

## 4.4

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

338 KRE (3898/2021)

H van der Stoep

4 November 2024

(028) 313 8900

Hermanus Administration

## 1. EXECUTIVE SUMMARY

An application has been received on 22 February 2021 from Plan Active Town & Regional Planners on behalf of HMMM Beleggings Trust for the following:

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to exceed the maximum permissible boundary wall height from 2,1m to 2,30m; 3,571m and 3,95m respectively; and also to exceed the maximum permissible height of the existing infill of the open terrace from 1m to  $\pm 1,6$ m.
- ❖ **Determination of an administrative penalty** in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the for unauthorised land use as mentioned above.

It was subsequently concluded that the previous application needs to be amended to include the removal of a restrictive title deed condition with reference to Title Deed building lines.

An **amended application** was therefore submitted on 26 June 2023 from Plan Active Town & Regional Planners on behalf of HMMM Beleggings Trust for the following

- ✚ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels for the removal of restrictive title deed condition F.(4)(d) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property.

The restrictive title deed conditions read as follows:

“F. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T77/1956, imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance No. 33 of 1934, reading as follows: -

4. *This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose;*

*(d) No buildings or structure except boundary wall and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf within 1,57 metres of any other boundary;"*

✚ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 in order to:

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

✚ **Determination of an Administrative Penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorized building line encroachments as stipulated above.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C. The Title Deed is attached as Annexure D.

## 2. DECISION AUTHORITY

Municipal Planning Tribunal

## 3. BACKGROUND / SITE HISTORY

An application was lodged in 2017 to deal with the transgressions on the erf. Due to certain incompleteness of the application the owner withdrew the application and appointed Plan Active Town Planners to resubmit the application in 2021. During the public participation process, it came to light that there are additional transgressions that needs to be addressed. The amended application was submitted in 2023 to address all issues. The latter went out for a full public participation process.

The owner of the property appointed a professional team consisting of a Land Surveyor, Architect and a building contractor for the project. A topographical survey was done by Van Dyk Land Surveyors before construction started. The architect, Mr P Wasserman, designed the dwelling in accordance and the dwelling was built by the building contractor.

Once finished, an occupancy certificate was requested from building control, but the owner was informed that the dwelling was not built in accordance with the approved plan. A subsequent survey of the built structures and an as built plan prepared by Van Dyk Land Surveyors indicated that there are discrepancies and that some structures did transgress the Land Use Scheme and the Title Deed building lines and therefore the application was submitted for departure and determination of administrative penalty in 2021 to ultimately obtain an occupancy certificate.

During the public participation process of the initial application by Plan Active Town & Regional Planners in 2021, a few other encroachments came to light, and an **amended** application was lodged in 2023 to address all transgressions.

It should be noted that the garage situated on the boundary line and was approved as such. In discussions with the Municipality, it was indicated that a boundary alignment addressed the Title Deed building lines between Erven 338 and 397 and it was thus not applied for in the initial application. After verification (by obtaining the Government Gazette) - it became evident that the removal of the restrictive title deed condition was only applicable to Erf 397. This aspect is now also addressed in the amended application.

The amended application was subject to a full public participation process and readvertised and recirculated.

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

##### CONTEXTUAL INFORMATION

##### **Description:**

Zoning of Erf 338:	Residential 1
Area in extent:	1202m <sup>2</sup>
Title Deed Number:	T73556/2014

##### **The property has the following structures:**

- Dwelling;
- Garage;
- Outdoor entertainment;
- Open stoep and court yards, and
- Double storey building consisting of a storeroom, laundry, personal gym and wine cellar.

##### DEVELOPMENT PROPOSAL

Van Dyk Land Surveyors did a Survey to determine the position of the As-Built structures in relation to the cadastral boundaries and the height of the structures on the property: The reasons of transgressions were due to the excavation during construction phase. The dwelling was raised during the construction phase from below natural ground level and a suspended built slab varying between 1,156m and 1,5m in height within the eastern and western building lines from natural ground level. This has resulted in the following transgressions:

**DEPARTURES:**Rear building line

The infill of the open terrace is higher than the 1m (1,6m) on above natural ground level seafront. The open terrace has no impact on the views of the neighbouring properties.

Boundary walls

The boundary walls vary from 2,07m to 3,95m above natural ground level. The application is that the wall restriction of 2,1m be relaxed to 3,571m at the highest point on the eastern side and to 3,95m at the highest point on the western side and 3,71m on the rear side of the property. Due to the suspended concrete slab on which the dwelling is located, the walls were erected higher to provide privacy and security to the owners as well as the neighbouring properties.

Height (concrete slab)

Departure from the 1m height limitations of structures over the building lines, pertaining to the suspended concrete slab which are as follows:

- eastern boundary from 1m to 1,156m in height, and
- western boundary from 1m to 1,5m in height.

Certain areas in the void are used for storage space, but are not habitable in terms of ceiling heights. The suspended slab does not have any impact on the surrounding properties and was erected to raise the dwelling above natural ground level due to concerns of flooding due to the topography of the site.

Height (planter)

Departure from the 1m height limit for structures over the western building line from 1m to 1,1m over the building line to accommodate the planter.

The planter has been created on the elevated suspension slab that has led to the transgression. The planter forms part of a small waterwise courtyard that is partially paved and partially covered with artificial grass and stones. Three water wise trees have been established and have two 110mm drainage pipes that are situated beneath the planter. These pipes are not stormwater runoff pipes from the roof. Only rain that falls within the ambit of the small courtyard drains via the planter and the 2 110mm pipes. The two pipes exit on Erf 338 which was confirmed by Van Dyk Land Surveyors. Due to the alignment of the boundary wall on the western side of the property, which is not parallel to the actual boundary, the two pipes exist on the subject erf. The existing planter does not have any impact on the neighbour.

### Height & building lines (water tanks)

Departure for the three (3) water tanks, respectively 2 x 10 000L and 1 x 20 000L tanks, that do transgress the building lines and the 2,1m height restriction. The water tanks are 0,2m, 0,32m and 0,15m, from the boundary, respectively. The water tanks are screened with wooden lattice. The neighbouring erf has very little sight of the existing tanks due to a row of established trees. The water tanks are being used by the owner for household purposes. The tanks act as retention ponds during winter months as most of the runoff water from the existing buildings is harvested in these water tanks. This has a positive impact on the adjoining low lying erven since most of the runoff is harvested and limit the flow of water onto the lower lying erven. The owner is also willing to cover these water tanks with environmentally friendly material if so required.

### HPOZ

Departure from the Heritage Protective Overlay Zoning Regulations - in terms of Section 12.8.1, it states that *"no solid, visually impermeable boundary treatments above 2,1m will be permitted"*.

The high boundary walls as perceived by the neighbouring landowner provides privacy and security due to the neighbouring structures being established on a much lower level than the dwelling on Erf 338 Rooi Els. Cognisance must also be taken of the fact that the boundary walls that exceed 2,1m height restriction in terms of the Overstrand Land Use Scheme were constructed well before the implementation of the Heritage Protection Overlay Zone Regulations.

### **Conclusion**

It should be reiterated that the main reason for the proposed departures is in fact that due to the topography of the site it was necessary to construct the dwelling on a suspended slab to eliminate possible flooding. This resulted in the boundary walls being higher than 2,1m in height and having structures such as the planter located in the building line higher than 1m. The water tanks, planter and infill in the open terrace do not have any impact or risks for the neighbouring properties. A certificate was issued by a professional engineer for the structures that include concrete foundation, retaining wall, surface bed fill compaction testing, RC beams, slabs and timber roof trusses and rafters.

### ACCESS

Access will be obtained from Hotel Crescent and will be retained

### SERVICES

No additional services will be required. The erf has access to Municipal services.

### REMOVAL OF RESTRICTIVE CONDITIONS IS MOTIVATED AS FOLLOWS:

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

*“F. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T77/1956, imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance No. 33 of 1934, reading as follows: -*

*4. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose;*

*(d) No buildings or structure except boundary wall and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf within 1,57 metres of any other boundary;”*

The aforementioned restrictive condition does not allow any structure or building on the property over the building lines, except with the approval of the Administrator and needs to be removed.

The Conveyancer’s certificate compiled by STBB dated 20 June 2022 also confirmed the aforementioned restriction needs to be removed from the said Title Deed in order for the proposed building line encroachments to be approved.

***The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.***

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

***The personal benefits which accrue to the holder of rights in terms of the restrictive condition.***

The personal benefit accumulated to the owners in the township is insignificant as far as the Title Deed condition to be removed is concerned. None of the existing owners within the township gain anything personally by having the restriction removed, which prevents the property to be developed to its full potential and according to the development rules set out in the zoning scheme regulations. The proposal will have an impact on the existing built form in the area however such changes have been supported in the area.

Surrounding properties are still protected by the policies in place for the area such as the zoning Scheme Regulations of the Overstrand Municipal Area and the Overstrand Municipality’s Amended By-law on Municipal Land Use Planning, 2020. The proposed removal of the restrictive Title Deed condition will increase the market value of the property as well as the area.

***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.***

The property owner will benefit from the removal as the existing structures can be legalised and will enable approved building plans and occupancy certificate.

***The social benefit of the restrictive condition remaining in place.***

The particular township has already changed with approved departures within the township and the removal of restrictive title Deed conditions. If the type of condition be removed is considered, it is doubtful that the retention thereof would have a significant social benefit. The retention of the restriction will add another layer to be enforced by the Overstrand Municipality.

***The social benefit of the removal of the restrictive condition.***

It can be argued that the social benefit for removing the condition of the mentioned building lines will be positive and will enable building plan approval. It is also the opinion that the current design and layout are as a precaution for flooding in the area and maintaining privacy between neighbours. The structures are also of high quality and do not have a negative visual impact on the surrounding area of Rooi Els.

***Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.***

The removal will not remove the rights completely as the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 provides a certain level of control that will guide the manner in which the property is used and developed.

With reference to Section 47 of the Spatial Planning Land Use Management Act, 2013, the removal of the restrictive Title Deed restriction will not deprive any person in the subject area of Rooi Els as contemplated in Section 25 of the Constitution of the Republic of South Africa. By denying the removal of Title Deed restriction, will also deprive the current owner from legally utilizing the subject property to its full potential.

**CONSISTENCY WITH SPLUMA AND LUPA PRINCIPLES:**

○ **Spatial Justice**

The proposed removal of a Title Deed restriction and departures are in line with the current land use tendencies in the vicinity within the Rooi Els area. The proposed applications are in order to address the encroachments.

○ **Spatial Sustainability**

The proposed application is in line with the current character of the established residential area. The application will have no impact on the conservation worthy areas of Rooi Els.

○ **Spatial Efficiency**

○ The proposed application will promote the optimisation of the use of space within the developed residential area.

- **Spatial Resilience**

Not Applicable.

- **Good Administration**

Our company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process.

POLICY DOCUMENTS:

**Overstrand Wide Development Framework, 2020**

The area is earmarked for urban development. The property is zoned Residential and will remain as such.

**Overstrand Growth Management Strategy, 2010**

The property falls within Planning Unit 1 with no densification proposals.

**Heritage Value**

The property is located in the Heritage Overlay zone but is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey report, 2009. The application will not have a negative impact on the heritage value of the subject property or the greater area of Rooi Els.

**Biophysical Environment**

The proposed application does not trigger any listed activities in terms of the National Environmental Management Act, 1998.

DETERMINATION OF AN ADMINISTRATIVE PENALTY:

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

The as built survey confirmed that the boundary walls were constructed higher than the permissible height of 2,1m. On the western side the planter box is at 1,1m in lieu of 1m as allowed over the building line. Three water tanks have been placed on the western side of the subject erf, which transgresses the building lines and the 2,1m height permissible.

The extent of the unauthorised building work that encroached the building lines are as follows:

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

Cognisance should be taken of the fact that the owner appointed a building contractor to construct the new dwelling according to the approved building plan and was under the impression that the structures were compliant with the approved building plans.

The transgressions came about due to the construction of a suspended concrete slab, due to the fact that the property is situated in a natural depression well below street level, and the concern was about to flooding.

The infill at the seafront where the open terrace is situated, was constructed more than 1m above natural ground level and the height was confirmed at 1,6m above ground level.

The boundary walls are to provide privacy and security between Erven 337 and 338. The courtyard and planter would be exposed, and the boundary walls currently create a privacy buffer between the bedroom and bathroom that have large windows facing in a western direction.

The water tanks are situated on the western boundary side and are barely visible from the neighbouring Erf 337 due to the screening and natural vegetation covering the water tanks. Two of the tanks were approved, but on different locations. The water tanks are harvesting rainwater to lessen the effect of possible stormwater damage.

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

The owners did address the situation once notified of the situation.

***Whether the unlawful conduct was stopped:***

The building work was already completed.

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

Should the Overstrand Municipality find it necessary to determine an administrative penalty, a report to the effect will be submitted.

***Whether a person involved in the contravention ha previously contravened this By-law or previous planning law.***

To the best of our knowledge the owner has never contravene the By-law.

**5. ADMINISTRATIVE COMPLIANCE**

Methods of advertising		Date published	Closing date for comments
Local newspaper	Yes	27 July 2023	1 September 2023
Government Gazette	Yes	28 July 2023	1 September 2023
Registered mail	Yes	27 July 2023	1 September 2023
Internal departments	Yes	27 July 2023	1 September 2023
Ward Councillor	Yes	27 July 2023	1 September 2023
Total comments	<b>THREE (3)</b>		

Total letters of support	<b>NONE</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 (if no, elaborate below):	<b>Yes</b>
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	<b>Yes</b>

*Public participation during the original application took place from 30 July 2021 to 3 September 2021.*

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

Name	Date received	Summary of comments
Fire Department	18/08/2023	No objection subject to compliance with the provisions of SANS 10400 A:2019, 10400-T:2020 and the By-Law relating to community fire safety.
Building Control	27/07/2023	No objection. All buildings to comply with NBR and all other applicable law.
Local Heritage Committee	02/08/2023	HPOZ – No comment.
Environmental Management Services	29/08/2023	No objection.
Engineering Services	15/11/2023	See Annexure G.

#### 7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION, THE APPLICANT'S RESPONSE AND THE MUNICIPAL TOWN PLANNER'S RESPONSE THEREON

The public participation process for the **original** application took place from 30 July 2021 to 3 September 2021. The application was duly advertised in the local newspaper and Government Gazette. Registered letters were also sent out to surrounding property owners and the Rooi Els Ratepayers Association. The applicant's consultant also placed a notice board on-site.

Six (6) objections were received from the public participation process which is listed below:

- 1) *D Baigrie*
- 2) *RJ Baigrie*
- 3) *Dr CA Simonsz*
- 4) *E Brink*
- 5) *WRAP Project Office on behalf of Mrs F Waddell*
- 6) *Friends of Rooiels (P van Rensburg)*

The public participation process for the **amended** application took place from 27 July 2023 to 1 September 2023. The application was duly advertised in the local newspaper and Government Gazette. Registered letters were also sent out to all owners of Rooi Els and the Rooi Els Ratepayers Association. A notice board was also placed on-site by the applicant's consultant.

Three (3) objections were received from the public participation process which is depicted in a summarized version under headings of similar nature. See Annexures E and F, respectively.

- 1) **Mrs F Waddell**
- 2) **Friends of Rooi Els (E Brink) - FOR**
- 3) **Rooiels Ratepayers Association (P van Rensburg)**

The objections, the applicant's reply and the Municipal Town Planner's response on the original application in 2021 and amended application in 2023 and can be summarized as follows:

*(Please note that the Consultant, Plan Active Town & Regional Planners, only responded to comments/objection of the amended application in 2023.)*

#### **OBJECTION**

##### **D & RJ Baigrie - owners of Erven 101 and 336 (2021)**

***The Municipality conducts an internal examination into its management failure of due process, overseen by a senior member of the legal staff. The findings to be made public to the affected parties and the Rooiels Residents Association who can use this experience to advise and illustrate future owner builders.***

***Prior to any rectification, a full description and listing of infringements in detail in a report back to the affected parties and RERA in order to ensure the list is complete and appoint our own architect / engineer and quantity surveyor and if the municipality disagree and neutral professional team be appointed agreed upon by both parties.***

***Number i and ii above be posted on the garage door to inform residents of rectification.***

***Given the failure of oversight by the Municipality, the administrative penalty be donated to charities and a penalty of R500 000-00 would be appropriate.***

***When infringements are rectified, appropriate demolition will take place.***

#### **TOWN PLANNER'S RESPONSE**

The comments are noted.

However, an application was submitted to rectify the situation, and it is not for residents of Rooi Els to dictate the process to be followed. The administrative process of land use applications is available to all residents in the Overstrand Municipality to ensure equality and fairness to all residents.

 **OBJECTION**

**Dr CA Simonsz - owner of Erf 397 (2021)**

***The application for the departure must be considered with great caution. The applicant broke many rules and was not done by mistake – as shown in the plans submitted. It is beyond understanding that the Town Planning Department could have watched this development go ahead.***

***The administrative penalty should be significantly harsh.***

***I personally do not feel sufficiently strongly about the transgressions to ask for a demolition order.***

**TOWN PLANNER'S RESPONSE**

Erf 397 was created due to the transgression of a garage over the boundary of Erf 338. A boundary line rectification application was lodged to subdivide and consolidate to rectify the situation in 2014. No administrative penalty was applicable in 2014 and thus no repercussions for the transgressor. Thus, the objector also broke rules and the reason given was that the builder made a mistake and not that it was done on purpose. It also needs to be clarified; the Town Planning Department is not responsible for the execution and monitoring of building plans or building work.

The remainder of the comments are noted.

 **OBJECTION**

**Mrs. F. Wadell - owner of Erf 337 (2021 and 2023)**

***She indicated that she did not receive a notice via the post and questions whether other interested and affected parties were notified correctly. (The on-site notice displayed however provided the information required.)***

***FOR also questions if proper notice was given for the application for the removal of the restrictive title deed condition as a notice should have been given to all erf owners of Rooiels.***

**APPLICANT'S RESPONSE**

The notice reference number sent to Mrs Waddell is: R1358125988ZA, dated 20 July 2023, sent from Betty's Bay Post Office, being the only operational Post Office in the area at the time.

Two hundred and ninety-two (292) registered postal notices were sent to the relevant property owners, as per the list provided by the Overstrand Municipality.

**TOWN PLANNER'S RESPONSE**

A notice was sent to Mrs Waddell in 2021 and 2023. Notices were sent to all property owners in Rooi Els.

**OBJECTION**

***The objectors are referring to two previous applications submitted for the same property.***

**APPLICANT'S RESPONSE**

In 2017, a town planning consultant submitted an application which addressed some encroachments, but it was withdrawn during the planning process due to insufficient detailed information.

Following additional surveys and the provision of as-built building plans by architect Mr. Pieter Wasserman, a second application was submitted. It was discovered that the boundary walls exceeded the permissible height of 2.1m. Additionally, the height of the open terrace and suspended concrete slab surpassed 1m above ground level within the relevant Zoning Scheme and Title Deed building lines.

On the western side of the property, a planter box within a small courtyard was constructed above the permissible height of 1m above ground level, violating Zoning Scheme and Title Deed regulations. Furthermore, three water tanks placed between existing structures and the property boundary on the western side exceeded the prescribed height limit of 2.1m, as outlined in Chapter 16, Section 16.1.1(a)(xii) of the Zoning Scheme regulations.

Upon submission of the second application, it was stated that addressing the Title Deed building lines was unnecessary, as a prior application in 2015 had been made to resolve the issue.

It is important to note that the garage on the subject property was initially positioned on the boundary line, with approval granted accordingly on the building plan. Discussions with the municipality during the second application process indicated that the Title Deed building lines had been accounted for during a boundary re-alignment application between Erven 338 and 397 Rooi Els.

Upon obtaining a copy of the relevant Government Gazette notice to confirm the removal of restrictions, it was discovered that the removal pertained only to Erf 397 Rooi Els, the adjacent property. Consequently, the third application also includes provisions for removing a restrictive Title Deed condition related to the specified Title Deed building lines.

**TOWN PLANNER'S RESPONSE**

An application was submitted in 2017 and was withdrawn due to incompleteness of the application. Plan Active was appointed and submits an application in 2021. During the public participation process, it was noted that application did not address structures over the Title Deed building line. The applicant submitted an amended application to deal with the Title Deed building lines. The application was distributed to all the owners of Rooi Els for comment.

**OBJECTION**

***An administrative penalty should be imposed to its maximum extent to deter others following the same trend and the offender should not be allowed to escape punishment as remedial demolition is not an option at this stage. The applicant deliberately constructed the suspended concrete slab after the building plan was approved and the slab should not be approved. The abuse of process to allow the levying of an administrative penalty to legalize substantial and wilful contraventions.***

**APPLICANT'S RESPONSE**

On 17 February 2023, a site meeting convened with Ms. Hanneen van der Stoep (OM Town Planning Department), the owner, and Mr. Sherwin Rossouw (OM Building Control Office), who served as the building inspector during the construction of the dwelling on Erf 338 Rooi Els.

During this meeting, Mr. Sherwin Rossouw recalled that during the approval process of the building plan, it was advised to elevate the dwelling above ground level as a precaution against potential flooding, given the topography of the site.

Given that the property is located in a natural depression significantly lower than the street level, the dwelling was built on a suspended slab to mitigate flood risks during heavy rainstorms. This recommendation, as noted by the building inspector, emerged during discussions on the building plan approval process before construction commenced. Consequently, the building contractor adhered to this recommendation by raising the dwelling accordingly.

**TOWN PLANNER'S RESPONSE**

Although the concern of flooding was raised and the mitigating factor was the suspended slab, adherence to the relevant legislation e.g. the Land Use Scheme remains applicable. The slab was extended over the building lines and thus caused the transgressions. The mitigation should have been managed by the Professional Team to address the higher base level due to the suspended slab. A Rider Plan should have been submitted and approved before continuing with the application, which would have alerted the professional team of possible transgressions that could have been addressed accordingly.

There was no ill intent of the applicant to circumvent any legislation since a professional team was appointed to manage the development.

**OBJECTION**

***The application item with reference to the wall height encroachment refers. The concern by the objector is that the foundation will most likely not be able to withstand a wall which is 2,07m and 3,95m in height, depending on where the wall is measured. An engineering certificate which confirms that the foundation can take the additional load was not submitted. If an engineering certificate can be produced the concerns would be eased. The boundary wall between Erven 337 and 338 should be demolished to 2.1m from the level as prescribed by the Overstrand Municipality.***

APPLICANT'S RESPONSE

The height of the boundary walls is a direct result of the dwelling's construction on a suspended concrete slab. This choice was made due to the property's location in a natural depression well below street level, aimed at preventing flooding during heavy rainstorms. As previously noted, this aspect was discussed during the building plan approval process, with confirmation from the building inspector.

These boundary walls serve to provide privacy for both the property owner and neighbouring properties. While they appear to be of appropriate height from within the house, they may seem taller from the neighbouring side. It is important to reiterate that the elevated walls primarily stem from the dwelling's placement on a suspended slab, a precautionary measure against flooding given the property's lower elevation.

In general, stormwater runoff flows over dirt roads, and during intense rain, it often spills into lower-lying properties, causing flooding. The photographs indicate excavation work on the property during construction, which lowered the natural ground level. However, when the dwelling was raised, it was done from below this altered ground level. Consequently, the structures may appear taller than they actually are due to the excavations from neighbouring properties.

As previously mentioned during discussions with the building inspector, concerns regarding flooding prompted the recommendation to elevate the dwelling as a precautionary measure, reflecting the topography of the area.





The disparity in height between the natural ground level and the suspended concrete slab ranges from 1.156m to 1.5m along the eastern and western building lines.

According to Section 16.6.1(a)(ii), structures lower than 1m above the natural ground level may be erected over the prescribed building lines as infill. However, the suspended concrete slab exceeds this threshold within the prescribed building lines, necessitating the addressing of encroachments.

The boundary walls adhere to the National Building Regulations and Buildings Act, 1977 (Act No. 103 of 1977). A certificate of completion for the structural and fire protection systems, was issued by TN Consulting (Tielman Nieuwoudt) in accordance with Section 14(2A) of the Act, confirms that the walls do not pose any risk to the subject property or neighbouring properties.

As previously mentioned, the elevated boundary walls were erected to ensure privacy relative to the floor level of the existing single-storey dwelling, which sits above the natural ground level. While these walls may appear taller when viewed from neighbouring properties, they are perceived as standard when observed from within the dwelling on Erf 338 Rooi Els.

Constructing the boundary walls within the 2.1m height restriction would have compromised both the owner's and neighbour's privacy. Additionally, it would have left the courtyard and planter exposed. Presently, the courtyard and planter serve as a privacy buffer between the bedroom and bathroom, which feature large windows facing westward on the western side of the property.

#### TOWN PLANNER'S RESPONSE

The wall heights are excessive in certain places, specially from the neighbouring erf, Erf 337. The boundary walls vary from 3,95m on the western boundary to 3,571m on the eastern boundary. The boundary walls excessive height is due to the suspended concrete slab on which the walls were built. In terms of the Overstrand Land Use Scheme, a boundary wall is restricted to 2,1m from the natural ground level and with varying heights of the suspended slab, the boundary walls differ accordingly.

The scenario as requested by the objector of Erf 337 will result in a boundary wall that will constantly step in height in order to comply with the 2,1m due to the topography. Aesthetically the up and down stepping of the boundary wall along the boundaries of Erf 338 will not be to the benefit of the area or the adjacent owners.

The reasoning for the height of the walls is to ensure privacy and security not only for the owner but also the adjacent owners. The most practical scenario is that the wall be determined 1m from the slab floor level at 44,73m. This will ensure that the height of the wall is dropped or elevated at the same height.

The Engineering completion certificate for the building work was submitted by Mr T Nieuwoudt, Engineer appointed by the owner, render the present boundary walls "safe".

 **OBJECTION**

***Breather vent valve was installed on the objector's side of the boundary wall and protrudes more than 110mm from the boundary wall. The vent is not indicated on the plan and application. The objector claims that there might be an illegal sewage connection behind the wall. The breather pipe should be removed and relocated as it is an eyesore.***

APPLICANT'S RESPONSE

The breather pipe is situated within the boundary lines of Erf 338 Rooi Els. The allegation of an illegal sewage connection is not based on any proof furnished by the objector.

TOWN PLANNER'S RESPONSE

The response from the applicant is noted. However, although the pipe is located on Erf 338, on the western boundary wall, it is highly visible from Erf 337. It is agreed with the objector that the breather pipe be removed and located on the inside of the wall of Erf 338. There is no reason for the pipe to be wall mounted.

 **OBJECTION**

***High walls impact the safety of neighbourhoods adversely as homes are not visible to neighbours.***

APPLICANT'S RESPONSE

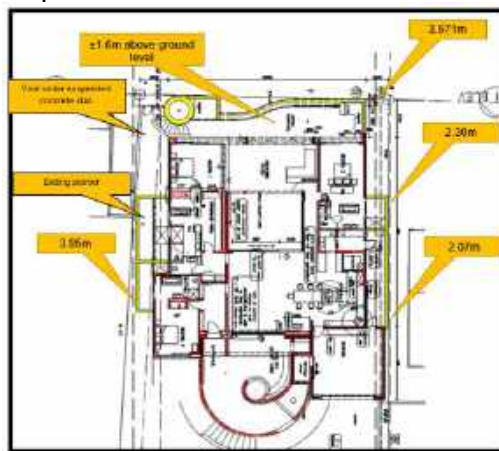
As depicted in the accompanying photographs, while the height of the boundary wall may not appear excessive from within the subject property, it surpasses the maximum allowable height for boundary walls, which is 2.1m. Despite this, it remains compliant with safety regulations, as previously noted. A compliance certificate has been issued for the boundary walls erected on the subject property, affirming their safety.

The constructed height of these walls serves to enhance privacy and security for both the owner of the subject property and neighbouring property owners.



It is important to emphasize that the primary reason for the heightened walls is the presence of the suspended slab beneath the dwelling, implemented as a preventive measure against potential flooding due to the property's lower elevation. The decision to elevate the dwelling was specifically taken as a precautionary measure to mitigate the risk of flooding. In general, stormwater tends to accumulate on dirt roads during heavy rainfall, often resulting in overflow onto lower-lying properties in the vicinity, thereby causing flooding.

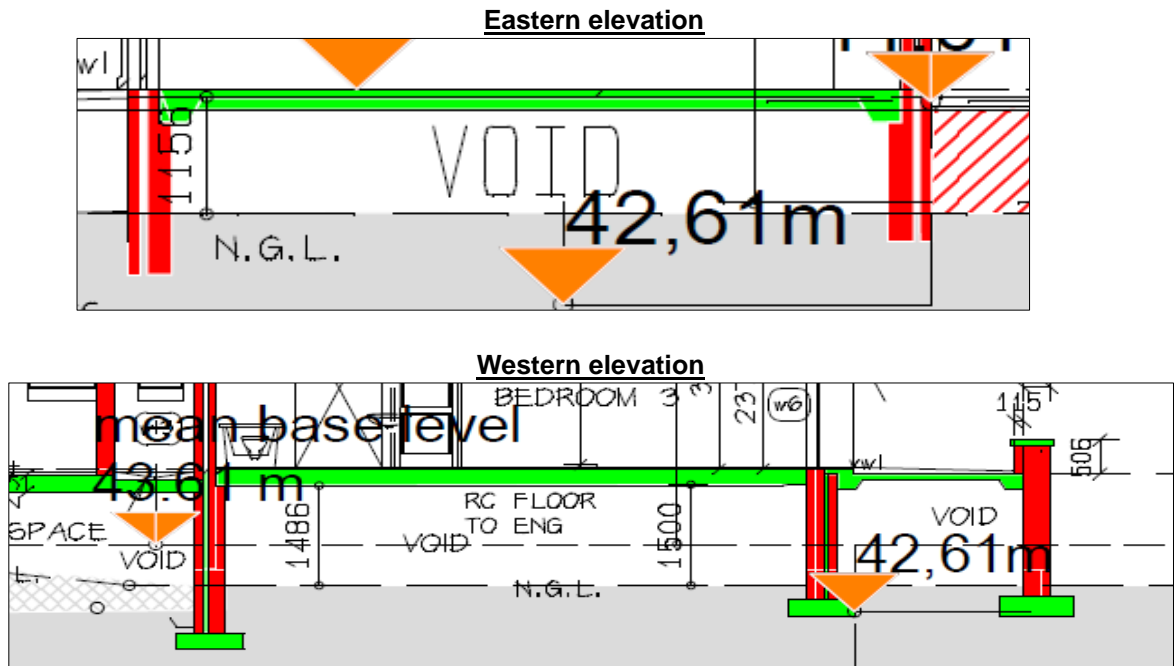
Additionally, it is worth noting that the boundary walls surrounding the subject property are not uniform in height. They range in height from approximately 2.07m to 3.95m along the property boundaries. The detail of the encroachments of the boundary walls and open terrace can be seen in the illustration below:



Excavations were conducted on the subject property during the construction phase, resulting in a lowering of the natural ground level at that time. However, when the dwelling was raised, it was elevated from a point below the original natural ground level. Consequently, the structures may appear taller than they truly are due to the excavations carried out on neighbouring properties.

