

**4.2****ERF 2699, 12 TREWWA STREET, GANSBAAI (PERLEMOENBAAI), OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF DP BOTHA****2699 GPB****SW van der Merwe****30 June 2022****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application has been received on 7 May 2021 from Messrs Interactive Town- and Regional Planning on behalf of DP Botha in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 2699, Gansbaai (Perlemoenbaai) for the following:

- ❖ departure in terms of Section 16(2)(b) of the By-law to accommodate the following:
  - a. encroachment of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling;
  - b. encroachment of the western lateral building line from 2m to 1,72m to accommodate the existing store (outbuilding);
  - c. encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room;
  - d. encroachment of the boundary wall height restriction from 2,1m to 2,39m and 3,19m along the northern street boundary, from 2,1m to 3,16m and 3,19m on the western lateral boundary and from 2,1m to 2,39m along the eastern lateral boundary, and from 2,1m to 3,19m along the rear boundary;
  - e. encroachment of the street building line from 4m to 0m and the western lateral building line from 2m to 0m, and
  - f. encroachment of the maximum permissible coverage from 50% to 54,92% to accommodate a proposed garage.
  
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-law to accommodate the existing building.

The Locality Plan of the property concerned is attached as Annexure A. The Motivation Letter from the applicant in support of the application is attached as Annexure B, while the Site Development Plan is attached as Annexure C.

**2. DECISION AUTHORITY**

Municipal Planning Tribunal

**3. BACKGROUND / SITE HISTORY**

The application property is situated in the low-density residential area of Perlemoenbaai that comprises a mixture of vacant and developed single residential erven. The property measures 500m<sup>2</sup> in extent and is developed with a three-storey dwelling house. The existing building footprint amounts to 249,2m<sup>2</sup> or 49,8% coverage.

The property was sold to the current owner during 2019 with the undertaking that the property would be compliant pertaining to amongst others approved building plans and Occupation Certificate in terms of the National Building Regulations.

The former property owner submitted as built plans that was subsequently approved under Plan Number 21594, dated 18 October 2019 (approved plans as per Annexure F). The transfer was registered without the required Occupation Certificate.

The current owner submitted building plans for a proposed second floor braai room and ground floor storeroom, which plans was approved on 19 November 2019 under Plan Number 38060. The Building Control Department issued an Occupation Certificate dated 20 February 2020 under Plan Number 38060 for the aforesaid additions (approved plans and Occupation Certificate attached as per Annexure G).

A professional land surveyor was appointed to conduct a height survey including the placement of the existing buildings on the property (survey attached as Annexure H). The survey indicated that the location of the dwelling is not in accordance with the approved building plans as per Plan Number 21594. The survey also indicated deviations from the approved building plans as per Plan Number 38060 despite the fact that an Occupation Certificate was issued in that the braai room encroaches the 8m height restriction with 0,44m and the storeroom encroaches the 2m lateral building line up to 1,72m from the property boundary.

The owner also raised the height of the boundary walls without approved building plans, despite a stop notice being served by the Building Inspector. Although not stated by the applicant, comparison of the as built boundary wall photos with google street view images (2010), it appears that the current owner was responsible for the height encroachments pertaining to the street and western lateral building lines only. The eastern lateral boundary wall and southern portion of the western lateral boundary wall already encroached the height restriction and was constructed by the former property owner.

The application therefore seeks to legalise the building line encroachments of the original three storey dwelling and store, the encroachment of the height restriction of the braai room addition that deviates from the approved building plans, the encroachment of the 2,1m height restriction applicable to boundary walls without approved building plans. The application also entails a departure of the street- and lateral building lines onto the erf boundaries, including the maximum permitted coverage to enable the construction of a proposed garage and determination of an administrative penalty.

Having had regard to the above the application is set out as follows:

- ❖ departure in terms of Section 16(2)(b) of the By-law to accommodate the following:
  - a. encroachment of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling;
  - b. encroachment of the western lateral building line from 2m to 1,72m to accommodate the existing store (outbuilding);
  - c. encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room;

- d. encroachment of the boundary wall height restriction from 2,1m to 2,39m and 3,19m along the northern street boundary, from 2,1m to 3,16m and 3,19m on the western lateral boundary and from 2,1m to 2,39m along the eastern lateral boundary and from 2,1m to 3,19m along the rear boundary;
  - e. encroachment of the street building line from 4m to 0m and the western lateral building line from 2m to 0m, and
  - f. encroachment of the maximum permissible coverage from 50% to 54,92% to accommodate the proposed garage.
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-law to accommodate the existing building.

#### 4. SUMMARY OF APPLICANT'S MOTIVATION

The motivation for the application is summarised as follows:

- Development objective is to legalise existing structures that contravene the height and building line restrictions, waiver of the applicable administrative penalty and to construct a garage.
- Conveyancer Certificate confirms there are no restrictions in the title deed against the application proposal.
- The surrounding area comprises a mixture of vacant and developed single residential erven.
- The proposal is consistent with the Single Residential Zoning.
- The proposal is consistent with the SDF.
- The applicant is consistent with the Overstrand Growth Management Strategy.

##### Departure of the height restriction

- The braai room was approved in accordance with the applicable 8m height restriction, but built at a height of 8,44m.
- The former Gansbaai Zoning Scheme imposed an 8,5m height restriction.
- The height of 8,44m is therefore consistent with the heights of existing approved buildings in the area.
- The new braai room does not exceed the height of the lift shaft, thus not increasing the maximum height of the application area.
- The westward falling slope of the erf does not cause an obstruction of ocean views for future neighbours of the property adjacent to the east, as they would be situated at a higher elevation.
- Positive aspects regarding the height of the roof outweigh the transgressions.
- The height departure proves of more logical, practical, efficient, and cost-effective solution opposed to demolition of critical sections of the roof.

##### Departure of the street, rear, eastern and western lateral boundary wall height restriction

- The street boundary and western lateral boundary wall encroachments are functional and as it forms part of and will support the proposed garage which requires the wall to be sufficiently high for the proposed garage.
- Height of the wall is influenced by the westward sloping topography, thus augmenting the height.
- Overall, the boundary wall heights encroachments are not foreseen to have a significant impact on the street in terms of visual impact or character.

- The boundary wall height does not impact the character of the area as the store and proposed garage are behind and below the wall and not visible from adjacent properties.
- The relationship of scale between the dwelling and boundary wall is not out of proportion.
- The rear boundary wall height encroachment of up to 1,09m and eastern lateral building line encroachment of up to 0,29m is not considered to have a significant visual impact on Erf 2710 and Erf 2700 or the character of the area.
- Although many surrounding properties may have no or low walls, they may in future considering security a priority resulting in more erven being fenced off by higher boundary walls.
- Additional boundary wall height increases security, provides privacy for both the owners.
- Boundary wall height will not negatively impact the character of the area as it serves to screen the outbuilding and proposed garage behind the wall.
- Positive aspects in relation to boundary wall height, outweigh the transgression approval of which would be more cost effective and less destructive solution opposed to demolishing sections of the boundary wall.

#### Existing house - encroachment of lateral and rear boundaries

- Existing dwelling was approved at 1,57m from the western lateral boundary but constructed at 1,55m. At first floor the encroachment constitutes of a balcony with railings whilst the braai room addition on the second floor adheres to the 2m lateral building line.
- The storeroom was approved at 2m from the lateral property boundary but constructed at 1,72m.
- The most likely to be affected is Erf 2713, adjacent, which is in the same ownership as the application property.
- The storeroom was built under the existing dwelling and screened by the boundary walls.
- Emergency access to the side is still available.
- The departure is not considered to negatively impact the character of the area.
- Approval of the departure is more practical, cost effective and non-destructive than to demolish sections of the existing dwelling that exceed the building line.
- Rear building line encroachment of 0,14m and eastern lateral building line encroachment of 1cm and western lateral building line encroachment is not considered to detract from application area or adjoining property in terms of visual impact, privacy, shade, and sun given the height of the existing structure.

#### Proposed garage - street, lateral building line and coverage encroachments

- The initial proposal was for a carport on the street and lateral property boundary.
- The proposed structure is not open on 2 sides and therefore deemed a garage.
- The proposed garage is 4,6m wide with an area of 25,4m<sup>2</sup> and has a flat roof extending from between the dwelling and boundary wall.
- The existing garage has stairs on the inside making one of the parking areas sub-standard only allowing one property parking bay.

- The property does not have sufficient covered parking area.
- There is no alternative place of additional covered parking.
- The garage is required to protect the owner's vehicles (motorhome) from the elements.
- The proposed garage is situated behind the boundary walls and not visible from the street or adjoining properties.
- The character of the area is therefore not impacted upon.
- The proposal will not result in any visual or privacy impact.
- Access for emergency services to the side will still be available.

#### Proposed coverage encroachment

- The existing coverage is 49,8% or 249,19m<sup>2</sup>.
- The proposed garage has an area of 25,4m<sup>2</sup> that will result in the encroachment of the maximum permissible coverage of 50% by 4,9%.
- Additional coverage is not to extend the dwelling, but to provide for a proposed ground floor garage.
- The applicant argues that coverage on a 400m<sup>2</sup> erf at 60% equates to a maximum building footprint of 260m<sup>2</sup>, whereas even larger than 400m<sup>2</sup> where 50% coverage is applicable has a lesser footprint (e.g., 200,5m<sup>2</sup> on a 401m<sup>2</sup> or 250m<sup>2</sup> in a 500m<sup>2</sup> erf).
- The proposed garage will not influence the character of the area in any way.

#### Application to waive the administrative penalty

The application is motivated in accordance with the provisions of Section 90(3) of the By-Law as follows:

##### (a) The nature, duration, gravity and extent of the contravention

- Existing boundary walls exceeds the height restriction up to 3,19m.
- Existing braai room exceed the 8m height restriction up to 8,4m.
- Existing storey and dwelling exceed the western lateral building line to 1,72m and 1,55m respectively.
- Existing dwelling exceeds the eastern side building line to 1,56m.
- The existing dwelling exceeds the rear building line to 1,86m.

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

- The application demonstrates the current owner is willing and co-operative to rectify the existing contraventions, most of which originated from the previous owner as well as to follow the correct procedure to legally construct a garage.

##### (c) Report by a quantity surveyor in matters of unauthorised building / construction

- The roof of the dwelling, including the lift height and chimney exceed the height restriction.
- The dwelling house encroach the lateral and rear building lines due to it not been setting out correctly during construction.
- Height of the street boundary exceeds the maximum permissible height.
- Existing coverage is complaint with the zoning scheme.

(d) Whether the unlawful conduct was stopped

- Due to the nature thereof, the contraventions can only be stopped by demolition to make it compliant with the land use scheme or via an application to legalise the contraventions, which the applicant did.

(e) Whether the person allegedly involved in the contravention has previously contravened this B-law of a previous planning law.

- Property owner did not previously contravene the By-law according to the applicant's knowledge.
- The dwelling was designed and built by the previous owner following building plan approval for which occupation was issued.
- The new owner / applicant since then submitted building plans for a braai and store room, street and lateral boundary wall. The latter alterations had been omitted from the building plans due to the height departure.
- The new owner commenced with the construction of the street and lateral boundary wall alterations and was instructed to stop by the Building Control Department.
- Increased height of the street and lateral boundary wall was part of the objective of the applicant to build a garage.
- Subsequent to the stop notice the suspicion arise that the building was not placed as per the approved plans, a survey was instructed and in accordance with the municipal request.

## 5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Internal Departments	Yes	02 August 2021	10 September 2021
Ward councillor	Yes	02 August 2021	10 September 2021
Notices	Yes	03 August 2021	10 September 2021
Total number of letters	<b>One (1)</b>		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			<b>Yes</b>
Was the application processed correctly?			<b>Yes</b>
Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA?			<b>Yes</b>

## 6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Department	02/08/2021	No objection. The building plan application must comply with all applicable law.

Fire Services	10/08/2021	No objection subject to compliance with the provision of SANS-A:2016, 10400-T: 2020 and the By-law relating to community fire safety.
Engineering Services	19/08/2021	Annexure I.
Telkom	26/08/2021	Annexure J.
Health	10/09/2021	No comment.
Environmental Services	10/09/2021	Application does not have any implications on NEMA Regulations.

## 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One letter of objection was received from SA Jacobs, the owner of Erf 2916, Gansbaai. The objection is attached as Annexure D and the applicant's response to the objection is attached as Annexure E. The objection can be summarized and is interpreted as follows:

**Contraventions of property boundaries and other municipal legislation have already been committed.**

### Response from applicant

The contraventions exist but does not contravene the property boundary but inter alia the building lines.

### Response from town planner

Applicants comment is noted and agreed with.

**How do these contraventions occur and how does a building progress this far without the misdemeanors having been identified in view of the protocols and regulations in place as well as the normal good efficiency of the municipality as follows:**

- ❖ **Clear parameters set by the building regulations prior to building plan approval and building commencement;**
- ❖ **Inspection of foundation by building inspector prior to filling;**
- ❖ **Building Plans are submitted for the purpose of ensuring that the planned building conforms to Overstrand municipal regulations.**

### Response from applicant

The objector's questions regarding the development processes and the origin of contraventions are noted but not considered relevant to the consideration of the application. Therefore, it is our opinion that this comment aimed at the application should be ignored.

Response from town planner

The applicant's comment is noted. The deviations were caused by the current as well as former property owners and was not picked up by the building inspector and resulted in the issue of an Occupation Certificate. The contravention for the boundary wall height only become known after a professional land surveyor had been appointed to conduct a height survey and to position the dwelling on the property.

**The objector is of the opinion that permitting these contraventions will create a troublesome precedent for the municipality for other transgressions encroaching on the rights of neighboring properties such as privacy and view**

Response from applicant

The objector's comment is noted but also agreed to.

As per the previous point discussed, this point of objection is read to be a general comment not specifically aimed at this application given that the objector is not directly impacted by the contraventions as she is located in a different street from the application area.

In the case where no material impact from the contraventions is foreseen to result on the application area or on the surrounding area, it is recommended that this point of comment should be omitted.

Response from town planner

Each application is to be considered upon individual merit and therefore precedence itself is not considered a valid planning consideration. The merit of the application is further discussed in the evaluation below.

**The objector states that if her memory serves her correctly, the owner of Erf 2918 was instructed to and did reduce the height of his residence roof which exceeded the permitted maximum height only slightly, obviously causing significant cost and time inconvenience.**

Response from applicant

This comment should be ignored, as it is considered irrelevant to the subject application, referring to a different application with its own determining factors with which we are not familiar with.

Response from town planner

The former owner of Erf 2918 had been instructed to reduce the height of the roof during the construction thereof. In this case Occupation Certificates had been issued for the braai room additions without the encroachments / deviations from the approved plans being picked up, hence the application under consideration.

**Breaking down the dwelling and conforming to all Overstrand Building Regulations would be excessive from a cost perspective and therefore a significant fine is suggested to prevent any future transgressions.**

Response from applicant

The comment is noted. It should also be noted that the comment is a general proposal to discourage residents to transgress the applicable building regulations and is not specifically aimed at this application site.

It should further be noted that an application for legalization of the contraventions includes the application for the determination of an administrative penalty. In this case, the application is for waiving the administrative penalty which is motivated by the co-operation and willingness of the applicant to rectify the existing contraventions, of which most originated from the previous owner and to follow the correct statutory procedure to apply to legally construct a garage.

The municipality will consider all relevant factors in determining the outcome of the application and in this respect the existing and foreseen impact on the surroundings is considered of paramount importance.

The comment regarding a suggested significant fine, should be ignored as it represents a general statement, not based on the consideration of all the relevant factors for the specific application

Response from town planner

The applicants comment that the point of objection is general and not directed towards the application and the comment pertaining to a fine is noted. The matter of the applicability of an administrative penalty and desirability of the application is evaluated under paragraph 11. below.

**8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS**

N/A

**9. MUNICIPAL ASSESSMENT OF COMMENTS**

The comments from the various departments have been positive.

**10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**

**10.1 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)**

The application is of a small scale and therefore the planning objectives applicable in terms of SPULMA and LUPA cannot be adequately discussed.

Spatial Justice

The proposal will not further perpetuate historic spatial imbalances and will accommodate existing contraventions as well as the proposed garage.

Spatial sustainability

The proposal will allow for legalisation of existing encroachments including a proposed garage on a single residential erf within the urban edge. No impact on agricultural land, environmentally sensitive or biodiversity rich areas would occur.

Efficiency

The efficiency principle, entails optimizing the use of existing resources and infrastructure. The proposed application entails existing roof and therefore the proposed application makes use of existing resources and will be aligned with this principle. The proposal will facilitate the optimal use of the property and will not adversely impact the natural environment.

Spatial resilience

The proposal is consistent with the Spatial Development Framework that adheres to the principle of spatial resilience.

Good administration

The application followed the required planning procedures to ensure that land use activity is in line with Municipal By-Laws and the public process has been followed.

**10.2 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)**

Same as above.

**10.3 (In)consistency with the IDP/Various levels of SDF's/Applicable policies**

N/A

**10.4 (In)consistency with guidelines prepared by the Provincial Minister**

N/A

**10.5 Impact on Municipal engineering services**

The property has access to municipal services. The proposal will not cause additional impact upon municipal services.

**10.6 Outcomes of investigations/applications i.t.o other legislation**

N/A

**10.7 Existing and proposed zoning comparisons and considerations**

The subject property is zoned Residential Zone 1: Single Residential and therefore the development parameters applicable to the aforementioned applies.

**10.8 ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

N/A

## 11. THE DESIRABILITY OF THE PROPOSAL

The history of the encroachments and unauthorised additions are set out in the background under paragraph 3. above. In short, the former property owner was responsible for the deviations of the approved plans for which as built plans were approved under Plan Number 21594, dated 18 October 2019.

