECTRICAL SYSTEM. THE CONTRACTOR IS TO BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE RELEVANT AUTHORITIES.

1. ALL ELECTRICAL WORK IS TO BE INSTALLED IN ACCORDANCE WITH THE NEW ZEALAND ELECTRICAL REGULATIONS (NZERS) AND THE NEW ZEALAND ELECTRICAL CODE (NZEC).

2. ALL ELECTRICAL WORK IS TO BE INSTALLED IN ACCORDANCE WITH THE NEW ZEALAND ELECTRICAL REGULATIONS (NZERS) AND THE NEW ZEALAND ELECTRICAL CODE (NZEC).

3. ALL ELECTRICAL WORK IS TO BE INSTALLED IN ACCORDANCE WITH THE NEW ZEALAND ELECTRICAL REGULATIONS (NZERS) AND THE NEW ZEALAND ELECTRICAL CODE (NZEC).

4. ALL ELECTRICAL WORK IS TO BE INSTALLED IN ACCORDANCE WITH THE NEW ZEALAND ELECTRICAL REGULATIONS (NZERS) AND THE NEW ZEALAND ELECTRICAL CODE (NZEC).

5. ALL ELECTRICAL WORK IS TO BE INSTALLED IN ACCORDANCE WITH THE NEW ZEALAND ELECTRICAL REGULATIONS (NZERS) AND THE NEW ZEALAND ELECTRICAL CODE (NZEC).

All colours to be according to the colour schedule to be provided by the client. All colours to be according to the colour schedule to be provided by the client.

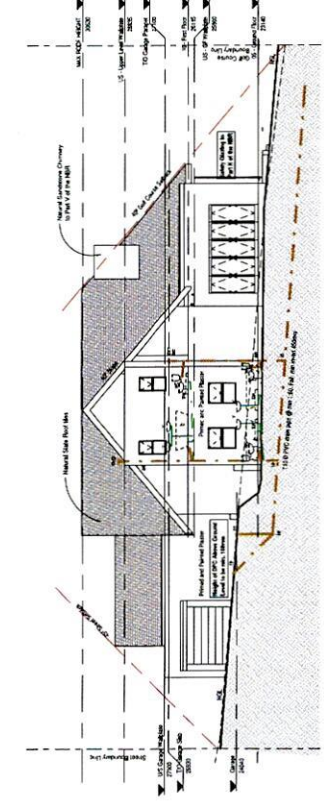
- Natural Stone - Thin, Chiseled
- Primary Plastered Walls - Light Grey
- Aluminium Powder Coated Frames - Battlement Grey
- M31 Steel Handrails - Matt Black

Colour Schedule
1 : 100

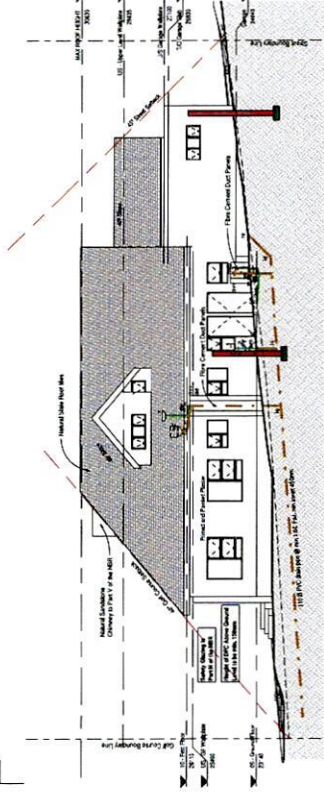
Symbol	Description
○	1. 14.07.01 14.07.01
○	2. 14.07.02 14.07.02
○	3. 14.07.03 14.07.03
○	4. 14.07.04 14.07.04
○	5. 14.07.05 14.07.05
○	6. 14.07.06 14.07.06
○	7. 14.07.07 14.07.07
○	8. 14.07.08 14.07.08
○	9. 14.07.09 14.07.09
○	10. 14.07.10 14.07.10
○	11. 14.07.11 14.07.11
○	12. 14.07.12 14.07.12
○	13. 14.07.13 14.07.13
○	14. 14.07.14 14.07.14
○	15. 14.07.15 14.07.15
○	16. 14.07.16 14.07.16
○	17. 14.07.17 14.07.17
○	18. 14.07.18 14.07.18
○	19. 14.07.19 14.07.19
○	20. 14.07.20 14.07.20
○	21. 14.07.21 14.07.21
○	22. 14.07.22 14.07.22
○	23. 14.07.23 14.07.23
○	24. 14.07.24 14.07.24
○	25. 14.07.25 14.07.25
○	26. 14.07.26 14.07.26
○	27. 14.07.27 14.07.27
○	28. 14.07.28 14.07.28
○	29. 14.07.29 14.07.29
○	30. 14.07.30 14.07.30