As previously mentioned, during discussions with the building inspector regarding the building plan, concerns arose regarding potential flooding due to the topography of the area. Hence, it was strongly recommended that the dwelling be raised as a precautionary measure.

The height between the natural ground level and the suspended concrete slab varies between 1.156m and 1.5m within the eastern and western building lines. The suspended concrete slab is therefore higher than 1m above the ground level within the prescribed building lines and thus the encroachments must be addressed.



#### TOWN PLANNER'S RESPONSE

The original survey depicting the natural contour lines before construction was done in 2014. An additional survey was done in 2017 to establish the transgressions due to the suspended slab. On the survey map, drawing number V20436, it also indicates the finished floor level heights. See Annexure H.

In terms of the Overstrand Land Use Scheme, boundary walls are measured from the natural ground level and may be erected to a height of 2,1m. Some portions of the boundary wall transgress the 2,1m up to 3,93m at the highest due to the suspended slab.

#### **Western boundary wall**

In terms of the National Building Regulations, 1977, a height of 1m is compulsory to ensure safety of occupants in relation to the courtyard and planter. The height of the boundary wall at this position is 3,95m which allows for total privacy and serves as protection of the courtyard trees. If the slab height is considered and a 1m high wall is allowed on top of the slab, it will allow for a boundary wall of approximately 2,5m.

#### **Eastern Boundary wall**

The height of the wall at 3,571m on the eastern side of the open porch is to provide total privacy from the neighbouring erf on the eastern side of the property. If the slab height is considered and a 1m high wall is allowed on top of the slab, it will allow for a boundary wall of approximately 2,15m.

**OBJECTION**

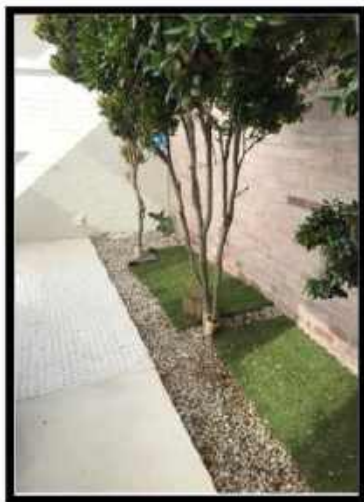
***Two 110mm water outlets were constructed in the boundary wall which channels stormwater water from Erf 338 onto Erf 337 Rooi Els. Erf 337 Rooi Els is subject to frequent flooding and interferes with the occupation and use of the property.***

***No property owner should accept water from another property situated in an elevated state and the water should be channelled to the street and by implication the applicant should channel the water directly from the property to Hotel Crescent. Compensation for damage caused by storm water channelled onto Erf 337 from the property of the applicant could be sought. It is requested that the water pipes be sealed to ensure that less water is being discharged onto Erf 337. A storm water management assessment and management plan should be implemented to direct all stormwater from Erf 338 Rooi Els to the lowest point.***

**APPLICANT'S RESPONSE**

There is a planter situated within the western lateral boundary scheme building line and Title Deed building line of the subject property which is part of a small low maintenance courtyard.

Due to the fact that the boundary wall on the western side of the property is not parallel to the actual boundary the two above mentioned 110mm pipes exit onto Erf 338 Rooi Els and not onto Erf 337 Rooi Els as it seems. Please refer to the photographs below depicting the small courtyard with the garden and the one of the 110mm pipes exiting the wall, which is situated within the property boundary.



The existing planter features a low-maintenance garden with artificial grass. Two 110mm planter drainage pipes extend from beneath the planter, passing through the boundary wall toward the neighbouring property. It is worth noting that despite this drainage, water still exits the pipes onto Erf 338 Rooi Els. Given that the planter is designed to be waterwise, the outflow of water through these pipes is minimal. These pipes are not intended for stormwater runoff or for transferring water from the dwelling's roof, and they can be closed off if necessary.

As depicted in the photograph below, the untarred roads in the vicinity of Erven 337 and 338 Rooi Els lack kerbs, and these roads serve as natural channels for stormwater during heavy rains. The absence of adequate road infrastructure means that stormwater cannot be contained, leading to runoff into lower-lying residential properties like Erven 337 and 338 Rooi Els, resulting in flooding.

This is the underlying reason for the suggestions received during the building plan submission process, advocating for the dwelling proposed on Erf 338 Rooi Els to be elevated using a suspended concrete slab to mitigate the potential risk of future flooding.



As previously discussed in this report, the construction of the dwelling on the subject property was carried out on a suspended concrete slab, a measure taken to mitigate the risk of flooding given the property's location within a natural depression significantly below road level. The blue arrows depicted in the photograph above illustrate the direction of stormwater runoff during periods of heavy rainfall.

Additionally, strategically positioned water tanks on Erf 338 Rooi Els have a substantial capacity, holding approximately 40,000 litres of rainwater. Without these tanks in place, there is a potential for exacerbating stormwater issues for neighbouring properties.

#### TOWN PLANNER'S RESPONSE

It is generally accepted that lower lying properties must accept stormwater from the higher lying properties, the understanding is also that the water may not be channelled and thus no natural dispersion of water is possible. Erf 337 does have stormwater problems due to the topography of the erven located in Hotel Crescent, however the water wise garden will not add to Erf 337 present problem. But be as it may, the water channelled should be dispersed on the application erf, Erf 338 and not channelled onto Erf 337.

The stormwater management plan requested by the objector is not realistic. The building on Erf 338 is built on a suspended slab, thus the natural water flow is not impeded by normal strip foundations. It is unreasonable to expect Erf 338 to resolve the stormwater problem experienced by Erf 337, without any proof that the development of Erf 338 in 2017, have exacerbated the storm water problems of Erf 337.

 **OBJECTION**

***The height of the water tanks is not indicated on the application plan. The departure for the water tanks should not be approved and legalised with a penalty payment, the tanks should be demolished.***

APPLICANT'S RESPONSE

The water tanks 3.15m and 4.27m in height, respectively, are positioned on the western side of the subject property. As depicted in the accompanying photographs, they are minimally visible from the neighbouring Erf 337 Rooi Els, largely obscured by natural vegetation established on that property. To obtain a clear view of the water tanks, one would need to approach the common boundary between Erven 337 and 338 Rooi Els, beyond the natural vegetation.

Consequently, the water tanks do not have any noticeable impact on the neighbouring property, Erf 337 Rooi Els.

Within the boundaries of the subject property, the water tanks serve as collection points for rainwater runoff from the roofs of all structures on Erf 338 Rooi Els. The stored water is utilized for household and irrigation purposes.

The collection of rainwater in the water tanks situated on Erf 338 Rooi Els has significant advantages for neighbouring properties. By capturing runoff water from the various structures on the property, including roofs and paved surfaces, these tanks play a crucial role in mitigating stormwater discharge onto surrounding areas.

Erf 337 Rooi Els, being a neighbouring property, benefits directly from this rainwater collection system. By intercepting and storing rainwater that would otherwise flow freely, the tanks prevent excess stormwater from inundating Erf 337 and potentially causing flooding. This is particularly crucial in areas prone to heavy rainfall or where natural drainage systems are inadequate.

Furthermore, the function of the water tanks parallels that of a retention pond, albeit on a smaller scale. Like a retention pond, they act as reservoirs, temporarily holding rainwater and gradually releasing it over time. This controlled release helps to regulate the flow of stormwater, reducing the risk of sudden inundation and erosion downstream.

Given these benefits, the presence of the water tanks is essential for managing stormwater and protecting neighbouring properties from potential flood damage. Removing them would disrupt this effective drainage system and increase the risk of flooding for Erf 337 Rooi Els and other nearby properties situated in lower-lying areas. Therefore, preserving the water tanks is not only beneficial but also necessary for maintaining effective stormwater management and preventing flood-related issues.



### TOWN PLANNER'S RESPONSE

The three water tanks do serve an important purpose to manage stormwater on Erf 338 and lessen the impact on Erf 337. As indicated by the applicant, the natural flow of storm water is from a northerly to a southernly direction, thus from Gnidia Road and Hotel Crescent towards and on the lower lying properties. The roads are gravel with no to limited provision of stormwater management.

It is noted that the tanks fulfilled an important function to manage stormwater and harvesting rainwater for gardening purposes and thus lessen the burden on municipal water resources. Water tanks are allowed at the same height as boundary walls on 2,1m and must be screened.

The applicant is requesting to deviate from building lines and thus does have to take the neighbouring erven into consideration. The applicant does indicate that there is natural vegetation on Erf 337 and thus screened and not highly visible, however should the vegetation be removed, and at the present height is intrusive.

The water tanks are transgressing the building lines, and the height allowed for tanks over the building lines of Erf 338. The water tanks are located at heights of 3,15m and 4,27m and should be lowered to 2,1m from natural ground level behind the boundary wall and screened.

 **OBJECTION**

**Friends of Rooi Els (2021)**

***Withdrawal of previous application, dated 2020: -***

***The resubmitting of the application is substantially the same and as indicated in the objection on the application in 2019 remain pertinent and should be regarded as incorporated in this document. This is relevant to the subdivision of Erf 338 that has not been included in this application with regard to the title deed condition restriction pertaining to the building lines.***

***It seems that more than 50% has been built on and that a second dwelling has been erected.***

**TOWN PLANNER'S RESPONSE**

The application for the subdivision of a portion of Erf 338 and subsequent consolidation with Erf 339 (now Erf 397) was approved in 2015. The application was a result of illegal building work over the boundary of Erf 338. The application did involve the removal of restriction condition of the lateral building line. The removal was dealt with by the Department of Environmental Affairs and Development and the notices were distributed as was determined by the Department.

The building plan does not indicate more than 50% coverage. The objectors should take due cognisance that the Title Deed allows for 60% coverage. There is no second dwelling build on the property.

All other points in the objection of 2021 have been encapsulated in the 2023 comments and are dealt with in the 2023 comments and responses.

 **OBJECTION**

**Friends of Rooi Els (2023)**

***Unauthorised building work that encroaches the building line to be demolished and that the title deed restriction not be removed completely as demolition will result that only an amendment of the restriction would be required for a deviation along the one boundary only for a described distance only, whilst retaining the restriction intact for the rest of the boundaries.***

APPLICANT'S RESPONSE

Demolishing all the building work encroaching the building lines is not a feasible option, as it would necessitate the demolition of the entire extent of the dwelling situated on the suspended concrete slab. The extension of the concrete slab over the building lines was a deliberate decision made to address safety concerns. Aligning the suspended building slab with the house position would have resulted in a significant drop between the ground level and the level of the house, posing safety risks due to the void underneath the concrete slab.

The height difference between the natural ground level and the suspended concrete slab ranges from 1.156m to 1.5m within the eastern and western building lines, as previously illustrated. Therefore, removing the title deed restriction is necessary to address the encroachment of existing features on the rear, western, and eastern building lines. It is important to note that amending the restriction on only one boundary for a specific distance would not be sufficient, as the encroachment extends across multiple boundaries and removing the restriction in its entirety is the appropriate course of action.

TOWN PLANNER'S RESPONSE

The applicant's response is supported and correct. It is not practical and serve no purpose to cut the suspended slab to the allowable building lines and may result in structural problems and safety concerns.

Therefore, to only remove the restriction on one boundary is not possible due to the suspended slab transgressing all boundaries.

 **OBJECTION**

***The Rooiels Heritage Protection Overlay Zone prohibits the departure of wall heights above 2.1m***

APPLICANT'S RESPONSE

The perception of the neighbouring landowner regarding the height of the boundary walls underscores their importance in providing privacy and security. This is particularly relevant given that neighbouring structures are situated at a significantly lower level than the dwelling on Erf 338 Rooi Els. Additionally, the street boundary wall aligns with the Heritage Protection Overlay Zoning Regulations, 2020, ensuring compliance with relevant regulations.

Furthermore, it is crucial to acknowledge that the boundary walls exceeding the 2.1m height restriction were constructed prior to the implementation of the Heritage Protection Overlay Zone regulations. This historical context underscores the need to consider the circumstances surrounding the construction of these walls.

Ultimately, the proposed departures from zoning regulations are primarily driven by the topography of the site. Constructing the dwelling on a suspended slab was deemed necessary to mitigate the risk of flooding, emphasizing the pragmatic approach taken to address site-specific challenges and ensure the safety and stability of the property.

TOWN PLANNER'S RESPONSE

This aspect was also raised in 2021 comments and has been addressed in the amended application 2023. The building plan was approved in 2017 which predate the Heritage Overlay Zone. It should be noted that the in terms of Chapter 4 of the Heritage Protection Overlay Zone Regulations, an application can be lodge to deviate from the regulations.

 **OBJECTION**

***FOR request that no departures, be allowed and no administrative levy be imposed***

APPLICANT'S RESPONSE

Rejecting the request by Friends of Rooiels to disallow any departure and waive administrative levies does not provide a viable solution to the current circumstances. The decision to encroach upon the building lines was not arbitrary but rather a strategic response to the need to construct the dwelling on a suspended concrete slab. This measure was undertaken to prevent potential flooding damage, given the property's location within a natural depression significantly below road level. Therefore, it is essential to consider the practical necessity behind the encroachment and to seek a resolution that addresses the underlying challenges while ensuring compliance with relevant regulations. Simply refusing departures and levying administrative fees without addressing the root cause of the encroachment would not effectively resolve the situation at hand.

The encroachment issues came to the owner's attention for the first time during the submission of an application to the Overstrand Municipality for an occupation certificate. This occurred as the owner had entrusted the building project to a team of professional consultants. This implies that the owner relied on these consultants to manage the various aspects of the project, including compliance with regulations.

TOWN PLANNER'S RESPONSE

The request from the Friends of Rooi Els is noted, but not feasible. The development on Erf 338 is designed as an architectural unit on a suspended concrete slab. The cutting of the suspended concrete slab will most properly have structural concerns, which may lead to unforeseen consequences, such as more than a 1m drop between the natural ground level and the building. Should the slab be cut and the infill up top 1m be retained, the implication is compaction, stairs, which will trigger a departure since it will be over the building lines.

The FOR comment that the removal and compliance with the Land Use building lines and Title Deed building lines will be disproportionate to the benefit derived from the removal by the applicant. This comment cannot be verified, since the FOR has not extensively addressed the benefit the applicant will obtain. The only benefit derived by the applicant is not to demolish the suspended concrete slab over the building lines and that the boundary walls be higher than 2,1m above natural ground level.

 **OBJECTION**

***FOR concerned that certain special title deed conditions have not been complied with by the owner of Erf 338 Rooiels.***

**APPLICANT'S RESPONSE**

No comments can be made as no details pertaining to the title deed conditions that have not been complied with.

**TOWN PLANNER'S RESPONSE**

The title deed as per Conveyancer Report (attached as Annexure J), does not indicate any special conditions. The adjacent owner indicated that there are restrictive conditions applicable to the approval of the subdivision Erf 87 (hotel site) into four (4) erven in 1983. The application erf has no such special restrictive conditions stipulated in the Title Deed.

The original subdivision application was approved by the Divisional Council of Caledon in 1981 and the removal of restrictive conditions in 1983 by Department of Local Government of the Cape of Good Hope. The documentation received from the Department, now The Department of Environmental Affairs and Development Planning, does indicate the special conditions, consisting of three Annexures. In the correspondence, the Director of Local Government indicated that in the process of rate clearance that the owners be made aware of these conditions.

The building plan for the dwelling was approved in 2017. These special conditions were not captured in the title deed and or on any other system in the Municipality for the past 36 years and also not during the rates clearance process when the applicant purchased the property. The special conditions should have been incorporated in the Title Deeds of the four (4) erven. The Title Deed of Erf 338 does not reflect the special conditions, and no documentation that reflects the special conditions were submitted with the objections. We do not want to speculate as to who was at fault in this regard. Annexure I.

 **OBJECTION**

***Demolition is requested by Friends of Rooiels for the infill of the open terrace within the building line, boundary walls, suspended concrete slab, the planter in the small courtyard and the water tanks. According to the FOR the cost of removal of the unauthorised building work that encroach the building lines would not be disproportionate to the benefit derived from the removal as per the judge's opinion as quoted in the case between BSB International Link CC v Readam South Africa (Pty) Ltd.***

APPLICANT'S RESPONSE

Demolishing all the building work encroaching the building lines, including the suspended concrete slab, is not a feasible option due to the extensive nature of the demolition required. Aligning the suspended building slab with the house position would result in a significant drop between the ground level and the level of the house, posing safety risks due to the void underneath the concrete slab. The variation in height between the natural ground level and the suspended concrete slab further underscores the impracticality of such a solution.

The water tanks situated within the boundaries of the subject property play a crucial role in collecting rainwater from the roofs of all structures on Erf 338 Rooi Els. This collected rainwater serves household and irrigation purposes and has a positive impact on neighbouring properties by reducing additional stormwater discharge onto Erf 337 Rooi Els and potentially adjacent lower-lying properties. The function of the water tanks resembles that of a retention pond, making their demolition unwarranted.

Similarly, the existing planter within the western building line, despite being higher than 1m above natural ground level, serves a beneficial purpose and has no adverse impact on neighbouring properties. The planter forms part of a waterwise courtyard and contributes to the aesthetic appeal and environmental sustainability of the property. Given these considerations, there is no valid reason for the demolition of the planter.

In summary, the proposed demolitions would not only be impractical but also unnecessary, as the existing features on the property serve important functions and do not pose any harm to neighbouring properties.

TOWN PLANNER'S RESPONSE

The FOR made reference to the READAM case. The following needs to be taken into consideration in this regard: The building only had to be partially demolished and then only after a suitable qualified engineer certified that the partial demolition would not compromise the structural integrity and safety of the building. This aspect has not been dealt with by the FOR in regard to the possible structural integrity of the building should portions of the suspended slab be demolished.

The legal precedent of the *Bet-el Faith Mission vs Motthamme and Others (5306/2017) [2020] ZAFSHC 6*, as summarised in an article by Ashersons Attorneys titled "*Your Neighbour Builds Without Plans – Can You Get a Demolition Order*" dated April 2020, which amongst others states: An article by Schindler's Attorneys titled "*Illegal Buildings*", dated September 2020 which states all the applicable legislation and also addresses the following salient points:

*"..... A court deciding a demolition application has "discretion to reach an equitable and reasonable solution in terms of the common law by ordering payment or compensation rather than removal in cases where the cost of removal would be disproportionate to the benefit derived from the removal."*

The extent of the requested demolition is disproportional to what will be gained from the demolition. The first aspect is the suspended slab, which may result in structural configuration and support. The boundary walls are in certain points quite excessive. It is clear that the owner of Erf 338 did intend to ensure privacy from the surrounding erven. The excessive height is also due to the suspended slab on which the boundary walls are located. Since the site gradient varies throughout the site, the boundary walls will have to step constantly, which aesthetically will be an eyesore and impact privacy. The best solution is that across the erf, that the boundary walls may only be 1m above the suspended slab.

The small, planted courtyard is located behind the walls and serves as a buffer between the bedroom and bathroom on Erf 338 and Erf 337. With the lowering of the wall, the courtyard with the trees will be more visible from Erf 337, but privacy will be retained by the owner of Erf 338.

The water tanks in the building lines must either be removed to comply with the building lines or be the same height as the proposed amended boundary walls and be screened.

The infill terrace at the rear of the erf has little impact on the surrounding owners and is an open porch. There is little to no gain in lowering the porch since it is blocked by the boundary walls.

#### **OBJECTION**

##### **Removal of Title deed Restriction:**

***The question arises whether proper notice was given to all the owners in Rooiels? Should this not have happened, the application will be appealable. Due consideration should be given to the importance of building lines and title conditions to maintain the spatial character of Rooiels. In extreme cases, a demolition cannot be ordered, the title deed restriction should be amended only, and not totally removed, by formulating a deviation along the one boundary for a prescribed distance only.***

##### **APPLICANT'S RESPONSE**

The height difference between the natural ground level and the suspended concrete slab ranges from 1.156m to 1.5m within the eastern and western building lines, as previously illustrated. Therefore, removing the title deed restriction is necessary to address the encroachment of existing features on the rear, western, and eastern building lines. It is important to note that amending the restriction on only one boundary for a specific distance would not be sufficient, as the encroachment extends across multiple boundaries and removing the restriction in its entirety is the appropriate course of action.

TOWN PLANNER'S RESPONSE

The response of the applicant is accepted.

Rooi Els is predominantly low-density residential town and has restrictive conditions in terms of building lines, coverage and use. Some of the title deed restrictions are more lenient than the Land Use Scheme. In this case the lateral building lines and coverage of the erf are more lenient, and the more restrictive application of the lands use scheme is in place. The lateral building lines in terms of the title deed are 1,57m versus the 2m of the Land Use Scheme as well as the coverage of 60% in terms of the title deed versus the 50% of the land use Scheme.

The spatial character of any town relates to its physical and non-physical attributes. The town of Rooi Els is not a gated complex and has no Architectural guidelines that guide the physical structures. Therefor the spatial character of the town of Rooi Els relates to a low-density residential development only, with little densification possibilities and commercial ventures. It has no special guiding documents to ensure a specific spatial character. Should one consider the various architecture designed dwellings, it is clear that Rooi Els in terms of its built character has no theme character.

 **OBJECTION**

**Mr E Brink (2021)**

***Boundary walls:***

***A departure from the development parameters is in general allowed. A departure specifically from the height of boundary walls is only allowed with prior submission and cannot be allowed post facto. A departure, although it can be applied for and approved by the MPT, cannot be approved contrary to the law as formulated for allowing a specific departure. The MPT cannot depart from the law itself, only from a development parameter.***

TOWN PLANNER'S RESPONSE

It is not clear what the objector interpretation refers to. Any departure is contrary to the By Law, this relates to the restrictive conditions in Title Deeds as well. That is why the mechanism for a departure has been created and is accepted as an acceptable process. The transgression of the development parameters must be evaluated on merit and may be subject to an administrative penalty. The motivation of the application clearly indicated why the transgression took place due to the suspended concrete slab.

Heritage Overlay zone: This aspect has been dealt with in the comments under the Friends of Rooi Els.

 **OBJECTION**

**Rooi Els Ratepayers (2023)**

***The request is to impose the highest fine possible to signal to all who intends to develop in Rooi Els take due cognisance of the building regulations and development parameters applicable to the erven in Rooi Els Town.***

TOWN PLANNER'S RESPONSE

Noted.

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

See Paragraph 7 above.

**9. MUNICIPAL ASSESSMENT OF COMMENTS (Town Planner's comment on objections/and response thereon)**

See Paragraph 7 above.

**Internal and External Departments**

The application was supported by all internal municipal departments.

**10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)****10.1 Background**

N/A

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

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

**Spatial Justice**

N/A

**Spatial Sustainability**

The development does not affect any agricultural or environmental land. The development has implemented water wise gardens and provides water tanks for rainwater harvesting. The suspended concrete slab also contributes to normal drainage pattern of the erf. All of the aforementioned contribute to the sustainability concept to make the development more environmentally friendly.

**Efficiency**

The development makes use of municipal services where available and is compliant with the normal engineering requirements of the municipality.

**Spatial Resilience**

The development with the implementation of water saving measures and the adherence to the national Building Regulations ensures that the development will be better protected against adverse weather conditions.

**Good Administration**

The applicant followed due procedure as prescribed by the Municipality.

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

Same as Point 10.2 above.

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

The application is in line with the SDF 2020.

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

N/A

**10.6 Impact on Municipal Engineering Services**

Existing services are provided by the Municipality.

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

N/A

**10.8 Existing and proposed zoning comparisons and considerations**

The application of restrictive conditions can be accommodated in terms of the Overstrand Land Use Scheme.

**11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS**

***The financial or other value of the rights in terms of the restrictive condition enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the personas of the owner of a dominant tenement.***

The applicant gains no financial or other value. The lower lying erven will enjoy financial benefit due to storm water retention of a higher lying erf.

***The personal benefits which accrue to the holder of rights in terms of the restrictive condition.***

None.

***The personal benefits which will accrue to the person seeking the removal of the restrictive conditions, if removed.***

The applicant will be able to legalize the existing structures.

***The social benefit of the restrictive condition remaining in place.***

The social benefit for the applicant is none, for the community the status quo remains in place.

***The social benefit of the removal of the restrictive condition.***

The applicant will be able to enjoy the benefit of her dwelling, built to her needs. The social benefit for the community is that the storm water problem of the lower lying erven will be minimized.

***Whether the removal, suspension or amendment of the restrictive condition will completely remove all rights enjoyed by the beneficiary or only some of those rights.***

No.

## 12. THE DESIRABILITY OF THE PROPOSAL

**Determination of an Administrative Penalty:**

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

The extent of the unauthorised building work that encroached the building lines are as follows:

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

Cognisance should be taken of the fact that the owner appointed a building contractor to construct the new dwelling according to the approved building plan and was under the impression that the structures were compliant with the approved building plans.

The transgressions came about due to the construction of a suspended concrete slab due to the fact that the property is situated in a natural depression well below street level, to prevent flooding.

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

The owners did address the situation once notified of the situation.

**Whether the unlawful conduct was stopped:**

The building work was already completed.

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

The owner did not submit a report.

**Whether a person involved in the contravention has previously contravened this By-law or previous planning law.**

The owner has never contravened the By-law.

**ADMINISTRATIVE PENALTY:**

The applicant submitted the actual building costs as in 2017-2018, by HU-ART Development and Construction. See Annexure K.

In terms of the Overstrand Municipality Tariff List 2024/2025 – Formal structure non-habitable per sqm is determined as follows: the average of two formal quotations, however in this case the transgression amount is the actual building costs when building the structures.

The transgression as determined are as follows:

**Rates used for building works in year 2017 – 2018 House Muller**

➤ Infill and Compaction 23m <sup>2</sup>	@ R280/m <sup>2</sup> =	R 6,440-00
➤ Boundary walls 4.84m <sup>2</sup>	@ R660/m <sup>2</sup> =	R 3,194-40
➤ Concrete Slab 35m <sup>2</sup>	@ R1080/m <sup>2</sup> =	R 37,800-00
➤ Water Tank 10 000lt 2	@ R 4,510.00 =	R 9,020-00
➤ Water Tank 20 000lt 1	@ R 8,500.00 =	R 8,500-00

**TOTAL = R 64,954.40**

It should be noted that the water tanks were calculated as the physical structures.

The percentage of 100% will be applicable, and the reasons being the following:

- The Professional team responsible for the development has not taken into consideration the impact of the suspended concrete slab, which it should have.
- The Architect is a professional person that should have submitted a plan when changes were made during construction. This aspect would have been discussed with the owner which remains responsible for any work done on the erf.
- The objections have been dealt with in detail.

The administrative penalty amount payable is **R64954,40**.

IN CONCLUSION:

The applicant has appointed a team of professionals to manage the development of Erf 338 in compliance with all the applicable legislation. However, during the preparation of the erf, the topography of the erf clearly indicated that storm water may be problematic. The team decided to elevate the building by the construction of a suspended concrete slab on which the building was built, which has now led to the various structures transgressing the Land Use Scheme parameters and Title Deed restrictive conditions with regard to infill, height and building lines. The Architect did not submit a rider plan taking into consideration the elevated suspension slab in relation to the height restrictions as per the Land Use Scheme. The rider plan was only submitted once the building was completed and an occupation certificate requested, and the deviations came to the forefront. This has triggered a land use application and a removal of restriction application.

The applicant and owner has appointed a professional team to deal with the development of Erf 338. The raising of the floor area with a suspended concrete has created all the transgressions that needs to be addressed. The objector, Mrs Waddle is correct in as far that the boundary walls are extremely high and was only constructed to ensure total privacy between Erven 337 and 338. There is no need for such an excessive height and aesthetically the boundary wall is to the detriment of Erf 377 which is lying lower than Erf 338.

The topography of the erf is as such, that a wall from the natural ground level would have stepped along the boundaries. In order to eliminate the constant stepping of the boundary, it is proposed that the boundary wall be lowered to 1m above the floor level at 44,73m to ensure continuity of the wall on the eastern and western boundaries.

The vent that is on the western boundary wall on the outside of the wall, although located on erf 338, is unsightly. It is recommended that the vent be located on the inside of the boundary wall and not visible from the adjacent erf (Erf 337) for due consideration of Ms Waddle.

The two outlets from the water saving planter may not be channelled onto Erf 337 and be dispersed before entering Erf 337. The water tanks, although it is to the benefit of Erf 337 with regard to storm water management, it should be lowered to below the boundary wall. It is visible and should the buffer plant material be removed; it is unsightly and visually to the detriment of Erf 337.

The Municipality does allow water tanks over the building lines if it is not higher than the specified height of a boundary wall of 2,1m in height. The requirement is also that the tanks be screened to make it less visible. Water tanks on erven has a twofold benefit namely to deal with storm water, lessen run off water on the lower lying erven and to lessen the impact on municipal water use for gardening purposes. This provision of water tanks is promoted, especially in the event of climate change and the prediction that the Western Cape will become drier. It is recommended that the tanks to be lowered similar to the proposed boundary walls to limit the visibility of the tanks from Erf 337.

The garage on the eastern lateral building line was approved and is a single storey building that is not to the detriment of the surrounding areas. The building plan was approved in 2017 and the removal of the lateral building line of 1,57m to address the Title Deed restriction was submitted.

The open porch at the rear of the building which transgresses the 1m infill does not impede any adjacent neighbour and is not to the detriment of the general public.

The enclosed planter, which is located on the western lateral building line forms a buffer between Erven 337 and 338 to ensure privacy since it is located in front of a bedroom and bathroom. Should the boundary wall be lowered, the bedroom and bathroom will be more visible, however the plants/ trees do form a sufficient buffer between Erven 337 and 338.

The removal of the restrictive conditions will not impact on the area since it has lesser restrictions with regard to the lateral building lines than the land use scheme in terms of coverage and building lines. The removal of the restrictive conditions addresses the building lines only and other restrictive conditions will not be removed.