The current owner is responsible for the deviations of the approved building plans pertaining to the height restriction encroachment of the braai room and as well as the lateral building line encroachment of the storeroom from Plan Number 38060 dated 19 November 2019. The current owner also raised the street and western lateral boundary walls without approved building plans despite a stop notice in terms of the National Building Regulations being served.

Having had regard to the background above, the application will be evaluated under the following headings:

### Departures from approved Building Plan Number 21594

The current owner took transfer of the property and was furnished with approved building plans. Following receipt of the survey by a professional land surveyor indicating amongst others, the placement of the existing structures deviations from the approved building plans become apparent, which relates to encroachments of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling.

The property was developed under the former Gansbaai Zoning Scheme Regulations imposing 1,57m lateral and 2m rear building lines. The encroachment resulted presumably due to the incorrect setting out during the construction phase of the dwelling. No objections were received pertaining to the impact of the existing encroachments from direct adjoining property owners, save for the general objection against the encroachment of the height restriction during the application. The opinion is held that the above encroachments is not significant and not out of keeping with the character of development in the surrounding area, the visual amenity of the locality and vested rights of the owners of adjoining properties. The encroachments were caused by the former property owner is considered desirable.

### Departures from approved Building Plan Number 38060

The current owner constructed a braai room and storeroom, which additions deviates from the approved building plans. The owner also raised the street and western lateral boundary wall heights despite a stop notice being served.

Approved plans for the braai room indicated compliance with the 8m height restriction, whilst the boundary wall additions were omitted from the plans due to non-compliance with 2,1m height restriction applicable to boundary walls. The applicable departures relate to the encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room and a departure of the western lateral building line from 2m to 1,72m to accommodate the storeroom.

Approved building plans indicated that the existing roof will be extended over the proposed braai room in accordance with the height restriction. The roof of the braai room was not constructed in accordance with the approved plans and affixed onto

the existing roof, resulting in the encroachment of the 8m height restriction with 0,44m. The applicant did not submit as built plans for this deviation, nor was it picked up by the Building Inspector, who subsequently issued an Occupation Certificate.

Normally the encroachments of the 8m height restriction are not supported unless in exceptional circumstances. The applicant motivates the height encroachment based on the slope of the erf from east to west, which is not considered exceptional circumstances. The fact that an Occupation Certificate was issued is considered exceptional circumstances in this case. The bulk of the existing flat roof of the three-storey house situated rear of the braai room obscure or screen the height encroachment almost invisible from adjoining properties to the east and south. The braai room also adheres to the lateral building line.

The opinion is held that the deviation of the height restriction, given the topography of the property, the height of natural ground level on adjacent properties slightly elevated above the application property contributes to the fact that the existing house will not appear out of keeping with the nature and scale of surrounding properties. In this regard it must be noted that an 8,5m height restriction in terms of the former Gansbaai Zoning Scheme Regulations applied.

The addition is of a high quality and aesthetically pleasing and not considered to detract from the character of the area and vested rights of adjoining property owners. Further, in terms of exceptional circumstances the Building Inspector issued an Occupation Certificate in respect of the completed building works. The opinion is therefore held that on balance the encroachment of the height restriction be supported based on the payment of an administrative penalty in according with the provisions of the By-Law.

The storeroom encroaches the lateral building line up to 1,72m. This is a single storey structure and not considered to adversely impact the character of the area or vested rights of adjoining property owner. The retention of the structure is considered desirable, subject to the payment of an administrative penalty.

#### Boundary wall height encroachments

The property owner raised the street and western lateral boundary walls without approval in terms of the National Building Regulations. It also appears that the portions of the existing boundary walls at the date of transfer exceeded the applicable boundary wall height restriction in terms of the 2013 Overstrand Integrated Zoning Scheme.

The former 2003 Gansbaai Zoning Scheme did not contain a boundary wall height restriction. Despite the aforesaid, boundary walls in the surrounding area does comply with the current height restriction, is generally low key comprising a mixture of walls and columns broken up by palisade fencing. Many properties in the area do not have any boundary walls, or limited walls to a portion of the erven. The character of the area is not that of high boundary walls and enclosed properties but more open thus allowing views through over Walkerbay to the north and west.

It appears that the encroachments of the rear and eastern lateral property boundaries were not caused by the current owner. Having had regard to the elevated natural ground level on the adjoining properties, the encroachments are not considered significant and will not impact vested rights of adjoining properties of

the visual amenity of the street scene and retention of this wall considered desirable.

The owner raised the street and western lateral boundary wall without approved building plans. The owner was advised by the Town Planner, Mr van der Merwe to stop, whilst a stop notice in terms of the National Building Regulations was blatantly ignored, resulting the street and western lateral boundary wall height encroachments.

The western lateral boundary wall varies between 3,16m and 3,19m in height. The street boundary wall encroaches the height restriction between 2,39m and 2,6m (south of the access) whilst the remaining portion of the street boundary wall encroach the height restriction between 2,5m and 3,16m.

The encroachments vary between 0,3m up to 1,06m is considered significant encroachments. This does not include the impact of electric fencing that has since been installed on the boundary wall as it did not form part of the application. The street and western lateral boundary wall heights is not characteristic of boundary walls in the area, thereby not in keeping with the character of the area and considered to visually dominate the street scape in front of the property.

The applicant's motivation that the boundary wall is functional as it will support the proposed garage is not supported since neither the encroachment of the boundary wall height restriction, nor the construction of a garage on property boundaries are primary rights or part of the area character. Having regard to the history, the property owner contravening the By-law, ignorance of a stop notice it appears that the contraventions occurred on purpose to enable the applicant to construct a garage that is obscured from public views. The argument that the boundary wall is functional presumably due to its height is flawed.

The applicant's motivation that the boundary wall height is influenced by the slope of the property is not agreed with. The usual practice is that boundary walls follows or step with the contours to ensure an acceptable visual impact. In this case the height of the boundary wall is overbearing and visually dominates the street scape as the wall does not steps down with the contours (existing ground level).

The applicant also installed electric fencing above the boundary walls, not reflected in the application. The boundary wall height encroachment is therefore not correctly portrayed in the application and does not form part of the evaluation.

Pertaining to the encroachment of the street and western lateral building line encroachments the applicant's motivation that the boundary wall height will not have a significant impact on the visual amenity and character of the area is not agreed with for the following reasons:

- ❖ The surrounding area is not characterized by high boundary walls.
- ❖ There is not a president of boundary wall height encroachments in the area.
- ❖ The scale and extent of the boundary wall height encroachment detract from the visual amenity of the locality being visually imposing and overbearing in the street scene.
- ❖ Boundary wall heights in terms of the Land Use Scheme of 2,1m above natural ground level with a further 0,5m provision for electric fencing is more than adequate for security and privacy purposes.

- ❖ The statement that positive aspects in relation to boundary wall height outweigh the transgression to motivate approval opposed to more costly and more destructive demolition of sections of the boundary wall is not agreed with.

Having had regard to the above the opinion is held that condonation of the street and a western lateral boundary wall height restriction is not desirable and should not be supported.

#### Proposed departures

The proposal entails the construction of a 25,4m<sup>2</sup> garage on the northern street and western lateral property boundary, screened behind the existing unauthorised boundary wall. Further, the proposed garage will result in the encroachment of the maximum permitted coverage of 50% with 4,9%.

It is motivated that the property has not sufficient covered parking with the existing double garage substandard due to an internal staircase and that an additional covered parking is required to accommodate a motorhome from the elements. The proposed location is the only available area on the property.

The owner also owned adjoining Erf 2713. When discussing his intention with the town planner the applicant was advised to locate the proposed garage on Erf 2713 but on condition of consolidation with the application property.

From a planning point of view, street building line encroachments, especially up to the property boundaries are normally not supported, save in exceptional circumstances. In case of garages within the street building lines approvals had been granted in the past up to 2m from the street boundary with access being obtained over the erf when justified in terms of site-specific circumstances.

The proposed garage will be in the only available place on site but is motivated not to impact upon the character of the area due to the fact that it is screened behind the unauthorised boundary walls that encroaches the height restriction. The motivation is considered flawed given the status of the boundary wall being unauthorised. Further, there is no precedent in the surrounding area of street boundary encroachments with garages or carports. The only exception in the vicinity being shade ports at 15 and 18 Melton Street. Given the opinion that the street and western lateral boundary wall height encroachments are not supported the applicants' motivation that the garage will not impact on the character of the area is flawed and not supported. Despite the only logical and available location on the property, a garage will have a significant impact on the street scene and character of the area. The applicant should re-consider this aspect of the proposal, since the scheme regulations do allow for the construction of a shade or carport within building lines subject to a motivated application, being more open lower impact structures. The applicable guidelines also ensure that it may not be enclosed, save for the construction of a boundary wall or fence in compliance with the 2,1m height restriction that will have a far lesser impact on the street scape. For the above reasons the construction of the proposed garage on the street and lateral boundary is not desirable.

#### Proposed coverage departure

The Perlemoenbaai area does not have a history of coverage encroachments being permitted to date. The minimum erf size in Perlemoenbaai is 500m<sup>2</sup>. The applicant

motivates that the coverage on a 500m<sup>2</sup> erf of 50% (i.e. 250m<sup>2</sup> building footprint) is more restrictive when compared to a 400m<sup>2</sup> erf with 65% coverage (i.e. 260m<sup>2</sup> building footprint). Perlemoenbaai is a low density single residential area. The proposed 400m<sup>2</sup> erf is more typical of higher density developments such as gated estates or town housing complexes and not relevant to the application area. The opinion is held that the coverage encroachment of 4,9% is not characteristic of the character and morphology of development in the surrounding area and should be dismissed. The applicant also owned Erf 2713 which would solve the coverage and building line encroachments as a result of the proposed garage. The town planners advice was ignored and the owner recently sold Erf 2713.

#### Administrative penalty

The application for determination of an administrative penalty relates to the existing unauthorised deviations from the approved plans by the former and current property owner, as well as building works without approved building plans. The application is motivated in accordance with the provisions of Section 90(3) of the By-Law as follows:

(a) The nature, duration, gravity and extent of the contravention

- Existing boundary walls exceeds the height restriction up to 3,19m.
- Existing braai room exceed the 8m height restriction up to 8,4m.
- Existing storey and dwelling exceed the western lateral building line to 1,72m and 1,55m respectively.
- Existing dwelling exceeds the eastern side building line to 1,56m.
- The existing dwelling exceeds the rear building line to 1,86m.

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

The application demonstrates the current owner is willing and co-operative to rectify the existing contraventions, most of which originated from the previous owner as well as to follow the correct procedure to legally construct a garage

(c) Report by a quantity surveyor in matters of unauthorised building / construction

- The roof of the dwelling, including the lift height and chimney exceed the height restriction.
- The dwelling house encroach the lateral and rear building lines due to it not been setting out correctly during construction.
- Height of the street boundary exceeds the maximum permissible height.
- Existing coverage is complaint with the zoning scheme.

(d) Whether the unlawful conduct was stopped

Due to the nature thereof, the contraventions can only be stopped by demolition to make it compliant with the land use scheme or via an application to legalise the contraventions, which the applicant did.

(e) Whether the person allegedly involved in the contravention has previously contravened this B-law of a previous planning law

- Property owner did not previously contravene the By-law according to the applicant's knowledge.
- The dwelling was designed and built by the previous owner following building plan approval for which occupation was issued.
- The new owner / applicant since then submitted building plans for a storeroom and street boundary wall, which had been omitted due to the height departure.
- The new owner commenced with the construction of the street boundary wall and was instructed to stop by the Building Control Department.
- Increased height of the street boundary wall was part of the objective of the applicant to build a garage.
- Subsequent to the stop notice the suspicion arise that the building was not placed as per the approved plans, a survey was instructed and in accordance with the municipal request

Having had regard to the above, the former property owner was responsible for the encroachments pertaining to the placement of the existing dwelling and some boundary wall height encroachments. The opinion is therefore held that an administrative penalty should not be imposed against the current owner in respect of the aforesaid encroachments.

The current owner was responsible for the unauthorized street boundary and western lateral boundary wall height encroachments as well as deviations from the approved plans pertaining to the height encroachment of the braai room and the storeroom encroachments over the western lateral building line. Although there is no previous history of By-law contraventions, the applicant proceeded with unauthorised building work relating to the boundary wall alterations despite a stop notice, whilst building work deviated from the building plan approvals.

Given the recommendation not supporting the height encroachment of the street and western lateral property boundaries and administrative penalty pertaining to the said encroachments should not be imposed.

The applicant did not submit detailed as built plans demonstrating the area of encroachments pertaining to the roof and storeroom. The applicant submitted a quotation for the construction of the roof for R43 769,00 but nothing in respect of the storeroom. The area of encroachment of the storeroom amounts to 1,42m<sup>2</sup> and built cost as per approved municipal tariff thus amounts to R21 300,00 (25m<sup>2</sup> x R15 000/m<sup>2</sup>).

Detailed plans indicating the extent/area of the unauthorised boundary wall additions was not submitted with the applications, only a quotation from Copper Construction of extending the boundary wall by 1m for 25m for R38 500,00.

Given the fact that the current owner deviated from the approved building plans with the construction of the braai room and storeroom and failed to submit updated building plans prior to construction thereof, ignored the stop notice from Building Control Department and completed the construction of new sections and raising of the boundary wall it is recommended that an administrative penalty of 20% of the built cost be made applicable in respect of the unauthorised additions hereby recommended for approval.

The penalty is therefore calculated as follows:

- 1) *Braairoom:*  $R43\,769 \times 20\% + \text{VAT } (R8753,80 + R1\,313,07)$
- 2) *Boundary wall:*  $R38\,500 \times 20\% + \text{VAT } (R7700,00 + R1\,155)$
- 3) *Storeroom:*  $R15\,000 \times 1,42\text{m}^2 = \text{Built cost of } R21\,000$   
 $R21\,000 \times 20\% + \text{VAT } (R4\,200 + R630)$

Based on the above the administrative penalty amounts to **R23 751,87 VAT inclusive**.

### Conclusion

Having had regard to the evaluation above, the current owner bought the dwelling with several deviations from the approved building plans, although in possession of an Occupation Certificate. These deviations, as elaborated in the evaluation above is not considered significant to such an extent where it would be detrimental to the character of the area or vested rights of adjoining property owners and is therefore considered desirable.

The current property owner deviated from the approved plans with in that the braai room addition encroaches the height restriction and the store room the lateral building line. The owner is however in possession of an Occupation Certificate issued in terms of the Natural Building Regulations. No objections were received from direct adjoining property owners. One objection was received in general against the encroachment of the height restriction in general from a property on the southern side of Melton Street. The objector did not provide any reasoning as to the impact of the height encroachment in terms of vested rights as property owner. Having had regard to the evaluation above, the encroachment of the height restriction will not significantly impact upon adjoining property owners or the character of the area and given the special circumstance motivated above, condonation is supported.

The encroachment of the street and western lateral boundary wall height restriction, the proposed street and lateral building line encroachments for the garage and encroachment of the maximum permitted coverage is not in keeping with the character and morphology of development in the surrounding area and therefore not considered desirable and not supported.

## 12. RECOMMENDATION

1. that the comment be noted;
2. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 2699, Gansbaai (Perlemoenbaai), to accommodate the following:
  - encroachment of the height restriction from 8m to 8,44m to accommodate the roof of the existing braai room;
  - encroachment of the eastern lateral building line from 2m to 1,56m, the southern rear building line from 2m to 1,86m and the western lateral building line from 2m to 1,55m to accommodate the existing dwelling, and
  - encroachment of the western lateral building line from 2m to 1,72m to

accommodate the existing store (outbuilding);

- encroachment of eastern lateral and rear boundary wall height restriction;

**be approved** in terms of the provisions of Section 61 of the By-Law;

3. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 2699, Gansbaai (Perlemoenbaai), to accommodate the following:

- encroachment of the maximum permissible coverage from 50% to 54,92% to accommodate the proposed garage;
- encroachment of the boundary wall height restriction from 2,1m to 2,39m and 3,19m along the northern street boundary, from 2,1m to 3,16m and 3,19m on the western lateral boundary and
- encroachment of the street building line from 4m to 0m and the western lateral building line from 2m to 0m to accommodate a proposed garage;

**not be approved** in terms of the provisions of Section 61 of the By-Law, due to the reasons provided in paragraph 13 below.

4. that an administrative penalty in terms of Section 16(2)(q) of the By-law for the deviations from approved Building Plan No. 21594, dated 18 October 2019, **not be imposed** in terms of Section 90(4) of the By-Law;
5. that an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised deviations from approved building plan 38060 and unauthorised boundary wall alterations resulting in the encroachment of the height restriction **be imposed** in terms of Section 90(4) of the By-Law;
6. that the recommendations in 2. and 5. above be subject to the following conditions:
  - (a) that the approval is limited to the encroachments as indicated per on the Site Development Plan as per Annexure C as submitted with the application;
  - (b) that building plans, in line with the above, be submitted to the Building Department for consideration within 60 days from the date of the final decision and that structure be rectified within 6 months, and all comments from the Building- and Fire Departments be complied with at that stage;
  - (c) that the portions of the street and western lateral boundary walls encroachment the 2,1m boundary wall height restriction be demolished within 90 days from the final approval of the application;
  - (d) that an administrative penalty of **R23751,87** (VAT inclusive) be payable within thirty (30) days of the decision;
  - (e) that this approval does not absolve the landowners from compliance with any other relevant legislation, and
  - (f) that all other applicable development parameters as prescribed in the

relevant Land Use Scheme be complied with.

7. that the applicant/person who commented be notified of its appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decisions.

### 13. REASONS FOR THE RECOMMENDATION

#### Reasons for approval

- The development is not considered to unacceptably detract from the character of the area, vested rights of adjoining property owners in terms of loss of privacy, overlooking, loss of views or sun / daylight.
- The application followed due process.
- The proposal is consistent with the SDF.
- The applicant is in possession of occupation certificates.