Electrical Legend
1 : 100

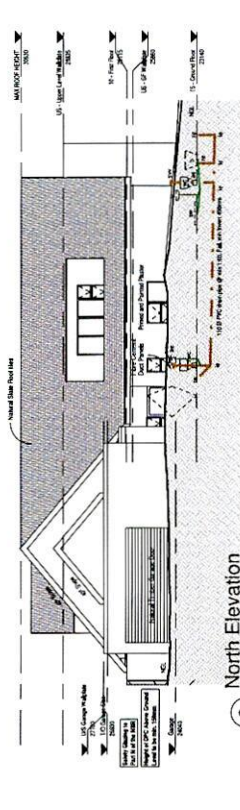
frond architecture (pty) ltd 1st Floor, 857 Papanui Road, Papanui, Christchurch Email: info@frond.co.nz Phone: 03 377 6444 Website: www.frond.co.nz	
Project: Proposed New Residence on Portion 76 Arabella Country Estate	
Client: Carmen Le Grange	
Title: SHEET 2 of 3	
Date: 13/05/2021	Scale: As shown @ A1
COUNCIL SUBMISSION Drawing number: 1634 - 02	



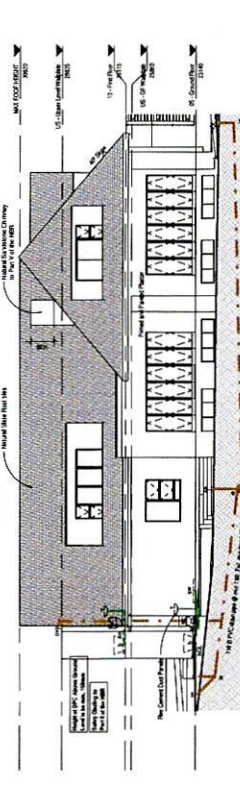
1 East Elevation
1 : 100



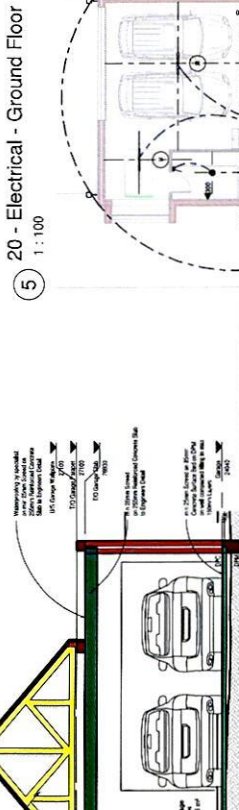
3 West Elevation
1 : 100



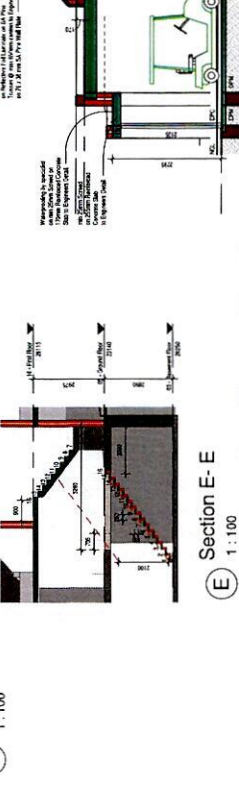
2 North Elevation
1 : 100



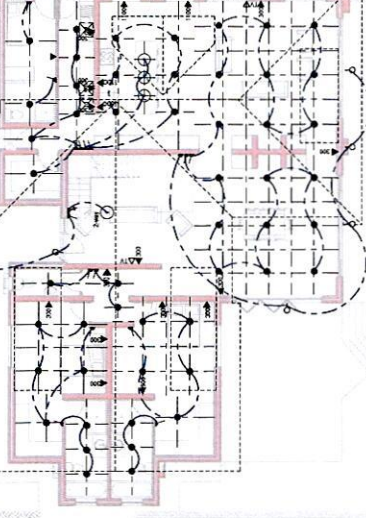
4 South Elevation
1 : 100



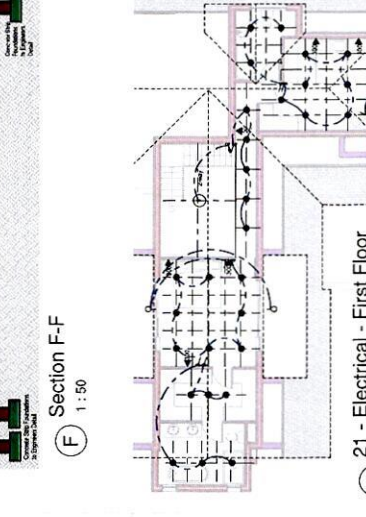
F Section F-F
1 : 50



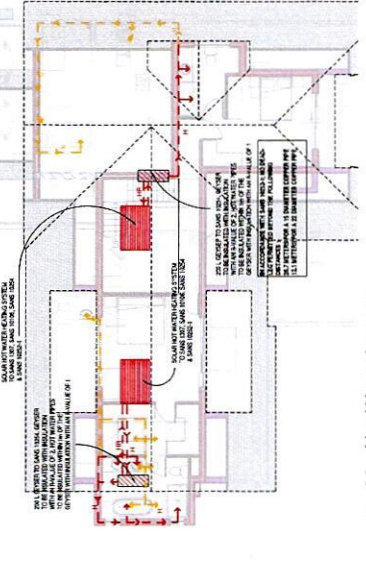
E Section E-E
1 : 100



5 20 - Electrical - Ground Floor
1 : 100



6 21 - Electrical - First Floor
1 : 100



7 30 - Hot Water Layout
1 : 100