The Heritage Overlay Zone was only promulgated in 2020 and thus not applicable in 2017 when the building plan was approved. Boundary walls were approved, and the Heritage Overlay zone cannot be made applicable retrospective. In order to address all legislation applicable in 2023 when the amended application was submitted, the departure from the overlay is recommended.

The request that an administrative penalty should be levied, is dismissed as per reasons under Point 6.

The application is recommended for partial approval subject to conditions.

### 13. RECOMMENDATION

1. that the objections be noted.
2. that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels for the removal of restrictive title deed condition F.(4)(d) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;

3. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels for the following departures:
  - Relaxation of the western lateral building line from 2m to 0m to accommodate an existing planter and a suspended concrete slab, both are higher than 1,0m above ground level;
  - To exceed the maximum permissible height of the existing infill of the open terrace from 1m to  $\pm 1,6$ m, on the rear boundary, and
  - To exceed the maximum permissible height of 2,1m to accommodate the existing boundary wall which is also in contravention with the heritage protection overlay zone regulations.

**be approved**, in terms of the provisions of Section 61 of the By-Law.
4. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels for a departure to exceed the maximum permissible height of 2,1m to accommodate the existing boundary wall, **be partially approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following condition;
  - That the boundary wall be lowered to 1m above the suspended slab level of 44,73m.
5. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels to exceed the maximum permissible height of 2,1m to accommodate three (3) existing water tanks, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
6. that the above approvals in Points 1 to 4 be subject to the following conditions:
  - (a) that this approval is not an approval in terms of any other legislation;
  - (b) that a **revised** building plan be submitted showing the decisions in Points 1-5 above; indicating the removal of the vent pipe to the inside of the wall and the two water outlets from the water wise planter channelling the water be moved to the inside of the erf;
  - (c) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control – and the Fire Department be complied with at that stage;
  - (d) that the amended title deed be submitted for record purposes to the Municipality;
  - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;
  - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation;

- (g) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with, and
  - (h) that all the conditions in the Services Report (attached as Annexure G), be complied with.
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 338, Rooiels for the unauthorized building line encroachments as stipulated above, **be imposed**, and that an administrative penalty fee of **R64 954,40** be payable within ninety (90) days of this decision.
  8. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

#### 14. REASONS FOR RECOMMENDATION

##### POINTS 2 - 4

- The application followed due process and was distributed to all property owners within Rooi Els.
- The development is in line with the built character of Rooi Els.
- The suspended concrete slab was a mitigating factor due to topography and storm water problems experienced by the low-lying properties.
- It attributes to the sustainability and resilience of the immediate area due to the mitigating storm water features implemented by the applicant.
- The cutting of the suspended concrete slab is not a viable option due to the unforeseen consequences such as height difference between the slab and the natural ground level and the fact that it could impact the structural integrity of the slab.
- The lowering of boundary walls will mitigate the impact on neighbours.

##### POINT 5

- The water tanks are visual and can be lowered to 2,1m above natural ground level, without impacting the dwelling and or rainwater harvesting.
- There is no reason for the elevated water tanks.

##### POINT 6

- The professional team responsible for the development has not taken into consideration the impact of the suspended concrete slab, which it should have.
- The architect is a professional person that should have submitted a plan when changes were made during construction.
- This aspect would have been discussed with the owner which remains responsible for any work done on the erf.

#### 15. ANNEXURES

- Annexure A: Locality Plan
- Annexure B: Motivation Report
- Annexure C: Site Development Plans

Annexure D: Title Deed T73556/2014  
Annexure E: Objections received (during 2021 & 2023)  
Annexure F: Applicant's response to the objections received  
Annexure G: Services Report  
Annexure H: Survey Diagram V20436  
Annexure I: Historic approvals  
Annexure J: Conveyancers Certificate  
Annexure K: HU-Art Development & Construction costing

**SIGNATURE****REGISTERED PLANNER**

Name: **H VAN DER STOEP**

SACPLAN registration number: **A/1708/2013**

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

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



	All distances approximate and subject to survey. COPY RIGHT RESERVED	<b>Property Description:</b> <b>Erf 338</b> <b>Rooi Els</b>	<b>Plan Description:</b> <b>LOCALITY MAP</b>	<b>Scale:</b> NTS <b>Drawing Nr:</b> erf 338 rooi els.dwg <b>Date:</b> FEBRUARY 2021	

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

**ERF 338 ROOI ELS**

**DIVISION: CALEDON**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

1. **BACKGROUND**

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

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

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

During the public participation process a few other encroachments came to light and therefor an amended application, to address all the encroachments on the subject property, is submitted. The additional encroachments are as follow:  
The form and height of the existing boundary walls are in contradiction with the Heritage Protection Overlay Zoning Regulations, 2020. Water tanks were also placed within the prescribed building lines that are also higher than 2.1m in height. This application also includes the determination of an administrative penalty.

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

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

Erf 338 Rooi Els is 1208m<sup>2</sup> in extent and is held by Title Deed Number 73556/2014.

## 2. APPLICATION DETAILS

Application is made in terms of:

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

## 3. DESIRABILITY

### 3.1 PROPERTY DESCRIPTION

Erf 338 Rooi Els is located at Hotel Crescent and is 1202m<sup>2</sup> in extent and is held by Title Deed Number 73556/2014. Please refer to the enclosed locality plan.

### 3.2 ZONING

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

### 3.3 LAND USE

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

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

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

### 3.4 PROPOSAL

The following are proposed:

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

Erf 338 Rooi Els is 1208m<sup>2</sup> in extent and is held by Title Deed Number 73556/2014. The intention of the owner of the subject property is to address the encroachments on the subject property.

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

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

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

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

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

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

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

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

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

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

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 10, Section 90(1), "A person, who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 10, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

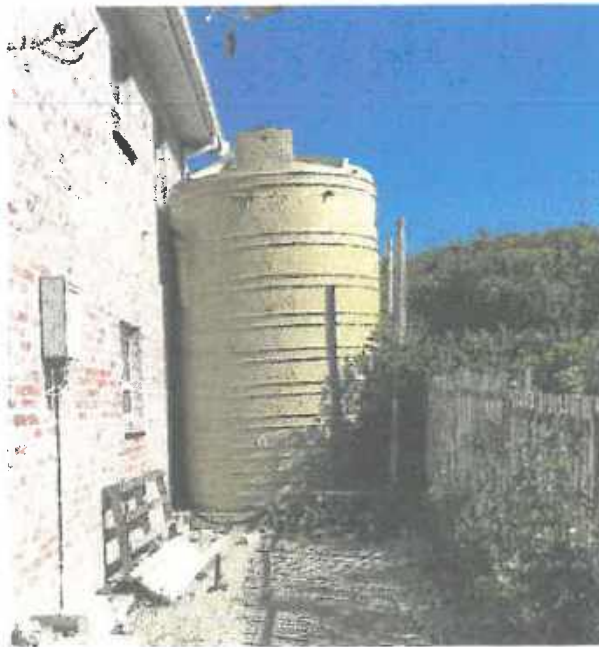


The **water tanks** are situated on the western side of the subject property. As seen in the photographs below the water tanks are barely visible from the neighbouring erf, Erf 337 Rooi Els. Natural vegetation established on Erf 337 Rooi Els obscures the view of these tanks and you will have to walk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

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

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

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

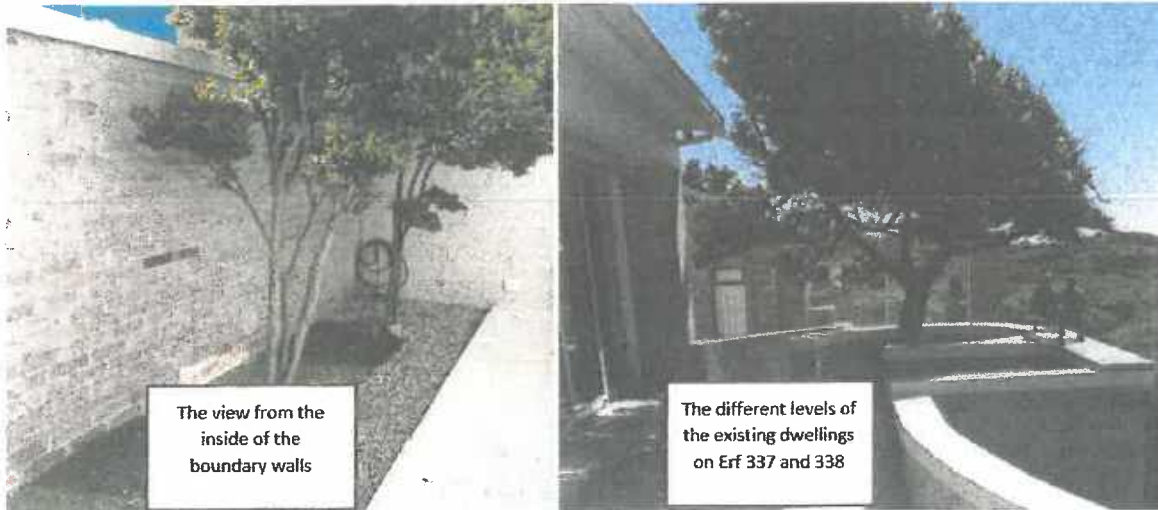


It should also be noted that an approved building plan does exist (as confirmed by the Overstrand Building Department) for two water tanks, but the location of the tanks has since changed, and they are not situated in the same position anymore, as indicated on the approved building plan. An email by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



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

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



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

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

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

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



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

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

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

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

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

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

If the Overstrand Municipality finds it necessary that an administrative penalty fee be enforced for the unauthorised building work, we will submit the required report. The reason being that if there is a chance that no penalty fee is imposed the report will be unnecessary at this stage.

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

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

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

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

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

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

#### **3.4.2. Proposed Removal of Title Deed restrictions**

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

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

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

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

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

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

In terms of **Chapter 4, Section 35(4)** of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 and **Section 39(5)** of the Land Use Planning Act, 2014, when the Municipality considers the removal, suspension or amendment of a restrictive condition; the municipality must consider the following:

- **The financial or other value of the rights in terms of the restrictive conditions enjoyed by a person or entity, irrespective of whether these rights are personal or vests in the person as the owner of a dominant tenement.**

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

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

- **The personal benefit which accrue to the holder of rights in terms of the restrictive conditions.**

The personal benefit accumulated to the owners in the township is insignificant insofar as the Title Deed condition to be removed is concerned. None of the existing owners within the township gain anything personally by having the restriction removed, which prevents the property to be developed to its full potential and according to the development rules as set out in the zoning scheme regulations. The proposal will have an impact on the existing built form in the area however such changes have been supported in the area.

Surrounding property owners are still protected by the policies in place for the area such as the **Zoning Scheme Regulations of the Overstrand Municipal Area** and the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020**. The proposed removal of the restrictive Title Deed condition will increase the market value of the property as well as the area. This in turn leads to the social and economic benefit of the local community as greater investment will be attracted.

- **The personal benefit which will accrue to the person seeking the removal of the restrictive conditions if it is removed.**

The property owner will benefit from the removal of the mentioned Title Deed restriction as the existing structures can be legalised. The removal of the restrictive Title Deed condition will also grant the owner an opportunity to obtain approved building plans and an occupation certificate.

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

The particular township has already changed with approved departures within the township and the removal of restrictive Title Deed conditions. If the type of condition to be removed is considered, it is doubtful that the retention thereof would have a significant social benefit. The retention of the restriction will add another layer to be

enforced by the Overstrand Municipality, in addition to the Zoning Scheme Regulations' requirements.

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

It can be argued that the possible social benefit of removing the restrictive Title Deed condition and consequently allowing for the mentioned building line departures will be positive. Removing the condition will enable building plan approval after the land use application is concluded.

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

Furthermore, the removal of the Title Deed condition is in line with the land use planning principles of efficiency and spatial sustainability as set out in the SPLUMA and LUPA, in that the development curtails urban sprawl, and promotes intensification of land uses with the constraints of existing infrastructure, without detracting from the visual or residential appeal of the area.

- **Whether the removal, suspension or amendment of the restrictive conditions will completely remove all rights enjoyed by the beneficiary or only some of the rights.**

The removal of the restriction will not remove the rights completely, as the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** provides a certain level of control that will guide the manner in which the property is both used and developed.

With reference to **Section 47** of the **Spatial Planning Land Use Management Act, 2013**, the removal of the restrictive Title Deed restriction will not deprive any person in the subject area of Rooi Els as contemplated in **Section 25** of the **Constitution of the**

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

The application for the removal of a Title Deed restriction is made in the prescribed manner as per the **Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.**

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

### **3.4.3. Proposed departures**

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

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

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

#### **Encroachment of building lines permitted**

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

### **General encroachments permitted**

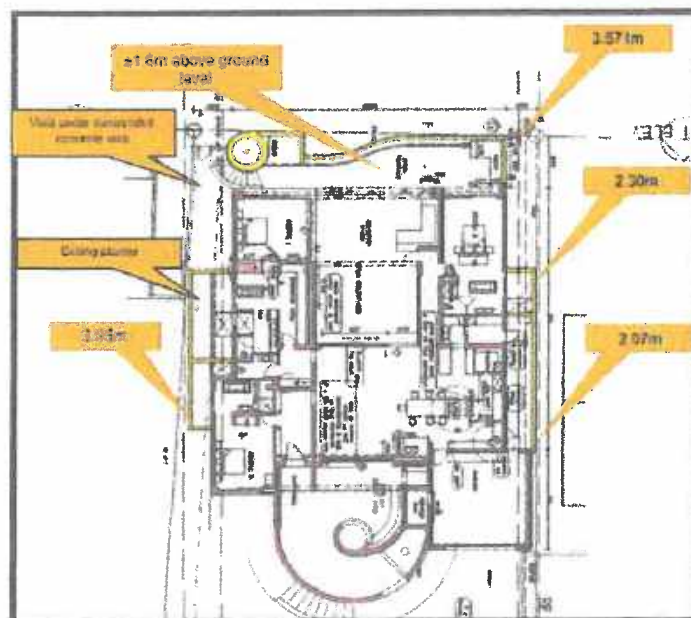
a) Notwithstanding the building line requirements set out in Part 2, the following structures or portions of structures may be erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit:

- (i) boundary walls, retaining walls, screen walls, fences and gates not exceeding 2,1 m in height above the existing ground level abutting such wall;
- (ii) open and uncovered stoeps, pools and filling lower than 1,0 m above the existing ground level;

### **Boundary Walls**

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

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



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

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

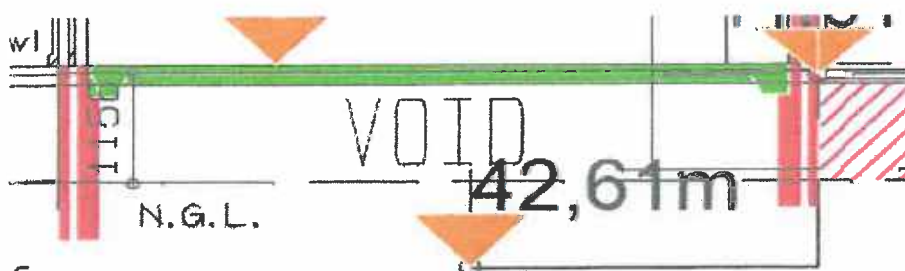
The **infill** at the seafront of the subject property where the **open terrace** is situated, was also constructed more than 1 meter ( **$\pm 1.6\text{m}$** ) above ground level within the scheme and Title Deed building lines. The plan from the land surveyor and the as built building plans confirm that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

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

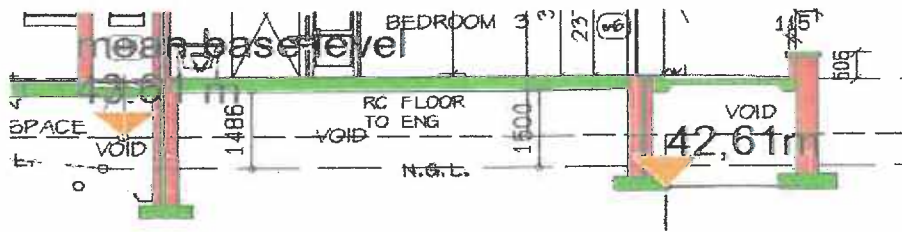


The height between the natural ground level and the suspended concrete slab varies between 1.156m and 1.5m within the eastern and western building lines as illustrated below.

**Eastern elevation**



### Western elevation



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

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

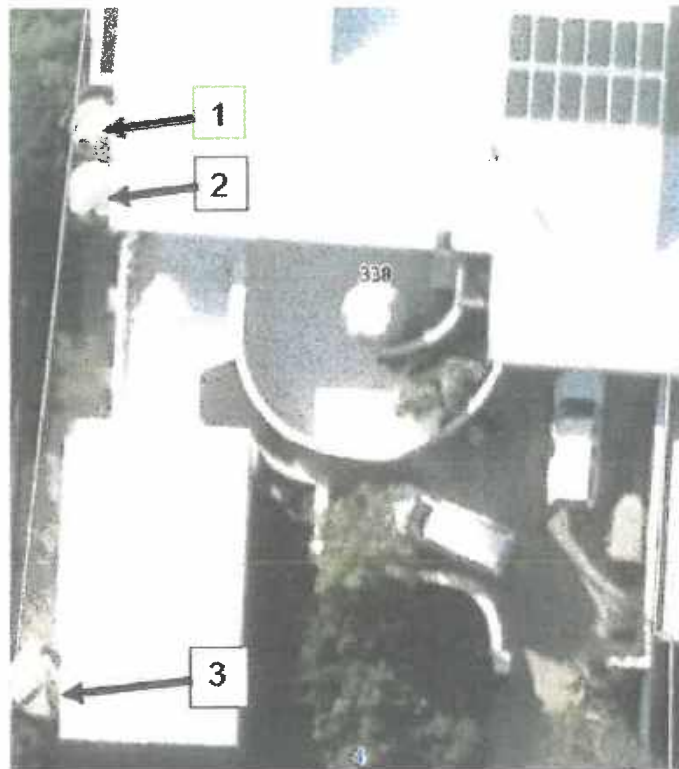


It should be reiterated that the void areas are **not** used as habital space. The space is below the water table and the floor/ceiling height is not desirable as little to no headspace exists.

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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

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

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

### 3.5 ACCESS

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

### 3.6 SERVICES

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

### 3.7 TITLE DEED

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

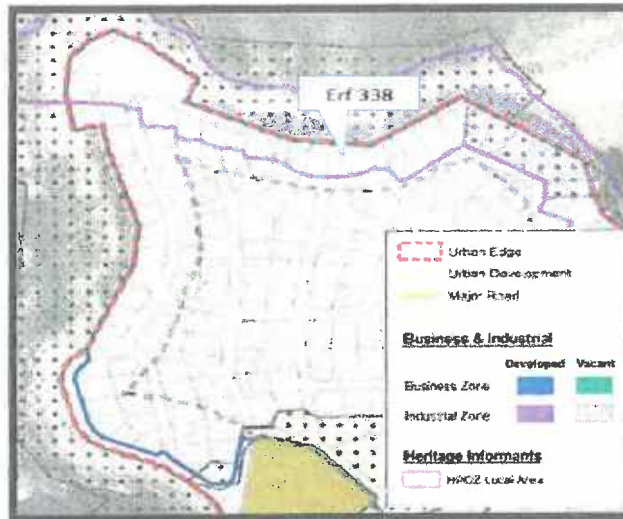
For detail pertaining to the removal of the restrictive Title Deed condition refer to **Section 3.4.2** of this report. Please refer to the conveyancer's certificate compiled by **STBB Attorneys dated 20 June 2022**.

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

### 3.8 FORWARD PLANNING

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

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



**Overstrand Growth Management Strategy**

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

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

### **3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION**

#### **3.9.1 HERITAGE VALUE**

Erf 338 Rooi Els is situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

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

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

### **3.9.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed removal of a restrictive Title Deed condition and departures do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

### **3.10 PLANNING PRINCIPLES**

The planning principles of spatial justice, spatial sustainability, efficiency and spatial resilience of this application can be described as follows:

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

**Spatial sustainability:** The proposed removal of a restrictive Title Deed condition and departures are in line with the current character of the established residential area. The proposed application will have no impact on the conservation worthy areas of Rooi Els.

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

**Spatial Resilience** in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e., communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). In our opinion the principle of Spatial Resilience is not applicable to this application.

**Good administration:** Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020.

#### 4. **RECOMMENDATION**

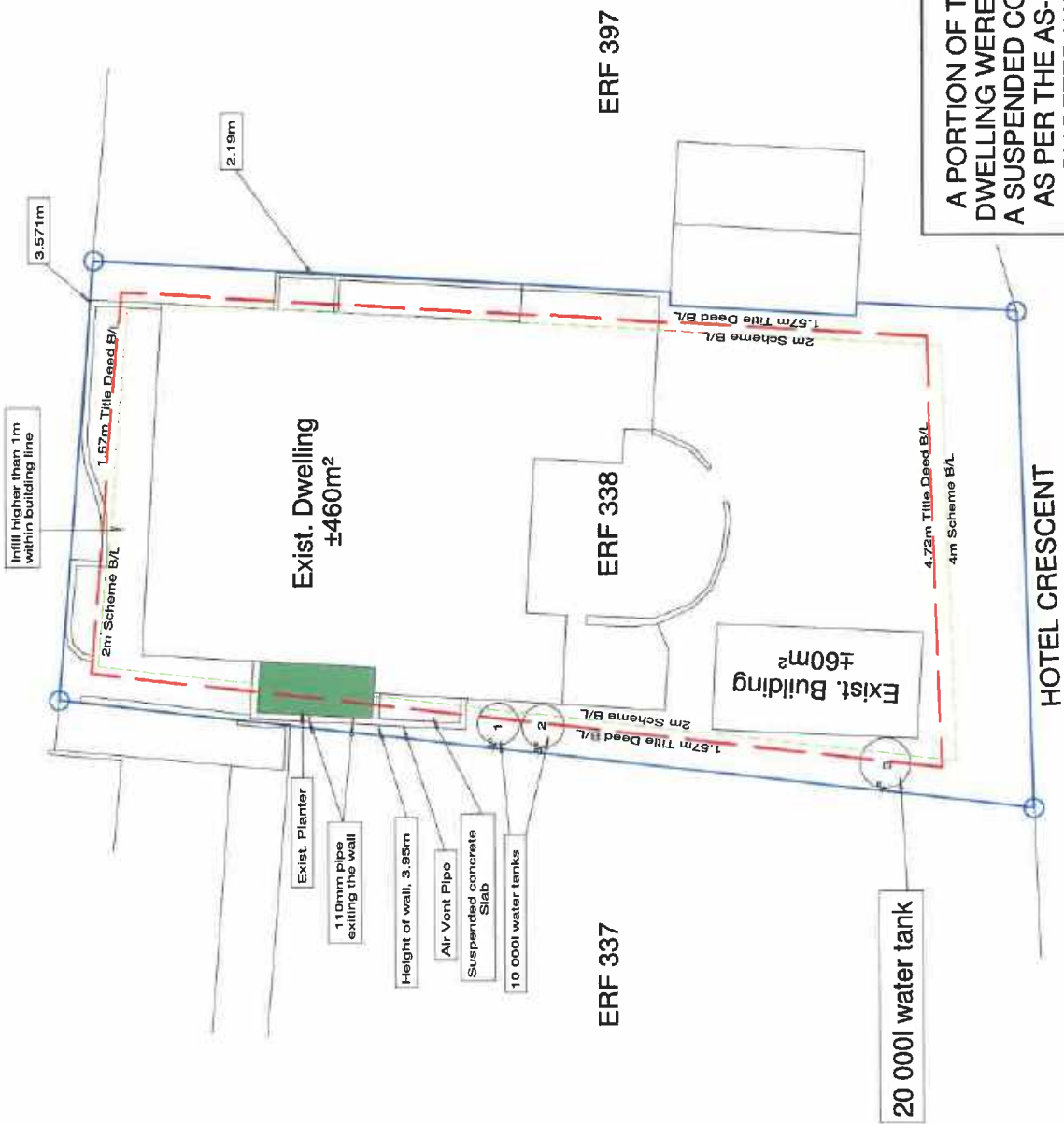
When this application is evaluated, it is important to take note of the following:

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

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

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

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



NOTES	
BOUNDARY LINES	
BUILDING LINES	
TITLE DEED BUILDING LINES	
COVERAGE	±44%
WATER TANKS	

Scale:	1:250
Drawing Nr:	erf 338 tanks.dwg
Date:	APRIL 2023

Plan Description:	Site Plan
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Property Description:	ERF 338 ROOIELS
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All distances approximate and subject to survey.  
COPY RIGHT RESERVED

**Plan Active**  
Stads- en Streeksbeplanners  
Town & Regional Planners

A PORTION OF THE EXISTING DWELLING WERE ERRECTED ON A SUSPENDED CONCRETE SLAB AS PER THE AS-BUILT PLANS BY PETER WASSERMAN

HOTEL CRESCENT

11

STBB SMITH TABATA BUCHANAN BOYES  
Somerset West  
1st Floor, Dynarc Triangle  
13 Urtel Crescent  
Somerset Mall  
Somerset West  
7137  
Docex 15, Somerset West

Annexure D 1/8  
Prepared by me,

CONVEYANCER  
Annemarie van Vuuren

Fees		Office fee
Amount	Amount	
Registration fee	R 3300000	R 110000
Transfer duty		
Stamp duty		
Reason for exemption	Exempt from	

VIR ENDOORSSEMENTE KAK BLADSY  
FOR ENDORSEMENTS SEE PAGE 8

T 00.0073556 / 2014

### DEED OF TRANSFER

BE IT HEREBY MADE KNOWN THAT

**LAUREN SULLIVAN**

appeared before me, REGISTRAR OF DEEDS at CAPE TOWN, he/she, the said Appearer, being duly authorised thereto by a Power of Attorney granted to him/her by

- CORNELIS FRANK UYS**  
Identity Number 620411 5031 08 2  
Married out of community of property
- BERNHARDINE JESSICA UYS**  
Identity Number 650202 0028 08 9  
Married out of community of property

DATA / VERIFY  
04 FEB 2015  
MURIE LORRAINE

DATA / CAPTURE  
15 JAN 2015  
LAMANLUYELWA

signed at STELLENBOSCH dated 31 October 2014

6

AND the said Appearer declared that his/her principal had on 18 October 2014 truly and legally sold by Private Treaty and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

The Trustees for the time being of  
**HMMM BELEGGINGS TRUST**  
 Registration Number IT022009/2014(T)

its successors in office or assigns in full and free property:

**ERF 338 ROOI ELS**  
**SITUATE IN THE OVERSTRAND MUNICIPALITY**  
**DIVISION CALEDON**  
**WESTERN CAPE PROVINCE**

**IN EXTENT: 1208 (ONE THOUSAND TWO HUNDRED AND EIGHT) Square Metres**

**FIRST TRANSFERRED by Deed of Partition Transfer Number T35914/1985 with Diagram Number 10179/1983 relating thereto and held by Deed of Transfer Number T33266/2007**

- A. **SUBJECT** to the conditions referred to in Certificate of Township Title No. 13367/1948.
- B. **NOT SUBJECT TO** to condition B on page 2 of Deed of Transfer No. T33266/2007, by virtue of Section 53 of the Mining Titles Registration Amendment Act 24 of 2003.
- C. **ENTITLED** to the benefit of the conditions referred to in the Servitude Endorsement dated 24<sup>th</sup> June 1940 on Certificate of Consolidated Title No. 3720/1937 which endorsement reads as follows:

"By Deed of Transfer No. 6068/1940 dated 24/6/40 certain conditions relating to

- (b) Prohibition of Petrol Station on land  
 (d) Wood and iron buildings  
 (e) Slaughter poles, cattle kraals and manufacture of bricks, tiles, etc., have been imposed on the property thereby conveyed for the benefit of the owner and its successors in title of the remainder of the property held hereunder.

6

As will more fully appear on reference of the said Deed of Transfer”.

- D. **SUBJECT FURTHER** to the following conditions contained in Deed of Grant in favour of A.J. Louw made on 30<sup>th</sup> April 1839 (Stellenbosch Oudtshoorn Volume 12 No. 18) which conditions read as follows:-

“On condition that all roads and thoroughfares running over this land shall remain free and uninterrupted; that said land shall be liable (without compensation to its Proprietor) to have any road made over it for the public good by order of Government. That the road and thoroughfare leading to Waaygat Bay, shall also remain free and that the public shall be allowed to unteam their cattle at the said Bay – and be allowed, without hinderance, to fish there, and he shall be bound (according to the existing Laws of Settlement) to have brought into such state of cultivation as it is capable of; the land thus granted being further subject to all such duties and regulations as are either already, or shall in future be established in respect of land granted under similar tenure”.

- E. **ENTITLED FURTHER** to the benefits of the Servitude reference whereto is made in the Endorsement dated 8<sup>th</sup> April 1949 on Certificate of Township Title No. T13367/1948, which said Endorsement reads as follows:-

**“Registration of Servitude**

By Notarial Deed No. 107/1949 dated 10<sup>th</sup> March 1949, the Administrator of the Province of the Cape of Good Hope, or his nominee, in Trust for such Local Authority as may hereafter be constituted for the Rooi Els Township for the benefit of the Erfholders and such Local Authority has been granted certain rights relating to (a) supply of water to erfholders and Local Authority (b) delivery of the said water to the abovementioned Township by means of a pipeline indicated on the servitude diagram No. 8589/48 by the letters a, b, c, d, e, f, g, h, j, k, l, m, n, annexes to the aforesaid Notarial Deed (c) storage of water and constructing the necessary impounding works (d) aqueducts (e) purification works and reservoirs (f) access to an egress from the present or future headwords, site, pipeline, reservoirs and purification works over the remainder of the farm Hangklip held under Cert. of Cons. Title No. T3720/1937, subject to conditions as will more fully appear on reference to the said Notarial Deed a copy of which is annexed hereto”.

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F. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T77/1956, imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of Rooi Els Township under the provisions Ordinance No. 33 of 1934, reading as follows:-

1. Any words and expressions used in the following conditions shall have the same meaning as may have been assigned to them by the regulations published under Provincial Administration Notice No. 401 dated 17<sup>th</sup> October 1935, and in the memorandum which accompanied the said regulations.
2. The owner of this erf shall, without compensation be obliged to allow the sewage and drainage including stormwater of any other erf or erven to be conveyed across the erf if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time in order to construct, maintain, alter, remove or inspect any sewer, manhole, channel, conduit or other works pertaining thereto.
3. The owner of this erf shall be obliged without compensation, to receive the material or permit excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing too difference between the level of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of an within a period to be determined by the local authority.
4. This erf shall be subject to the following further conditions, provided especially that where, in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time suspended or relaxed, he may authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose;

(c) Not more than 60% of the area thereof shall be build upon;

(d) No building or structure except boundary wall and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf within 1,57 metres of any other boundary;

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(e) .....

G. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T77/1956, imposed by the Transferor Company therein (Handklip Beach Estates Limited, hereinafter referred to as the Company) as being in favour of the registered owner of any Erf in the Township of Rooi Els, namely:

(b) .....

(c) No slaughter poles, cattle kraals, pigsties or cowsheds shall be erected or carried on by any persons whatsoever on this erf.

(d) Save with the consent in writing of the company and of any Local Authority the owner shall not have the right to take or cause to be made upon the erf for any purpose whatsoever any bricks, tiles or earthenware pipes or other articles of such nature, nor shall he have the right (save and except to prepare the erf for building purposes) to dig or quarry any earth, gravel, lime or stone thereon.

(e) No building (excluding outbuildings) shall be erected on this erf of a superficial area of less than 99 square metres.

(f) No noxious trade or noxious business shall be carried on this erf.

(g) The Transferee shall not camp over-night or light fires on the erf with the written consent of the Company.

H. **SUBJECT FURTHER** to the Endorsement dated this day on Deed of Transfer NO. T53982/1981, which endorsement reads as follows:-

"By Deed of Transfer No. T35913/1985

The remainder of the within property measuring 3700 square metres is subject to the following condition imposed by the Administrator of the Cape of Good Hope in terms of Ordinance No. 33 of 1934 when approving the subdivision of Erf 87 Rooi Els, namely:

"The owner of this erf shall without compensation, be obliged to allow gas mains, electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or even to be conveyed across this erf, and surface installations such as minisubstations, meter kiosks and service pillars to be installed thereon, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected to the above."

I. ....

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A

WHEREFORE the Appearer, renouncing all the right and title which the said

- 1. CORNELIS FRANK UYS, married as aforesaid
- 2. BERNHARDINE JESSICA UYS, married as aforesaid

heretofore had to the premises, did, in consequence also acknowledge them, to be entirely dispossessed of, and disentitled to, the same; and that, by virtue of these presents, the said

**HMMM BELEGGINGS TRUST, Registration Number IT022009/2014(T)**

its successors in office or assigns

now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of R3 300 000.00 (THREE MILLION THREE HUNDRED THOUSAND RAND).

IN WITNESS WHEREOF I, the said Registrar of Deeds together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at CAPE TOWN on 19 December 2014

  
 \_\_\_\_\_  
 q.q.

In my presence:

  
 \_\_\_\_\_  
 Registrar of Deeds

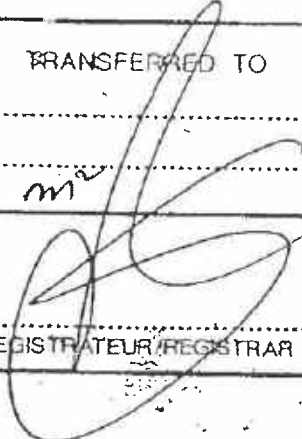
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CERTIFIKAAT VAN GEREISTREERDE TITEL UITGEREIK CERTIFICATE OF REGISTERED TITLE ISSUED	
TEN OPSIGTE VAN IN RESPECT OF	EF 396 7 6 m <sup>2</sup>
RESTANT/ REMAINDER 1202 m <sup>2</sup>	
T	<del>Not Proceeded with</del>
REGISTRATEUR/REGISTRAR	

EF 396 = 6 m<sup>2</sup>

GETRANSPORTEER AAN C. A. SIMONSZ	TRANSFERRED TO
RESTANT/REMAINDER 1202 m <sup>2</sup>	
T 000058465/2018	
12 DEC 2018	REGISTRATEUR/REGISTRAR

CERTIFIKAAT VAN VERENIGDE TITEL UITGEREIK CERTIFICATE OF CONSOLIDATED TITLE ISSUED	
NOU DE VRIJHEID FROM THE...	<del>EF 396</del>
T	<del>Not Proceeded with</del>
REGISTRATEUR/REGISTRAR	

TP-A Theart  
(Huidstoeple)



## ● FRIENDS OF ROOIELS

[FriendsofRooiels@gmail.com](mailto:FriendsofRooiels@gmail.com)

eldie.brink@gmail.com

PO BOX 420

Pringle Bay

7196

9 August 2023

The Municipal Manager

Overstrand Municipality

HERMANUS

7200

EMAIL: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

FILE NO. <b>ERF 338-KRE</b>
SCAN NO.
COLLABORATOR NO.
<b>1898613</b>

ERF 338 HOTEL CRESCENT ROOIELS: OBJECTION TO REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION, DEPARTURE AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLAN ACTIVE (OBO HMMM BELEGGINGS TRUST)

### EXECUTIVE SUMMARY

We request please:

- (a) that the unauthorised building work that encroach the building lines be demolished, as the cost of removal would not be disproportionate to the benefit derived from the removal, as submitted below.
- (b) that the title deed restriction not be removed completely, as it would not be necessary in the case of demolition, or that it be amended only as suggested below.

### 1. ORGANISATION

Friends of Rooiels (FOR) is a nonprofit community based organisation established during March 2018. We represent a growing number of Rooiels residents who are concerned about the incremental erosion of title deed conditions leading to a loss of the sense of place, character and special environmental quality of the village of Rooiels.

2. WE BRING OUR PREVIOUS OBJECTIONS UNDER YOUR ATTENTION AGAIN AND SUBMIT THAT THEY HAVE NOT BEEN ADDRESSED IN THE LATEST APPLICATION. THEY REMAIN IN FORCE.

The latest application is the third attempt at applying by the applicant.

In general, we find these three application attempts misleading and lacking in vital information. This lack of full disclosure of all relevant information renders the whole public participation process flawed and subject to review.

#### 2.1 APPLICATION ATTEMPT ONE – FEBRUARY 2019

On 15 February 2019 FOR objected (copy of objection attached) that the owner of erf 338 has committed numerous town planning and title deed transgressions and appears to have had little respect for such conditions and for Overstrand Municipality's (OM) bylaws when developing the property.

FOR further objected that, to regularise all of these transgressions will be counter-productive and detrimental in the long term to the whole community. Not only will our title deed conditions (which are of great importance to the Rooiels community) be undermined, but the actions of the owner of erf 338 will also severely undermine Overstrand Municipality's town planning regulations and Overstrand's authority on these matters. It will be viewed by the rest of our community as a blank cheque by the authorities that one can do as one likes in Rooiels (if you have enough money) without fear of any negative repercussions from Overstrand Town Planning and Building Control.

#### 2.2 WITHDRAWAL OF FIRST APPLICATION ATTEMPT

The first application was withdrawn on 22 September 2020.

#### 2.3 APPLICATION ATTEMPT TWO – AUGUST 2021

On 27 August 2021 FOR objected (copy of objection attached) to the apparent processing of unfounded applications by Overstrand Town Planning, and that the second attempt at applying in August 2021 was another example of such unfounded applications.

##### 2.3.1 Departure consent by Overstrand Municipality expressly forbidden

FOR pointed out on 27 August 2021 that the application completely ignores the applicability to erf 338 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ") which expressly forbids departure consent of a higher wall.

Par 12.8.1 thereof reads as follows:

" 12.8 Boundary treatment

12.8.1 No solid, visually impermeable boundary treatments above 2,1 m will be permitted." [Our emphasis].

##### 2.3.2 Objection to legalisation of departures upon payment of an administrative penalty

2.3.2.1 FOR expressed its concern about the apparent abuse of process in the present application by allowing the levying of an administrative penalty to legalize substantial and wilful contraventions.

We refer you to paragraph 1 of our previous objection of :

"The applicant is not a "layman" as stated (page 3 par 4.3) in the application.

This statement should be seen as deliberately misleading and an attempt to garner sympathy for the applicant's flouting of numerous building rules and regulations.

To place this in the proper context, the applicant is a legal persona (HMMM Beleggingstrust) with substantial funds at its disposal. It purchased a beach front property (for millions) and developed thereon a multimillion Rand mansion without any external financing. Various expert consultants have been employed by the owner in this process."

**2.3.2.2. In addition, the outcome of our queries of August 2021 in our objection was that additional transgressions (e.g. water tanks etc) have now come to light which were not disclosed in the first two applications.**

This now being the case, in our opinion the departures should not be approved and legalised with the payment of an administrative levy.

2.3.3 We also draw the attention to the fact that these are in fact huge departures. The contraventions are of such a scale that, in our opinion, they were contravened intentionally.

In practice contraveners will gladly pay the insubstantial administrative levy to have their way, rather than having to demolish illegal structures.

2.3.4 In the light of the points raised by us:

2.3.4.1 We request that due to the number of transgressions, which are clearly not of an innocent nature, and in view of possible further undisclosed contraventions, the departures and payment of an administrative levy NOT be approved.

2.3.4.2 We further request that demolition or rectification or removal (including of illegal infillings) be ordered by the Overstrand Municipality.

2.3.4.3 We are especially concerned that certain special title deed conditions, which were included in the title deed conditions by the Caledon Divisional Council at the request of neighbouring property owners at the time when the hotel site was subdivided into a number of erven, including erf 338, have not been complied with by the applicant.

Despite bringing it to the attention of the applicant in our objection, this matter is expressly ignored in the present third attempt at applying.

**In that case the deviation of the portion of the cement slab on which the dwelling is built should not be approved, in order to enable future neighbouring property owners themselves to take suitable legal steps against the owner.**

We submit that possibly the right of successive neighbouring property owners will be extinguished 30 years after construction through extinctive prescription or, unlikely, through an application for removal of the special restrictions.

### 3. DEMOLITION OF UNAUTHORISED BUILDING WORK THAT ENCROACH THE BUILDING LINES

3.1 We please request that the OM order the demolition of the following structures:

#### Erf 338 Rooi Els

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

3.2 We submit that demolition will be in accordance with legal precedent as expressed in the leading case (copy of case attached) of BSB International Link CC v Readam South Africa (Pty) Ltd (279/2015) [2016] ZASCA 58 (13 April 2016)

3.2.1 A magistrate's court has the power to order the demolitions as requested in par 3.1 above:

The judge says:

"[21] Where the court a quo sourced a power of demolition from was not explained. The only power to be found in the NBSA to order the demolition of a building is that in s 21 of the NBSA, which provides:

'Order in respect of erection and demolition of buildings

Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a magistrate shall have jurisdiction, on the application of any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorising such local authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorisation granted thereunder."

3.2.2 In [24] the judge agrees with the following:

“Despite the above rule the court can, in its discretion, in order to reach an equitable and reasonable solution, order the payment of compensation rather than the removal of the structure. This discretion is usually exercised in cases where the cost of removal would be disproportionate to the benefit derived from the removal.”

**3.3 We submit that the cost of removal of the UNAUTHORISED BUILDING WORK THAT ENCROACH THE BUILDING LINES as per par 3.1 would not be disproportionate to the benefit derived from the removal.**

4. We draw the attention to par 3.1 above that the application completely ignores the applicability to erf 338 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ") which expressly forbids departure consent of a higher wall.

**We submit that the OM is not empowered to consent to this departure and must order demolition.**

## 5. REMOVAL OF TITLE DEED RESTRICTION

5.1 We wonder whether proper notice of the application for the removal of the title deed condition has been given.

In this regard we wish to draw the attention that it is common professional knowledge that, for the removal of title deed conditions, notice should be given to all erf owners in Rooiels and not only to the neighbours.

Failure to comply will make the removal of any title deed condition in this application appealable.

5.2 “Restrictive conditions on a title deed are placed there for a specific reason and the removal of these conditions should not be considered lightly.” This is what was said in a previous OM Appeal Decision.

The applicants are applying for a complete removal to rectify an illegality which, we submit, should instead be resolved by demolition.

5.3 Due consideration should be given to the importance of building lines and title deed conditions for maintaining the spatial character of Rooiels.

In an extreme case where, due to the cost involved, a demolition cannot be ordered, the title deed restriction **should be amended only, not totally removed**, by formulating a deviation along the one boundary only for a described distance only, whilst retaining the restriction intact for the rest of the boundaries.

Yours faithfully



Eldie Brink

Secretary: Friends of Rooiels

Attached:

1. Copy of FOR objection 15 February 2019.
2. Copy of FOR objection 27 August 2021
3. Copy of case BSB International Link CC v Readam South Africa (Pty) Ltd (279/2015) [2016] ZASCA 58 (13 April 2016)



## ● FRIENDS OF ROOIELS

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FriendsofRooiels@gmail.com

PO BOX 420

Pringle Bay

7196

27 August 2021

The Municipal Manager

Overstrand Municipality

HERMANUS

7200

EMAIL: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

ERF 338 HOTEL CRESCENT ROOIELS: OBJECTION TO DEPARTURE WITH ADMINISTRATIVE PENALTY:  
PLAN ACTIVE (OBO HMMM BELEGGINGS TRUST)

### **PART A: PROCESSING OF AN UNFOUNDED TOWN PLANNING APPLICATION**

1. We draw your attention to the contents of our letter dated 15 June 2021 to the Director:  
Infrastructure and Planning.

Our letter referred to the following:

#### *“PROCESSING OF UNFOUNDED TOWN PLANNING APPLICATIONS*

*1. We wish to bring under your attention that a new practice has seemingly evolved in recent times whereby town planners are allowed to bring unfounded applications, which are then not refused by Overstrand's town planning department. After objections have been received, the application is then withdrawn, brushed up cosmetically and substantially the same application is brought again.*

*This leads to a loss to objectors of substantial resources and funds to obtain advice as well as substantial loss of wasted time. This is, in our opinion, an abuse of the process. This type of abuse should not be institutionalised and encouraged by the Overstrand municipality as is it contrary to its stated values and duty of care towards civil society.”*

2. We thereupon listed in our letter a number of recent such instances where Rooiels is involved.

We understand that a neighbouring ratepayers' association has raised similar concerns recently.

3.1 The present application is another example of such unfounded application, as the application completely ignores the applicability to erf 338 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ") which expressly forbids departure consent of a higher wall.

Par 12.8.1 thereof reads as follows:

" 12.8 Boundary treatment

12.8.1 **No** solid, visually impermeable boundary treatments above 2,1 m **will be permitted.**" [Our emphasis added on no permission].

3.2 For your convenience we attach OM Plan 4, which delineates the area of the ROOIELS HPOZ as including erf 338.

4. The applicant's town planner goes so far as to state erroneously:

"3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

*Erf 338 Rooi Els is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).*

5. It is extremely worrying that the OM Town Planning Department has allowed, once more, that an unfounded application be advertised, namely without reference to the recently promulgated ROOIELS HPOZ.

The ROOIELS HPOZ has to be considered for other requirements also, for example par 12.3.1:

*"Land use and building applications, if applicable, should be submitted to the Overstrand Heritage and Aesthetics Committee or a registered conservation body for comment."*

6. For full details of the legal submission, please see the objection submitted by Mr Eldie Brink. We agree with the submission.

**7. In the light of our above submission under Part A, we request that the application please be referred back to the applicant for compliance with the basic legal requirements thereof.**

**PART B: WITHDRAWAL OF PREVIOUS APPLICATION ON 22 SEPTEMBER 2020 , BRUSHING IT UP AND RESUBMITTING IT NOW AS SUBSTANTIALLY THE SAME APPLICATION**

1. In PART A paragraph 1 we drew our the attention to the abuse of the process by the withdrawal and resubmission of applications, causing a loss to objectors of substantial resources and funds to obtain legal advice as well as substantial loss of wasted time.

2. The present application is another such instance of resubmission of substantially the same application as the one which was withdrawn on 22 September 2020.

3. In view of our request in Part A that the application be referred back as being unfounded and noncompliant, and also because our previous objections are based on substantially the same previous application, we resubmit and attach our previous objection dated 15 February 2019.

The issues raised in our objection dated 15 February 2019 remain pertinent and should be regarded as incorporated in this document.

4. We particularly wish to draw your attention to the following paragraphs in our previous objection, which are still unanswered in the present brushed up application:

4.1 Paragraph 3: *"The new title deed of erf 338 (or the subsequently subdivided erf 338) has not been included in this application. This lack of transparency and full disclosure places potential objectors (and probably also the authorities considering this application) in the impossible position that they are unable to verify the correctness of the very crux of the claims made in this application (namely that the title deed conditions are in order). This application is therefore incomplete, irregular and defective."*

4.2 Paragraph 5: *"It appears that more than 50% of the area of erf 338 has been built upon. Kindly advise of the exact area that has been built upon and whether this is in conformity with the title deed restrictions?"*

4.3 Paragraph 6: *"A second dwelling unit appears to have been erected on the property. Is this in conformity with the title deed restrictions pertaining to erf 338?"*

**5. We request that answers be provided by the applicant to the issues raised above in PART B.**

**PART C: OBJECTION TO LEGALISATION OF DEPARTURES UPON PAYMENT OF AN ADMINISTRATIVE PENALTY**

1. We are concerned about the apparent abuse of process in the present application by allowing the levying of an administrative penalty to legalize a substantial and willful contravention.

2. We refer you to paragraph 1 of our previous objection:

*"The applicant is not a "layman" as stated (page 3 par 4.3) in the application.*

*This statement should be seen as deliberately misleading and an attempt to garner sympathy for the applicant's flouting of numerous building rules and regulations.*

*To place this in the proper context, the applicant is a legal persona (HMMM Beleggingstrust) with substantial funds at its disposal. It purchased a beach front property (for millions) and developed thereon a multimillion Rand mansion without any external financing. Various expert consultants have been employed by the owner in this process."*

3. In addition, the outcome of our queries in Part B may be that **additional** transgressions (e.g. water tanks etc) may come to light which were not disclosed in the present application. If that should be the case, then in our opinion the departures should not be approved and legalised with the payment of an administrative levy.

4. We also draw the attention to the fact that these are in fact **huge** departures. The contraventions are of such a scale that, in our opinion, they were contravened intentionally.

4.1 In practice contraveners will gladly pay the insubstantial administrative levy to have their way, rather than having to demolish illegal structures.

**5. In the light of the points raised in this Part C:**

**5.1 We request that due to the number of transgressions, which are clearly not of an innocent nature, and in view of possible further undisclosed contraventions, the departures and payment of an administrative levy NOT be approved.**

**5.3 We further request that demolition or rectification or removal (of illegal infillings) be ordered by the Overstrand Municipality.**

**5.4 We request that, should there be a resubmitted application, the applicant be requested to motivate why the specific contraventions should not be demolished, rectified or filled up. For this purpose all contraventions should be fully disclosed.**

**5.5 We are especially concerned that certain special title deed conditions, which were included in the title deed conditions by the Caledon Divisional Council at the request of neighbouring property owners at the time when the hotel site was subdivided into a number of erven, including erf 338, have not been complied with by the applicant. In that case the deviations, including the cement slab, should not be approved, in order to enable future property owners themselves to take suitable legal steps against the owner.**

Please keep us advised.

Yours faithfully

Piet van Rensburg

**Chairman: Friends of Rooiels**

Attached:

1. Delineation on OM Plan 4 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ").
2. "ERF 338 OBJECTION TO APPLICATION FOR DEPARTURE" - Objection by Friends of Rooiels dated 15 February 2019.

## ● FRIENDS OF ROOIELS

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FriendsofRooiels@gmail.com

15 February 2019

Municipal Manager

Overstrand Municipality

HERMANUS

7200

EMAIL TO: loretta@overstrand.gov.za

### **ERF 338 OBJECTION TO APPLICATION FOR DEPARTURE**

Friends of Rooiels is a non profit community based organisation established during March 2018. We represent a growing number of Rooiels residents who are concerned about the incremental erosion of title deed conditions leading to a loss of the sense of place, character and special environmental quality of the village of Rooiels.

In general, we find this application misleading and lacking in vital information. This lack of full disclosure of all relevant information renders the whole public participation process flawed and subject to review.

The owner of erf 338 has committed numerous town planning and title deed transgressions and appears to have had little respect for such conditions and for Overstrand municipality's by laws when developing the property.

To regularise all of these transgressions will be counter-productive and detrimental in the long term to the whole community. Not only will our title deed conditions (which are of great importance to the Rooiels community) be undermined, but the actions of the owner of erf 338 also severely undermine Overstrand Municipality's town planning regulations and Overstrands authority on these matters. It will be viewed by the rest of our community as a blank cheque by the authorities that one can do as one likes in Rooiels (if you have enough money) without fear of any negative repercussions from Overstrand Town Planning and Building Inspectorate.

The following detailed points support our general concerns as raised above:

1. The applicant is not a "layman" as stated (page 3 par 4.3) in the application.

This statement should be seen as deliberately misleading and an attempt to garner sympathy for the applicant's flouting of numerous building rules and regulations.

To place this in the proper context, the applicant is a legal persona (HMMM Beleggingstrust) with substantial funds at its disposal. It purchased a beach front property (for millions) and developed thereon a multimillion Rand mansion without any external financing. Various expert consultants have been employed by the owner in this process.

2. The applicant's statement on (page 1 par 2.1 Note 1) that "removal of title deed restrictions had already been granted ... in 2015" is misleading. This statement leads one to believe that ALL of the title deed conditions that have been transgressed were removed in 2015.

We could find no such general approval. Kindly clarify and furnish us with a copy thereof if it exists.

The only application for an approval that we could find was that published in Provincial Gazette of February 2014 (p 530) which is included below, which deals solely with an outbuilding on the Simonz property (erf 339):

"OVERSTRAND MUNICIPALITY

(Hangklip-Kleinmond Administration)

**REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) PROPOSED SUBDIVISION, CONSOLIDATION AND RELAXATION OF SIDE BUILDING LINE: ERVEN 338 & 339, ROOIELS**

Notice is hereby given in terms of section 3(6) of the above Act that the undermentioned application has been received and is open to inspection at the Municipal offices, 37 Fifth Avenue, Kleinmond, during office hours (Enquiries: P Bezuidenhout, tel. (028) 271 8407, (028) 271 8428, e-mail fbezuidenhout@overstrand.gov.za), and at the office of the Director, Land Management: Region 2, Provincial Government of the Western Cape, Room 606, 1 Dorp Street, Cape Town, from 08:00—12:30 and 13:00—15:30 (Monday to Friday). Telephonic enquiries in this regard may be made at tel. (021) 483 0783 and fax (021) 483 3098. Any objections, with full reasons therefor, should be lodged in writing at the office of the above-mentioned Director, Land Management: Region 2, Private Bag X9086, Cape Town, 8000, with a copy to the above-mentioned local authority (Private Bag X3, Kleinmond, 7195), before or on Friday, 4 April 2014, quoting the above Act and the objector's erf number. Any comments received after the aforementioned closing date may be disregarded.

*Applicant:* Diesel and Munns Inc. (on behalf of CF Uys, BJ Uys and CA Simonz)

*Nature of application:* Removal of restrictive title condition applicable to Erf 339, corner of Hotel Crescent and Bathers Road, Rooiels, to enable the owner to encroach the side building line in order to accommodate the existing outbuilding on the proposed consolidated erf [Portion A ( $\pm 6,1\text{m}^2$ ) of Erf 338 and Erf 339  $\pm 1224\text{m}^2$ ].

Notice is also hereby given:

In terms of section 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), that an application for the subdivision of Erf 338, Hotel Crescent, Rooiels, in two (2) portions (Portion A ( $\pm 6,1\text{m}^2$ ) and Remainder ( $\pm 1203\text{m}^2$ )) has been received. Portion A will be consolidated with Erf 339, Rooiels. [sEp]

That an application has been received for the relaxation of the side building line restriction, applicable to Erven 338 & 339, Rooiels, in terms of paragraph 3.3.3(c) of the Scheme Regulations made in terms of section 8 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), in order to accommodate the encroachment of the existing outbuilding on the proposed consolidated erf. Further details are available for inspection during office

hours at the Municipal offices, 37 Fifth Avenue, Kleinmond. (Enquiries: P Bezuidenhout, tel. (028) 271 8407, fax (028) 271 8428, e-mail fbezuidenhout@overstrand.gov.za). Any objections, with full reasons therefor, should be lodged in writing with the Municipal Manager, Private Bag X3, Kleinmond, 7195, before or on Friday, 4 April 2014.

In addition, notice is also hereby given in terms of section 21(4) of the Local Government Act: Municipal Systems, 2000 (Act 32 of 2000) that persons who cannot write may approach the above-mentioned offices, during office hours, where they will be assisted to put their comments or objections in writing. Notice No 006-2014-C GROENEWALD, MUNICIPAL MANAGER 21 February 2014 56498

The above application was clearly not one for removal of ALL building lines and other restrictive title deed conditions.

If the applicant had obtained a general removal of title deed restrictions in 2015, the details of this should be part and parcel of this application.

3. The new title deed of erf 338 (or the subsequently subdivided erf 338) has not been included in this application. This lack of transparency and full disclosure places potential objectors (and probably also the authorities considering this application) in the impossible position that they are unable to verify the correctness of the very crux of the claims made in this application (namely that the title deed conditions are in order). This application is therefore incomplete, irregular and defective.

**Kindly forward to us a copy of the said title deed so that we may be able to substantiate and supplement this objection.**

4. Another error in the application is that the impression is created that zoning scheme regulations replace and render title deed conditions obsolete. **This is legally incorrect**, see the ruling of the Supreme Court of Appeal in *Van Rensburg N.O. and another v MEC for Housing, Local Government and Traditional Affairs*.

5. It appears that more than 50% of the area of erf 338 has been built upon. Kindly advise of the exact area that has been built upon and whether this is in conformity with the title deed restrictions?

6. A second dwelling unit appears to have been erected on the property. Is this in conformity with the title deed restrictions pertaining to erf 338?

**In summary, this application is highly irregular and part of a considered piece-meal approach by a sophisticated developer who has openly disregarded title deed conditions and building by laws. We request that, at the very least, the offending portion of the wall and flower boxes should be demolished forthwith.**

Please keep us advised.

On behalf of the Friends of Rooiels

**D Esterhuyse**

**CHAIRPERSON**



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA  
JUDGMENT**

**Reportable**

Case No: 279/2015

In the matter between:

**BSB INTERNATIONAL LINK CC**

**APPELLANT**

And

**READAM SOUTH AFRICA (PTY) LTD**

**FIRST RESPONDENT**

**CITY OF JOHANNESBURG**

**METROPOLITAN MUNICIPALITY**

**SECOND RESPONDENT**

**Neutral citation:** *BSB International Link CC v Readam South Africa (Pty) Ltd*  
(279/2015) [2016] ZASCA 58 (13 April 2016)

**Coram:** Ponnann, Majiedt and Swain JJA and Victor and Kathree-  
Setiloane AJJA

**Heard:** 3 March 2016

**Delivered:** 13 April 2016

**Summary:** Review – municipality – illegal building – sections 7 and 21 National Building Regulations and Building Standards Act 103 of 1977 (the NBSA) – adjacent property owner – locus standi at common law – demolition order – exercise of discretion – stark dichotomy between discretion at common law and discretion in terms of s 21 of the NBSA.

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## ORDER

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**On appeal from:** Gauteng Local Division of the High Court, Johannesburg (Mayat J sitting as court of first instance).

1 The order of the court a quo is amended in the following respects:

(a) Paragraph 1 is deleted and replaced by:

'The purported decision taken by the first respondent on or about 5 March 2013 in terms of s 7 of the National Building Regulations and Building Standards Act 103 of 1977 (the NBSA) to approve the building plan or plans submitted to it under Reference No 2012/12/0397 in respect of Erf 426, Parkmore Township, Registration Division IR, Province of Gauteng, measuring 991m<sup>2</sup> is reviewed and set aside.'

(b) Paragraph 4 is amended by the addition of:

'and a suitably qualified engineer has certified that the partial demolition of the building will not compromise the structural integrity and safety of the building or adjacent buildings.'

2. Save to the extent set out above the appeal is dismissed with costs.

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## JUDGMENT

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**Ponnan and Swain JJA** (Victor and Kathree-Setiloane AJJA concurring):

[1] This is an appeal against an order granted by the Gauteng Local Division, Johannesburg (Mayat J) at the instance of the first respondent, Readam South Africa (Pty) Ltd (Readam), directing that a building owned and constructed by the appellant, BSB International Link CC (BSB), be demolished to the extent necessary to ensure

compliance with the Sandton Town Planning Scheme (the scheme). The order granted reads as follows:

1. It is declared that the building erected on ERF 426, PARKMORE TOWNSHIP, REGISTRATION DIVISION IR, PROVINCE OF GAUTENG, measuring 991 metres square ("the property"), has been erected and continues to be erected without the prior approval of building plans by the First Respondent [the City of Johannesburg Metropolitan Municipality] in terms of section 7 of the National Building Regulations and Building Standards Act 103 of 1977 ("the NBSA"), as required by section 4 of the NBSA, and is accordingly unlawful.
2. It is further declared that the building erected on the property and presently being erected on the property, has been erected and continues to be erected in contravention of the provisions of the Sandton Town Planning Scheme, 1980 ("the Scheme"), and is accordingly unlawful.
3. The Second Respondent [BSB] and / or its successors in title to the property is / are directed to partially demolish the building erected on the property so as to ensure that such building shall be fully compliant with
  - 3.1 the coverage limit of 60% imposed by the Scheme;
  - 3.2 the parking requirements imposed by the Scheme; and
  - 3.3 the remaining provisions of the Scheme.
4. It is declared that no such partial demolition of the building on the property in terms of paragraph 3 above shall take place unless and until building plans have been approved by the First Respondent in terms of section 7 of the NBSA.
5. It is declared that no such partial demolition of the building on the property in terms of paragraph 3 above shall take place unless and until the First Respondent has satisfied itself that the building plans and all buildings depicted therein are compliant with the 60% maximum coverage limitation imposed by the Scheme, and also compliant with the requirements of the Scheme relating to on-site parking for motor cars as well as other applicable provisions of the Scheme.
6. Irrespective of whether or not the building on the property has been partially demolished and modified in terms of 3 above, the building on the property shall not be used in contravention of the Scheme, nor shall the property be occupied until a valid certificate of occupancy has been issued by the First Respondent in terms of section 14(1)(a) of the NBSA.