#### Reasons for non-approval

- The proposed double garage and resulting coverage encroachments is not in keeping with the character and morphology of existing development in the area.
- The retention of the street and western lateral boundary wall height encroachments is not in keeping with the character of the area.
- The retention of the street boundary wall encroachment is visually over-dominant in the street scape and reflected of the character of the area.
- Boundary walls should follow or step with the contours.
- The applicant failed to stop with the raising of the boundary wall when telephonically advised by the Senior Town Planner, whilst a stop notice from Building Control was ignored.
- The raising of the boundary walls takes place without building plan approval in terms of the National Building Regulations.
- The applicant did not obtain building plan approval for deviations pertaining to the braai and storeroom additions.

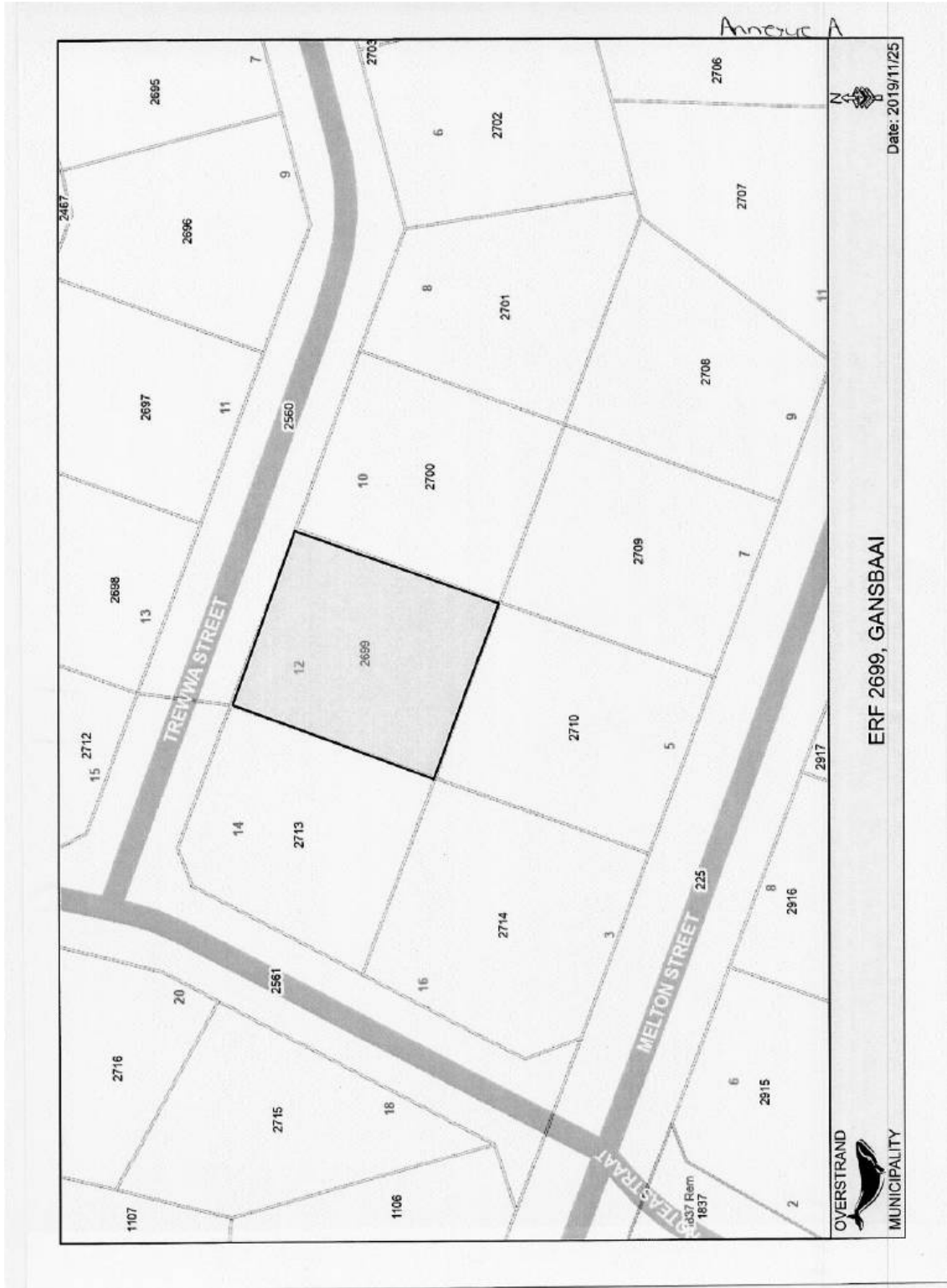
### 14. Annexures

Annexure A:	Locality Plan
Annexure B:	Motivation Letter
Annexure C:	Site Development Plan
Annexure D:	Comment received
Annexure E:	Comment from applicant
Annexure F:	Approved plans dated 18 October 2019 (Plan Number 21594)
Annexure G:	Approved building plans dated 21 October 2019 (Plan Number 38060) and Occupation Certificate dated 20 February 2020
Annexure H:	Site survey by Professional Land Surveyor van Dyk & Ass. Inc.
Annexure I:	Services Report
Annexure J:	Comment: Telkom

**REGISTERED PLANNER**Name: **H VAN DER STOEP**SACPLAN Reg No: **A/1708/2013**

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



ERF 2699, GANSBAAI



Date: 2019/11/25

Annexure A

Annexure B/17

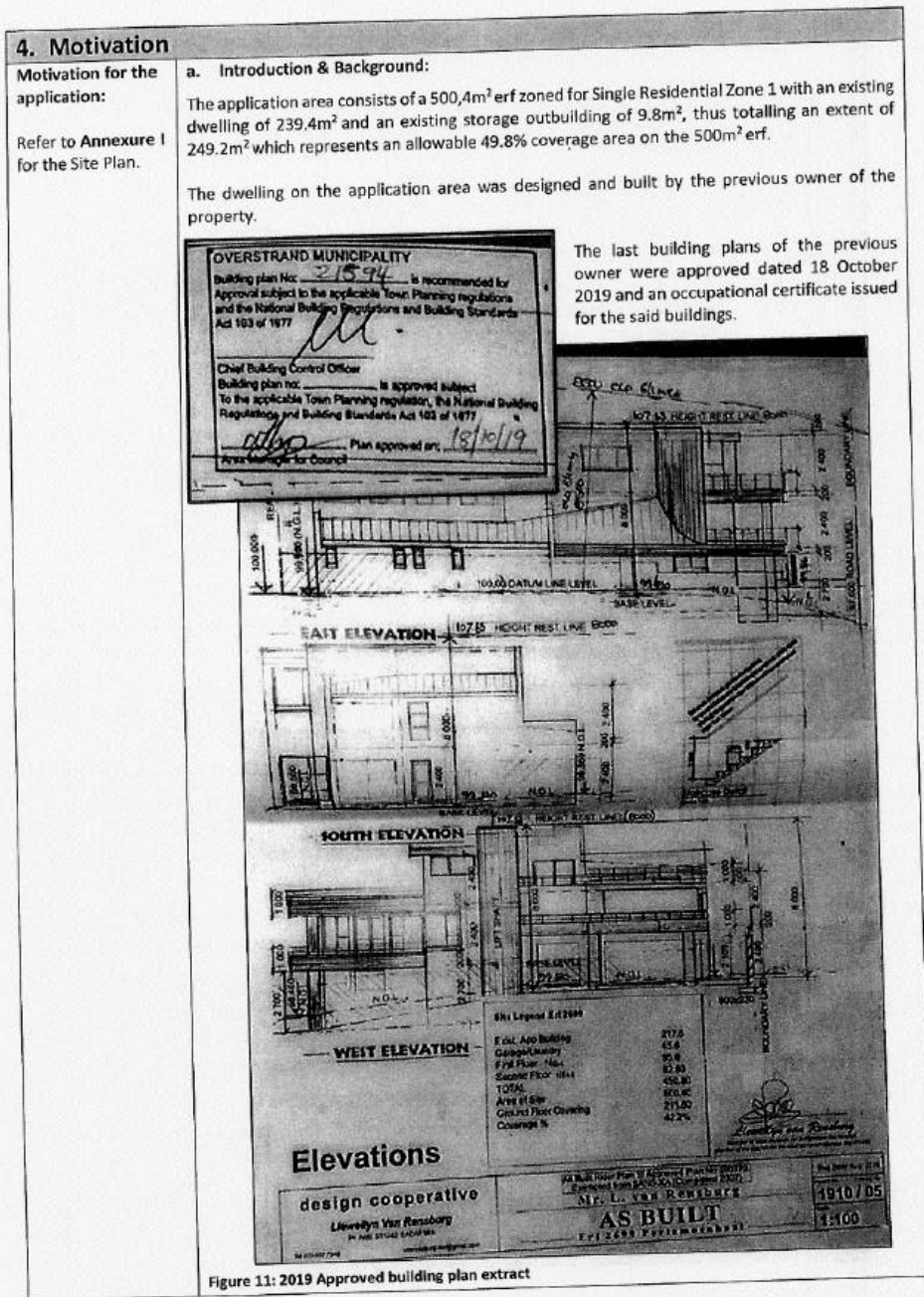


Figure 11: 2019 Approved building plan extract

The new owner / the applicant has since submitted building plans for a storeroom and a street boundary wall. The boundary wall part on the building plan was omitted (as it required a height departure approval) whereafter the building plans were subsequently approved. The owner commenced with the construction of the street boundary wall, which exceeds the height restriction of such a wall and was instructed to terminate the building work by the local authority.

The increase in height of the street boundary wall forms part of the applicant's objective to accommodate a garage and therefore as per the owner's objective to build a garage he needs to legalize the existing contravening street boundary wall and simultaneously applying for permission for the proposed 25.4m<sup>2</sup> garage for his motorhome on site.

Due to the contentiousness of the application area, the municipality has required that application be made to legalize all existing encroachments, to apply for the required departures to legally construct a garage and for an administrative penalty.

#### b. The Application Proposals

The proposal is thus to legalize the existing transgressions, apply for building line and coverage departures for the proposed garage and to apply to waive the administrative penalty on the application area.

Subsequently, the following application proposals are triggered:

Application is made for height and building line departures to legalize the following:

##### ➤ Height departures

- The existing dwelling height which is 8.44m.
- The existing boundary walls which are up to 3.19m above natural ground level.

##### ➤ Building line departures

- The existing dwelling is 1.86m from the rear boundary, originally approved at 2m, 1.55m from the western side boundary, originally approved at 1.57m and 1.56m from the eastern side boundary, originally approved at 1.57m.

Application is made for building line and coverage departures for the proposed garage as follows:

##### ➤ Building line departure

- A garage on the western side boundary and street boundary, thus over the building lines to 0m.

##### ➤ Coverage Departure

- The total proposed coverage when including the proposed garage which totals 54.92%.

Application is made to waive an administrative penalty for the existing transgressions as follows:

##### ➤ Dwelling and boundary wall height contravention

- The dwelling height exceeds the 8m height restriction up to 8.44m
- The boundary wall exceeds the maximum 2.1m height restriction up to 3.16m.

##### ➤ Dwelling & new store building line contravention

- The existing dwelling which is 1.86m from the rear boundary, 1.55m from the western side boundary and 1.56m from the eastern side boundary.
- The west side new store which is 1.72m from the western boundary.

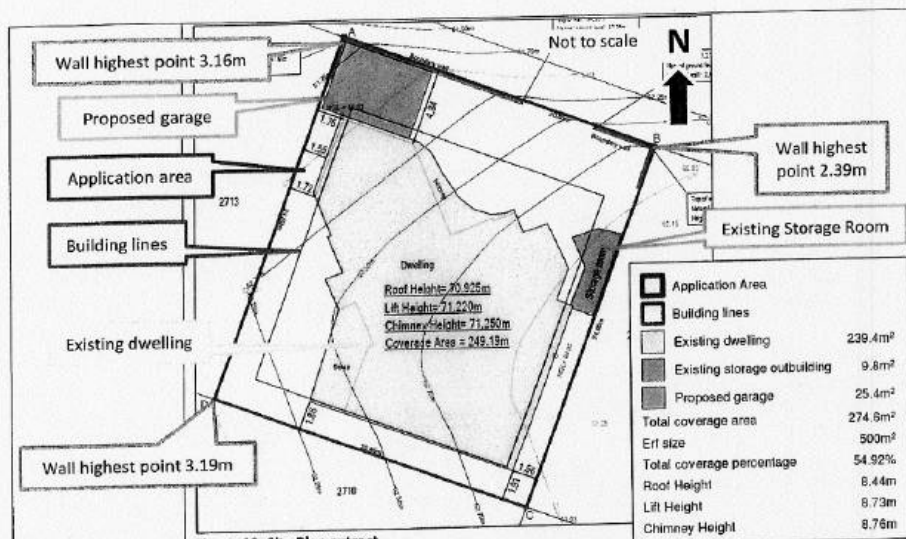


Figure 12: Site Plan extract

The following paragraphs provide a motivation for the departures on the application area as well as for the waiving of the administrative penalty:

#### Height Departures:

As part of this application, the height departures involve the height of the main dwelling house and of the street boundary walls.

- **A departure to relax the height of the existing building from 8m to 8.44m**

The height of the existing dwelling as determined by Van Dyk and Associates Inc surveyors is as follows:

- Roof height: 8.44m (2<sup>nd</sup> survey)
- Lift height: 8.73m (2<sup>nd</sup> survey)
- Chimney height: 8.76m (2<sup>nd</sup> survey)

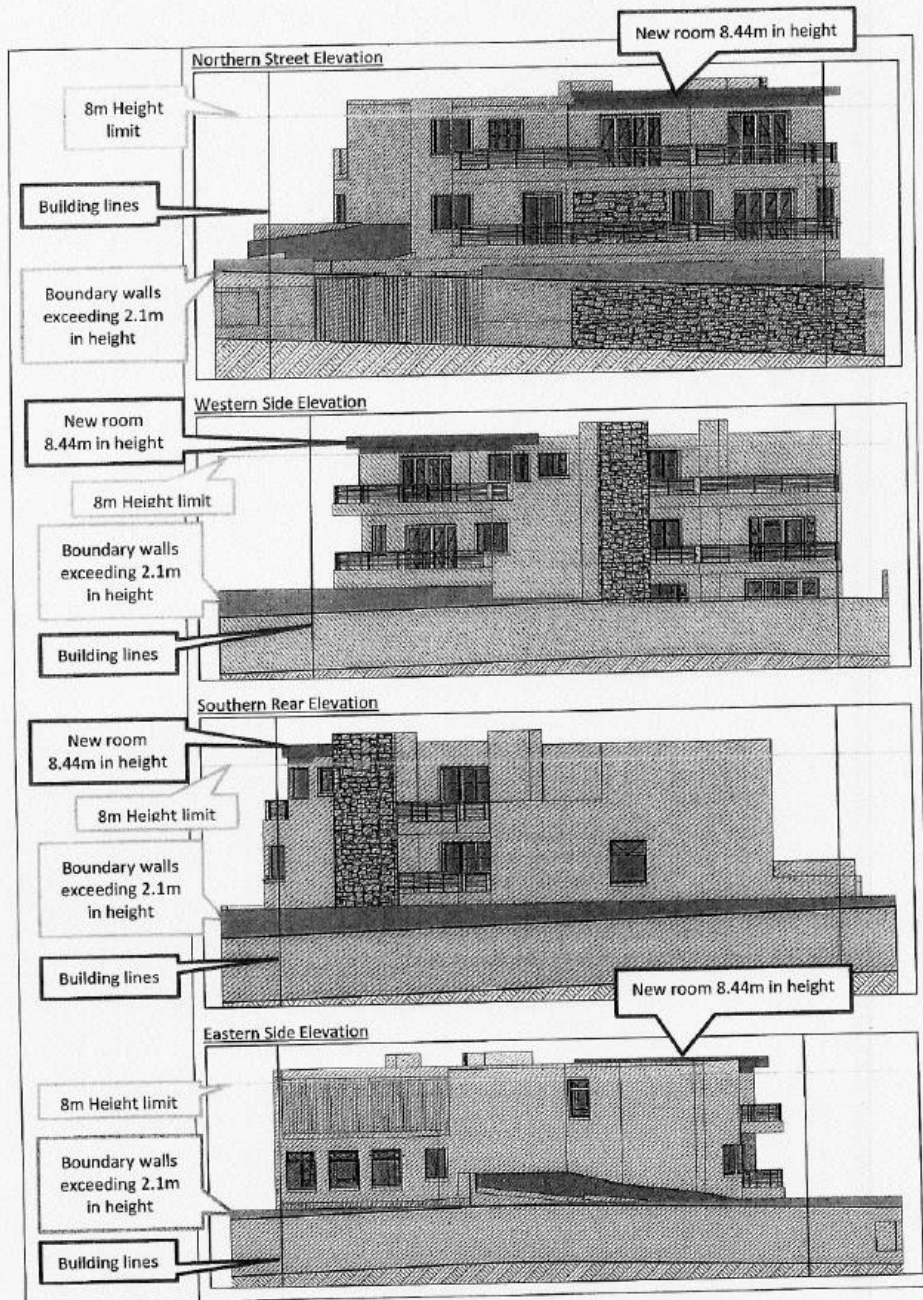
The original dwelling was approved at 8.5m in 2004 which included the lift and the chimney. This was measured from a different base level than the existing height measurements and which complied at the time, thus being approved.

A new room was approved at 8m but built at 8.44m. The application is therefore only for the new roof at 8.44m in height.

The previous Gansbaai Zoning Scheme had a height restriction of 8.5m. As a result, properties built in terms of the previous Gansbaai Zoning Scheme were built up to 8.5m. The departure for the new existing room to 8.44m is consistent with the heights of existing approved buildings in the area. The new room does not exceed the height of the existing lift, thus not increasing the maximum height of the application area.

Furthermore, as a result of the westward falling slope, the height transgression is not foreseen to cause an obstruction of ocean views for future neighbours of the property adjacent to the east, as they would be situated at a higher elevation.

The positive aspects regarding the height of the roof outweigh the transgressions and the height departure represents a more logical, practical, efficient, cost-effective and non-destructive solution than demolishing these critical sections of the dwelling.



- **A departure to relax the height of the existing boundary walls**

Boundary wall heights:

- Street: 3.16m
- Western side: 3.16m
- Eastern side: 2.39m
- Rear: 3.19m

- **A departure to relax the height of the existing northern street boundary wall from 2.1m to 3.16m**

The street boundary wall is approximately between 2.39m to 3.16m high measured from the average natural ground-level which is used to determine the height of the dwelling, and thus exceeds the maximum permitted height of 2.1m.

The street boundary wall which exceeds the maximum permitted height is functional, as it forms part of and supports the proposed garage which requires the wall to be sufficiently high for the proposed garage to fit in under it.

Furthermore, the westward sloping topography of the erf also influences the height of the wall which increases towards the west, but which is level at the top, thus augmenting the height.

The height encroachment of the northern street boundary wall is approximately 1.06m and is not foreseen to have any significant impact on the application area or on the adjacent street in terms of visual impact or character.

- **A departure to relax the height of the existing western side boundary wall from 2.1m to 3.16m**

The western boundary wall is approximately up to 3.16m high measured from the average natural ground-level which is used to determine the height of the dwelling, and thus exceeds the maximum permitted height of 2.1m.

A section of the western boundary wall which exceeds the maximum permitted height is functional, as it forms part of and supports the proposed garage which requires the wall to be sufficiently high for the proposed garage to fit in under it.

The height encroachment of the western boundary wall is approximately 1.06m and is not foreseen to have any significant impact on the application area or the adjacent Erf 2713 in terms of visual impact or character.

- **A departure to relax the height of the existing southern rear boundary wall from 2.1m to 3.19m**

The southern rear boundary wall is approximately up to 3.19m high measured from the average natural ground-level which is used to determine the height of the dwelling, and thus exceeds the maximum permitted height of 2.1m.

The height encroachment of the southern boundary wall is approximately 1.09m and is not foreseen to have any significant impact on the application area or the adjacent Erf 2710 in terms of visual impact or character.

- **A departure to relax the height of the existing eastern side boundary wall from 2.1m to 2.39m**

The eastern boundary wall is up to 2.39m high measured from the average natural ground-level which is used to determine the height of the dwelling, and thus exceeds the maximum permitted height of 2.1m.

The height encroachment of the eastern boundary wall is only a slight encroachment of approximately 0.29m and is not foreseen to have any significant impact on the application area or the adjacent Erf 2700 in terms of visual impact or character.

#### ❖ Boundary wall height departures conclusion

In general, to conclude, the character is therefore not impacted in a negative way by the additional height of the boundary wall, as both the garage and the storage outbuilding are behind and below the boundary wall and not visible from the adjacent properties, therefore ensuring an aesthetically pleasing view from the surrounding properties and the street. As the dwelling is a double-storey house, the relationship of scale between the dwelling and the street boundary wall does not appear to be out of proportion. Although many of the surrounding existing dwellings consist of no or low walls, the houses in future may consider security a higher priority resulting in more even being fenced off with higher boundary walls.

The higher boundary walls provide increased privacy for both the owners of Erf 2699 and the surrounding properties. The house is built on a hill, which means the boundary wall heights at 2.1m on three boundaries (north, west & south) will be lower in relation to the dwelling ground floor level than properties with flat topographies. The fourth boundary (east) at 2.1m will likely be lower in relation to the adjacent neighbour's house ground floor level when compared to properties with flat topographies thus having a reduced level of privacy due to the slopes of the area. The boundary wall height departure will contribute to the normalisation of the privacy of the application area and surrounding properties in relation to flatter areas.

Furthermore, the additional height of the wall increases property security, which is a growing concern in South Africa.

The positive aspects regarding the additional height of the boundary wall outweighs the transgression in terms of the Land use Scheme, 2020 regulations and therefore, approving the departure represents a more practical, cost-effective and less destructive solution than demolishing sections of the boundary wall.

#### Building Line Departures:

- A departure to relax the western side building line from 2m to 1.55m to allow for an existing dwelling

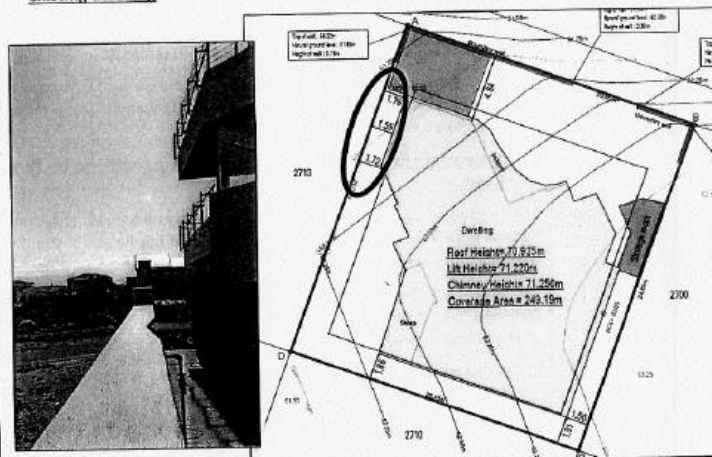


Figure 13: Western Building Line Departure

The existing dwelling was approved at 1.57m from the boundary. The property is built at 1.55m from the boundary, thus only exceeding the originally approved dwelling by 2cm. The dwelling was thereafter expanded upward to include an additional storey which was approved by the building department. A new storeroom was approved on the ground floor at 2m from the boundary but built at 1.72m from the boundary, thus exceeding the 2m building line by 0.28m.

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The new storeroom is on the ground floor, was built under an existing building and is screened off by boundary walls, thus having no negative impact on surrounding properties or the character of the area.

The original existing dwelling that exceeds the originally approved distance from the boundary by 2cm is considered too small to have any negative impact.

The upward expansion of the property exceeding the 2m building line by 0.45m on the western side only includes a stoep/balcony. The new room on the top floor does not exceed the building line, except for the roof overhang.

The erf most likely potentially affected by the encroachment of the western building line will be Erf 2713 Gansbaai. The adjacent Erf 2713 Gansbaai is vacant and also within the ownership of the applicant, Mr Botha. The existing dwelling exceeds the western side building line by 45cm (i.e. balcony railing up to lateral boundary).

The encroachment of the 45cm is not expected to be material on Erf 2713 Gansbaai, especially from a sun, shade or sea, mountain view perspective. The reasons are respectively that in terms of shade and sun, the encroachment (45cm) will not make any material difference, if at all, given the height of the existing dwelling house structure. Furthermore, there are not any mountain views considered as features from this specific location. From a sea view perspective, the sea views are west of the potentially affected erf, Erf 2713.

In terms of overlooking and privacy, the encroachment will not create any additional deprivation of privacy or overlooking due to the 45cm encroachment.

Access to this side of the property for emergency purposes is still accommodated as well.

Therefore, it is evident that the departure for the relaxation of the western side building line is not foreseen to impact negatively on the application area or on the adjacent area.

Furthermore, it is more practical, cost-efficient and non-destructive to allow for the departure than to demolish the sections of the dwelling exceeding the building line.

- **A departure to relax the rear building line from 2m to 1.86m to allow for an existing dwelling**

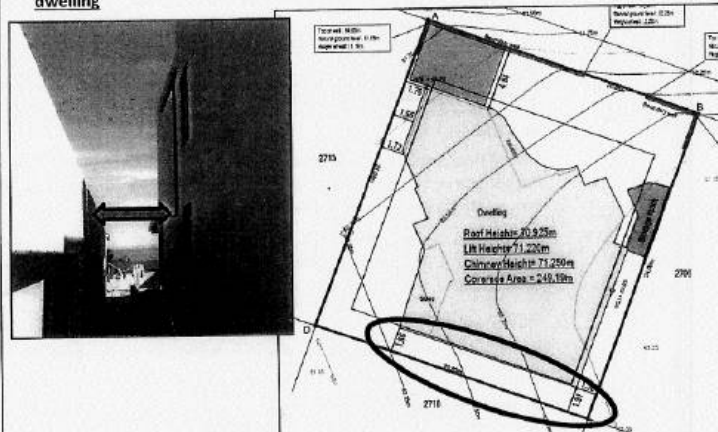


Figure 14: Southern Building line Departure

The existing dwelling exceeds the rear building line only slightly by 0.14m and therefore is not foreseen to impact on the application area or the adjacent erf in terms of future visual impact or privacy intrusion. There are no roof overhangs on the part of the building exceeding the southern rear building line.

In terms of shade and sun, the encroachment (14cm) will not make any material difference, if at all, to the adjacent Erf 2710, given the height of the existing dwelling house structure.

Access to this side of the property for emergency purposes is still accommodated as well.

Therefore, it is evident that the departure for relaxation of the rear building line is not foreseen to impact negatively on the application area or on the adjacent erf.

Furthermore, it is more practical, cost-efficient and non-destructive to allow for the departure than to demolish the sections of the dwelling exceeding the building line.

- **A departure to relax the eastern side building line from 2m to 1.56m to allow for the existing dwelling**

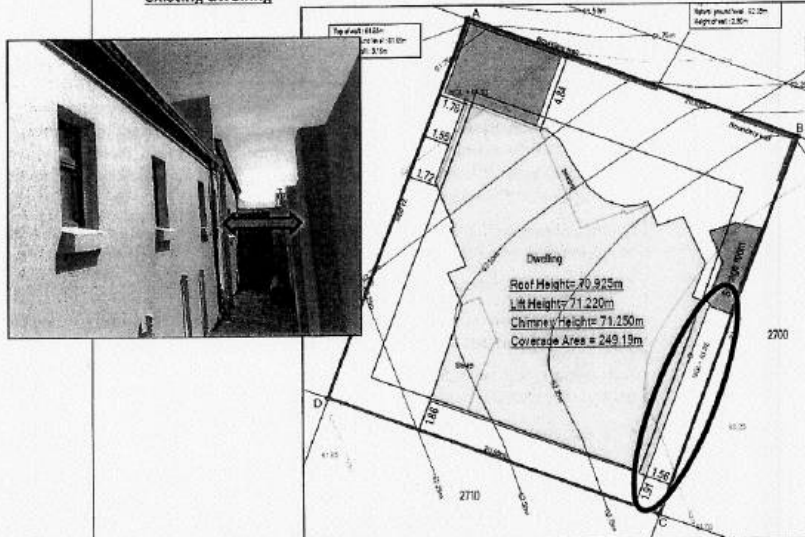


Figure 15: Eastern Building Line Departure

#### Dwelling

The existing dwelling was approved at 1.57m from the boundary. The property is built at 1.56m from the boundary, thus only exceeding the originally approved dwelling by 1cm. A window was thereafter moved and made smaller.

The original existing dwelling that exceeds the originally approved distance from the boundary by 1cm is considered too small to have any negative impact. The change of the window was a window facing the storage area and size was decreased, thus not having any negative impact.

#### Storage Outbuilding

A departure to relax the eastern side building line to 0m to allow for a storage room was approved in 2019.

#### Proposed Garage Departures:

- **A departure to relax the street and western side building lines from 4m to 0m and from 2m to 0m respectively, to allow for the proposed garage**

The original proposal was for a carport, but a carport has to be completely open on two sides. Therefore, the proposal is for a garage.

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A roof is proposed between the existing dwelling and boundary walls. The 25.4m<sup>2</sup> proposed garage is proposed to be completely open on the eastern side and have a 1.5m opening on the southern side. The garage is only approximately 4.6m wide and will therefore only be able to accommodate one vehicle.

The existing garage on the property has stairs within which makes one of the two garage bays substandard, only allowing for one proper bay. The application area does not have sufficient covered parking at the moment. There is no alternative possible place for additional covered parking on the application area.

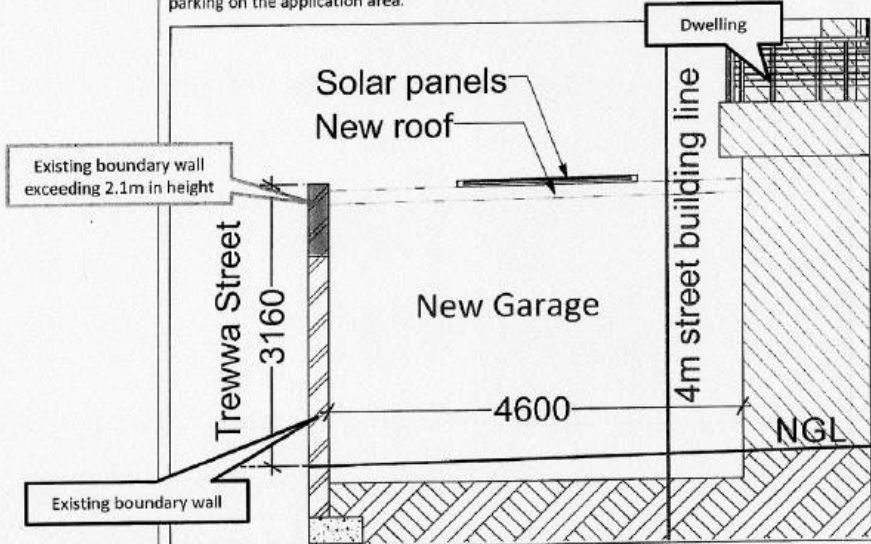
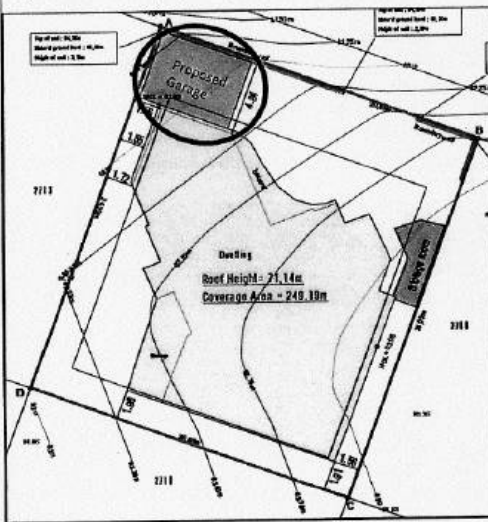


Figure 16: Section of proposed garage



The purpose of the proposed garage is to provide covered parking against the sun and inclement weather.

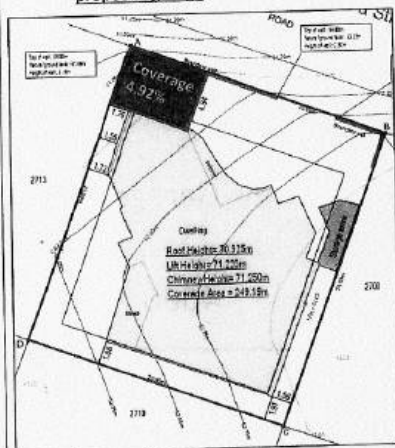
The location for the proposed garage represents an optimal and efficient utilization of space as this area is currently used by the owners for washing their vehicles and would still be able to be used for this purpose as well as for providing cover and protection for a motorhome/vehicle against inclement weather.

Figure 17: Impact of Proposed Carport

The garage will not be visible from the street or from the western neighbouring property as it will be situated behind and below the boundary wall. Therefore, the character of the area is not foreseen to be impacted by the garage. Furthermore, no visual impact or privacy intrusion from the proposed garage on future western neighbours are foreseen either. Access to the property for emergency services will not be obstructed by the garage on the western side of the application area with 1.55m still open on this side.

It is therefore evident that all Land-Use Scheme, 2020 requirements will be adhered to by the proposed garage, that the garage is functional and that the garage would support optimal and efficient use of space with no impact on the character of the area or on the surrounding properties.

- A departure to relax the coverage of Erf 2699 from 50% to 54,9% to allow for a proposed garage



The total existing coverage of the existing dwelling which is 249.19m<sup>2</sup> includes the existing storage outbuilding of 9.8m<sup>2</sup>; thus representing a coverage of 49,8%. The proposed garage will add an extra 25.4m<sup>2</sup> to the total extent thus equalling 274.59m<sup>2</sup> implying a coverage of 54,9%, which represents a nominal exceedance of 4,9% over the permitted maximum of 50% coverage regulations.

The additional coverage therefore, is not for extending the dwelling but for constructing a proposed garage on the ground floor level.

The character of the area will not be influenced in any way by the garage. The dwelling on its own represents 49,8% of the proposed 54,9% coverage and is thus 0,2% below the maximum permitted coverage of 50%.

Figure 18: Additional Coverage Impact

Furthermore, the table below illustrates the impact of the permissible coverage on the permissible building floor area. It is evident that a 400m<sup>2</sup> erf is permitted more floor area (i.e. 260m<sup>2</sup> building floor area) whereas a 500m<sup>2</sup> erf may only accommodate 250m<sup>2</sup> building floor area. This implies that for erven between 401m<sup>2</sup> and 519m<sup>2</sup> in extent, the larger erven allow for smaller dwellings than for a 400m<sup>2</sup> erf.

Table 1: Impact of Permissible Coverage on the Relationship between Erf Extent and Permissible Building Floor Area

Impact of Permissible Coverage on the Relationship between Erf Extent and Permissible Building Floor Area		
Erf Extent (m2)	Permissible Coverage (%)	Permissible Building Floor Area (m2)
400	65	260
401	50	200.5
420	50	210
440	50	220
460	50	230
480	50	240
500	50	250
520	50	260

The above-mentioned calculations should be taken into consideration when evaluating the application for the coverage departure of a mere 4,9% above the permissible coverage of 50% and it is requested that the Overstrand Municipality apply leniency in this regard.