7. The Second Respondent is interdicted from occupying or permitting occupation of any building on the property until such time as a valid certificate of occupancy in terms of section 14(1)(a) of the NBSA has been issued by the First Respondent in respect of such building.
8. The Second Respondent is directed to pay the Applicant's costs.'

[2] Although the City of Johannesburg Metropolitan Municipality (the municipality) was cited as the first respondent, it filed no answering affidavit and took no part in the proceedings. This was despite the fact that the primary relief sought by Readam in terms of Rule 53 of the Uniform Rules of Court, was directed at reviewing and setting aside the building plans approved by the municipality in terms of s 7 of the National Building Regulations and Building Standards Act 103 of 1977 (the NBSA).

[3] The supine and uncooperative attitude of the municipality made the task of the court a quo in resolving the dispute between BSB and Readam all the more difficult. It also resulted in an incomplete record being produced by the municipality as required in terms of Rule 53.

[4] It is clear from the evidence that BSB has also played no small part in frustrating Readam's attempts to obtain details of the approval of the building plans by the municipality. It also exploited the ineptitude of the municipality, with the clear objective of obfuscating and delaying matters to enable the building to be completed prior to the court adjudicating the dispute between the parties. The goal being, no doubt, to present the court with a fait accompli, in the form of a completed building. Against this background it comes as no surprise that BSB, in response to Readam's application, launched a counter-application founded on the complaint that it was prejudiced in its defence of the main application, by the inadequate record furnished by the municipality. BSB also sought orders against Readam and the municipality directing Readam to itemise all documents and other information which Readam contended were missing from the record filed by the municipality. Unsurprisingly, an order was also sought staying the review proceedings pending the municipality's furnishing of the missing portions of the record.

[5] In support of its counter-application BSB also relied upon an agreement reached between BSB and Readam at a case management meeting held before Claassen J, where the learned judge directed that the provisions of Rule 35 relating to discovery, inspection and the production of documents, would serve as the basis for obtaining the missing portions of the record allegedly required by BSB.

[6] The counter-application was correctly dismissed on the facts. Somewhat surprisingly BSB thereafter sought leave to appeal primarily on the basis that the court a quo had erred in dismissing its counter-application (for discovery of the full record). BSB asserted that it had accordingly been denied a proper opportunity to be heard and defend itself against the challenges made by Readam. The present appeal is with the leave of this court.

[7] The relief sought by BSB on appeal is that as a consequence of the inadequate record the order of the court a quo falls to be set aside in its entirety and replaced with one compelling discovery by the municipality. According to BSB, the matter should thereafter only be enrolled when the municipality has complied with that order. Assuming in favour of BSB (without deciding) that the dismissal of the counter-application is appealable,<sup>1</sup> as we shall show it is clearly without merit.

[8] BSB submits that there is a dispute of fact on the papers as to whether the requirements of the scheme have been contravened as regards: (a) the permissible coverage of the building on the site and (b) the provision of adequate parking. Each of those requirements will be considered in turn.

### **Coverage**

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<sup>1</sup> *Zweni v Minister of Law and Order* [1992] ZASCA 197; 1993 (1) SA 523 (A) at 532I-533B; *Absa Bank Ltd v Mkhize & two similar cases* [2013] ZASCA 139; 2014 (5) SA 16 (SCA) paras 17-19; *National Director of Public Prosecutions v King* [2010] ZASCA 8; 2010 (2) SACR 646 (SCA) paras 50-52.

[9] In terms of the scheme, the property is zoned business 1 and is situated in Height Zone 0. The building comprises new retail and/or office space. Clause 25 of the scheme regulates coverage by reference to Table H. It is clear in respect of a development such as this, that the maximum coverage of a property by a building cannot exceed 60 per cent.

[10] As correctly submitted in Readam's heads of argument, the initial allegation made by Readam in its founding affidavit, based upon the evidence of Mr Kevin Wilkens, a town planner, was that the coverage of the property by the building as at April 2013 was at least 80 per cent. The response by BSB in its answering affidavit was:

'The allegations herein made are denied. The evidence is in any event inadmissible'.

No basis was given as to why it was contended that the evidence, which was confirmed by Wilkens in a supporting affidavit, was inadmissible.

[11] As pointed out by Readam in a supplementary affidavit filed in terms of Rule 53(4), if BSB genuinely held the view that there was no contravention of the maximum coverage limitation of 60 per cent, it was open to it to adduce evidence from its architect or some other suitably qualified expert, who could have authoritatively stated the precise area of the property covered by the building.

[12] Readam, had engaged the services of a land surveyor, Mr Kevin Meluish, who measured the coverage of the site by the building as at October 2013 and found this to be 853,58 m<sup>2</sup> or 86.13 per cent of the total area of the property which is 991m<sup>2</sup>. The following response of BSB is revealing:

'This appears to be a gratuitous précis and restatement of allegations and arguments and interpretations thereof already made in earlier affidavits. This is primarily a matter for submission and I repeat what has been stated in the earlier affidavits filed in this matter. The argument herein contained will be dealt with at the hearing of this application.'

[13] The direct expert evidence of Mr Meluish, which addresses a central issue in the dispute between the parties, ought not to have been simply glossed over by the deponent to BSB's affidavit, Mr Mike Slim, its sole member. What had been stated in

the earlier affidavit by Mr Kevin Wilkens was simply denied by Mr Slim. When counsel for BSB was asked why the measurements made by Mr Meluish were not disputed he submitted somewhat faintly that the coverage of the site had already been denied and it was not necessary to do so again. It is quite clear that BSB in not countering Mr Meluish's evidence failed to raise a genuine and bona fide dispute of fact in this regard. As stated in *Wightman t/a JW Construction v Headfour (Pty) Ltd & another* [2008] ZASCA 6; 2008 (3) SA 371 (SCA) at 375H-I:

'When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied.'

[14] That there was no foundation for BSB's denial of the extent of the coverage of the property is illustrated by the fact that BSB admitted in a later supplementary affidavit, that it had made application to amend the scheme to permit an increased coverage of 85 per cent. This, however, was refused in April 2014. Counsel for BSB made the startling submission that it was the intention of BSB to continue building and if it eventually transpired that the building exceeded that permitted in terms of the scheme, the offending portion of the building would be demolished. This submission ignores the requirement that the building would have to proceed in terms of lawfully approved building plans in the first place, which self-evidently did not happen here.

### **Parking**

[15] Clause 18 of the scheme read with Table F provides that effective and paved parking for motor vehicles together with the necessary manoeuvring space shall be provided to the satisfaction of the municipality, for shops, six parking bays per 100m<sup>2</sup> of gross lettable shopping area and for offices, four parking bays per 100m<sup>2</sup> of office area.

[16] Readam submits that if the building was built in conformity with the coverage permitted of 60 per cent of the site and if the ground floor was utilised for retail purposes, this would require 35 parking bays. It is undisputed that BSB has provided

no additional parking over and above the present 10 parallel bays located in the road widening servitude. It is clear that the building as erected makes no provision for the requisite number of parking bays required by the scheme.

[17] BSB submits that it did have approved building plans. But, if the municipality had purported to approve the plans despite the fact that the scheme had not been complied with in respect of either coverage or parking, the approval would contravene s 7(1)(a) of the NBSA and Readam would have been entitled to an order reviewing and setting aside the approval.<sup>2</sup> It follows that the court a quo ought to have granted the primary relief sought by Readam to review and set aside the purported approval of the plans by the municipality and not an order (as per paragraph 1 of the high court's order) declaring that the building was erected without the prior approval of the municipality. This order granted by the court a quo was based upon a finding that the building plans had been cancelled by the municipality arising out of a document included in the record filed by the municipality. This document which on the face of it contained the approval notification of the plans in question, had two transverse lines drawn across it with the word 'cancelled' written in manuscript. No other evidence was furnished to explain the document or its significance. The court a quo accordingly erred in finding that this document standing alone proved that the municipality had cancelled the building plans. The order granted will accordingly be amended by the deletion of paragraph 1 of the high court's order. It will be replaced with an order as originally sought by Readam, reviewing and setting aside the unlawfully approved building plans.

[18] Tellingly, the evidence adduced by Readam that insofar as the permissible coverage and parking were concerned, BSB had contravened the scheme, became either common cause or undisputed. In those circumstances the possible relevance of the content of the record to either of these issues remains unexplained. In any

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<sup>2</sup> *JDJ Properties CC & another v Umngeni Local Municipality & another* [2012] ZASCA 186; 2013 (2) SA 395 (SCA) para 22.

event, BSB had been aware since April 2013 that the complaint by Readam was that it (BSB) was building in contravention of the scheme and without building plans. BSB as the owner and developer was accordingly entitled at any time to documentation in the possession of the municipality, most of which would have emanated from its architects and other consultants. Nothing prevented BSB from accessing and placing the record before the court. In reality, the record such as it was must have been available to it, consisting, as it must have, in the main, of documents that it would have supplied to the municipality. In this context the relief sought was nothing short of audacious and may well have constituted an abuse. It would thus amount to an exercise in futility to accede to BSB's request that the order of the high court be set aside and that the municipality be compelled to make discovery.

[19] The primary contention of BSB having been disposed of, what remains is to consider the correctness of certain of the orders of the high court, which were sought to be assailed on appeal by BSB.

#### **The partial demolition order**

[20] The court a quo in dealing with the relevant legal framework examined the provisions of the scheme, the Town Planning and Townships Ordinance 15 of 1986, as well as the provisions of the NBSA.<sup>3</sup> It held: (i) . . . 'our courts have always recognized that there is a duty on the relevant local authority to enforce the provisions of the relevant town-planning schemes'<sup>4</sup>; (ii) 'In the present case, the applicant has presented undisputed evidence demonstrating that the municipality has in any event dismally failed to take any measures against clear contraventions of the applicable Scheme. As such, the applicant effectively has no alternative adequate remedy other than a final interdict . . .'<sup>5</sup>; (iii) . . . 'there is no basis for this

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<sup>3</sup> Paragraph 14 to 25 of the judgment.

<sup>4</sup> Paragraph 62.

<sup>5</sup> Paragraph 63.

court to exercise its general discretion against the granting of a final interdict<sup>6</sup> and (iv) ' . . . the applicant has satisfied the requirements of mandatory interdict sought in paragraph 6 of the amended notice of motion<sup>7</sup>'.

[21] Where the court a quo sourced a power of demolition from was not explained. The only power to be found in the NBSA to order the demolition of a building is that in s 21 of the NBSA, which provides:

**'Order in respect of erection and demolition of buildings**

Notwithstanding anything to the contrary contained in any law relating to magistrates' courts, a magistrate shall have jurisdiction, on the application of any local authority or the Minister, to make an order prohibiting any person from commencing or proceeding with the erection of any building or authorising such local authority to demolish such building if such magistrate is satisfied that such erection is contrary to or does not comply with the provisions of this Act or any approval or authorisation granted thereunder.'

[22] In *Lester v Ndlambe Municipality and another* [2013] ZASCA 95; 2015 (6) SA 283 (SCA) it was decided that a court hearing an application in terms of s 21 of the NBSA, had no latitude not to order the complete demolition of a building once the jurisdictional fact, namely that the building was erected contrary to the NBSA, was established. It was held that the conclusion that s 21 did not lend itself to an interpretation other than that there was no discretion not to order demolition of the building, was unassailable. The law could not and did not countenance an ongoing illegality which was also a criminal offence. To do so would be to subvert the doctrine of legality and to undermine the rule of law. It was for this reason that a partial demolition order could not be granted.

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<sup>6</sup> Paragraph 64.

<sup>7</sup> Paragraph 65.

[23] If s 21 found application here then on the authority of *Lester* the partial demolition order issued by the court a quo may not have been competent. However, it is clear that only a local authority or the Minister has locus standi to bring an application in terms of s 21 before a magistrate. The statutory right to seek the remedies provided for in s 21 is clearly intended to enable local authorities and the Minister, to ensure compliance with the provisions of the NBSA in relation to town planning schemes. Consequently, an individual with standing to bring an application to review and set aside the unlawful approval of building plans by a local authority would not have locus standi to pursue the remedies provided for in s 21. Such an individual would be restricted to seeking a mandamus in appropriate circumstances to compel the municipality or the Minister to act in terms of s 21 of the NBSA, should the municipality or Minister have failed so to act.

[24] That, however, could hardly mean that Readam was without a remedy. For, it is 'of the essence of a town-planning scheme that it is conceived in the general interests of the community' (*The Administrator, Transvaal and The Firs Investments (Pty) Ltd v Johannesburg City Council* 1971 (1) SA 56 (A) at 70D). And, as the high court observed, '... the contravention of the Scheme by BSB, at least in relation to parking in the vicinity, has a direct adverse (and harmful) impact on the applicant'.<sup>8</sup> At common law the power to order the demolition of a building ordinarily finds application in the case of an encroachment by a building onto a neighbour's property. The relevant principles are clearly expressed in the title on 'Things' by C G Van der Merwe in 27 *LAWSA* (2 ed) para 158 in the following terms:

'When a land owner erects a structure on his or her land he or she must take care that he or she does not encroach on his or her neighbour's land. This rule of neighbour law is not only applicable in cases where the building itself or its foundations encroach on neighbouring land, but also where roofs, balconies or other projections encroach on the air space above a neighbour's.

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<sup>8</sup> Paragraph 61.

In the case of encroaching structures the owner of the land which is encroached upon can approach the court for an order compelling his or her neighbour to remove the encroachment. . . Despite the above rule the court can, in its discretion, in order to reach an equitable and reasonable solution, order the payment of compensation rather than the removal of the structure. This discretion is usually exercised in cases where the cost of removal would be disproportionate to the benefit derived from the removal. If the court considers it equitable it can order that the encroaching owner take transfer of the portion of the land which has been encroached on. In such circumstances the aggrieved party is entitled to payment for that portion of land, costs in respect of the transfer of the land as well as a solatium on account of trespass and involuntary deprivation of portion of his or her land.'

[25] Importantly, here we are not concerned with an encroachment on Readam's land. In *De Villiers v Kalson* 1928 EDL 217, Graham JP embarked upon a detailed discussion of the prior authorities on this point. He said (at 229-230):

'[i]t will be observed that in none of the South African cases were the facts quite similar to the facts disclosed in this case, for in the present case there has been no encroachment upon the ground of another, but an encroachment upon his rights . . . I am inclined to think that this difference makes little or no change in the plaintiff's rights for many of the same arguments used in favour of the view that the Court has no discretion but must grant an order for the removal, apply equally well to encroachment on land and encroachment on rights, such as exist in the present case.'

In concluding that there was a discretion vested in the Court the learned judge president added (at 231):

'After all there must surely be some discretion vested in a Court even in cases involving breaches of what are termed negative covenants in the English Law, and I can find no authority in our law which states that under no circumstances can the Court exercise such a discretion. It is quite clear that for the reasons stated in so many of the English cases, the wrongdoer who encroaches on another's rights cannot be heard to say, unless there are some very special circumstances, that a monetary compensation is sufficient, for that would be tantamount to compelling the plaintiff to consent to expropriation, but on the other hand it would be equally inequitable to place the plaintiff in a position to extort wholly excessive completion from the defendant by granting an order for the removal of the buildings in cases

in which the facts disclose that a remedy in damages would fully meet the justice of the case. . .

I have therefore come to the conclusion that I have a discretion in this case to grant an order giving the defendant an option of paying damages in place of removing his building if the plaintiff has satisfied me that he has sustained damages.'

[26] The high court appeared not to appreciate that it was possessed of the kind of discretion alluded to by Graham JP. What tips the scales against BSB is that it was warned that it was acting illegally and in spite of such warning, it deliberately persisted. If anything, it engaged in obfuscatory behaviour to delay finalisation of this litigation whilst pressing ahead with its illegal conduct. Such conduct can hardly be countenanced by a court. To do so will make a mockery of ordered town planning and by extension the law. The order granted by the court a quo which directed that the property be demolished to the extent necessary to ensure compliance with the scheme, can accordingly not be faulted.

[27] That conclusion notwithstanding, it is nonetheless necessary to observe that if the municipality had properly performed its functions and approached the court in terms of s 21 of the NBSA, the court would, on the strength of *Lester*, have been obliged to grant an order of total demolition. If *Lester* is correct a stark dichotomy would exist between our common law and our statutory law in respect of substantially the same remedy. For, in terms of the former, a court would have a broad general discretion, whilst in terms of the latter, a court would have no discretion. Several important factors appear not to have received due consideration in the interpretive exercise undertaken by *Lester*. First, given the draconian nature of the power (namely to order demolition) the purpose of s 21 must obviously be to ensure judicial oversight. Judicial oversight without a judicial discretion seems, on the face of it, to be a contradiction in terms. The absence of a discretion would in those circumstances run counter to the proper exercise of judicial oversight. Second, if the magistrates' court is merely to perform a rubber-stamping function then a review can hardly lie to the high court at the instance of anyone aggrieved by that decision. Third, in terms of s 21 of the NBSA a court has the power 'to make an order prohibiting any person from commencing or proceeding with the erection of

any building or authorising such local authority to demolish such building'. Consequently, after the commencement of the erection of the building, but before completion of its erection, a court can grant an order either prohibiting the person from 'proceeding with the erection' or an order of demolition. If a court possesses such a discretion then it is difficult to see why, once erection of the building is complete, a court no longer possesses a discretion to even grant a partial demolition of the building to the extent of its illegality. Fourth, irrespective of the extent of the illegality a demolition order must follow. Thus, even a fairly trivial illegality must elicit the rather disproportionate sanction of total demolition. Whether our Constitution would countenance that has to be debateable. Fifth, in terms of s 26(3) of the Constitution no one may have their home demolished 'without an order of court made after considering all of the relevant circumstances'. That plainly envisages the exercise of a broad general discretion. Thus certainly insofar as a home is concerned, with which we are admittedly not concerned here, an interpretation of s 21 that there is no discretion appears not to square with the Constitution. Sixth, the definition of 'building' in s 1(d) of the NBSA includes 'any part of a building' which suggests that any relief granted in terms of s 21, may be directed at part of a building. That, it goes without saying, will entail the exercise of a discretion.

[28] It thus seems incongruous to require judicial oversight over the grant of a demolition order in terms of s 21 of the NBSA but then remove any discretion from a court whether to grant a partial or total demolition order. The exercise of a discretion to order the partial demolition of a building to the extent of its illegality, accords with the principle of legality, because in granting such an order a court in no way abrogates its duty to enforce the law. For, these reasons, which are probably by no means exhaustive, it may well be that the interpretation placed on s 21 by *Lester* does not survive careful scrutiny. But, it is not necessary for now to express any firm view on its correctness.

[29] In a case such as this a court is possessed of a broad general discretion to be exercised after affording due consideration to all the relevant circumstances. Obviously, before granting a partial demolition order a court would have to be satisfied that the illegality complained of is capable of being addressed by such an

order and that it is practically possible to do so. Depending on the circumstances this may require evidence to be given by experts such as engineers and architects to ensure that the structural integrity and safety of the building is not compromised when partially demolished. Accordingly, paragraph 4 of the order of the court a quo which declares that no partial demolition of the building shall take place unless and until building plans have been approved by the municipality, will be amended to include a further requirement that an engineer must certify that partial demolition will not impair the structural integrity and safety of the building, or adjacent buildings.

### **The certificate of occupancy**

[30] BSB alleges that it was originally granted a temporary certificate of occupancy of the building dated 15 May 2013, which was due to lapse on 31 May 2014. In anticipation of this a new temporary certificate was issued dated 15 May 2014.

[31] In the amended notice of motion dated 31 October 2013, Readam sought the review and setting aside of the temporary certificate of occupancy dated 15 May 2013. BSB therefore submits that although the court made no order in this regard, it erred in holding that the second temporary certificate of occupancy expiring in May 2015 was susceptible to be set aside, because the issue of the second certificate rendered the relief sought against the first certificate moot. It is however clear that the grounds upon which the first certificate was challenged - namely that because the approval of the plans was unlawful, any issue of a temporary certificate of occupation in reliance upon the legal validity of the plans, would itself be unlawful – is logically unassailable.

### **The interdict preventing occupation of the building pending the issue of a valid certificate of occupancy in terms of s 14(1)(a) of the NBSA**

[32] The court a quo granted an order directing BSB not to permit the occupation of the building until such time as a valid certificate of occupancy was issued. BSB submits that in the absence of any joinder of the occupants it was not permissible for

the court to grant such an order. Importantly, the order that issued in this respect operates only as against BSB and no one else.

[33] It is ordered that:

1 The order of the court a quo is amended in the following respects:

(a) Paragraph 1 is deleted and replaced by:

'The purported decision taken by the first respondent on or about 5 March 2013 in terms of s 7 of the National Building Regulations and Building Standards Act 103 of 1977 (the NBSA) to approve the building plan or plans submitted to it under Reference No 2012/12/0397 in respect of Erf 426, Parkmore Township, Registration Division IR, Province of Gauteng, measuring 991m<sup>2</sup> is reviewed and set aside.'

(b) Paragraph 4 is amended by the addition of:

'and a suitably qualified engineer has certified that the partial demolition of the building will not compromise the structural integrity and safety of the building or adjacent buildings.'

2. Save to the extent set out above the appeal is dismissed with costs.

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**V M Ponnán**  
**Judge of Appeal**

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**K G B Swain**  
**Judge of Appeal**

**MAJIEDT JA:**

[34] I have read the judgment of my colleagues, Ponnán and Swain JJA. I agree with its outcome and the underlying ratio decidendi. I write separately because I

respectfully disagree with their obiter dictum relating to this court's approach and finding in *Lester v Ndlambe Municipality & another*.<sup>9</sup> On the facts and issues that arose in this case, it was unnecessary to deal with this issue.

[35] The obiter dictum seeks to examine the 'stark dichotomy . . . between our common law and our statutory law in respect of substantially the same remedy' as far as a court's discretion is concerned.<sup>10</sup> It concludes that ' . . . it may well be that the interpretation placed on s 21 by *Lester* does not survive careful scrutiny. But it is not necessary, for now, to express any firm view on its correctness'.<sup>11</sup> As I see the matter, the reason my colleagues did not deem it necessary to decide the correctness or otherwise of *Lester* is precisely because this case has nothing to do at all with demolitions under statutory law, as was the case in *Lester*.

[36] As an adjoining landowner whose rights were adversely affected by the unlawful construction of the building, Readam South Africa (Pty) Ltd (Readam) approached the court below for a common law remedy, as it was entitled to do.<sup>12</sup> Demolition in terms of s 21 of the National Building Regulations and Building Standards Act 103 of 1977 (the Act) did not feature in the affidavits, the judgment of the court below or the written submissions in this court. So when it was raised by members of the court during the course of counsel's argument, they were unsurprisingly not prepared to deal meaningfully with this aspect when pressed to do so. Counsel for Readam therefore filed supplementary heads of argument after the hearing in which he pertinently pointed out that *Lester* had no bearing on the basis upon which Readam sought relief in the court below or upon the competency of that court to order a partial demolition (under the common law). I agree with that submission.

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<sup>9</sup> *Lester v Ndlambe Municipality & another* (514/12) [2013] ZASCA 95; 2015 (6) SA 283 (SCA).

<sup>10</sup> Paragraph 26.

<sup>11</sup> Paragraph 27.

<sup>12</sup> *JDJ Properties CC & another v Umngeni Local Municipality & another* (873/11) [2012] ZASCA 186; 2013 (2) SA 395 (SCA) paras 34-35.

[37] My colleagues have provided a detailed analysis of the different remedies under the common law (neighbour law) and the statutory law (s 21 of the Act) insofar as demolition is concerned. This court did the same in *Lester* and it is not necessary to regurgitate the principles. It is self-evident that a land owner who complains about the encroachment of its rights by an adjoining land owner has no right to approach a magistrate's court for a demolition order in terms of s 21, which my colleagues have cited in full in para 20. That right is expressly reserved for the Minister of Economic Affairs and a local authority. An affected land owner can only seek a remedy in common law. My colleagues appear to recognise this in para 23. It is necessary to advert briefly to the papers to demonstrate why *Lester* has no bearing on this case.

[38] Readam approached the court below on the basis that the encroaching BSB structure contravened the Sandton Town Planning Scheme (the Scheme). It made no mention of s 21 anywhere in its papers. There was no need to. Section 4(1) of the Act<sup>13</sup> was mentioned in Readam's papers only in the context that any purported approval by the second respondent (the municipality) would have been a nullity by virtue of the contraventions of the scheme in terms of s 7(1)(a) of the Act.<sup>14</sup> Section 21 of the Act and *Lester* feature nowhere in the papers or in the comprehensive, well reasoned judgment of Mayat J. The reason is not hard to find: this case had nothing to do with it.

[39] A useful comparison can be drawn (as Readam's counsel has done in its supplementary heads) between Readam's position here and that of Mr Haslam, one of the shareholders and directors of the second respondent company (High Dune) in *Lester*. His holiday home, registered in the name of the company, adjoined the home

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<sup>13</sup> Section 4(1) reads as follows:

'(1) No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.'

<sup>14</sup> Section 7(1)(a) reads:

'(1) If a local authority, having considered a recommendation referred to in section 6(1)(a) – (a) is satisfied that the application in question complies with the requirements of this Act and any other applicable law, it shall grant its approval in respect thereof.'

of Professor Lester, which was the offending structure in that case. The municipality sought a demolition order in respect of Lester's unlawfully erected home (this was common cause) in terms of s 21 of the Act. The second respondent was initially cited by the municipality as a respondent with a direct interest in the matter. The second respondent, however, successfully applied on an unopposed basis to be joined as a co-applicant with the municipality. It made common cause with and supported the relief claimed by the municipality. As stated (in *Lester* para 21), the second respondent did not seek any common law remedies, nor did it rely on the common law (neighbour law) principles – it supported the municipality's claim for a public law remedy under s 21. A detailed discussion ensued in *Lester* (in paras 22 and 23) on the differences between a s 21 demolition and one based on neighbour law. That was necessary in view of the high court's erroneous approach in *Lester* that that was a neighbour law case. In the present instance the converse applies – this is a neighbour law case, based on the private law remedy of partial demolition available to an affected land owner. Readam could not and did not seek a public law remedy under s 21 of the Act, nor did it rely on any of the provisions of the Act at all. Hypothetically, absent the municipality's participation in *Lester*, the second respondent there had a neighbour law remedy available to it. That would have entailed an order for either partial or total demolition in the discretion of the court.

[40] I do not propose traversing afresh the ratio decidendi in *Lester* – the judgment speaks for itself. An attempt to appeal to this court's unanimous judgment was unsuccessful – the Constitutional Court dismissed Professor Lester's application for leave to appeal with costs on 10 September 2013.<sup>15</sup> While an obiter dictum is not binding authority, it does have some persuasive value, particularly coming from this court. In *Turnbull-Jackson v Hibiscus Coast Municipality*<sup>16</sup> Madlanga J explained it thus:

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<sup>15</sup> *Matthew Robert Michael Lester v Ndlambe Municipality & another* CCT 115/13.

<sup>16</sup> *Turnbull-Jackson v Hibiscus Coast Municipality & others* (CCT/04/13) [2014] ZACC 24; 2014 (6) SA 592 (CC) para 61 (footnotes omitted).

'Literally, *obiter dicta* are things said by the way or in passing by a court. They are not pivotal to the determination of the issue or issues at hand and are not binding precedent. They are to be contrasted with the *ratio decidendi* of a judgment, which is binding.'

But the learned Judge adds:

'Only that which is truly *obiter* may not be followed. But depending on the source, even *obiter dicta* may be of potent persuasive force and only departed from after due and careful consideration.'<sup>17</sup>

[41] Our courts have on many occasions emphasized the need to observe the doctrine of precedent. The rationale for it was explained as follows by Brand AJ in *Camps Bay Ratepayers' and Residents' Association & another v Harrison & another*:<sup>18</sup>

'Observance of the doctrine has been insisted upon, both by this court and by the Supreme Court of Appeal. And I believe rightly so. The doctrine of precedent not only binds lower courts, but also binds courts of final jurisdiction to their own decisions. These courts can depart from a previous decision of their own only when satisfied that the decision is clearly wrong. *Stare decisis* is therefore not simply a matter of respect for courts of higher authority. It is a manifestation of the rule of law itself, which in turn is a founding value of our Constitution. To deviate from this rule is to invite legal chaos.'

Hahlo and Kahn<sup>19</sup> state that:

'In the legal system the calls of justice are paramount. The maintenance of the certainty of the law and of equality before it, the satisfaction of legitimate expectations, entail a general duty of judges to follow the legal rulings in previous judicial decisions. The individual litigant would feel himself unjustly treated if a past ruling applicable to his case were not followed where the material facts were the same.'

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<sup>17</sup> Paragraph 56.

<sup>18</sup> *Camps Bay Ratepayers' and Residents' Association & another v Harrison & another* (CCT/8/10) [2010] ZASCA 19; 2011 (4) SA 42 (CC) para 28 (footnotes omitted).

<sup>19</sup> HR Hahlo and Ellison Kahn *The South African Legal System and Its Background* (1968) at 214.

[42] Given the centrality of the doctrine of judicial precedent in our legal system, and of the strong persuasive force of obiter dicta from this court, I do not consider it correct or appropriate for this court to call into question a prior judgment of this court in regard to an issue that has no bearing on the outcome of the present matter.

[43] To conclude: this matter was litigated as a private (neighbour) law case by an aggrieved and affected land owner with legal standing to pursue the remedy available to it. The court below correctly decided the matter on that basis. The order for a partial demolition of the unlawful structure was, in the exercise of the court's discretion, properly made as the appropriate remedy in the circumstances. Section 21 of the Act, and the issues in *Lester*, have no bearing whatsoever on this case. *Lester* concerned a public law statutory remedy in an instance where the unlawful erection of the offending structure constituted a criminal offence. It remains binding authority, notwithstanding the reservations expressed obiter by my colleagues.

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**S A Majiedt**  
**Judge of Appeal**

Appearances:

For the Appellant:

D J Vetten

Instructed by:

Martini Patlansky Attorneys, Johannesburg

Lovius Block, Bloemfontein

For the First and Second Respondent: G F Porteous

Instructed by:

Strauss Scher Attorneys, Sandton

Webbers, Bloemfontein

**Loretta Gillion**

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**From:** Eldie Brink <eldie.brink@gmail.com>  
**Sent:** Wednesday, 09 August 2023 21:41  
**To:** Loretta Gillion  
**Cc:** Friends of Rooiels  
**Subject:** Rooiels Erf 338 Hotel Crescent Letter of Objections Municipal Notice 118/2023  
**Attachments:** FOR Objection Erf 338 Aug 2023 Final.pdf; FOR OBJECTION ERF 338 ROOIELS FEBRUARY 2019.pdf; FOR Objection Erf 338 Aug 2021.pdf; Afbreek van struktuur BSB International Link CC v Readam South Africa (Pty) Ltd.pdf

Beste Me **Gillion**,

Ek sal dit waardeer indien u asseblief ontvangs van ons beswaar kan erken.