The departure for additional coverage will not impact negatively on the character of the area and it is recommended that leniency be applied to the 250m<sup>2</sup> cut-off point for the coverage area on a 500m<sup>2</sup> erf compared to a 400m<sup>2</sup> erf, which is smaller, and permitted to accommodate a 260m<sup>2</sup> coverage area, which is larger.

**Application to waive the administrative penalty:**

The following information is provided as required according to Chapter X, Section 90(3) of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020 for an application to waive the administrative penalty regarding the boundary wall height and building line transgressions:

(a) The nature, duration, gravity and extent of the contravention;

The nature, duration, gravity and extent of the contravention has been described in detail in this motivation report and includes the following contraventions:

- the existing boundary walls exceed the permitted height up to a maximum of 3.19m.
- the existing new room exceeds the permitted height up to a maximum of 8.44m.
- the existing new store and dwelling exceed the western side building line to 1.72m and 1.55m, respectively.
- the existing dwelling exceeds the eastern side building line to 1.56m.
- the existing dwelling exceeds the rear building line to 1.86m.

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

It is evident from this application that the applicant/owner is co-operative and willing to rectify the existing contraventions, of which most originated from the previous owner and to follow the correct statutory procedure to apply to legally construct a garage.

(c) Report by a quantity surveyor in matters of unauthorised building/construction;

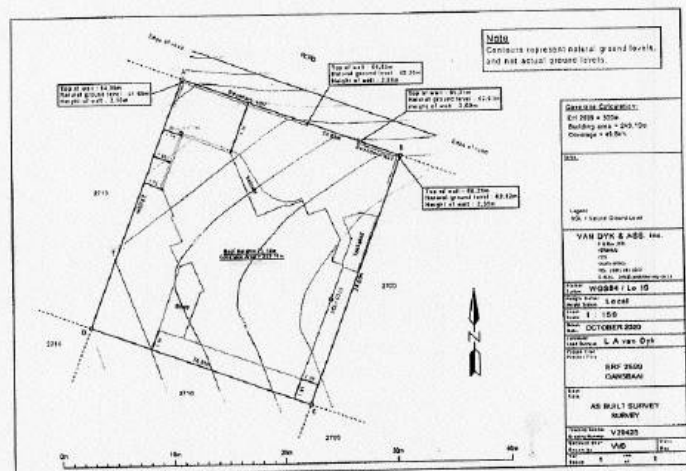
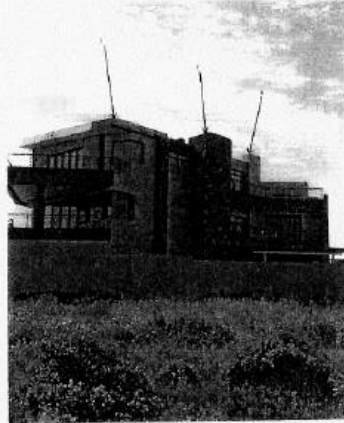


Figure 19: Surveyor's Plan

The land surveyor's survey confirmed the following:

- The height of the dwelling house exceeds the permissible height at three points.



----- Forward message -----  
 From: Van Die Surveyors [mailto:info@vandie.co.za]  
 Date: Tue, 20 Jun 2017 12:24:19 PM  
 Subject: KW 315 614 2016 General  
 Re: [mailto:info@vandie.co.za]

Stree: 060 204 8100

Apparaat: 060 204 8100

Wanneer die ligging 100% verskaf, kan die hoogte van die gebou tot 1,2 m 3 m die foto.

Wanneer die foto

1. 70,000 - Ouk

2. 71,200 - Huis

3. 71,200 - Skoorsteen

Wanneer die foto

Vindas van Die PLS 1000

Professional Land Surveyor

Figure 20: Land-Surveyor Report of Dwelling Height

- Height encroachment for the existing dwelling:
  - o Roof height: 8.44m
  - o Lift height: 8.73m
  - o Chimney height: 8.76m
- The dwelling house encroaches the building lines of the eastern, rear and western boundaries due to an incorrect outset / construction of the footprint of the main building.
- The height of the street boundary wall exceeds the permissible height.
- The existing coverage, including the dwelling and the storage building / outbuilding, is compliant with the zoning scheme requirements.

(d) Whether the unlawful conduct was stopped

Due to the nature of the contraventions being transgressions of building lines and heights, of which most were committed by the previous owner, the only way to stop the unlawful conduct is either by legalising the contraventions, which the applicant/owner is in the process of applying for through this application, or by demolishing portions of the existing building, which is an unnecessarily destructive and costly procedure, especially in view of the conclusion that the current contraventions are not causing a material impact on the environment.

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

No, according to our knowledge, the owner has not previously contravened this By-Law or a previous planning law.

The dwelling on the application area was designed and built by the previous owner of the property. The last building plans of the previous owner were approved dated 18 October 2019 and an occupational certificate issued for the said buildings.

The new owner / the applicant has since submitted building plans for a storeroom and a street boundary wall. The boundary wall part on the building plan was omitted (as it

required a height departure approval) whereafter the building plans were subsequently approved. The owner commenced with the construction of the street boundary wall, which exceeds the height restriction of such a wall and was instructed to terminate the building work by the local authority.

The increase in height of the street boundary wall forms part of the applicant's objective to accommodate a garage and therefore as per the owner's objective to build a garage he needs to legalize the existing contravening street boundary wall and simultaneously applying for permission for the proposed 25.4m<sup>2</sup> garage for his motorhome on site.

Subsequent to the instructions to terminate the construction of the wall as well as in preparation of submitting a height departure for the wall and permission for a garage the suspicion began to arise that the dwelling house was not built accurately on the property as per the building plans. In response to the above a surveyor was appointed to determine the exact position of the dwelling house on the property, determine the coverage of the dwelling house as well as the height of the dwelling house and boundary walls in accordance with the definitions of Overstrand Municipal Planning By-Law, 2020.

Due to the contentiousness of the application area, the municipality has required that application be made to legalize all existing encroachments, to apply for the required departures to legally construct a garage and for an administrative penalty.

**c. Character of the area**

Many of the erven surrounding the application area are still vacant. Gansbaai which consists of a natural scenic beauty, functions mostly as a holiday and retirement town, which has developed gradually over a period of time and will carry on developing. As a result, the town represents a changing and evolving character consisting of a variety of architectural styles which should carry on evolving further.

The permission and departure application for the application area (as portrayed in the photos below) support the character of the area for the following reasons.

- The dwelling represents a modern, yet aesthetically appealing building which is in line with the style and scale of various other large, double-storey dwellings in the De Kelders and Gansbaai area
- The height of the boundary walls which serve a practical and functional purpose, are not visually unappealing, do not appear out of proportion with the scale of the dwelling due to the topography of the area and the height of the dwelling and provide increased privacy as well as security which is foreseen to be regarded as a higher priority in future and which may result in more fenced off properties with higher walls in the area over time
- The proposed coverage which exceeds the maximum permitted coverage does not enlarge the dwelling but accommodates the proposed "out of sight" garage which does not affect the character as a result of its location behind and below the boundary wall

Therefore, the application area supports and enhances the evolving character of the area as it represents an adaptive balance between trends in architectural styles, optimal use of the property, adaption to increased security concerns within South Africa, as well as a sensitive response to the natural scenic area with ocean views.

14/17

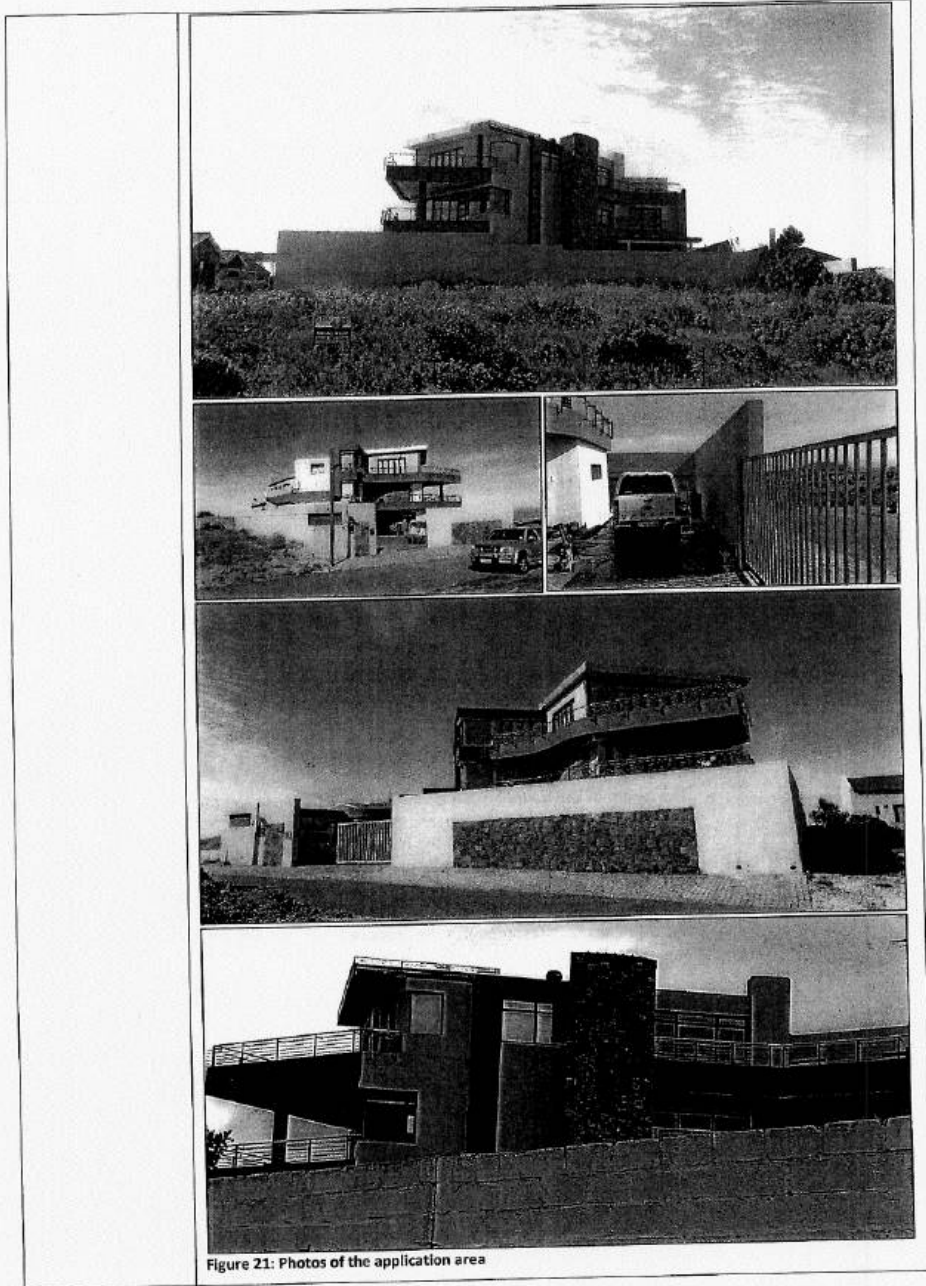


Figure 21: Photos of the application area

**d. Desirability of the proposal**

The proposal is considered **desirable** for the following reasons:

- Supports the changing and evolving character of the area
- Consists of a modern architectural style
- Owner wishes to co-operate with the Overstrand Municipality by legalizing the existing contraventions and applying for the proposed garage.
- Owner is prepared to apply for an administrative penalty for existing contraventions.
- The proposed garage which represents an efficient and optimal utilization of space will provide protection for a motorhome against inclement weather and is not visible from the street.
- The additional coverage will not impact the character, as it will only accommodate the proposed garage which is both functional and not visible from the street or from outside the property.
- According to the Land-Use Management Scheme, 2020, an erf with an extent of 400m<sup>2</sup> may accommodate a larger dwelling than an erf with an extent of 500m<sup>2</sup>, such as in the case of the application area and it is therefore recommended that leniency be applied by the municipality when evaluating the application for a coverage departure.
- Approval of the application represents an efficient, practical, cost-effective and non-destructive solution to the contraventions which do not materially impact on the surrounding area or on the application area.
- The positive aspects of approving the subject applications which include visual appeal, practicality, cost-efficiency, increased security, privacy and functionality, far outweigh the contraventions they represent which are not foreseen to materially impact on the application or surrounding area in terms of visual impact, privacy, sun and shade, views or character of the area or access to the application area for emergency purposes.

**e. Planning Principles**

The application has also been analyzed for consistency with the planning principles prescribed by the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and also the Western Cape Land Use Planning Act, 2014 (LUPA) and the following conclusions were made:

- (i) **Spatial Justice** which refers to the need for redressing the past apartheid spatial development imbalances and aim for equity in the provision of access opportunities, facilities, services and land.

**Possible results of the development**

The proposal will not in any way contribute to perpetuation of past apartheid spatial development imbalances as it will accommodate the legalization of existing contraventions as well as a proposed garage.

The application is consistent with spatial justice.

- (ii) **Spatial Sustainability** which refers to the fact that a spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl.

**Possible results of the development**

The proposal will allow for the legalization of the existing contraventions as well as for a proposed garage on a single residential erf within the urban edge. Therefore, no impact on agricultural land, environmentally sensitive areas and biodiversity rich areas will occur.

The application can thus be deemed to be spatially sustainable.

- (iii) **Efficiency** which refers to the manner in which settlements themselves are designed to function in such a way that there will be a minimum need to travel long distances to access services, facilities and opportunities.

**Possible results of the development**

The proposal represents the most logical, efficient, practical, cost-effective and least destructive solution to legalize the existing contraventions including height and building lines which exceed the applicable statutory parameters and will allow a garage which provides covered parking against inclement weather, therefore allowing for a full range of residential needs to be catered for resulting in exceeding the coverage with less than 5%.

The garage represents an optimal, efficient and functional use of space as the area to be occupied by the garage is currently used by the owners for washing their vehicles and will still be able to be used for this purpose as well as for providing protection and cover for a motorhome/ vehicle.

Furthermore, the roof of the garage will be supported by the existing boundary wall and outside dwelling wall which represents an efficient and optimal use of building materials.

The application is **consistent** with the efficiency principle.

- (iv) **Spatial Resilience** which, in the context of land use planning, refers to spatial plans, policies and land use management systems which should enable communities to be able to resist, absorb and accommodate any economic and environmental shocks which might occur in a timely and efficient manner.

**Possible results of the development**

The proposed development will not lead to any economical and/or environmental shocks as the application allows for an existing dwelling and boundary wall as well as for a proposed garage within a residential suburb.

The application is **consistent** with the principle of spatial resilience.

- (v) **Good Administration** which, in the context of land use planning refers to the promotion of integrated, consultative planning practices in which all spheres of government and other role players ensure that a joint planning approach is pursued.

**Possible results of the development**

Consultative practices are being followed in this application as it is done in consultation with the Planning Department of the Municipality who will also advertise the application in such a manner as to enable the relevant government tiers and the general public to participate in the eventual decision-making process.

The application is **consistent** with the principle of good administration.

## 5. Conclusion

Approval of the application represents a logical, efficient, practical, cost-effective and non-destructive solution to the existing contraventions which do not materially impact on the surrounding area or on the application area. Furthermore, approval will allow for a new garage resulting to exceed the property's coverage but which will not be visible from outside the property. Therefore, the application as motivated in this report is regarded **desirable** within its local context and well-integrated within the existing community land-use activities.

It is therefore recommended that the application be approved in terms of the Overstrand Amendment By-law on Municipal Land-use Planning, 2020, as follows:

- A departure to relax the height of the new room of the existing dwelling of Erf 2699 Gansbaai from 8m to 8.44m in terms of Chapter IV, Section 16.2(b).
- A departure to relax the height of the existing street boundary wall of Erf 2699 Gansbaai from 2.1m to 3.16m in terms of Chapter IV, Section 16.2(b).
- A departure to relax the height of the existing western side boundary wall of Erf 2699 Gansbaai from 2.1m to 3.16m in terms of Chapter IV, Section 16.2(b).
- A departure to relax the height of the existing rear boundary wall of Erf 2699 Gansbaai from 2.1m to 3.19m in terms of Chapter IV, Section 16.2(b).
- A departure to relax the height of the existing eastern side boundary wall of Erf 2699 Gansbaai from 2.1m to 2.39m in terms of Chapter IV, Section 16.2(b).
- A departure to relax the western side building line from 2m to 1.55m to allow for the existing dwelling of Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- A departure to relax the eastern side building line from 2m to 1.56m to allow for the existing dwelling on Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- A departure to relax the southern rear building line from 2m to 1.86m to allow for an existing dwelling of Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- A departure to relax the northern street building line from 4m to 0m to allow for the proposed garage of Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- A departure to relax the western side building line from 2m to 0m to allow for the proposed garage of Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- A departure to relax the coverage of Erf 2699 from 50% to 54.92% to allow for a proposed garage of Erf 2699 Gansbaai in terms of Chapter IV, Section 16.2(b).
- Application to waive the administrative penalty regarding the existing height and building line contraventions of Erf 2699 Gansbaai in terms of Chapter X, Section 90(3).



Annexure D

**Townplan**

**From:** A Conradie  
**Sent:** Friday, 03 September 2021 08:13  
**To:** Townplan  
**Subject:** Fw: Erf 2699 , 12 Trewwa. Application for departure and determination of Admin penalty DP Botha

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**From:** Pierre Jacobs <pierre@tenastelin.com>  
**Sent:** Monday, August 30, 2021 2:54 PM  
**To:** A Conradie <alida@overstrand.gov.za>  
**Cc:** Barry Jacobs <barryj@alcolin.co.za>  
**Subject:** Erf 2699 , 12 Trewwa. Application for departure and determination of Admin penalty DP Botha

Dear Sir/ Madam,

I refer to your communication in the above regard of the 2nd August 2021 instant.  
 I am the owner of erf 2916 Perlemoenbaai.

If I understand this communication and request correctly, all these requests for exceeding property boundaries as well as other municipal legislation have already been committed/exceeded.

I am not sure how this occurs when Overstrand Municipal building regulations clearly state what the parameters are PRIOR to building commencement and the approval of building plans.

Furthermore the town municipal building inspector is supposed to inspect the foundation prior to them being filled. Building plans are submitted for the specific purpose of ensuring that the planned building conforms to The Overstrand Municipal Building regulations.

With all these regulations and protocols in place and the normal good efficiency and monitoring by the building Dept how does a building progress this far without the misdemeanours being identified ?

In my opinion permitting these transgressions creates a precedent that is going to haunt The Overstrand Municipality as well as when these regulations are AGAIN transgressed and encroach on the rights, privacy as well as view of a neighbouring residence. If my memory serves me correctly the owner of the residence on Erf 2918 was instructed to and did reduce the height of his residence roof as it exceeded the Overstrand Building regulations by a miniscule measure. All obviously at significant cost and time inconvenience.

On the other hand it would maybe be excessive from a cost aspect to instruct the transgressor to breakdown the building and conform to all Overstrand Building legislation which they should have in the first instant. A significant fine that would desist any future transgressions of this nature seems to be the alternative solution in this instance.

Yours faithfully

Suzanne Agusta Jacobs  
 Owner Erf 2916 Perlemoenbaai  
 Tenastelin International(Pty) Ltd  
 Tel:- 0+27-83-700-7275



**InterActive Town & Regional Planning**

PO Box 980  
Hermanus  
7200

TR. A. (Heart)  
(S. J. d. W. N. d. M.)

Reference: Gansbaai 2699

Date: 12 October, 2021

**Office of the Director:** Infrastructure and Planning, Town Planning

**Attention:** Mr SW van der Merwe (Senior Town Planner)

**RESPONSE TO OBJECTION: ERF 2699, 12 TREWWA STREET GANSBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR HEIGHT, BUILDING LINE & COVERAGE DEPARTURES AND WAIVING OF THE ADMINISTRATIVE PENALTY**

Your letter 2699 GGB, dated 15 September 2021 in which a written reply to the objection from SA Jacobs is requested, refers.

In summary the application proposal was made for the following:

Legalise the existing structures

- Height departure for the new room on the second floor to 8.44m.
- Height departure for boundary walls - the existing street and western side boundary wall is up to 3.16m above natural ground level, the southern up to 3.19m above natural ground level and eastern side boundary wall up to 2.39m above natural ground level.
- Building line departures - the existing dwelling is 1.86m from the rear boundary, 1.55m from the western side boundary and 1.56m from the eastern side boundary.

The existing storage building is located on the eastern side boundary but was approved in 2019.

Construct a garage

- Building line departures for the proposed garage – 0m on both the street and western side building lines
- Coverage departure for the proposed garage to 54.92%.

Administrative Penalty

- In addition, the municipality requires an application for administrative penalty. The owner wishes to apply for the administrative penalty to be waived.

The **development objective** as illustrated below in Figure 1: Site Plan Extract, is thus to legalise the existing structures which contravene the height and building line restrictions, to waive the administrative penalty arising from such contraventions and to construct a garage.

FILE NO:	2699
	Gansbaai
SCAN NO:	06
COLLABORATOR NO:	1593152

12 OCT 2021

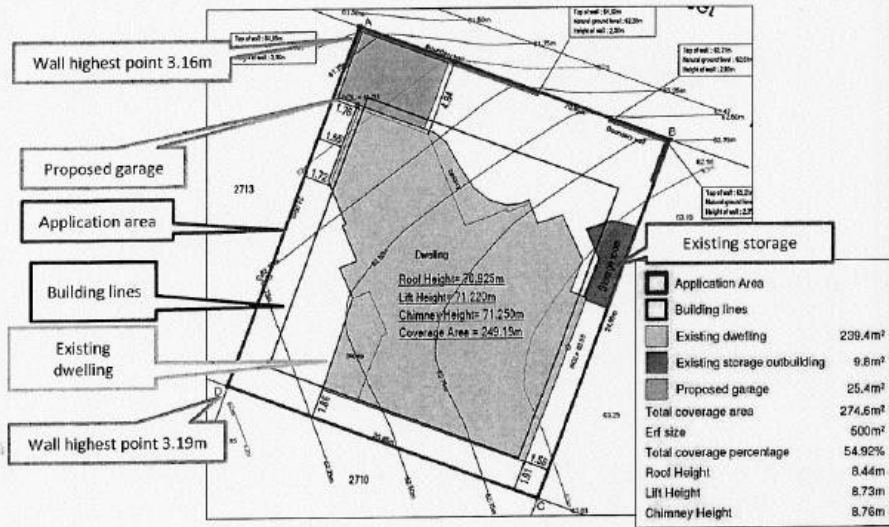


Figure 1: Site Plan Extract

The objector, SA Jacobs, is the owner of Erf 2916, a vacant erf, which is located to the south of the application area adjacent to Melton Street, as illustrated in Figure 2 below:

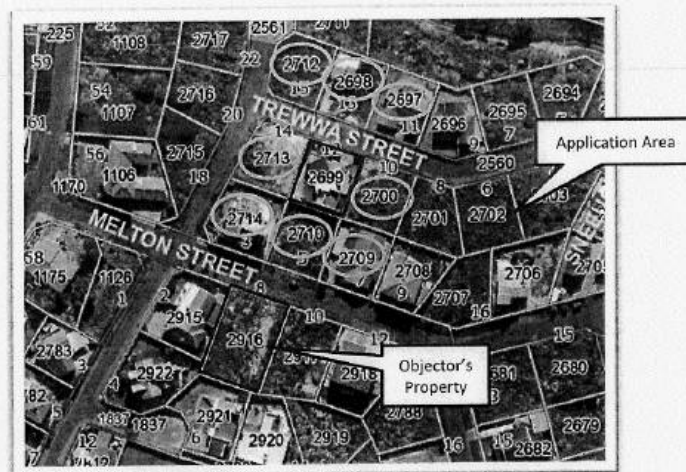


Figure 2: Location of Objector's Property

It is also particularly noteworthy that **no objections** were lodged against the application for legalization during the public participation phase by either one of the neighbours directly adjacent to the application area and circled in yellow in Figure 2:

The motivation for the objection received from SA Jacobs can be summarized and is interpreted as follows:

- Contraventions of property boundaries and other municipal legislation have already been committed.
- How do these contraventions occur and how does a building progress this far without the misdemeanors having been identified in view of the protocols and regulations in place as well as the normal good efficiency of the municipality as follows:
  - Clear parameters set by the building regulations prior to building plan approval and building commencement
  - Inspection of foundation by building inspector prior to filling
  - Building Plans are submitted for the purpose of ensuring that the planned building conforms to Overstrand municipal regulations.
- The objector is of the opinion that permitting these contraventions will create a troublesome precedent for the municipality for other transgressions encroaching on the rights of neighbouring properties such as privacy and view
- The objector states that if her memory serves her correctly, the owner of Erf 2918 was instructed to and did reduce the height of his residence roof which exceeded the permitted maximum height only slightly, obviously causing significant cost and time inconvenience
- Breaking down the dwelling and conforming to all Overstrand building regulations would be excessive from a cost perspective and therefore a significant fine is suggested to prevent any future transgressions.

Based on the summary of the objections, a response to each of the points of objections are provided here-below:

Objection	Response
<p>The objector stated that if she understands correctly, contraventions of the property boundaries and other municipal legislation have already been committed.</p>	<p>The understanding of the objector that the contraventions already existed, is correct.</p> <p>However, to clarify, not the "property boundaries" but inter alia the <u>building lines</u> are contravened.</p> <p>Furthermore, the following phrase "if I understand this communication and request correctly" serves to confirm that the objector is not personally impacted by the contraventions and that the further objections here below, rather represent <u>objections</u> against existing contraventions <u>in general</u>.</p> <p>This comment is also considered an introduction to the next comment <u>here below</u>.</p>
<p>How do these contraventions occur and how does a building progress this far without the misdemeanors having been identified in view of the protocols and regulations in place as well as the normal good efficiency of the municipality as follows:</p> <ul style="list-style-type: none"> <li>○ Clear parameters set by the building regulations prior to building plan approval and building commencement</li> <li>○ Inspection of foundation by building inspector prior to filling</li> </ul>	<p>The objector's questions regarding the development processes and the origin of contraventions are noted, but is not specifically considered to be applicable to this application as such but more of a generalisation without any proof or facts.</p> <p>However, this response serves here to explain the history and the background of the application site / area (as could be determined from the files, the owner, information generally obtained and in some instances derived), in order to provide a better</p>

<ul style="list-style-type: none"> <li>o Building Plans are submitted for the purpose of ensuring that the planned building conforms to Overstrand municipal regulations.</li> <li>o Clear parameters set by the building regulations prior to building plan approval and building commencement</li> <li>o Inspection of foundation by building inspector prior to filling</li> <li>o Building Plans are submitted for the purpose of ensuring that the planned building conforms to Overstrand municipal regulations.</li> </ul>	<p>understanding of how the contraventions originated on the application area:</p> <p>The original dwelling house on the application area was designed and built by the previous owner.</p> <p>The property was sold to the current owner in 2019, with the undertaking that the property would be compliant.</p> <p>The correspondence in the building plan file shows several contentious matters over several years regarding the building plans. It should however be noted that a number of building plans were submitted, approved and also occupational certificates issued for the completed work.</p> <p>However, a most recent survey by a land surveyor revealed that several of the completed building works do not accurately correspond with the approved building plans and from a town-planning point of view. It should also clearly be noted that the surveyor indicated that the original ground levels can not be determined exactly and is only interpolated to provide a so-called calculated ground level.</p> <p><u>Due to the contentiousness and history of the application area, the municipality has required that applications be made for all the encroachments whether originating from the previous or the current owner, as to ensure legalization of all facets of the application area.</u></p> <p>Clearly evident from the submitted application for legalization of the application area, is the co-operation and willingness of the applicant to rectify the existing contraventions, of which <u>most originated from the previous owner</u> and to follow the correct statutory procedure to apply to legally construct a garage.</p> <p>In the light of the comment from SA Jacobs, being interpreted as <u>general comment</u> applicable to the functions of local authority regarding contraventions and is not specifically relevant to the specific application. Therefore it is our opinion that this comment aimed at the application should be ignored.</p>
<p>The objector is of the opinion that permitting these contraventions will create a troublesome precedent for the municipality for other similar transgressions encroaching on the rights of neighbouring properties such as privacy and view.</p>	<p>The objector's comment is noted but also agreed to.</p> <p>As per the previous point discussed, this point of objection is read to be a general comment not specifically aimed at this application given that the objector is not directly impacted by the</p>

	<p>contraventions as she is located in a different street from the application area.</p> <p>In the case where no material impact from the contraventions is foreseen to result on the application area or on the surrounding area, it is recommended that this point of comment should be omitted.</p>
<p>The objector states that if her memory serves her correctly, the owner of Erf 2918 was instructed to and did reduce the height of his residence roof which exceeded the permitted maximum height only slightly obviously causing significant cost and time inconvenience.</p>	<p>This comment should be <u>ignored</u>, as it is considered irrelevant to the subject application, referring to a different application with its own determining factors with which we are not familiar with.</p>
<p>Breaking down the dwelling and conforming to all Overstrand building regulations would be excessive from a cost perspective and therefore a significant fine is suggested to prevent any future transgressions.</p>	<p>The comment is noted. It should also be noted that the comment is a general proposal to discourage residents to transgress the applicable building regulations and is not specifically aimed at this application site.</p> <p>It should further be noted that an application for legalization of the contraventions includes the application for the determination of an administrative penalty.</p> <p>In this case, the application is for waiving the administrative penalty which is motivated by the <u>co-operation and willingness of the applicant</u> to rectify the existing contraventions, of which <u>most originated from the previous owner</u> and to follow the correct statutory procedure to apply to legally construct a garage.</p> <p>The municipality will consider all relevant factors in determining the outcome of the application and in this respect the existing and foreseen impact on the surroundings is considered of paramount importance.</p> <p>The comment regarding a suggested significant fine, should be <u>ignored</u> as it represents a <u>general statement</u>, not based on the consideration of all the relevant factors for the specific application.</p>

**Conclusion:**

The application for building line, coverage and height departures and waiving of an administrative penalty is not foreseen to impact negatively on the residents of Trewwa Street and neither one of the adjacent neighbours lodged any objections to the subject application either.

The objection/ comment is considered to be an objection against contraventions in general and could have been an objection against any application to legalize existing contraventions, thus not specifically aimed at any negative consequences experienced by the objector as a result of the existing contraventions on the application area.

In the light of the above it is requested that the objection from SA Jacobs be rejected and that the application be supported by the deciding authority.

Kind Regards



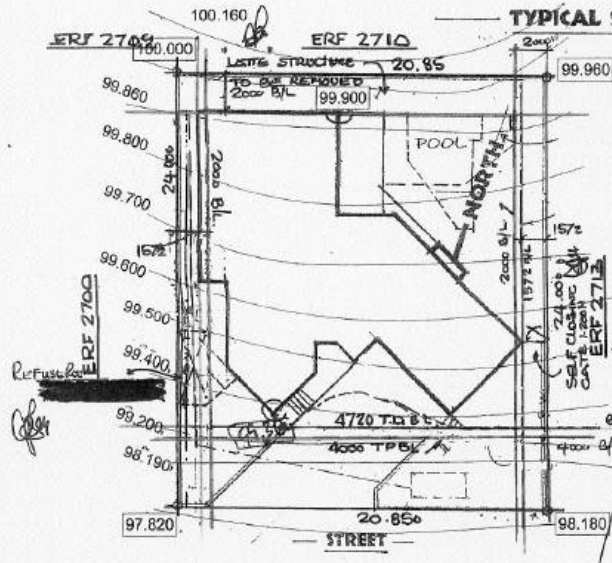
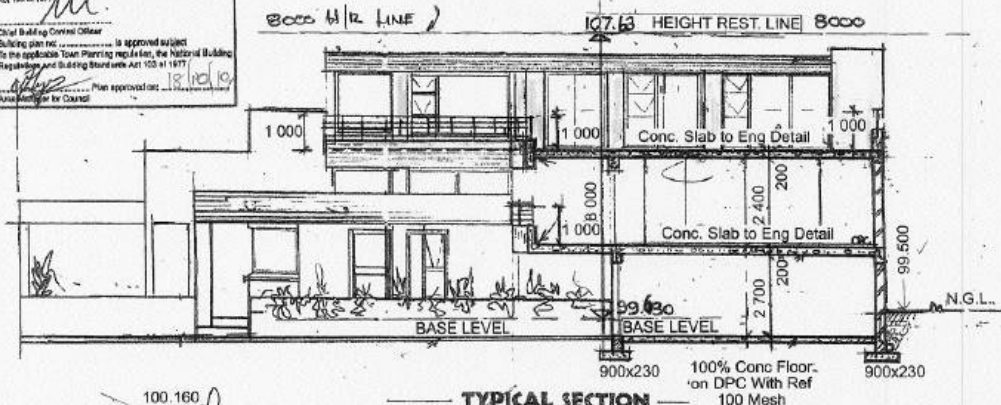
**Andre Wiehahn** Pr Pln A/927/1996  
B Art et Sc (Town and Regional Planning)

Building plan No. 215944 is recommended for approval subject to applicable Town Planning regulations and the National Building Regulations and Building Standards Act 103 of 1977.

Building plan No. 181019 is approved subject to the applicable Town Planning regulations, the National Building Regulations and Building Standards Act 103 of 1977.

Plan approved on: 18.10.19

Annexure F.1/S



In terms of SANS 10400-D, the following requirements must be met for swimming pools and swimming baths:

4.2.1. A wall or fence must be provided by the owner of a site which contains a swimming pool or a swimming bath.

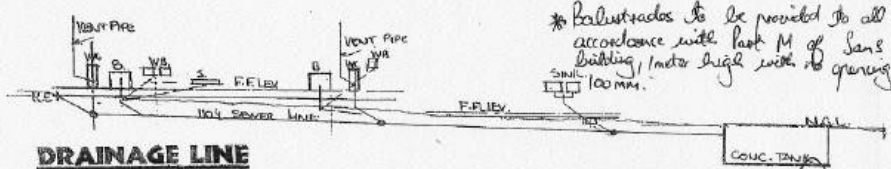
a. A self-closing and self-latching gate with provision for locking in such wall or fence; or

b. A building where such building forms part of such wall or fence.

4.2.2. A balustrade or wall provided as protection at a change in level in any occupancy classified as E2, E3, E4, H1, H2, H3, H4 or H5 shall not have any opening that permits the passage of a 100 mm diameter ball, provided that such protection in any occupancy that is not an occupancy classified as E2, E3, E4, H1, H2, H3, H4 or H5, shall consist of at least a handrail and one other rail midway between such handrail and the floor.

4.2.3. In the case of an interior balcony or a mezzanine floor, such balcony or floor shall be provided with a balustrade or wall not less than 1 m in height.

\* Balustrades to be provided to all stair-cases in accordance with part M of SANS 10400 (H4) building, 1 meter high with no opening to exceed 100mm.