Eldie Brink  
Sekretaris  
Vriende van Rooiels

341TP n. Theaie  
(H. ud Skoop)

31/77

21 August 2023  
The Municipal Manager  
Overstrand Municipality  
P O Box 20  
HERMANUS  
7200

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
3 1 AUG 2023
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

FILE NO. <u>ERF 338</u>
<u>Rooi Els</u> ✓
SCAN NO. <u>KRE 338</u>
COLLABORATOR NO. <u>1909559</u>

Sir

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

Application is being made for the following:

- Application in terms of Section 16(2)(f) of the Bylaw for the removal of restrictive title deed condition F.(4)(d) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property.
- Application in terms of Section 16(2)(b) of the Bylaw in order to:
  - Relax the western lateral building line from 2m to 0m to accommodate an existing planter and a suspended concrete slab, both are higher than 1,0m above ground level.
  - Exceed the maximum permissible height of 2,1m to accommodate the existing boundary wall which is also in contravention with the heritage protection overlay zone regulations.
  - Exceed the maximum permissible height of the existing infill of the open terrace from 1m to ±1,6m.
  - Exceed the maximum permissible height of 2,1m to accommodate three existing water tanks.
- In terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for unauthorised building line encroachments.


The By-Law under Section 52 (3) highlights that each objection must comply with the following requirements:

Requirements	Details
The name of the person or body concerned.	Mrs Frances Waddell
The address or contact details at which the person or body concerned will accept notice or service documents.	35 Upper Dean Road Sea Point 8002
The interest of the body or person in the application.	Adjacent neighbour who is directly affected by the proposal. The owner of Erf 337 Rooi Els.
Reason for the objection, comment or representation.	This objection below provides all the reasons.

It should be noted that I did not receive notice via the post and this needs to be questioned whether other interested and affected parties have been notified correctly and if the post office delivered the notices. I was able to see the on-site notices that were placed on the property.

**Background**

The land use application submitted in 2023 is not the first application submitted, as a previous land use application was submitted in 2021 by PlanActive and 2019 by another town planning firm, ME Planners. Both of these applications were not supported and both times I appointed a consultant to submit objections on my behalf. Some of the contents herein are extracted from previously submitted objections.

31 AUG 2023 

This alone indicates the timeframe we have been dealing with, trying to resolve the grievances that I have had with the illegal buildings and structures on Erf 338.

Please refer to the following timeline that indicates the entire background of the subject property:

Date	Occurrence
16 December 2016	<p>This was the first occurrence that sparked the entire process which includes the concerns that I, Mrs Frances Waddell had. (6 years, 8 months, 5 days before the 2023 application was submitted)</p> <p>The building inspector, Mr Rossouw was first advised of potential irregularities occurring on Erf 338 and the construction process.</p>
6 June 2017 (5 Months and 22 days later)	Mr Rossouw advises that the Overstrand Town Planning Department has taken over the matter.
October 2018 (1 Year, 3 months and 26 days later)	<p>Almost a year and 4 months later a land use application was finally submitted.</p> <p>ME Town Planners submitted an application on behalf of Mrs Muller (representative of HMMM BELEGGINGS TRUST).</p> <p>Reference - 338 KRE (3856)</p>
11 January 2019 (3 Months and 11 days later)	<p>Public participation process was opened. Due to slow postage the objector only had 2 weeks to submit an objection.</p> <p>WRAP was appointed to submit the objection which was received on the 12 February 2019 – proof of submission may be produced if requested.</p>
27 February 2019 (1 months and 17 days later)	Receipt of objection was confirmed.
22 September 2020 (1 year, 6 months and 27 days later)	<p>The Overstrand Town Planning department provided a letter stating the application was withdrawn.</p> <p>The application was considered finalised and closed – no conclusion was given, and no objection points were addressed or rectified.</p>
28 September 2020 (6 days later)	The Overstrand Town Planning Department advised that they have advised ME planners and Mrs Muller to prepare another application.
30 July 2021 (10 Months and 3 days later)	<p>The applicant (Mrs. Coetzee/HMMM BELEGGINGS TRUST) has appointed Plan Active to submit a new land use application.</p> <p>In a letter dated 30 July 2021, surrounding property owners were invited to provide comments on the submitted application.</p>
April 2023	<p>The applicant (Mrs. Coetzee/HMMM BELEGGINGS TRUST) has appointed Plan Active to submit an amended land use application.</p> <p>This is the third application being considered and advertised.</p>

Total time that has passed since the first occurrence: 6 years, 8 months, 5 days.

**Objections:****Application**

In terms of Section 16(2)(b) of the By-Law for a departure to allow the suspended slab above the 1m mark.

**1.1. Objection**

Should this application be approved without an administrative penalty being imposed, others may follow in the applicants' footsteps, going against what is allowed and then seeking legalisation after the construction has been completed.

This will have an adverse impact on the prevailing architectural styling and character of residential areas in Rooi Els and will not be in the interest of the public.

**Remedy sought**

It is acknowledged that the suspended concrete slab has been constructed, and I am not an unreasonable neighbour and do not expect it to be demolished. I do however feel that the applicant should not be allowed to escape punishment. The applicant deliberately constructed the suspended concrete slab against prescribed procedures after the building plans were approved on the fly when they were discussing how the house should be built and is seeking legalisation after the wrongdoing was concluded.

The outcome of this application will have large consequences for similar future applications, setting a precedent for offenders knowingly continuing their wrongdoing, without any consequences.

That applicant should be fined with the maximum administrative penalty. If not, others may assume they can follow in the applicant's footsteps, without any consequences.

**Application**

In terms of Section 16(2)(b) of the By-Law for a departure to exceed the maximum permissible boundary wall height from 2,07m to 3,95m respectively;

**1.2. Objection**

This objection is a copy from the previous application that was submitted. The survey carried out by Van Dyk Land Surveyors confirms our concerns. Since late 2016 and early 2017 myself and my late husband have been in contact with the building inspector Mr Rossouw with concerns regarding the height of the wall.

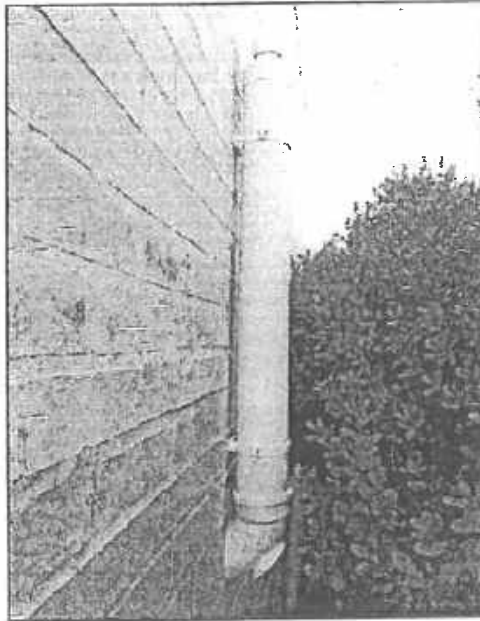
The concern was and still is, that the foundation will most likely not be able to withstand a wall which is between 2,07m and 3,95m in height, depending on where the wall is measured. The submitted town planning report also does not mention or include an engineering certificate which confirms that the foundation of the wall can take the additional load. The application states that the wall was constructed to the national building regulations however, it is easy to state this there is no proof of this. Our concern remains that if the wall collapses, people may be injured or killed, and damage may be caused to my property.

Our home is located approximately 3m from the erf boundary and with a wall with a height of 3,95m, when the wall should collapse, it may damage my house. If an engineering certificate can be produced, it would ease my concerns that the wall's foundation does not meet specifications.

Until such time, the illegal wall is therefore a threat to safety and security of both properties and their owners. The concern regarding the height of the wall was raised on numerous occasions with the building inspector Mr Sherwin Rossouw. There are numerous emails of correspondence where I highlighted the concern of the height of the wall with Mr Rossouw (the emails can be forwarded to you upon request). Mr Rossouw was extremely helpful in trying to objectively gather all the facts pertaining to the wall and a site inspection was conducted on 20 December 2016. The concern of the wall was also escalated to Ms Hanneen van der Stoep who instructed the applicant to submit an application to address the height of the wall. This illustrates that

the applicant did not submit this application voluntarily but tried everything possible to avoid compliance and was subsequently forced to address the matter.

The builder also installed a breather vent valve on our side of the boundary wall, the pipe protrudes more than 110mm from the existing illegal boundary wall, where is this indicated on the plan and application? This was also not approved by the Overstrand Municipality and signals that there may be an illegal sewage connection behind the high wall.



The approval of this extremely high (illegal) wall will also lead to other property owners following the applicant in constructing the walls of their own properties too high and then applying to legalise these encroachments after the fact. Should the wall have been applied for before being built will it be approved. This impact on the character of Rooi Els is also something to be concerned about as there will be more shade and less sunlight on properties, particularly on smaller erven.

High walls will also not enable residents to see into the streetscape from homes which is a form of surveillance. The implication is that opportunistic criminals will take advantage of this as visibility of neighbours will be blocked by high walls and will not be conducive to citizens looking after each other's interest. The approval of such a high wall will have an adverse cumulative impact on the safety of neighbourhoods in Rooi Els and is not desirable.

### 1.3. Objection

The town planning application indicates that there are two 110 mm water outlets which were constructed in the existing boundary wall which channels water from Erf 338 onto Erf 337 Rooi Els. The water is still flowing into Erf 337 Rooi Els. Frequent flooding is a huge inconvenience and interferes with the occupation and use of our land.

*In terms of the National Building Regulations:*

*Building Control considerations*

*"PART R - STORMWATER DISPOSAL*

*R1 STORMWATER DISPOSAL REQUIREMENT*

- (1) The owner of any site shall provide suitable means for the control and disposal of accumulated stormwater which may run off from any earthworks, building or paving.*
- (2) Such means of stormwater disposal may be in addition to or in combination with any drainage works required in terms of regulation F4(2).*

*(3) The requirements of sub-regulation (1) shall be deemed to be satisfied where such means of stormwater disposal is provided in accordance with SANS 10400-R: Provided that where a local authority is of the opinion that the conditions on any site render it essential for stormwater disposal to be the subject of an acceptable rational design prepared by an approved competent person, such local authority shall, in writing, notify the owner of such site of its reasons for the necessity for such design, and may require such owner to submit for approval plans and particulars of a complete storm control and disposal installation for such site and for any building erected thereon, based on such design."*

#### **Legal considerations**

In terms of the common law, the principle of *actio negatoria de stillicidio vel flumine* is applicable. This principle stipulates that no owner of land which is within an urban area (not a farm) is obliged to accept water from property which is located on an elevated site. The owner of the property with a storm water related problem in terms of this principle is obliged in to ensure that water is channelled from the property to the street. The applicant is obliged in terms of this legal principle to channel the water directly from his property into Hotel Crescent.

Failure to comply with the above legal principle would make the principle of *interdictum quod vi aut clam* applicable where an aggrieved property owner can institute legal action for compensation for the damage caused by flooding from the storm water from the property of the applicant. We have taken all necessary measures to manage the storm water from our property but has reached a point where he would not have any other alternative than to approach the court for an order for compensation for damage caused by storm water channelled onto our property from the property of the applicant, if not resolved by action from the Overstrand Municipality. This illustrates that we managed the situation with patience and has been living with the storm water problems for a while, hoping that the applicant would rectify the illegal discharging of water that is in conflict with the Overstrand Municipality Land Use Scheme, National Building Regulations and common law principles. It is requested that the waterpipes be sealed as indicated in the application the applicant is open to, the less water discharged into our property the better.

These objections above were also submitted to the 2018/2019 & 2021 land use application. Since then, almost five years have passed, and we have had to live with the implication of the storm water being directed onto their property.

#### **1.4. Objection**

The water tanks that were omitted from the 2021 application have been included in this current application. The Overstrand Municipality Land Use Scheme permits water tanks with a height of up to 2.1 meters to encroach upon the building lines. However, there is no indication of the height of the tanks being applied for in the current application?

All these departures required, is a direct result of the applicant, who did the construction of these illegal structures. There were no departures granted by the Overstrand Municipality for this purpose. This signals that the applicant tends to not follow prescribed procedures, rules, and legislation before commencing with construction and proceeded with building work and asking for leniency after contravention is the *modus operandi* of the applicant.

#### **Conclusion**

1. The following remedies are sought:

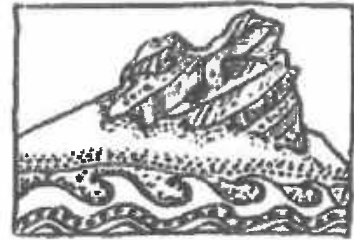
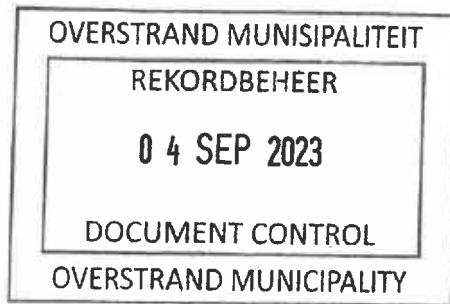
- 1.1 That the boundary wall between Erf 338 and Erf 337 be broken down to 2.1 meters measured from the level as prescribed by the Overstrand Municipal Land Use Scheme;
- 1.2 That an engineering design, plan and certificate be submitted stating that the foundation of the walls is designed and built in such a way that it can support a 2.1m high wall;
- 1.3 That the illegal sewerage breather pipe installed on the Erf 337 side of the boundary wall be removed and relocated as it is an eyesore and not normal practice.

- 1.4 That the illegal stormwater pipes that exit onto Erf 337 be covered and a storm water management assessment and management plan should be submitted in accordance to Section 16.3.2 of the OMLUS, directing all stormwater from Erf 338 to the lowest point; and
  - 1.5 That it be made a condition of approval that the storm water management assessment and management plan be implemented within a specific timeframe prescribed by the Overstrand Municipality.
2. That the administrative penalty provided for in the By-Law and the rate per square meter as per the Overstrand Municipality 2023/2024 Budget is applied to its maximum extent.

Yours faithfully



Mrs Frances Waddell



TP - A Theart  
(H vld Stoep)

Rooiels Ratepayers Association  
(RERA)

267 Perspicua street,

Rooiels,

Western Cape.

1 September, 2023

Planning department,

Overstrand Municipality,

16, Paterson street,

Hermanus.

Email: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za).

FILE NO. Erf 338-KRE
SCAN NO.
COLLABORATOR NO.
1910650

**Subject: Submission relating to Erf 338 Rooiels. Attention: MS H van der Stoep, Senior Town Planner**

Dear Me van der Stoep

**DETERMINATION OF AN ADMINISTRATIVE PENALTY ALLOWING WORKS ALREADY LONG COMPLETED ON ERF 338 ROOI ELS, 4 HOTEL CRESCENT**

I write on behalf of the Rooiels Ratepayers Association (RERA). We represent 80 members of the community immediately neighbouring Erf 338. We therefore consider that RERA is an interested and affected party.

This erf is one of the most visible and expensive in our town and lies in a 'premium' position facing north on our slipway beachfront. The current RERA team were not office holders when the building was done, but we were neighbours, and the village was amazed at the time that the building regulations had been flouted.

Following your notice for public input, we asked our members and all ratepayers on our mailing list whether they agreed with our committee view that it was too late for remedial demolition. While almost all respondents agreed, some of them raised the concern that a fine could legalize and retrospectively legitimize an illegal development. In order to serve as a deterrent, the fine should therefore be the maximum possible,

As the 2023 RERA Exco, we consider this perspective has a strong logic and merit and therefore ask you to impose fines as high as you deem possible. We understand that the courts have precedents that will likely limit your powers, but within those limits: **we would ask you to please try to signal to all who would develop in our town that the building regulations and the heritage protection overlay zone regulations must be complied with and your office, our community and the law treated with respect.**

*Piet van Rensburg*

My thanks for your attention to this matter.

Yours sincerely

*Piet van Rensburg*

Piet van Rensburg

**Chair**

Mobile number: 082 8524595

**RERA Exco 2023**

**And o.bo. RERA Exco members:**

Achim Halpaap

Leslie Lundie

Andre Roothman

Ralph Felix Pina

Tom Baigrie

**Loretta Gillion**

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**From:** rera.chair@rooiels.org.za  
**Sent:** Friday, 01 September 2023 16:34  
**To:** Loretta Gillion  
**Cc:** 'Piet van Rensburg'  
**Subject:** RERA Submission on ERF 338  
**Attachments:** RERA Submission to OM re Erf 338 4 Hotel Crescent.pdf

Best Loretta,  
Sien asb die aangehegde voorlegging mbt erf 338 Rooiels.  
Dit sal gaaf wees as jy na die regte persone kan verwys en ontvangs per epos erken.  
Vriendelike groete,  
Piet van Rensburg.  
Voorsitter: RERA,  
Rooiels.

350

TP. n. / heard  
(M. ud Skoop)

46/77



From: <[redacted]> @gmail.com  
Subject: ERF 338, 4 HOTEL CRESCENT, ROOIELS.  
APPLICATION FOR DEPARTURE AND DETERMINATION OF  
ADMINISTRATIVE PENALTY

Date: 31 August 2021 at 14:25:12 GMT-7

To Whom It May Concern

FILE NO:	Erf 338
	Rooi Els
SCAN NO:	DB
COLLABORATOR NO:	1579067

I am the owner representative of Erf336 Rooiels, writing in response to the "Notice To Affected Persons" dated 30 July 2021 I received, signed by S.Muller, Director: Infrastructure and Planning. The owner is [redacted], my wife of 51 years, who is cc'd in the email and has approved its content. We have owned our house on Erf 101 in Rooiels since 1980.

My opinion has been formed after consultation with other owners of Rooiels homes and observing the dwelling on Erf338 being built with clear infringement of legislation, without any evident municipal inspection resulting in its building law infringements being corrected.

Our house perspectives have not been directly impacted, but Erf338's adjacent neighbours have been, one of whom, on its east side, willingly bought a small piece of land on which his 1989 builder had mistakenly infringed the building line, in order to restore the owner of Erf 338's rights. This is an irony that should not be ignored, given the owners' rampant errors in their own building that they are now offering to "rectify". What the neighbour paid would be interesting to know under these circumstances, when considering the "administrative penalty." He would tell you if asked I'm sure.

What are the options when this has been done so brazenly in the public eye and the municipality, whose job it is to see that buildings are erected according to current legislation, are now asking a few nearby residents what they should do to correct their own failure to fulfill their

TP

02 SEP 2021

mandate, resulting in a material breach of law?

My response to these 2 parties, equally guilty of failure of responsibility for compliance with the laws, follows :

i) The municipality conducts an internal examination into its management failure of due process

being followed and legislation complied with by their responsible department, overseen by a

senior member of the legal staff of the municipality who writes the report. This to be made

public to the affected parties and The Rooiels Residents Association (RERA), who can use this

experience to advise and illustrate to future owner builders, the importance of compliance;

ii) Prior to any rectification starting, a full description is made listing every infringement in detail in

a reportback to the affected parties and RERA, so that we are able to be satisfied that this list

is a complete one and has been fully rectified after completion, by appointing our own

qualified and experienced architect/engineer/quantity surveyor to confirm that this has

been done to their full satisfaction. If the municipality inspectorate disagrees with this/these

person(s) conclusions, then an "impasse" is declared and a neutral respected professional is

appointed by both parties' agreement, whose conclusions will be final;

iii) The list in ii) above is securely posted on the garage door of the house in a suitable waterproof

envelope that can easily be read by residents and be accompanied by a Notice that makes clear this is an action being taken in response to a contravention of building regulations by the owner;

iv) Given the failure of oversight by the Municipality I think that any "Administrative Penalty" be

donated to charities, not kept by the municipality for its own enrichment after a failure of

responsibility that is really a disgrace. These charities I would suggest are active in the Rooiels

to Kleinmond string of communities and support the youngest children and oldest adults.

My suggestion is that R500,000 would be appropriate, this was no mistake, it was done openly

as if they were sure they would not be challenged by the Municipality. This needs an enquiry.

v) When the infringements are rectified appropriate demolition will take place. I see no benefit

to affected parties of a material nature, in further demolition, the rectification process will be

costly as will the penalty as proposed. I am not aware of, but assume, that any consequential

damage to neighbours arising from the infringements are listed and part of the rectification.

All this reminds me of one of my long dead father's favourite sayings: "the wheels of justice turn slow, but they grind very fine."

Yours faithfully,

Diarmuid Baigrie.  
Erf336 and Erf101

353  
TP - D. Ineart  
(H. vd Groep)



# Project Office

Town Planning & Project Management

Our Reference: 19/018  
Your Reference: 338 KRE

1 September 2021

The Municipal Manager  
Overstrand Municipality  
P O Box 20  
**HERMANUS**  
7200

FILE NO:	SP 338 Kooi EIS ✓
SCAN NO:	KRE 338
COLLABORATOR NO:	579023

Sir

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

Application is being made for the following:

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

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Wright Approach Investments  
136 CC  
(Reg No. 2002/060745/23)

Unit B Standard House,  
cnr Dirkie Uys & Royal Street  
P O Box 1247  
Hermanus, 7200

Tel: +27 (0)28 313 1411

Email: [admin@wrapgroup.co.za](mailto:admin@wrapgroup.co.za)  
Web: [www.wrapgroup.co.za](http://www.wrapgroup.co.za)

Established 2002

TP

02 SEP 2021



The By-Law under Section 52 (3) highlights that each objection must comply with the following requirements:

Requirements	Details
The name of the person or body concerned.	Mrs Frances Waddell
The address or contact details at which the person or body concerned will accept notice or service documents.	35 Upper Dean Road Sea Point 8002
The interest of the body or person in the application.	Adjacent neighbour who is directly affected by the proposal. The owner of Erf 337 Rooi Els.
Reason for the objection, comment or representation.	This objection below provides all the reasons.

A copy of the application was circulated to Mrs Frances Waddell, the owner of Erf 337, Rooi Els (our client) and the neighbour of the applicant.

Our client does not agree with the merits and motivation of the application submitted by Plan Active and subsequently appointed WRAP to submit an objection to the submitted proposal.

### **Background**

The land use application submitted in 2021 is not the first application submitted, as a previous land use application was submitted in 2019 by another town planning firm, ME Planners. This application was also not supported by our client and WRAP submitted an objection on behalf of the owner of Erf 337, Rooi Els.

This alone indicates the timeframe our client has been dealing with, trying to resolve the grievances that she has with the illegal buildings and structures on Erf 338. Throughout the land use application, Plan Active repeatedly states that no neighbours have objected to the building's construction or methods that were used.

On request, our client can provide proof of between 20 – 30 emails with officials at the Overstrand Municipality, from the Town Planning Department to the Building Inspector since **2016**.

Falsely stating that no objections have been received, indicates the intentions of the applicant, by deliberately not mentioning the previous objections received. They intentionally did not follow prescribed procedures when they built their home, signalling the applicant has the tendency to not follow procedure and then ask for leniency after several contraventions of the past 4 years have occurred.

Please refer to the following timeline that indicates the entire background of the subject property:



Date	Occurrence
16 December 2016	<p>This was the first occurrence that sparked the entire process which includes the concerns that had. (4 years, 6 months, 16 days before the 2021 application was submitted)</p> <p>The building inspector, Mr Rossouw was first advised of potential irregularities occurring on Erf 338 and the construction process.</p>
6 June 2017 (5 Months and 22 days later)	Mr Rossouw advises that the Overstrand Town Planning Department has taken over the matter.
October 2018 (1 Year, 3 months and 26 days later)	<p>Almost a year and 4 months later a land use application was finally submitted.</p> <p>ME Town Planners submitted an application on behalf of Mrs Muller (representative of HMMM BELEGGINGS TRUST).</p> <p>Reference - 338 KRE (3856)</p>
11 January 2019 (3 Months and 11 days later)	<p>Public participation process was opened. Due to slow postage the objector only had 2 weeks to submit an objection.</p> <p>WRAP was appointed to submit the objection which was received on the 12 February 2019 – proof of submission may be produced if requested.</p>
27 February 2019 (1 months and 17 days later)	Receipt of objection was confirmed.
22 September 2020 (1 year, 6 months and 27 days later)	<p>The Overstrand Town Planning department provided a letter stating the application was withdrawn.</p> <p>The application was considered finalised and closed – no conclusion was given, and no objection points were addressed or rectified.</p>
28 September 2020 (6 days later)	The Overstrand Town Planning Department advised that they have advised ME planners and Mrs Muller to prepare another application.
30 July 2021 (10 Months and 3 days later)	<p>The applicant (Mrs. Coetzee/HMMM BELEGGINGS TRUST) has appointed Plan Active to submit a new land use application.</p> <p>In a letter dated 30 July 2021, surrounding property owners were invited to provide comments on the submitted application.</p> <p>The application is similar to the application that was submitted by ME Planners, as it is still not addressing the most concerning points that have been raised by our client.</p>



	in addition, inaccuracies have been stated as that no surrounding property owners have made any objections. The trail of events and the timeframe above paints a different picture.
--	---

Total time that has passed since the first occurrence: 4 Years, 7 months and 15 days.

### **Objections:**

The objections to the application and the remedies sought by our client, are the following:

<b>Application</b>	In terms of Section 16(2)(b) of the By-Law for a departure to exceed the maximum permissible boundary wall height from 2,1m to 2,07m; 2,30m; 3,571m and 3,95m respectively; <b>and also to exceed the maximum permissible height of the existing infill of the open terrace from 1m to +1,6m.</b>
<b>Objection</b>	<p><b>Cumulative impact</b></p> <p>Should this application be approved without an administrative penalty being imposed, others may follow in the applicants' footsteps, going against what is allowed and then seeking legalisation after the construction has been completed.</p> <p>This will have an adverse impact on the prevailing architectural styling and character of residential areas in Rooi Els and will not be in the interest of the public.</p>
<b>Remedy sought</b>	<p>It is acknowledged that the suspended concrete slab has been constructed, and the objector does not expect it to be demolished. We do however feel that the applicant should not be allowed to escape punishment. The applicant deliberately constructed the suspended concrete slab against prescribed procedures and is seeking legalisation after the wrongdoing was concluded.</p> <p>The outcome of this application will have large consequences for similar future applications, setting a precedent for offenders knowingly continuing their wrongdoing, without any consequences.</p> <p>That applicant should be fined with the maximum administrative penalty. If not, others may assume they can follow in the applicant's footsteps, without any consequences.</p>

<b>Application</b>	In terms of Section 16(2)(b) of the By-Law for a departure to exceed the maximum permissible boundary wall height from <b>2,1m to 2,07m; 2,30m; 3,571m and 3,95m respectively;</b> and also to exceed the maximum permissible height of the existing infill of the open terrace from 1m to +1,6m.
<b>Objection</b>	<p><b>Cumulative impact</b></p> <p>As mentioned, numerous times throughout the application, the boundary walls exceed the allowable 2.1m height restriction.</p>



The survey carried out by Van Dyk Land Surveyors confirms our clients' concerns. Since late 2016 and early 2017 our client has been in contact with the building inspector Mr Rossouw with concerns regarding the height of the wall.

The concern was and still is, that the foundation will most likely not be able to withstand a wall which is between 2,07m and 3,95m in height, depending on where the wall is measured.

The submitted town planning report also does not mention or include an engineering certificate which confirms that the foundation of the wall can take the additional load. Our client is concerned that if the wall collapses, people may be injured or killed, and damage may be caused to the property of our client.

Her home is located approximately 3m from the erf boundary and with a wall with a height of 3,95m, when the wall should collapse, it may damage our client's buildings. If an engineering certificate can be produced, it would ease our clients concerns that the wall's foundation does not meet specifications.

Until such time, the illegal wall is therefore a threat to safety and security of both properties and their owners. As mentioned previously, Plan Active states in their town planning report that no surrounding properties owners have objected against the high walls, which is not true.

The concern regarding the height of the wall was raised on numerous occasions with the building inspector Mr Sherwin Rossouw. There are numerous emails of correspondence where our client highlighted the concern of the height of the wall with Mr Rossouw (the emails can be forwarded to you upon request). Mr Rossouw was extremely helpful in trying to objectively gather all the facts pertaining to the wall and a site inspection was conducted on 20 December 2016. The concern of the wall was also escalated to Ms Hanneen van der Stoep who instructed the applicant to submit an application to address the height of the wall. This illustrates that the applicant did not submit this application voluntarily but tried everything possible to avoid compliance and was subsequently forced to address the matter.

The builder also installed a breather vent valve on our client's side of the subject wall (refer photo on next page). This was also not approved by the Overstrand Municipality and signals that there may be an illegal sewage connection behind the high wall.



#### **Cumulative impact**

The approval of this extremely high (illegal) wall will also lead to other property owners following the applicant in constructing the walls of their own properties too high and then applying to legalise these encroachments after the fact.

This would adversely impact on the character of Rooi Els as there will be more shade and less sunlight on properties, particularly on smaller erven.

High walls will also not enable residents to see into the streetscape from homes which is a form of surveillance. The implication is that opportunistic criminals will take advantage of this as visibility of neighbours will be blocked by high walls and will not be conducive to citizens looking after each other's interest. The approval of such a high wall will have an adverse cumulative impact on the safety of neighbourhoods in Rooi Els and is not desirable.

#### **Remedy sought**

The remedy sought by our client is that the part of the wall, which is above 2,1m from existing ground level of the two erven (Erf 338 & Erf 337 Rooi Els), whichever is the highest, be demolished. This might seem extreme, but the development parameters are there for a reason. It is not only a guideline but indicates the acceptable and desirable limit and the applicant knowingly disobeyed these parameters.

In addition, the administrative penalty should also be applied to the maximum extent as the applicant knowingly infringed on the Overstrand Municipality's Land Use Scheme and the administrative penalty is there to punish these deliberate infringements.



Other contraventions that the applicant has failed to mention or apply for

**The garage encroaches the 2,0m eastern side scheme building line by 1,7m.**

**Comment**

Our client has no objection to the garage as is not located adjacent to Erf 337.