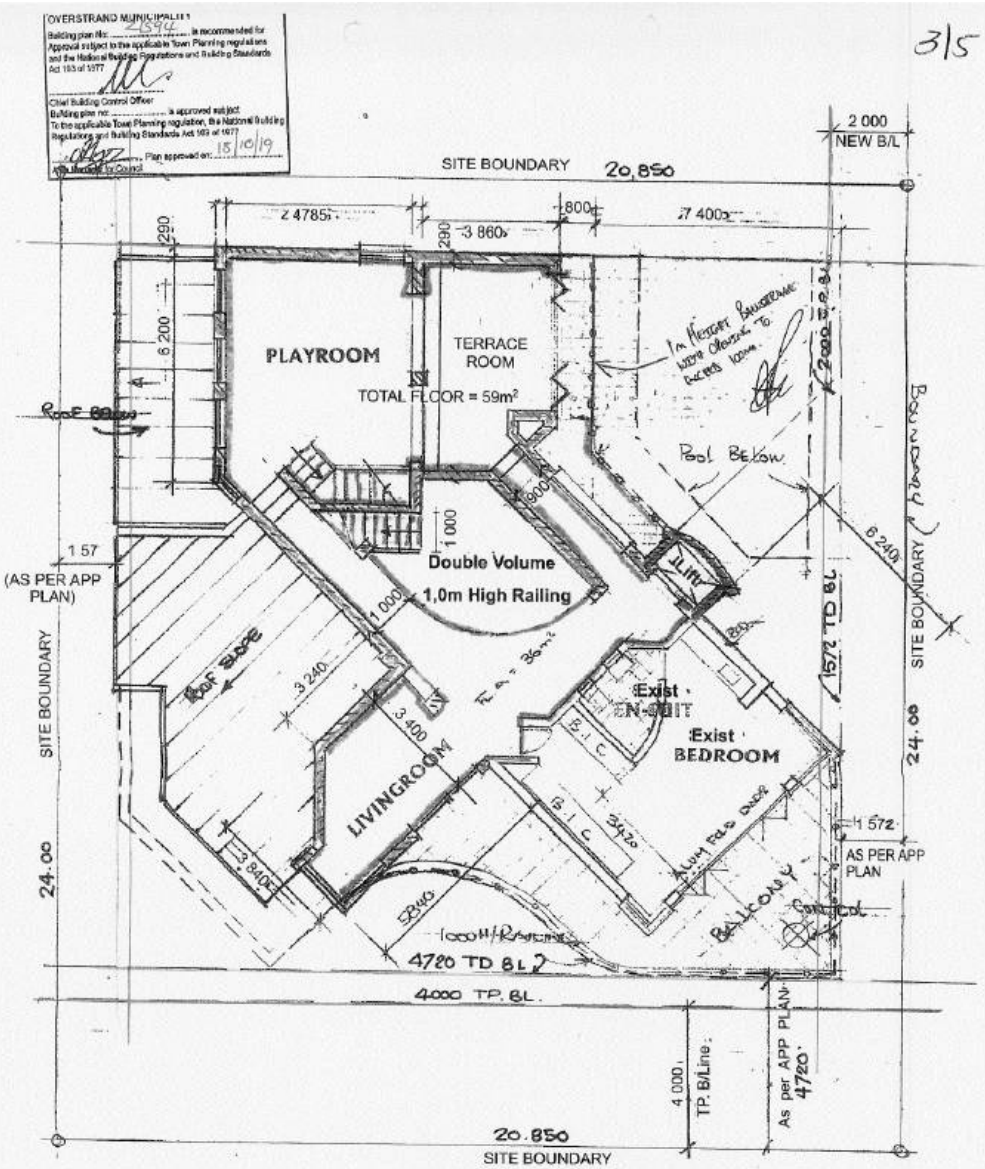
Site Plan / Section

Llewellyn van Rensburg  
Member of Cape Institute for Architecture Reg M-0015  
Member of the Council for the Architectural Profession Reg 571202

design cooperative Llewellyn Van Rensburg Pr. Arch. ST1242, SACAP MIA Tel 071 037 7345      vanrensburglew@gmail.com	As Built Rider Plan to Approved Plan No 200770 Exempted from SANS XA (Completed 2007)	Proj Date: Aug 2019 Project No.      Drawing No.
	Mr. L. van Rensburg AS BUILT Erf 2699 Perlemaenbaai	1910 / 01 Scale 1:100



315



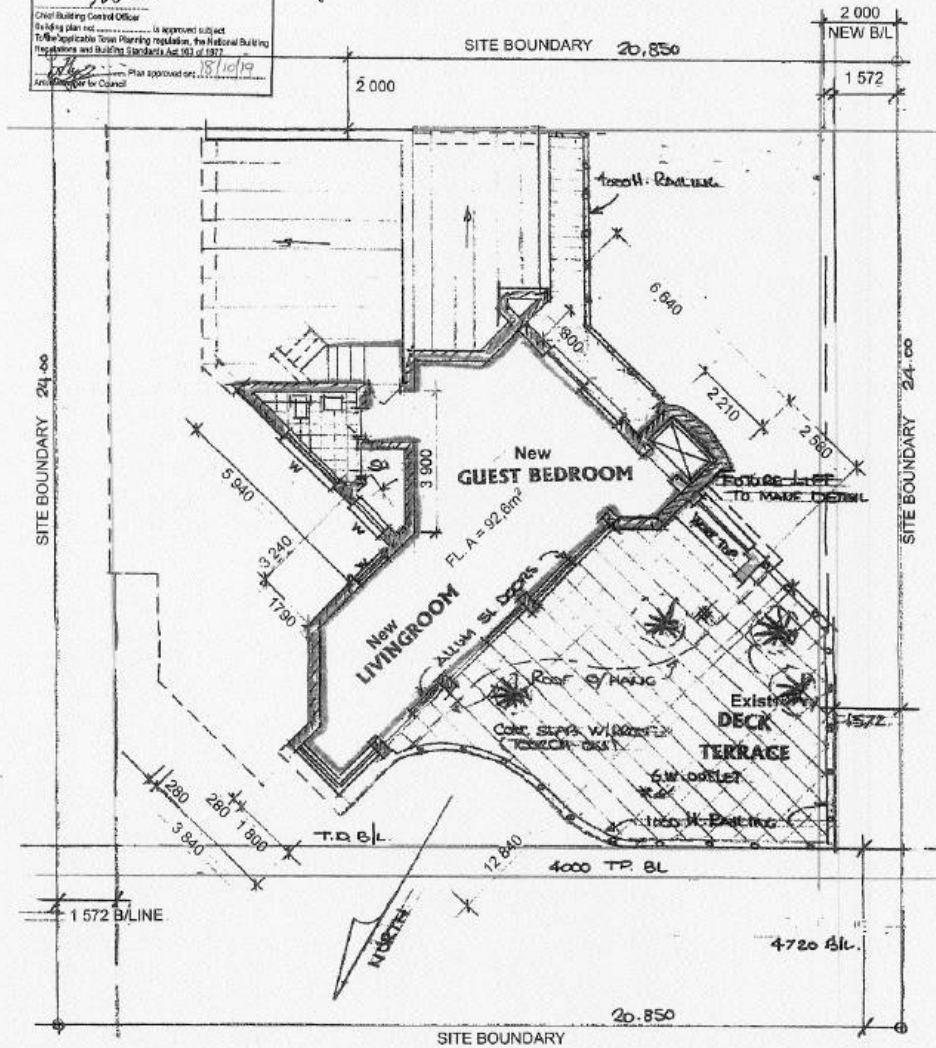
# First Floor

*Llewellyn van Rensburg*  
**Llewellyn van Rensburg**  
 Member of Cape Institute for Architecture Reg M-4915  
 Member of the Council for the Architectural Profession Reg ST1242

<b>design cooperative</b> Llewellyn Van Rensburg Pr. Arch. ST1242, SACAP MIA Tel 079 037 7348      vanrensburg.lvw@gmail.com	As Built Rider Plan to Approved Plan No 200770 Exempted from SANS XA (Completed 2007)	Proj Date: Aug 2019 Project No.      Drawing No.
	Mr. L. van Rensburg <b>AS BUILT</b> Erf 2699 Perlemoenbaai	1910 / 03 Scale: <b>1:100</b>

4/5

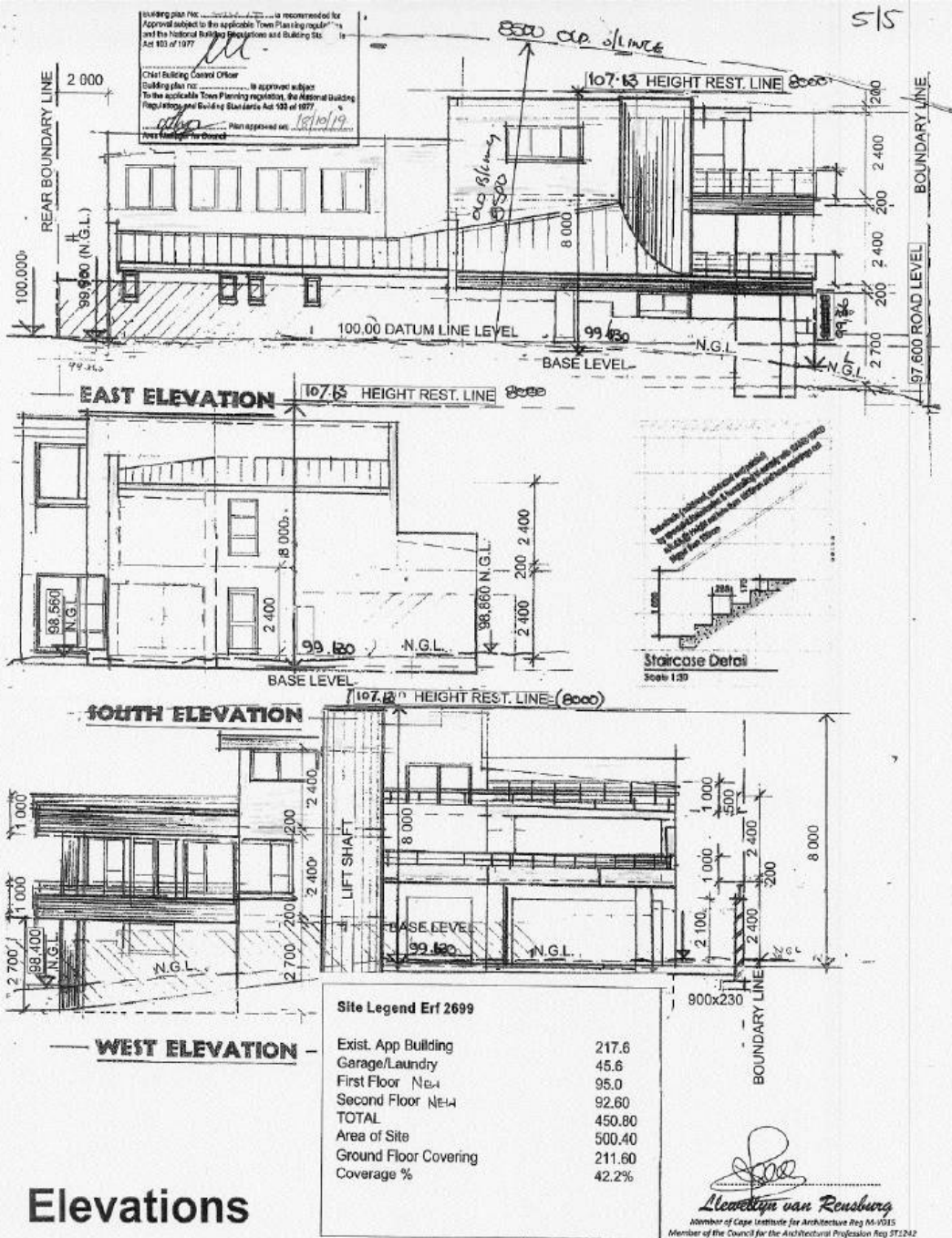
OVERSTRAND MUNICIPALITY  
 Building plan No. 21574 is recommended for  
 Approval subject to the applicable Town Planning Regulations  
 and the National Building Regulations and Building Standards  
 Act 103 of 1977.  
 Chief Building Control Officer  
 In My approval subject  
 to the applicable Town Planning regulations, the National Building  
 Regulations and Building Standards Act 103 of 1977  
 Plan approved on: 18/10/19  
 Approved for Council



# Penthouse Floor

*Llewellyn van Rensburg*  
 Llewellyn van Rensburg  
 Member of Cape Institute for Architecture Reg M 1015  
 Member of the Council for the Architectural Profession Reg ST3242

<b>design cooperative</b> Llewellyn Van Rensburg Pr. Arch. ST1242, SACAP MIA Tel 079 027 7348      vrenensburg.lw@gmail.com	As Built Rider Plan to Approved Plan No 200770. Exempted from SANS XA (Completed 2007)	Proj Date: Aug 2019 Project No.      Drawing No. <b>1910 / 04</b>
	Mr. L. van Rensburg <b>AS BUILT</b> Erf 2699 Perlemoenbaai	Scale <b>1:100</b>



# Elevations

**design cooperative**

**Llewellyn Van Rensburg**  
Pr Arch. ST1242. SACAP MIA

Tel 079 057 7348

vanrensburg.lvw@gmail.com

As Built Rider Plan to Approved Plan No 200770,  
Exempted from SANS XA (Completed 2007)

**Mr. L. van Rensburg**

**AS BUILT**

Erf 2699 Perlemoenbaai

Proj Date: Aug 2019

Project No. Drawing No.

**1910 / 05**

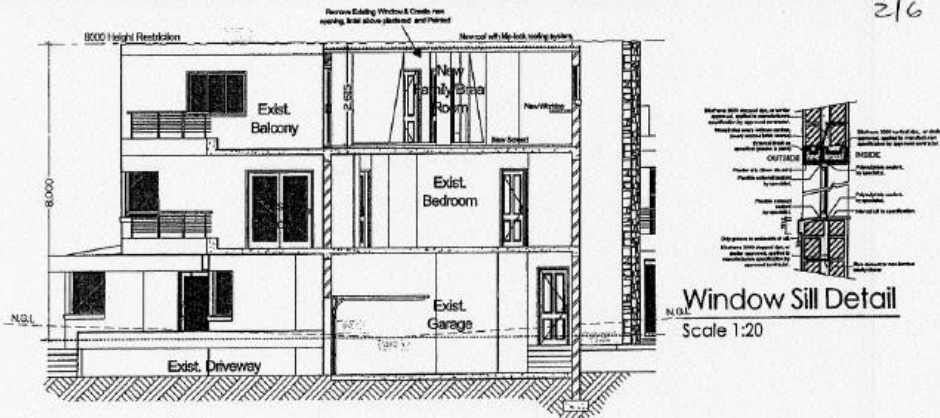
Scale:

**1:100**

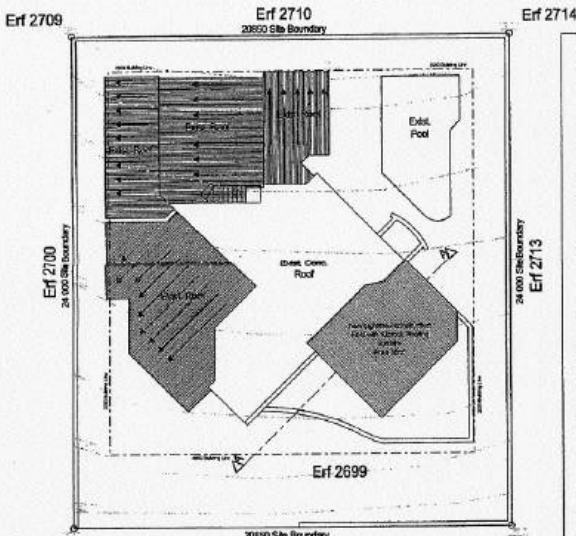
*Llewellyn van Rensburg*  
**Llewellyn van Rensburg**  
Member of Cape Institute for Architecture Reg M-V015  
Member of the Council for the Architectural Profession Reg ST1242



216

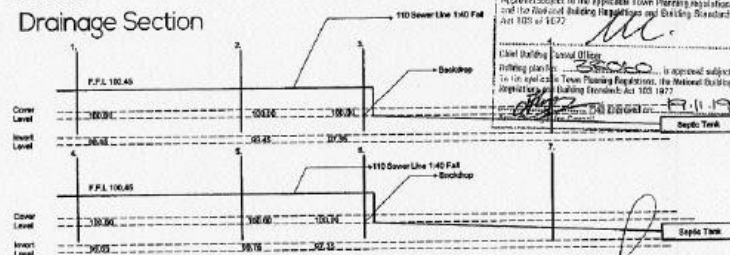


Typical Section A-A  
Scale 1:100



Site Plan  
Scale 1:200

Drainage Section  
Trewa Str



General notes

In terms of SANS 10400-D, the following requirements must be met for swimming pools and swimming baths:

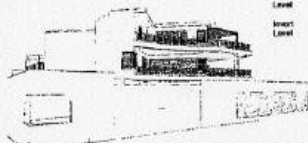
4.2.1. A wall or fence must be provided by the owner of a site which contains a swimming pool or a swimming bath.

a. A self-closing and self-latching gate with provision for locking in such wall or fence; or

b. A building where such building forms part of such wall or fence.

4.2.2. A balustrade or wall provided as protection at a change in level in any occupancy classified as E2, E3, E4, H1, H2, H3, H4 or H5 shall not have any opening that permits the passage of a 100 mm diameter ball, provided that such protection in any occupancy that is not an occupancy classified as E2, E3, E4, H1, H2, H3, H4 or H5, shall consist of at least a handrail and one other rail midway between such handrail and the floor.

4.2.3. In the case of an interior balcony or a mezzanine floor, such balcony or floor shall be provided with a balustrade or wall not less than 1-m in height.

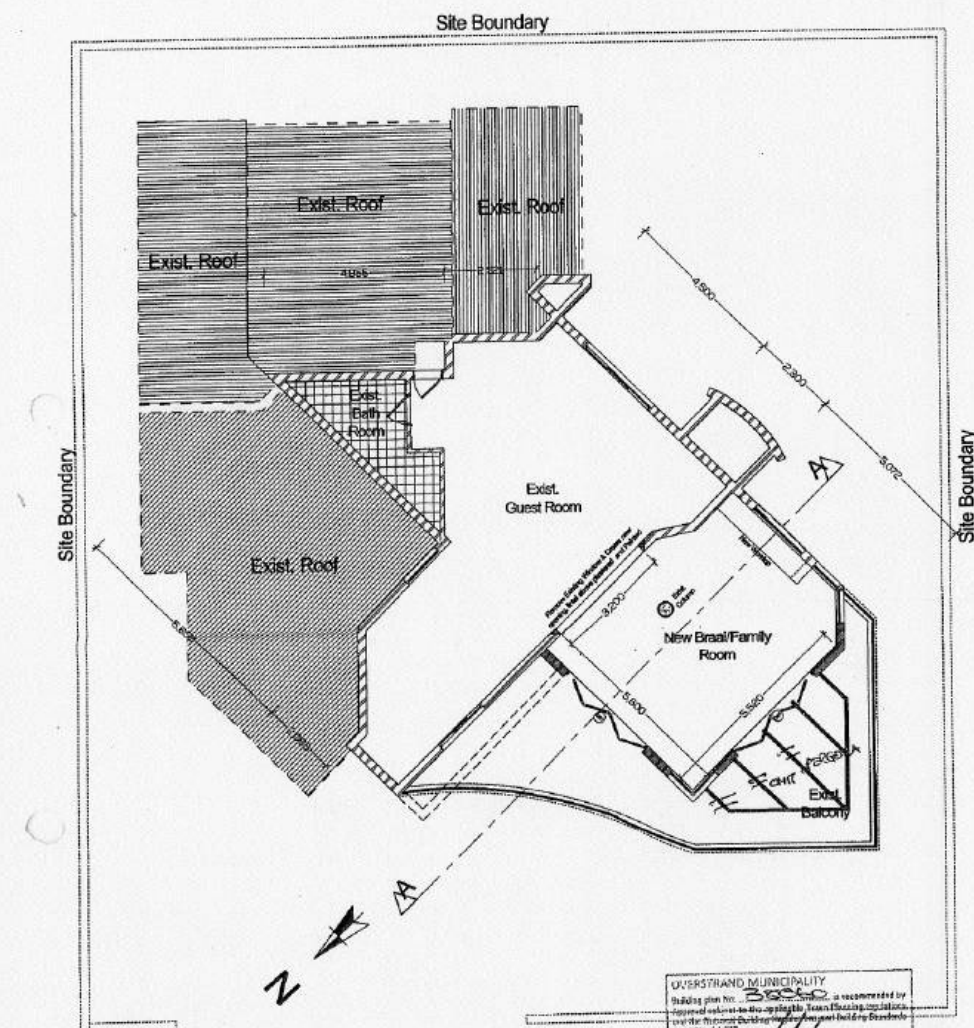


design cooperative  
Llewellyn van Rensburg  
Architecture & Planning  
P.O. BOX 671284, SANDHURST

Mr. L. van Rensburg  
Proposed Alterations

Llewellyn van Rensburg  
Member of Cape Institute for Architecture Reg M-1615  
Member of the Council for the Architectural Profession Reg ST1242

Page No.	1301
Date	13/09/2011
Drawing No.	LP 02



Penthouse Floor  
Scale 1:100

OVERSTRAND MUNICIPALITY  
 Building plan No. 3030 is recommended by  
 approved architect L. van Rensburg in accordance with the  
 provisions of the Building Regulations and Building Standards Act 103 of 1977  
 Chief Building Control Officer  
 Building plan No. 3030 is approved subject  
 to the conditions of the Planning Regulations, the National Building  
 Regulations and Building Standards Act 103 of 1977  
 Approved on 19/11/09  
 Approved by Council



**design cooperative**  
*Llewellyn van Rensburg*  
 Architecture & Planning  
 P.O. Box 97126, 2013, Durban  
 www.dco.co.za

Mr. L. van Rensburg  
**Proposed Alterations**  
 Erf 2699 Perlemoenbaai

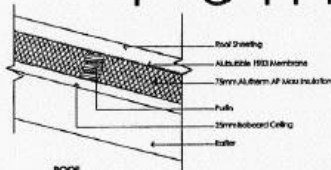
*Llewellyn van Rensburg*  
 Member of Cape Institute for Architecture Reg M-V015  
 Member of the Council for the Architectural Profession Reg 571242

Project No. **1301**  
 Date: 1/10/09  
 Drawing No. **LP 03**



516

# Fenestrations



ROOF	
Airtight Membrane	1.1R
75mm Airtight AP Layer Insulation	1.1R
Felt	1.1R
25mm Insulated Ceiling	3.3R
<b>TOTAL</b>	<b>5.6R</b>

Door ID	D01	D02
Orientation	L	L
Quantity	2	1
W x H Size	3,000x2,100	8,000x2,665
Description	Sliding Folding Door	Entrance Gate
2D Symbol		
3D Front View		

Window ID	W01
Quantity	2
W x H Size	1,800x1,200
P-Value	1.20
H-Value	2.1
Direction	N.E
2D Symbol	
3D Front View	

**WATER**

Domestic Connection With Valve = 20m  
 Ring Main = 20m  
 Standpipes = 12m  
 Ring Main to H.W.C. = 20m  
 Hot & Cold Water Supply Line = 20m  
 Branch Lines = 12m  
 Isolating Valves to Kitchen + WC's + Bathrooms  
 Min 50% of Annual Hotwater Generation Achieved by Solar  
 All Services to Comply with SANS 1307 & SANS 10400-6.

**of Building**

Total Ground Floor = 93.70m<sup>2</sup>  
 Total First Floor = 93.89m<sup>2</sup>  
 Area of Garage = 24.50m<sup>2</sup>  
**TOTAL** = 212.19m<sup>2</sup>

**Site Calculations**

Area of Plot = 939m<sup>2</sup>  
 Area of Dwelling = 157.90m<sup>2</sup>  
 Area of Garage = 24.50m<sup>2</sup>  
**TOTAL COVERED** = 212.19m<sup>2</sup>  
 Coverage % = 22.59%  
 Deemed to Satisfy

**Window Area Calculations**

Area of Plot = 939m<sup>2</sup>  
 Area of Dwelling = 157.90m<sup>2</sup>  
 Area of Garage = 24.50m<sup>2</sup>  
**TOTAL GLAZING AREA** = 38.83m<sup>2</sup>  
 % Net Floor Area (Dwelling) = 20.59%  
 Glazing Transmittance E = Deemed to Satisfy

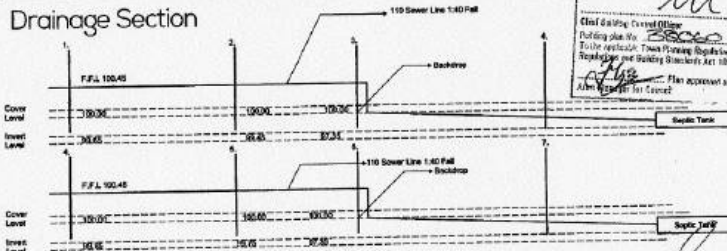
**Site Legend Erf 2999**

to Building = 217.8  
 LandyStore = 63.8  
 or = 56.0  
 Floor = 336.6  
 TOTAL = 512.8  
 Area of Site = 600.4  
 Ground Floor Footprint = 211.6  
 Coverage % = 42.2%

**SHEET ROOF R-VALUE CALCULATIONS**  
 MIN. REQUIRED = 3.7m<sup>2</sup>/KW-1  
**FORMULA**  
 $R = 1/U = 1/h_i + 1/h_o + (1/a) + (d1/k1 + d2/k2 + d3/k3 + d4/k4 + d5/k5) = m^2/KW$   
**PROPOSED**  
 = 0.09 + 0.05 + 0.147 + ( 30mm Lambdaboard = 1.250  
 50mm Isotherm = 1.420  
 Double-sided RadenShield = 1.360  
 Roof Sheeting = 0.030  
 = 4.135  
 = 0.287 + 4.135  
 = 4.422m<sup>2</sup>/KW-1

Where:  
 Minimum required Total R-Value (m<sup>2</sup>/KW-1) for Climatic Zone 4 - Temperate Coastal = 3.7  
 Direction of heat flow-UP for Zone 4  
 h<sub>i</sub> = coefficient heat transfer for surface of wall, roof, or floor in W/m<sup>2</sup>/K = 11 W/m<sup>2</sup>/K  
 h<sub>o</sub> = coefficient heat transfer for outer surface of wall, roof or floor in W/m<sup>2</sup>/K = 20 W/m<sup>2</sup>/K  
 a = Thermal conductivity of separate air spaces in structure W/m<sup>2</sup>/K = 0.17 W/m<sup>2</sup>/K  
 k<sub>1</sub>...k<sub>n</sub> = Thermal conductivity of successive layers of the different constituents in structure W/m<sup>2</sup>/K  
 d<sub>1</sub>...d<sub>n</sub> = Thickness of successive layers of different material components in square meters.  
 Deemed to Satisfy

## Drainage Section



OVERSTRAND MUNICIPALITY  
 Building Plan No. 2500  
 It is recommended for approval subject to the approval of the Planning and Building Regulations, the National Building Regulations and Building Standards Act, 1977.  
 Date of issue: 15.11.19  
 Mr. L. van Rensburg  
 Municipal Engineer



**Leandryn van Rensburg**  
 Member of Esape Institute for Architecture Reg M-1025  
 Member of the Council for the Architectural Profession Reg 371242

**design cooperative**  
 Leandryn van Rensburg  
 Architecture & Planning  
 P. BAY, 8101, SACAP, JHB

Mr. L. van Rensburg  
**Proposed Alterations**

<b>1301</b>
LP 05

Gansbaai Administration  
 Building Plan Department  
 PO Box 26  
**GANSBAAI**  
 7220

Navrae :  
 Imibuzo :  
 Enquiries:

Tel: (028) 384 8321  
 Fax: (028) 384 0241  
 e-mail: mcrafford@overstrand.gov.za



Date Print: 20 February 2020

**VAN RENSBURG LP**  
 Daan Botha - 082 394 0282

Date Approved: 19 November 2019  
 Occupation Date: 20 February 2020

### CERTIFICATE OF OCCUPANCY / OKKUPASIE SERTIFIKAAT

PLAN NUMBER: 38060  
 PLAN NOMMER: \_\_\_\_\_

This is to certify, in terms of Section 14 of the National Building Regulations promulgated in terms of the Building Standard Act, Act 103 of 1977, that the

*Dit word hiermee in terme van Artikel 14 van die Nasionale Bouregulasies, wat uitgereik is in terme van die Nasionale Boustandaarde Wet, Wet 103 van 1977, gesertifiseer dat die*


**ADD HOUSE - HIGH VALUE**

Stand No.: 2699  
 Erf Nr.: \_\_\_\_\_

Street / Road / Avenue : TREWWA STREET PERLEMOENBAAI  
 Straat / Weg / Laan : \_\_\_\_\_

Plan Reference Number:  
 Plan Verwysings Nommer:

has been completed and it is fit for occupation.  
*voltooi is en nou gereed is vir okkupasie.*

  
 \_\_\_\_\_  
**Building Control Officer / Boubeheerbeampte**

Annex H

**Note**  
Contours represent natural ground levels,  
and not actual ground levels.

**Coverage Calculation:**  
ERF 2699 = 500m  
Building area = 243,19m  
Coverage = 49,84%

Blank

Legend:  
NGL = Natural Ground Level

**VAN DYK & ASS. inc.**  
P.O. Box 2025  
HEWAME  
7200  
SOUTH AFRICA  
TEL: (021) 213 6077  
E-MAIL: info@vandyk.co.za

Dataset: WGS84 / Lo 19  
Datum: South African  
Horizontal System: Local

Scale: 1 : 150

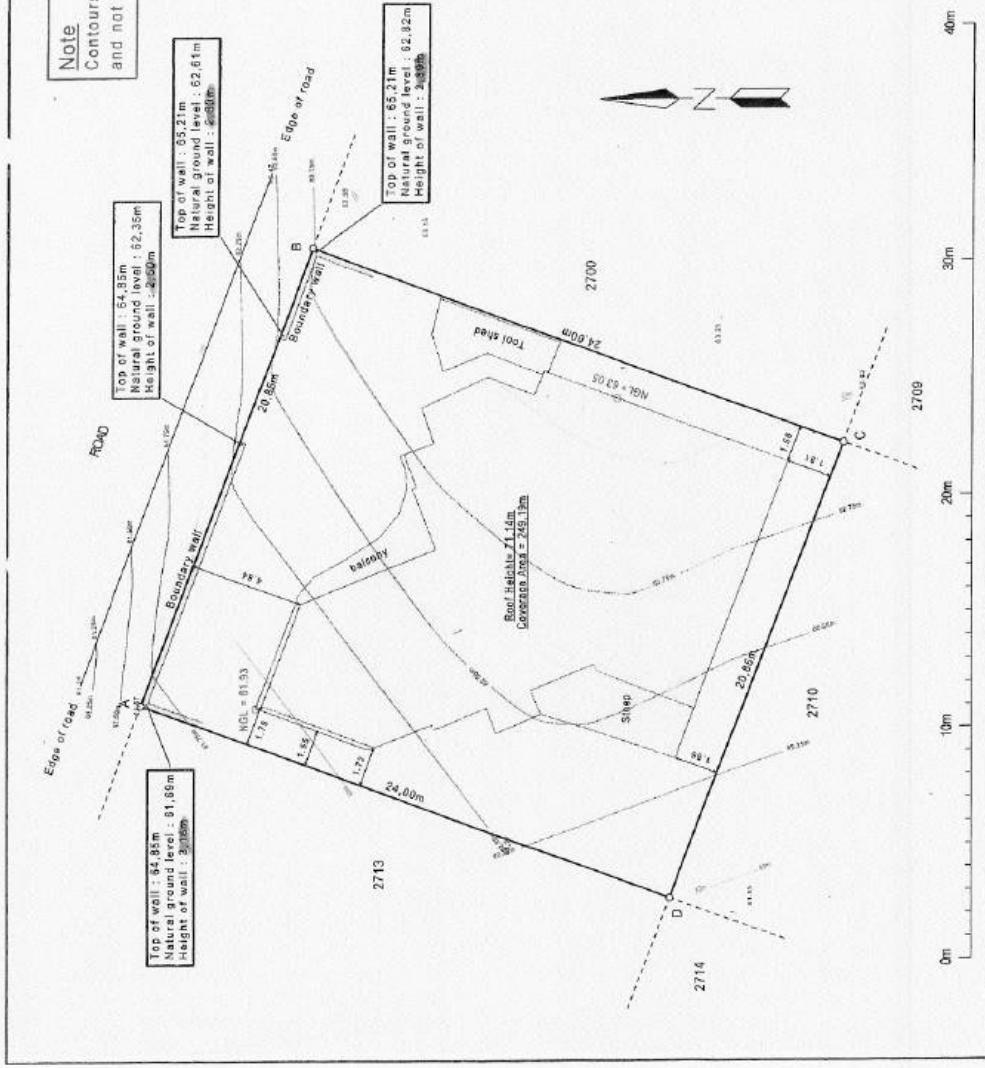
Date: OCTOBER 2020

Client: L.A. van Dyk

Project Title: ERF 2699 GANSBAAI

AS BUILT SURVEY  
SURVEY

Drawing Number: V20425  
Drawing Date: WD  
Drawing Scale: 1:150  
Sheet 1 of 1



Annexure I

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR DEPARTURE & DETERMINATION OF AN  
ADMINISTRATIVE PENALTY: ERF 2699, GANSBAAI**

Electricity : In order  
Water : In order  
Sewer : In order  
Stormwater : In order  
Roads and traffic : In order

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
2. that only the existing, standard electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
3. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 140400 – P: 2010: Drainage;
4. that any additional and / or extended vehicle entrances will be for the developer's account;
5. that stormwater be allowed to discharge through Erf 2699, Gansbaai, unobstructed;
6. that no on-street parking be allowed.

*p.p. M. Hendriks*  
**DENNIS HENDRIKS**  
**SENIOR MANAGER:**  
**ENGINEERING SERVICES**

*19.08.2021*  
**DATE**

Annexure J1/4



Division of TelkomSA SOCLtd

10 Jan Smuts Drive  
Pinelands  
7404

Stefan Geldenhuys  
Tel: 021 414 5546  
Email: [StefanG@openserve.co.za](mailto:StefanG@openserve.co.za)

Our Ref: WWIP\_WGNB2877\_21  
Your Ref: 2699 GGB

26 August 2021

**Attention : S Muller**  
**Overstrand Municipality**  
**Hermanus**

PLANT AFFECTED : COPPER

Wayleave application : Organs of State Request for Comment, Organs of State Request for Comment

With reference to your letter received 02 August 2021

**Important cables and other infrastructure are affected, please contact our representative Melt Van As / 021 852 1717 / 081 363 7873 / [Meltva@openserve.co.za](mailto:Meltva@openserve.co.za) 48 hours prior to commencement of construction work.**

I hereby inform you that OpenServe approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, OpenServe infrastructure **WILL BE AFFECTED**, consequently the conditions below and on the attached legend will apply.

61 Oak Avenue, Highveld, TechnoPark, Centurion 0157,  
Private Bag X881, Pretoria, Gauteng, 0001

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.

Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should OpenServe infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All OpenServe rights remain reserved.

Yours faithfully



---

For Selwyn Bowers  
Operations Manager  
Wayleave Management: Western Region

## PLANT AFFECTED : COPPER

This wayleave, Reference Number WWIP\_WGNB2877\_21 is valid for 12 months from date hereof and is subject to the following conditions:

1. No mechanical plant or vibrator type compactors may be used within three meters of any Openserve Plant (i.e. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and Melt Van As / 021 852 1717 / 081 363 7873 / Meltva@openserve.co.za must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration, should the of the work, upon which the actual location of Openserve Plant will be applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existence of the indicated plant and to notify Openserve immediately, should the applicant locate any Openserve Plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof.

Date: 2021-08-26

By: S Geldenhuys  
For Regional General Manager  
Western Cape

Legend	Green
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC)	
5. Jointing Pit / AJB	
6. Jointing Pillar (PJ)	
7. Pipe Junction Box (R/S)	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable (A/C)	