It is however important to raise the concern if this has ever been applied for? It is acknowledged that a garage may be constructed inside of the building line. However, specific development parameters are required to be met:

- (i) **written consent** from the immediate neighbours are obtained;  
Has the written consent been obtained from the owners of Erf 339?  
The question needs to be addressed.
- (ii) no building that encroaches the building line **may be higher than 3,5 m** above the existing ground level on the common boundary, provided that the height may increase at a 40 degree angle away from such boundary.  
Does the encroaching garage comply with the 3.5m height restriction of the Overstrand Municipality Land Use Scheme?
- (iii) the length and width of the structure **does not exceed one third of the lateral and rear boundary concerned or 9,0 m**, whichever is the most restrictive (except in cases as prescribed in point (iv) below).  
Does the encroaching garage comply with a 9m length restriction of the Overstrand Municipality Land Use Scheme?
- (iv) where the lateral/rear boundary of the property is less than 19,5 m in width, the structure will have a maximum width of 6,5 m on the rear boundary.  
N/A.
- (v) **no doors and windows shall be permitted in any wall closer than 1,0 m to the rear or side boundary.**  
N/A
- (vi) a **1,0 m wide access may be required to the satisfaction of the Fire Department.**  
To be determined by the Overstrand Municipality.
- (vii) **no runoff of rainwater from a roof shall be discharged directly onto adjoining properties.**  
N/A
- (viii) the garage/carport shall be included in the **calculation of coverage** on the land unit.  
To be confirmed by the Overstrand Municipality.
- (ix) the Municipality is satisfied that the structure does **not pose a fire hazard and is constructed of appropriate material to its satisfaction.**  
This illustrates that our client is not preoccupied with arbitrarily submitting frivolous objections to development proposals, but only objects in rare instances where existing land use rights and comfort in the occupation of land are infringed upon.

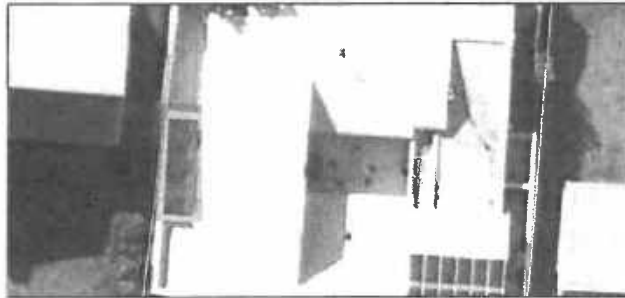


**A planter on the western side that encroaches the 2,0m scheme side building line by 2,0m.**

**Comment**

In 2018 the land use application included an application for a departure to allow a planter that exceeded 1.0m in height and is regarded as a structure. This was omitted from the town planning report by Plan Active.

With the sheer height of the wall, it is impossible for our client to comment if the planter has ever been built and if it would be required to be included in the current land use application. It should be noted it appears on the Overstrand Municipality's GIS data as if the planter was constructed, requiring a departure. Please refer to image below:



**Remedy Sought**

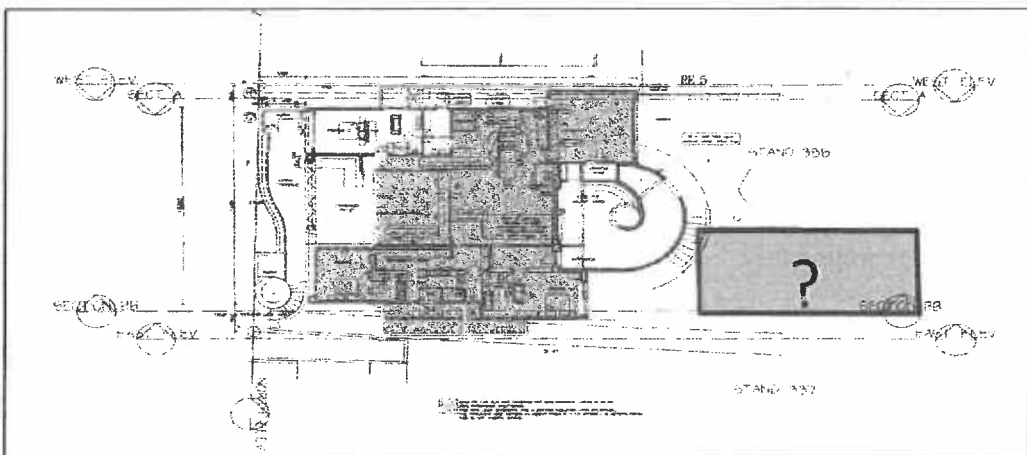
It is requested that indication is given by the applicant if the planter was ever built and if the answer is yes, it should be included in the application.

If it was constructed without prior approval, it should also be included into the calculation of the administrative penalty as it was also built without approval in terms of the Overstrand Municipality Land Use Scheme.

**The existing house was not built according to the approved plan submitted to the Overstrand Municipality. There is a double storey section adjacent to the road that is not shown.**

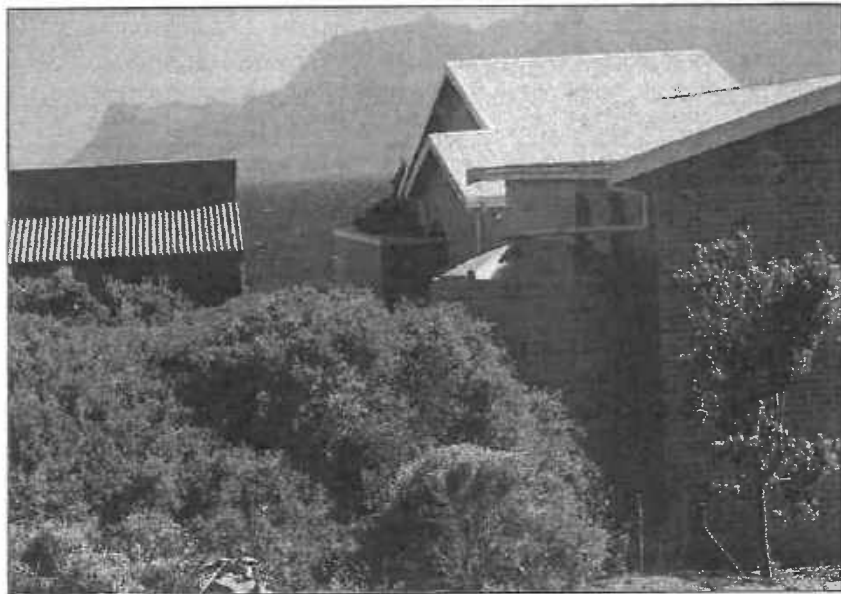
**Comment**

The approved building plans which were submitted by Plan Active as part of the Town Planning report, are not accurately depicting all buildings on Erf 338 Rooi Els.





Please refer to the following image that indicates a building or structure not indicated on the building plans submitted. Why was this not included in the town planning report or the building plans? Does the Municipality have record of approved building plans of this structure?



This structure can be clearly seen from the Overstrand Municipality's GIS data, although it is not included in the plans submitted with the application. The question should also be raised if the building is located over the building line?



The survey done should have included this building and it is recommended that a survey be done to determine the location of the building before the planning department can make an informed decision.

It also appears if the allowable coverage on the erf may be exceeded. It is proposed that an as built plan be submitted to the municipality to determine the full extent of all structures on Erf 338 Rooi Els.

### Illegal storm water diversion onto Erf 337, Rooi Els from Erf 338, Rooi Els

#### Comment

The town planning application omitted that illegal storm water drains were constructed in the boundary wall to exit onto Erf 337, Rooi Els (our client's property).

There are two 110 mm water outlets which were constructed in an existing boundary wall which channels storm water from Erf 338 onto Erf 337 Rooi Els (refer picture below).



The picture below shows the result of the stormwater channeled onto Erf 337, Rooi Els.

Why not follow the rules and direct the water to the street?





Frequent flooding is a huge inconvenience for our client and interferes with the occupation and use of his land.

In terms of the National Building Regulations:

**Building Control considerations**

**"PART R - STORMWATER DISPOSAL**

**R1 STORMWATER DISPOSAL REQUIREMENT**

- (1) *The owner of any site shall provide suitable means for the control and disposal of accumulated stormwater which may run off from any earthworks, building or paving.*
- (2) *Such means of stormwater disposal may be in addition to or in combination with any drainage works required in terms of regulation F4(2).*
- (3) *The requirements of sub-regulation (1) shall be deemed to be satisfied where such means of stormwater disposal is provided in accordance with SANS 10400-R: Provided that where a local authority is of the opinion that the conditions on any site render it essential for stormwater disposal to be the subject of an acceptable rational design prepared by an approved competent person, such local authority shall, in writing, notify the owner of such site of its reasons for the necessity for such design, and may require such owner to submit for approval plans and particulars of a complete storm control and disposal installation for such site and for any building erected thereon, based on such design."*

**Legal considerations**

In terms of the common law, the principle of **actio negatoria de stillicidio vel flumine** is applicable. This principle stipulates that no owner of land which is within an urban area (not a farm) is obliged to accept water from property which is located on an elevated site. The owner of the property with a storm water related problem in terms of this principle is obliged in to ensure that water is channelled from the property to the street. The applicant is obliged in terms of this legal principle to channel the water directly from his property into Hotel Crescent.

Failure to comply with the above legal principle would make the principle of **interdictum quod vi aut clam** applicable where an aggrieved property owner can institute legal action for compensation for the damage caused by flooding from the storm water from the property of the applicant. Our client has taken all necessary measures to manage the storm water from his own property but has reached a point where he would not have any other alternative than to approach the court for an order for compensation for damage caused by storm water channelled onto our client's property from the property of the applicant, if not resolved by action from the Overstrand Municipality. This illustrates that our client managed the situation with patience and has been living with the storm water problem for a while, hoping that the applicant would rectify the illegal discharging of water that is in conflict with the Overstrand Municipality Land Use Scheme, National Building Regulations and common law principles.

**These objections above were also submitted to the 2018/2019 land use application. Since then, almost two years have passed, and our clients have had to live with the implication of the storm water being directed onto their property.**



<b>Remedy Sought</b>	<p>In terms of Section 16.3.2 of the Overstrand Municipality Land Use Scheme, the following provisions shall apply with regard to site development plans:</p> <p><i>(c) If the Council considers it necessary, a storm water management assessment and management plan may be required in conjunction with a site development plan, the extent of which shall be determined by the Council depending on the magnitude of the development".</i></p> <p>The storm water runoff from Erf 338 into our client's property has become unbearable. Considering this, it is proposed that the Overstrand Municipality exercise its powers in terms of the Overstrand Municipality Land Use Scheme and the National Building Regulations and Building Standards Act No 103 of 1977 and instruct the applicant to either compile a storm water management plan and/or show on a Site Development Plan how the storm water will be directed from and over his own property to the nearest street. Once approved, the applicant also needs to provide a time frame in which the plan will be implemented.</p> <p>This would provide our client with some relief and hopefully the storm water related problems caused by the storm water runoff from Erf 338 will be resolved.</p>
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### Encroaching water tanks

	<b>10 000 Litre Tanks</b>
<b>Comment</b>	<p>The applicant installed three water tanks on the boundary between Erf 337 and Erf 338, Rooi Els. Two 10 000 litre rain water tanks which is 3,15m high and together with their concrete base are only 0,09m from the boundary line.</p> <p>No departure application was included in the submitted application to allow these tanks within the building line?</p> <p>According to the Overstrand Municipality's Land Use Scheme Section 16.1.1 (a) (xii) "water tanks and gas bottle storage enclosures not exceeding 2,1 m in height and screened behind a boundary wall/screen to the same height;", maybe erected over the prescribed building lines, provided that they do not extend beyond the boundaries of the land unit.</p> <p>With no information about the tanks being included in the application received by our client, we had to investigate the information from water tank suppliers.</p> <p>According to the tank manufacturer (JoJo) which is one of the most used water tanks in South Africa a 10 000l tank, similar to the tanks used on Erf 338, Rooi Els, has the following dimensions:</p> <p>Diameter – 2.2m  <b>Height – 3.15m</b></p> <p>Please refer to the manufacture's website for specification - <a href="https://www.jojo.co.za/products/10000-litre-vertical-water-storage-tank/">https://www.jojo.co.za/products/10000-litre-vertical-water-storage-tank/</a></p>



Please refer to the image below:



Image taken of tanks on Erf 338



Image taken from JoJo's website  
(10,000l Tank)

The tanks used on Erf 338 has a Winter Grass colour according to the manufacturer. With the height being more than what is allowed, a departure is required to be submitted for these tanks.

Once again, an oversight from the applicant's perspective and indicating even more contraventions that the applicant knowingly implemented when the house was built. Placing these water tanks over the building line between Erf 338 Rooi Els and Erf 337 Rooi Els.

#### **20,000 Litre Tank**

**Comment** There is a third tank located on Erf 338 Rooi Els, which is a 20 000 litre tank, closer to the road next to the double storey building **not** indicated on the building plans.

According to the manufacturer of the water tank, it has a diameter of 2.6m and a height of **4.27m**. Please refer to the manufacture's website for specification - <https://www.jojo.co.za/products/20-000-litre-vertical-water-storage-tank/>

It should be noted that it seems as if the 20,000l tank was installed 200-300mm over the **boundary line between Erf 338 and Erf 337, Rooi Els**, which is unacceptable. A land surveyor was appointed (at the cost of the objector) to verify this, in 2018.

Please refer to image of the tank on the next page:

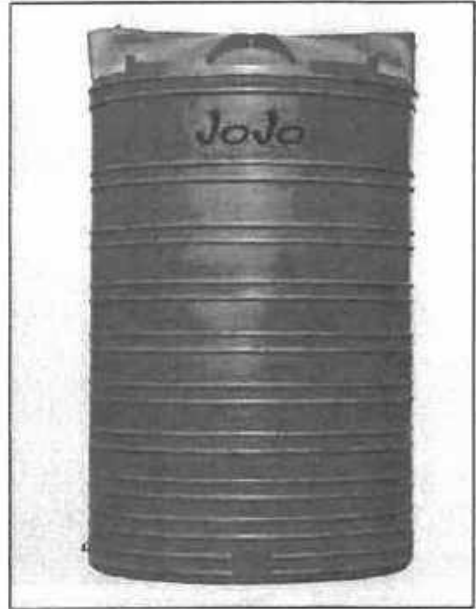
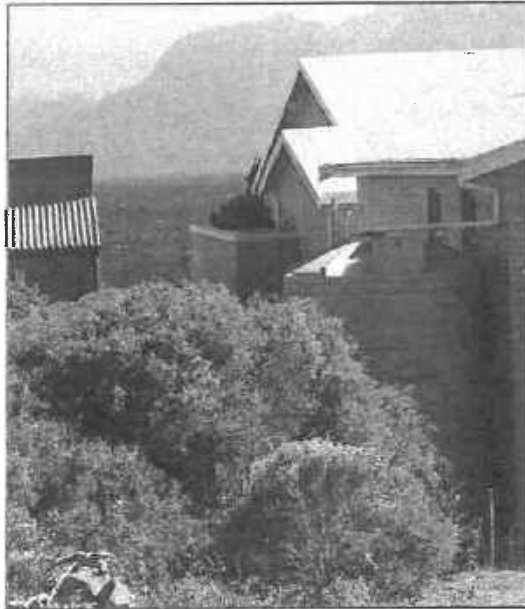


Image taken of tank on Erf 338

The top of the 20,000-litre tank has a distinctive feature that is not used on the 10,000 litre tanks. This is the determining factor indicating the sizes of these tanks.

**Remedy Sought**

The above mentioned clearly indicates the current land use application submitted, is not addressing all the issues/encroachments of Erf 338, Rooi Els.

In addition to this, the applicant has installed the tanks over the building line, without applying for any departures from the building line.

**A – 2 x 10,000l Water Tanks**

These water tanks are 3.15m high

**B – 1 x 20,000l Water Tank**

This water tank is 4.27m high.



With the 20,000l tank partially located on our client's property, the tank needs to be removed and placed within the boundaries of Erf 338, Rooi Els. There is no alternative here as this is illegal use of our client's property and it is expected that the Overstrand Municipality use their authority to enforce the aforementioned.



	Regarding the 2 x 10,000l water tanks - there should be a departure application submitted as these tanks are higher than the allowable 2.1m in terms of the Overstrand Municipality's Land Use Scheme.
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All these departures required, is a direct result of the applicant, who did the construction of these illegal structures. There were no departures granted by the Overstrand Municipality for this purpose. This signals that the applicant tends to not follow prescribed procedures, rules, and legislation before commencing with construction and proceeded with building work and asking for leniency after contravention is the **modus operandi** of the applicant.

### Conclusion

It is proposed that the land use application submitted by Plan Active be amended to address ALL the contraventions and applying for departures required to ensure that Erf 338, Rooi Els is compliant with the Overstrand Municipality's Land Use Scheme. This will allow the Overstrand Municipality to exercise their authority to ensure the applicant complies with all the requirements set out by the Overstrand Municipality's land use scheme.

In addition, with all the departures and contraventions in one application, it will allow the decision makers to exercise their right to impose an administrative penalty. As mentioned earlier, the applicant knowingly and deliberately allowed all these encroachments and contraventions to happen.

This was done deliberately, thinking that they can come after the construction is completed and submit an application to rectify all these issues, without any consequences.

1. The following remedies are sought:

- 1.1 That the boundary wall between Erf 338 and Erf 337 be broken down to 2.1 meters measured from the level as prescribed by the OMLUS (Overstrand Municipal Land Use Scheme);
- 1.2 That an engineering design, plan and certificate be submitted stating that the foundation of the walls is designed and built in such a way that it can support a 2.1m high wall;
- 1.3 That the illegal sewerage breather pipe installed on the Erf 337 side of the boundary wall be removed and relocated.
- 1.4 That the illegal stormwater pipes that exit onto Erf 337 be removed and a storm water management assessment and management plan should be submitted in accordance to Section 16.3.2 of the OMLUS, directing all stormwater from Erf 338 to the nearest street;
- 1.5 That it be made a condition of approval that the storm water management assessment and management plan be implemented within a specific timeframe prescribed by the Overstrand Municipality;
- 1.6 That the 20,000 litre water tank encroaching onto Erf 337, Rooi Els be relocated; and
- 1.7 That clarification be given if the planter was built inside of the building lines of Erf 338, Rooi Els.

2. The submitted application is regarded as incomplete and should include the following:

- 2.1 As built plans or at least a survey of all structures on the property such as the double storey building, and all water tanks not shown on submitted plans;



- 2.2 Where required, application must be made for departure from the building lines for the following structures:
- Water tanks (2 x 10,000 Litre tanks)
  - Planter (If it is determined that the planter was built)
  - Garage
- 2.3 Address the misinformation stating that no previous objections have been received, as indicated throughout this objection numerous previous objections/comments have been submitted over the past 4 years.
3. That the administrative penalty provided for in the By-Law and the rate per square meter as per the Overstrand Municipality 2021/2022 Budget is applied to its maximum extent.

Yours faithfully

A handwritten signature in black ink that reads 'Thian Jansen'. The signature is written in a cursive, flowing style.

**THIAN JANSEN**  
**PROFESSIONAL TOWN PLANNER (A/2858/2019)**

369 TP. n. / heart  
(H. ud Graep)



65/77

• FRIENDS OF ROOIE

FriendsofRooiels@gmail.com

PO BOX 420

Pringle Bay

7196

27 August 2021

FILE NO:	ERF 338 ✓ Rooi Els
SCAN NO:	Friends
COLLABORATOR NO:	1579008

The Municipal Manager  
Overstrand Municipality

HERMANUS

7200

EMAIL: [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)

**ERF 338 HOTEL CRESCENT ROOIELS: OBJECTION TO DEPARTURE WITH ADMINISTRATIVE PENALTY: PLAN ACTIVE (OBO HMMM BELEGGINGS TRUST)**

**PART A: PROCESSING AN UNFOUNDED TOWN PLANNING APPLICATION**

1. We draw your attention to the contents of our letter dated 15 June 2021 to the Director: Infrastructure and Planning.

Our letter referred to the following:

**"PROCESSING OF UNFOUNDED TOWN PLANNING APPLICATIONS**

1. We wish to bring under your attention that a new practice has seemingly evolved in recent times whereby town planners are allowed to bring unfounded applications, which are then not refused by Overstrand's town planning department. After objections have been received, the application is then withdrawn, brushed up cosmetically and substantially the same application is brought again. This leads to a loss to objectors of substantial resources and funds to obtain advice as well as substantial loss of wasted time. This is, in our opinion, an abuse of the process. This type of abuse should not be institutionalised and encouraged by the Overstrand municipality as it is contrary to its stated values and duty of care towards civil society."

02 SEP 2021

TP

2. We thereupon listed in our letter a number of recent such instances where Rooiels is involved.

We understand that a neighbouring ratepayers' association has raised similar concerns recently.

3.1 The present application is another example of such unfounded application, as the application completely ignores the applicability to erf 338 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ") which expressly forbids departure consent of a higher wall.

Par 12.8.1 thereof reads as follows:

" 12.8 Boundary treatment

12.8.1 **No solid, visually impermeable boundary treatments above 2,1 m will be permitted.**" [Our emphasis added on *no permission*].

3.2 For your convenience we attach OM Plan 4, which delineates the area of the ROOIELS HPOZ as including erf 338.

4. The applicant's town planner goes so far as to state erroneously:

"3.9 OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.9.1 HERITAGE VALUE

*Erf 338 Rooi Els is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy (2010). The property is not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).*

5. It is extremely worrying that the OM Town Planning Department has allowed, once more, that an unfounded application be advertised, namely without reference to the recently promulgated ROOIELS HPOZ.

The ROOIELS HPOZ has to be considered for other requirements also, for example par 12.3.1:

*"Land use and building applications, if applicable, should be submitted to the Overstrand Heritage and Aesthetics Committee or a registered conservation body for comment."*

6. For full details of the legal submission, please see the objection submitted by Mr Eldie Brink. We agree with the submission.

**7. In the light of our above submission under Part A, we request that the application please be referred back to the applicant for the submission of correct information and compliance with the basic legal requirements.**

**PART B: WITHDRAWAL OF PREVIOUS APPLICATION ON 22 SEPTEMBER 2020, BRUSHING IT UP AND RESUBMITTING SUBSTANTIALLY THE SAME APPLICATION NOW**

1. In PART A paragraph 1 we drew our the attention to the abuse of the process by the withdrawal and resubmission of applications, causing a loss to objectors of substantial resources and funds to obtain legal advice as well as substantial loss of wasted time.

2. The present application is another such instance of resubmission of substantially the same application as the one which was withdrawn on 22 September 2020.

3. In view of our request in PART A that the application be referred back as being unfounded and noncompliant, and also because our previous objections are based on substantially the same previous application, we resubmit and attach our previous objection dated 15 February 2019.

The issues raised in our objection dated 15 February 2019 remain pertinent and should be regarded as incorporated in this document.

4. We particularly wish to draw your attention to the following paragraphs in our previous objection, which are still unanswered in the present brushed up application:

4.1 Paragraph 3: *"The new title deed of erf 338 (or the subsequently subdivided erf 338) has not been included in this application. This lack of transparency and full disclosure places potential objectors (and probably also the authorities considering this application) in the impossible position that they are unable to verify the correctness of the very crux of the claims made in this application (namely that the title deed conditions are in order). This application is therefore incomplete, irregular and defective."*

4.2 Paragraph 5: *"It appears that more than 50% of the area of erf 338 has been built upon. Kindly advise of the exact area that has been built upon and whether this is in conformity with the title deed restrictions?"*

4.3 Paragraph 6: *"A second dwelling unit appears to have been erected on the property. Is this in conformity with the title deed restrictions pertaining to erf 338?"*

**5. We request that answers be provided by the applicant to the issues raised above in PART B.**

**PART C: OBJECTION TO LEGALISATION OF DEPARTURES UPON PAYMENT OF AN ADMINISTRATIVE PENALTY**

1. We are concerned about the apparent abuse of process in the present application by allowing the levying of an administrative penalty to legalize a substantial and willful contravention.

2. We refer you to paragraph 1 of our previous objection:

*"The applicant is not a "layman" as stated (page 3 par 4.3) in the application.*

*This statement should be seen as deliberately misleading and an attempt to garner sympathy for the applicant's flouting of numerous building rules and regulations.*

*To place this in the proper context, the applicant is a legal persona (HMMM Beleggingstrust) with substantial funds at its disposal. It purchased a beach front property (for millions) and developed thereon a multimillion Rand mansion without any external financing. Various expert consultants have been employed by the owner in this process."*

3. In addition, the outcome of our queries in PART B may be that **additional** transgressions (e.g. water tanks etc) may come to light which were not disclosed in the present application. Piece-meal regularisation amounts to abuse and circumvention. In our opinion, it is not appropriate that these departures be approved and legalised with the payment of an administrative levy, .

4. We also draw the attention to the fact that these are in fact **huge** and **important** departures impacting the rest of Rooiels. The contraventions are of such a scale that, in our opinion, they were contravened intentionally.

5. In practice contraveners will gladly pay the insubstantial administrative levy to have their way, rather than having to demolish illegal structures.

**6. In the light of the points raised in this PART C:**

**6.1 We request that due to the number of transgressions, which are clearly not of an innocent nature, and in view of possible further undisclosed contraventions, the departures and payment of an administrative levy NOT be approved.**

**6.2 We further request that demolition/rectification/removal (of illegal infillings) be ordered by the Overstrand Municipality.**

**6.3 We request that, should there once again be a resubmitted application, the applicant be requested to motivate why the specific contraventions should not be demolished, rectified or filled up. It goes without saying that all contraventions should be fully disclosed.**

**6.4 We are especially concerned that certain special title deed conditions, which were included in the title deed conditions by the Caledon Divisional Council at the request of neighbouring property owners at the time when the hotel site was subdivided into a number of erven, including erf 338, have not been complied with by the applicant. In that case the deviations, including the cement slab, should not be approved, in order to enable future property owners themselves to take suitable legal steps against the owner.**

Please keep us advised.

Yours faithfully

Piet van Rensburg

**Chairman: Friends of Rooiels**

Attached:

1. Delineation on OM Plan 4 of the ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ").
2. "ERF 338 OBJECTION TO APPLICATION FOR DEPARTURE" - Objection by Friends of Rooiels dated 15 February 2019.

# ● FRIENDS OF ROOIELS

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FriendsofRooiels@gmail.com

15 February 2019

Municipal Manager

Overstrand Municipality

HERMANUS

7200

EMAIL TO: loretta@overstrand.gov.za

## **ERF 338 OBJECTION TO APPLICATION FOR DEPARTURE**

Friends of Rooiels is a non profit community based organisation established during March 2018. We represent a growing number of Rooiels residents who are concerned about the incremental erosion of title deed conditions leading to a loss of the sense of place, character and special environmental quality of the village of Rooiels.

In general, we find this application misleading and lacking in vital information. This lack of full disclosure of all relevant information renders the whole public participation process flawed and subject to review.

The owner of erf 338 has committed numerous town planning and title deed transgressions and appears to have had little respect for such conditions and for Overstrand municipality's by laws when developing the property.

To regularise all of these transgressions will be counter-productive and detrimental in the long term to the whole community. Not only will our title deed conditions (which are of great importance to the Rooiels community) be undermined, but the actions of the owner of erf 338 also severely undermine Overstrand Municipality's town planning regulations and Overstrands authority on these matters. It will be viewed by the rest of our community as a blank cheque by the authorities that one can do as one likes in Rooiels (if you have enough money) without fear of any negative repercussions from Overstrand Town Planning and Building Inspectorate.

The following detailed points support our general concerns as raised above:

1. The applicant is not a "layman" as stated (page 3 par 4.3) in the application.

This statement should be seen as deliberately misleading and an attempt to garner sympathy for the applicant's flouting of numerous building rules and regulations.

To place this in the proper context, the applicant is a legal persona (HMMM Beleggingstrust) with substantial funds at its disposal. It purchased a beach front property (for millions) and developed thereon a multimillion Rand mansion without any external financing. Various expert consultants have been employed by the owner in this process.

2. The applicant's statement on (page 1 par 2.1 Note 1) that "removal of title deed restrictions had already been granted ... in 2015" is misleading. This statement leads one to believe that ALL of the title deed conditions that have been transgressed were removed in 2015.

We could find no such general approval. Kindly clarify and furnish us with a copy thereof if it exists.

The only application for an approval that we could find was that published in Provincial Gazette of February 2014 (p 530) which is included below, which deals solely with an outbuilding on the Simonz property (erf 339):

"OVERSTRAND MUNICIPALITY

(Hangklip-Kleinmond Administration)

**REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967) PROPOSED SUBDIVISION, CONSOLIDATION AND RELAXATION OF SIDE BUILDING LINE: ERVEN 338 & 339, ROOIELS**

Notice is hereby given in terms of section 3(6) of the above Act that the undermentioned application has been received and is open to inspection at the Municipal offices, 37 Fifth Avenue, Kleinmond, during office hours (Enquiries: P Bezuidenhout, tel. (028) 271 8407, (028) 271 8428, e-mail fbezuidenhout@overstrand.gov.za), and at the office of the Director, Land Management: Region 2, Provincial Government of the Western Cape, Room 606, 1 Dorp Street, Cape Town, from 08:00—12:30 and 13:00—15:30 (Monday to Friday). Telephonic enquiries in this regard may be made at tel. (021) 483 0783 and fax (021) 483 3098. Any objections, with full reasons therefor, should be lodged in writing at the office of the above- mentioned Director, Land Management: Region 2, Private Bag X9086, Cape Town, 8000, with a copy to the above-mentioned local authority (Private Bag X3, Kleinmond, 7195), before or on Friday, 4 April 2014, quoting the above Act and the objector's erf number. Any comments received after the aforementioned closing date may be disregarded.

*Applicant:* Diesel and Munns Inc. (on behalf of CF Uys, BJ Uys and CA Simonz)

*Nature of application:* Removal of restrictive title condition applicable to Erf 339, corner of Hotel Crescent and Bathers Road, Rooiels, to enable the owner to encroach the side building line in order to accommodate the existing outbuilding on the proposed consolidated erf [Portion A ( $\pm 6,1\text{m}^2$ ) of Erf 338 and Erf 339  $\pm 1224\text{m}^2$ ].

Notice is also hereby given:

In terms of section 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), that an application for the subdivision of Erf 338, Hotel Crescent, Rooiels, in two (2) portions (Portion A ( $\pm 6,1\text{m}^2$ ) and Remainder ( $\pm 1203\text{m}^2$ )) has been received. Portion A will be consolidated with Erf 339, Rooiels.

That an application has been received for the relaxation of the side building line restriction, applicable to Erven 338 & 339, Rooiels, in terms of paragraph 3.3.3(c) of the Scheme Regulations made in terms of section 8 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), in order to accommodate the encroachment of the existing outbuilding on the proposed consolidated erf. Further details are available for inspection during office

hours at the Municipal offices, 37 Fifth Avenue, Kleinmond. (Enquiries: P Bezuidenhout, tel. (028) 271 8407, fax (028) 271 8428, e-mail fbezuidenhout@overstrand.gov.za). Any objections, with full reasons therefor, should be lodged in writing with the Municipal Manager, Private Bag X3, Kleinmond, 7195, before or on Friday, 4 April 2014.

In addition, notice is also hereby given in terms of section 21(4) of the Local Government Act: Municipal Systems, 2000 (Act 32 of 2000) that persons who cannot write may approach the above-mentioned offices, during office hours, where they will be assisted to put their comments or objections in writing. Notice No 006-2014 C GROENEWALD, MUNICIPAL MANAGER 21 February 2014 56498 ”

The above application was clearly not one for removal of ALL building lines and other restrictive title deed conditions.

If the applicant had obtained a general removal of title deed restrictions in 2015, the details of this should be part and parcel of this application.

3. The new title deed of erf 338 (or the subsequently subdivided erf 338) has not been included in this application. This lack of transparency and full disclosure places potential objectors (and probably also the authorities considering this application) in the impossible position that they are unable to verify the correctness of the very crux of the claims made in this application (namely that the title deed conditions are in order). This application is therefore incomplete, irregular and defective.

**Kindly forward to us a copy of the said title deed so that we may be able to substantiate and supplement this objection.**

4. Another error in the application is that the impression is created that zoning scheme regulations replace and render title deed conditions obsolete. **This is legally incorrect**, see the ruling of the Supreme Court of Appeal in *Van Rensburg N.O. and another v MEC for Housing, Local Government and Traditional Affairs*.

5. It appears that more than 50% of the area of erf 338 has been built upon. Kindly advise of the exact area that has been built upon and whether this is in conformity with the title deed restrictions?

6. A second dwelling unit appears to have been erected on the property. Is this in conformity with the title deed restrictions pertaining to erf 338?

**In summary, this application is highly irregular and part of a considered piece-meal approach by a sophisticated developer who has openly disregarded title deed conditions and building by laws. We request that, at the very least, the offending portion of the wall and flower boxes should be demolished forthwith.**

Please keep us advised.

On behalf of the Friends of Rooiels

D Esterhuysen

**CHAIRPERSON**

OVERSTRAND MUNICIPALITY  
OVERLAY ZONES  
FOR ZONING SCHEMES

PLAN 4:  
ROOIELS &  
HANGKLIP SMALLHOLDINGS

HPOZ: SCENIC DRIVES

— Important Scenic Corridor

HPOZ

- Local Area
- Coastal Strip

INDIVIDUAL SITES OUTSIDE HPOZ

● 3C : Local Heritage Sites

NODES

- ☆ Special Places
- ▲ Landmark

PLEASE NOTE:  
All boundary line positions, distances and property areas need to be verified by a Professional Land Surveyor.

REF: JGD/awg/epa-15/02/01/04/05/06/07/08/09/10/11/12/13/14/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1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377 TP N. Theart  
(H. Ud Sroep)

73/77



To: loretta@overstrand.gov.za

Re: Erf 338 , 4 Hotel Crescent, Rooiels: Application for Departure and determination of administrative penalty: Plan Active (obo HMMM Beleggings Trust)

Dear Ms Gillion

I am from RJ Baigrie, the owner of Erfs 89, 90, 91 Rooiels. Erf 89 is within 35-40m of erf 338.

I am writing this letter in response to the "Notice to affected persons" which arrived at the local post-office as a registered document.

The HMMM Beleggings broke many rules that apply to any new dwelling being constructed in Rooiels. Such as wall height, floor height, building lines encroached, suspended concrete slab , percentage of coverage of the plot etc.

These were shown in the plans they submitted to your municipality and it beggars belief how the Overstrand Municipality Town Planning Department approved all this and watched it happen. To simply allow a fine to be paid ( they can clearly pay this without much financial discomfort) is to give carte-blanche to others to follow the same route. Build what you like, wait for the complaints, submit as a "built building plan", pay a fine and it will all go away.

1. There is no clarity about the administrative penalty being determined and paid by HMMM Beleggings Trust . How does this justify the statement that "the owner intends to RECTIFY the encroachments."

Unless this penalty is very harsh, eg several million Rand (and is publicised) - it will never be a deterrent to any future transgression.

I personally do not feel sufficiently strongly about these transgressions to ask for a demolition order, but would support their neighbor, the elderly Scotsman whose name I forget, if he demanded this. He has suffered significant loss of property enhancements, including an unresolved electrical main supply issue, as I understand it. I understand this means he visits the property much less because he has ongoing power supply issues. That is a tragic result of the build for an elderly couple, devaluing their lifestyle and their property value.

Perhaps the applicant, a Council representative & lawyer and any affected residents who seek a demolition order should find if there is a possible solution besides demolition. Only once thios solution has been satisfactorily undertaken, by HMMM Bejeggings then the fine could be paid and demolition avoided. Until then, the threat of demolition should remain.

Yours sincerely

RJ Baigrie

ID

FILE NO:	338 ✓ Rooiels
SCAN NO:	KRE 338
COLLABORATOR NO:	1578092

TP 31 AUG 2021

378  
TP N. / Incoat  
(H. ud Stoep)



26.8.21

To: loretta@overstrand.gov.za

Re:

Erf 338, 4 Hotel Crescent, Rooiels: Application for Departure and determination of administrative penalty: Plan Active (obo HMMM Beleggings Trust)

Dear Sir,

I am Dr C A Simonsz (ID No. ). I am the owner of what was previously known as Erf 339 Rooiels. Due to me purchasing a 6m x 1m portion of Erf 338 - which was consolidated into my title deeds - the property is now known as Erf 397. My property borders the Eastern side of erf 338 in Rooiels.

I am writing this letter in response to the "Notice to affected persons" sent out by Ms H van der Stoep on 30.7.21 File ref: 338KRE

Although this notice was sent out by registered mail - I never received it through the mail and only got a copy sent to me by other affected persons.

Herewith my comments regarding this application.

1. I think the application for a departure must be considered with great caution. This is because HMMM Beleggings Trust - in their construction of the dwelling on erf 338 - broke many rules that apply to any new dwelling being constructed in Rooiels. e.g. wall height, floor height, building lines encroached, suspended concrete slab, percentage of coverage of the plot etc. This was not done by mistake - it was shown in the plans they submitted.  
*It is almost beyond understanding how the Overstrand Municipality Town Planning Department could have watched this development go ahead. !*

Granting this departure will be tantamount to saying to any potential property developer - "You can simply build whatever you like.... If there are any problems - all that is needed is to submit "as built building plans"

2. I find the concept of an administrative penalty being determined and paid by HMMM Beleggings Trust - very vague. This is hardly in keeping with the statement that "the owner intends to **RECTIFY** the encroachments."  
Unless this penalty is significantly harsh (and is publicised) - it will never be a deterrent to any future transgression.

I personally do not feel sufficiently strongly about these transgressions to ask for a demolition order.

However I think that the applicant and those who do seek a demolition order should get together and itemise the problems - with the objective of the HMMM Beleggings Trust actively solving the problems (for example the ongoing electrical problems that have been caused by the trees planted outside of the boundary of the erf.) That would be the closest that could be achieved to a win-win solution.

Yours sincerely,

Jr C A Simonsz

FILE NO:	338
	Rooiels ✓
SCAN NO:	Simonsz
COLLABORATOR NO:	1577241

TP

30 AUG 2021

Municipal Manager  
Overstrand Municipality

loretta@overstrand.gov.za



TP. N. (Hood)  
(H. ud Stoep)

E Brink  
PO Box 12772  
Mill Street  
Cape Town  
8010  
Cell  
26 August 2021

ERF 338 HOTEL CRESCENT ROOIELS: OBJECTION AGAINST THE APPLICATION FOR DEPARTURE FROM THE 2,1M BOUNDARY WALLS HEIGHT RESTRICTION

**EXECUTIVE SUMMARY**

I submit that the OM Land Use Scheme allows departure of the 2,1 m boundary wall height with prior permission only, not after the wall had already been built.

I also submit that the Rooiels Heritage Protection Overlay Zone adds an additional constraint by expressly forbidding permission for a departure from the 2,1 m boundary wall height.

**MY INTEREST IN THE APPLICATION**

I am the owner of erf 237 Rooiels.

I have a legitimate expectation that the laws of the Overstrand Municipality will be complied with, especially the recently promulgated Rooiels Heritage Protection Overlay Zone regulation ("Rooiels HPOZ").

**MY MOTIVATION IS AS FOLLOWS:**

1. The OVERSTRAND MUNICIPALITY BY-LAW ON MUNICIPAL LAND USE PLANNING, 2020 reads as follows:

"20. Departures

(1) An applicant may apply as contemplated in Section 16(2) —

(a) for a departure from the development parameters of a zoning or an overlay zone;"

2. The OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2020 reads as follows:

" CHAPTER 16: GENERAL PROVISIONS APPLICABLE TO ALL ZONES

FILE NO:	ERF 338 ✓
	Rooiels
SCAN NO:	KRE 338
COLLABORATOR NO:	1517874

TP 31 AUG 2021

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

General encroachments permitted

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

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

3. BUT THEN THE DEPARTURES IN RESPECT OF THE DEVELOPMENT PARAMETERS OF BOUNDARY WALLS ARE SPECIFICALLY RESTRICTED TO **PRIOR CONSENT ONLY**.

The OVERSTRAND MUNICIPALITY LAND USE SCHEME, 2020 reads as follows:

“16.6 BOUNDARY WALLS

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

16.6.2 Only electric fencing will be allowed above the 2,1 m height restriction, subject to a maximum height of 0,5 m.”

4. My submission is this:

Insofar as a departure from development parameter are in general allowed, a departure specifically from the height of boundary walls is only allowed with prior permission. It cannot be allowed ex post facto.

**A departure, although it can be applied for and approved by the MPT, cannot be approved contrary to the law as formulated for allowing the specific departure.**

**The MPT cannot depart from the law itself, only from a development parameter.**

**Such is the present case of the prior illegally built boundary walls.**

5.1 The ROOIELS HERITAGE PROTECTION OVERLAY ZONE ("ROOIELS HPOZ") goes even further than the above prior consent requirement, in **expressly forbidding departure consent of a higher wall:**

“ 12.8 Boundary treatment

12.8.1 **No** solid, visually impermeable boundary treatments above 2,1 m **will be permitted.”** (My emphasis on no permission).

5.2 The OVERSTRAND MUNICIPALITY HERITAGE PROTECTION OVERLAY ZONE REGULATIONS

(ANNEXURE C: HPOZ) in par 5, emphasise that an additional constraint, such as forbidding a wall height departure, may be set, when it reads:

"5. It should be noted that while the Municipality will make its own decisions in respect of proposed development inside the identified HPOZ's under the Overstrand Municipality By-Law on Municipal Land Use Planning, 2020, **it will be further constrained by these regulations** (my emphasis)."

#### 6. REQUEST

I request that:

6.1 the application for departure from the wall height restriction please be refused on the basis, both of the land use scheme regulations **and** on the basis of the ROOIELS HPOZ overlay regulations, and;

6.2 that the applicant be required to rectify the heights of the boundary walls to 2,1 m.

Yours faithfully,

E Brink



TOWN & REGIONAL PLANNERS  
STADS-EN STREEKSBEPLANNERS

6 Magnolia St / Str  
PO Box / Posbus 296  
HERMANUS  
7200  
Tel: (028) 313 1673  
Fax / Faks: (028) 312 1351  
Email:  
[planactive@hermanus.co.za](mailto:planactive@hermanus.co.za)  
za  
Website:  
[www.planactive.co.za](http://www.planactive.co.za)

Our reference: PA20051/JML  
Your reference: 726 KPRB  
Application ID: 3898/2021

23 April 2024

TP. n. Theak  
(H. ud Stoep)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
24 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

THE MUNICIPAL MANAGER  
OVERSTRAND MUNICIPALITY  
P.O. BOX 20  
HERMANUS  
7200

FILE NO. ERF 338 ✓
Rooi Els
SCAN NO.
KRE 338
COLLABORATOR NO.
2036234

FOR ATTENTION: MRS H VAN DER STOEP

Sir

**PROPOSED DETERMINATION OF AN ADMINISTRATIVE PENALTY, REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION AND DEPARTURES: ERF 338 ROOI ELS**

- HMMM BELEGGINGS TRUST

Reference is made to our application dated 22 February 2022 and your letter with objections attached thereto dated 28 September 2023.

Three (3) objections were received as the result of the public participation process.

The details of the objectors are:

1. F. Waddell
2. Friends of Rooi Els (FOR)
3. Rooiels Ratepayers Association

PP

24 APR 2024

Herewith a summary of the objections received and our response to the objections. Our response will attempt to further motivate that the application is desirable in terms of Section 66 of the Overstrand Municipality's Bylaw on Municipal Land Use Planning:

- ***Mrs. F. Wadell indicated that she did not receive a notice via the post and questions whether other interested and affected parties were notified correctly. (The onsite notice displayed however provided the information required.) FOR also questions if proper notice was given for the application for the removal of the restrictive title deed condition as a notice should have been given to all erf owners of Rooiels.***

The notice reference number sent to Mrs Waddell is: RI358125988ZA, dated 20 July 2023, sent from Betty's Bay Post Office, being the only operational Post Office in the area at the time.

Two hundred and ninety two (292) Registered Postal Notices were sent to the relevant property owners, as per the list provided by the Overstrand Municipality.

- ***The objectors are referring to two previous applications submitted for the same property.***

In 2017, a town planning consultant submitted an application which addressed some encroachments, but it was withdrawn during the planning process due to insufficient detailed information.

Following additional surveys and the provision of as-built building plans by architect Mr. Pieter Wasserman, a second application was submitted. It was discovered that the boundary walls exceeded the permissible height of 2.1m. Additionally, the height of the open terrace and suspended concrete slab surpassed 1m above ground level within the relevant Zoning Scheme and Title Deed building lines.

On the western side of the property, a planter box within a small courtyard was constructed above the permissible height of 1m above ground level, violating Zoning Scheme and Title Deed regulations. Furthermore, three water tanks placed between existing structures and the property

boundary on the western side exceeded the prescribed height limit of 2.1m, as outlined in Chapter 16, Section 16.1.1(a)(xii) of the zoning scheme regulations.

Upon submission of the second application, it was stated that addressing the Title Deed building lines was unnecessary, as a prior application in 2015 had been made to resolve the issue.

It's important to note that the garage on the subject property was initially positioned on the boundary line, with approval granted accordingly on the building plan. Discussions with the municipality during the second application process indicated that the Title Deed Building lines had been accounted for during a boundary re-alignment application between Erf 338 and 397 Rooi Els.

Upon obtaining a copy of the relevant Government Gazette notice to confirm the removal of restrictions, it was discovered that the removal pertained only to Erf 397 Rooi Els, the adjacent property. Consequently, the third application also includes provisions for removing a restrictive Title Deed condition related to the specified Title Deed building lines.

- ***An Administrative Penalty should be imposed to its maximum extent to deter others following the same trend and the offender should not be allowed to escape punishment as remedial demolition is not an option at this stage. The applicant deliberately constructed the suspended concrete slab after the building plan was approved and the slab should not be approved. The abuse of process to allow the levying of an administrative penalty to legalize substantial and wilful contraventions.***

On February 17, 2023, a site meeting convened with Ms. Hanneen van der Stoep (OM Town Planning Department), the owner, and Mr. Sherwin Rossouw (OM Building Control Office), who served as the building inspector during the construction of the dwelling on Erf 338 Rooi Els.

During this meeting, Mr. Sherwin Rossouw recalled that during the approval process of the building plan, it was advised to elevate the dwelling above ground level as a precaution against potential flooding, given the topography of the site.

Given that the property is located in a natural depression significantly lower than the street level, the dwelling was built on a suspended slab to mitigate flood risks during heavy rainstorms. This

recommendation, as noted by the building inspector, emerged during discussions on the building plan approval process before construction commenced. Consequently, the building contractor adhered to this recommendation by raising the dwelling accordingly.

- ***The application item with reference to the wall height encroachment refers: -The concern by the objector is that the foundation will most likely not be able to withstand a wall which is 2,07m and 3,95m in height, depending where the wall is measured. An engineering certificate which confirms that the foundation can take the additional load was not submitted. If an engineering certificate can be produced the concerns would be eased. The boundary wall between erven 337 and 338 should be demolished to 2.1m from the level as prescribed by the Overstrand Municipality.***

The height of the boundary walls is a direct result of the dwelling's construction atop a suspended concrete slab. This choice was made due to the property's location in a natural depression well below street level, aimed at preventing flooding during heavy rainstorms. As previously noted, this aspect was discussed during the building plan approval process, with confirmation from the building inspector.

These boundary walls serve to provide privacy for both the property owner and neighbouring properties. While they appear to be of appropriate height from within the house, they may seem taller from the neighbouring side. It's important to reiterate that the elevated walls primarily stem from the dwelling's placement on a suspended slab, a precautionary measure against flooding given the property's lower elevation.

In general, stormwater runoff flows over dirt roads, and during intense rain, it often spills into lower-lying properties, causing flooding. The photographs indicate excavation work on the property during construction, which lowered the natural ground level. However, when the dwelling was raised, it was done from below this altered ground level. Consequently, the structures may appear taller than they actually are due to the excavations from neighbouring properties.

As previously mentioned during discussions with the building inspector, concerns regarding flooding prompted the recommendation to elevate the dwelling as a precautionary measure, reflecting the topography of the area.



The disparity in height between the natural ground level and the suspended concrete slab ranges from 1.156m to 1.5m along the eastern and western building lines.

According to Section 16.6.1(a)(ii), structures lower than 1m above the natural ground level may be erected over the prescribed building lines as infill. However, the suspended concrete slab exceeds this threshold within the prescribed building lines, necessitating the addressing of encroachments.

The boundary walls adhere to the National Building Regulations and Buildings Act, 1977 (Act No. 103 of 1977). A certificate of completion for the structural and fire protection systems, was issued by TN Consulting (Tielman Nieuwoudt) in accordance with Section 14(2A) of the Act, confirms that the walls do not pose any risk to the subject property or neighbouring properties.

As previously mentioned, the elevated boundary walls were erected to ensure privacy relative to the floor level of the existing single-story dwelling, which sits above the natural ground level. While these walls may appear taller when viewed from neighbouring properties, they are perceived as standard when observed from within the dwelling on Erf 338 Rooi Els.

Constructing the boundary walls within the 2.1m height restriction would have compromised both the owner's and neighbour's privacy. Additionally, it would have left the courtyard and planter exposed. Presently, the courtyard and planter serve as a privacy buffer between the bedroom and bathroom, which feature large windows facing westward on the western side of the property.

- ***Breather vent valve was installed on the objectors side of the boundary wall and protrudes more than 110mm from the boundary wall. The vent is not indicated on the plan and application. The objector claims that there might be an illegal sewage connection behind the wall. The breather pipe should be removed and relocated as it is an eyesore.***

The breather pipe is situated within the boundary lines of Erf 338 Rooi Els. The allegation of an illegal sewage connection is not based on any proof furnished by the objector.

- ***High walls impact the safety of neighbourhoods adversely as homes are not visible to neighbours.***

As depicted in the accompanying photographs, while the height of the boundary wall may not appear excessive from within the subject property, it surpasses the maximum allowable height for boundary walls, which is 2.1m. Despite this, it remains compliant with safety regulations, as previously noted. A compliance certificate has been issued for the boundary walls erected on the subject property, affirming their safety.

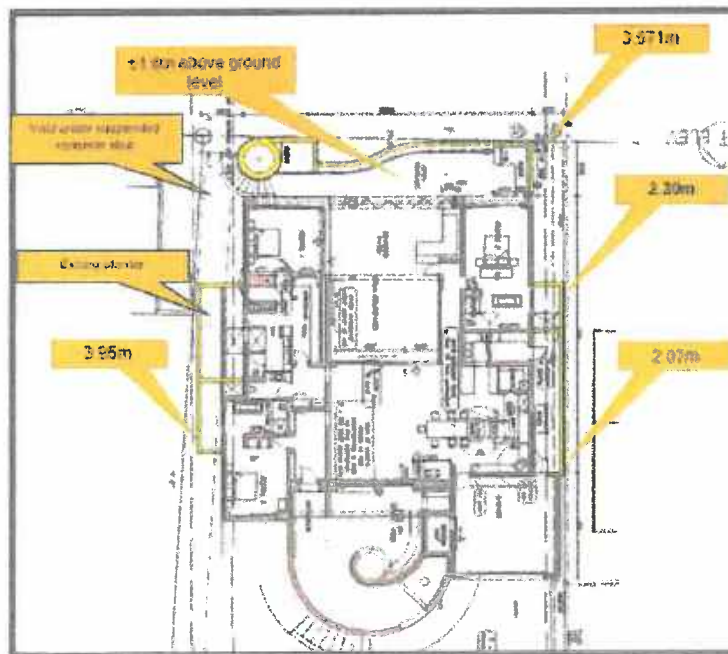
The constructed height of these walls serves to enhance privacy and security for both the owner of the subject property and neighbouring property owners.



It's important to emphasize that the primary reason for the heightened walls is the presence of the suspended slab beneath the dwelling, implemented as a preventive measure against potential flooding due to the property's lower elevation. The decision to elevate the dwelling was specifically taken as a precautionary measure to mitigate the risk of flooding.

In general, stormwater tends to accumulate on dirt roads during heavy rainfall, often resulting in overflow onto lower-lying properties in the vicinity, thereby causing flooding.

Additionally, it's worth noting that the boundary walls surrounding the subject property are not uniform in height. They range in height from approximately 2.07m to 3.95m along the property boundaries. The detail of the encroachments of the boundary walls and open terrace can be seen in the illustration below:



Excavations were conducted on the subject property during the construction phase, resulting in a lowering of the natural ground level at that time. However, when the dwelling was raised, it was elevated from a point below the original natural ground level. Consequently, the structures may appear taller than they truly are due to the excavations carried out on neighbouring properties.

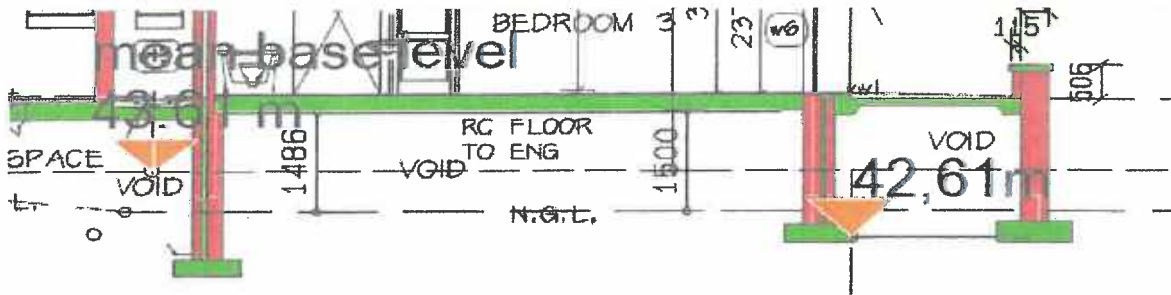
As previously mentioned, during discussions with the building inspector regarding the building plan, concerns arose regarding potential flooding due to the topography of the area. Hence, it was strongly recommended that the dwelling be raised as a precautionary measure.

The height between the natural ground level and the suspended concrete slab varies between 1.156m and 1.5m within the eastern and western building lines. The suspended concrete slab is therefore higher than 1m above the ground level within the prescribed building lines and thus the encroachments must be addressed.

#### Eastern elevation



#### Western elevation

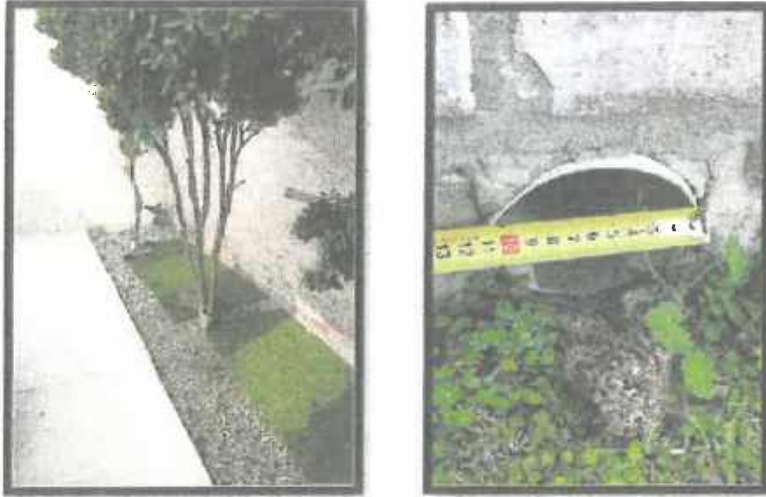


- **Two 110mm water outlets were constructed in the boundary wall which channels stormwater water from Erf 338 onto Erf 337 Rooi Els. Erf 337 Rooi Els is subject to frequent flooding and interferes with the occupation and use of the property.**

**No property owner should accept water from another property situated in an elevated state and the water should be channelled to the street and by implication the applicant should channel the water directly from the property to Hotel Crescent. Compensation for damage caused by storm water channelled onto Erf 337 from the property of the applicant could be sought. It is requested that the water pipes be sealed to ensure that less water is being discharged onto Erf 337. A storm water management assessment and management plan should be implemented to direct all stormwater from erf 338 Rooi Els to the lowest point.**

There is a planter situated within the western lateral boundary scheme building line and Title Deed building line of the subject property which is part of a small low maintenance courtyard.

Due to the fact that the boundary wall on the western side of the property is not parallel to the actual boundary the 2 above mentioned 110mm pipes exit onto Erf 338 Rooi Els and not onto Erf 337 Rooi Els as it seems. Please refer to the photographs below depicting the small courtyard with the garden and the one of the 110mm pipes exiting the wall, which is situated within the property boundary.



The existing planter features a low-maintenance garden with artificial grass. Two 110mm planter drainage pipes extend from beneath the planter, passing through the boundary wall toward the neighbouring property. It's worth noting that despite this drainage, water still exits the pipes onto Erf 338 Rooi Els. Given that the planter is designed to be waterwise, the outflow of water through these pipes is minimal. These pipes are not intended for stormwater runoff or for transferring water from the dwelling's roof, and they can be closed off if necessary.

As depicted in the photograph below, the untarred roads in the vicinity of erven 337 and 338 Rooi Els lack kerbs, and these roads serve as natural channels for stormwater during heavy rains. The absence of adequate road infrastructure means that stormwater cannot be contained, leading to runoff into lower-lying residential properties like erven 337 and 338 Rooi Els, resulting in flooding.

This is the underlying reason for the suggestions received during the building plan submission process, advocating for the dwelling proposed on Erf 338 Rooi Els to be elevated using a suspended concrete slab to mitigate the potential risk of future flooding.



As previously discussed in this report, the construction of the dwelling on the subject property was carried out on a suspended concrete slab, a measure taken to mitigate the risk of flooding given the property's location within a natural depression significantly below road level. The blue arrows depicted in the photograph above illustrate the direction of stormwater runoff during periods of heavy rainfall.

Additionally, strategically positioned water tanks on Erf 338 Rooi Els have a substantial capacity, holding approximately 40,000 liters of rainwater. Without these tanks in place, there is a potential for exacerbating stormwater issues for neighbouring properties.

- ***The height of the water tanks is not indicated on the application plan. The departure for the water tanks should not be approved and legalised with a penalty payment, the tanks should be demolished.***

The water tanks 3.15m and 4.27m respectively, are positioned on the western side of the subject property. As depicted in the accompanying photographs, they are minimally visible from the neighbouring Erf 337 Rooi Els, largely obscured by natural vegetation established on that property. To obtain a clear view of the water tanks, one would need to approach the common boundary between Erven 337 and 338 Rooi Els, beyond the natural vegetation.

Consequently, the water tanks do not have any noticeable impact on the neighbouring property, Erf 337 Rooi Els.

Within the boundaries of the subject property, the water tanks serve as collection points for rainwater runoff from the roofs of all structures on Erf 338 Rooi Els. The stored water is utilized for household and irrigation purposes.

The collection of rainwater in the water tanks situated on Erf 338 Rooi Els has significant advantages for neighbouring properties. By capturing runoff water from the various structures on the property, including roofs and paved surfaces, these tanks play a crucial role in mitigating stormwater discharge onto surrounding areas.

Erf 337 Rooi Els, being a neighbouring property, benefits directly from this rainwater collection system. By intercepting and storing rainwater that would otherwise flow freely, the tanks prevent excess stormwater from inundating Erf 337 and potentially causing flooding. This is particularly crucial in areas prone to heavy rainfall or where natural drainage systems are inadequate.

Furthermore, the function of the water tanks parallels that of a retention pond, albeit on a smaller scale. Like a retention pond, they act as reservoirs, temporarily holding rainwater and gradually releasing it over time. This controlled release helps to regulate the flow of stormwater, reducing the risk of sudden inundation and erosion downstream.

Given these benefits, the presence of the water tanks is essential for managing stormwater and protecting neighbouring properties from potential flood damage. Removing them would disrupt this effective drainage system and increase the risk of flooding for Erf 337 Rooi Els and other nearby properties situated in lower-lying areas. Therefore, preserving the water tanks is not only beneficial but also necessary for maintaining effective stormwater management and preventing flood-related issues.



- ***Unauthorised building work that encroaches the building line to be demolished and that the title deed restriction not be removed completely as demolition will result that only an amendment of the restriction would be required for a deviation along the one boundary only for a described distance only, whilst retaining the restriction intact for the rest of the boundaries.***

Demolishing all the building work encroaching the building lines is not a feasible option, as it would necessitate the demolition of the entire extent of the dwelling situated on the suspended concrete slab. The extension of the concrete slab over the building lines was a deliberate decision made to

address safety concerns. Aligning the suspended building slab with the house position would have resulted in a significant drop between the ground level and the level of the house, posing safety risks due to the void underneath the concrete slab.

The height difference between the natural ground level and the suspended concrete slab ranges from 1.156m to 1.5m within the eastern and western building lines, as previously illustrated. Therefore, removing the title deed restriction is necessary to address the encroachment of existing features on the rear, western, and eastern building lines. It's important to note that amending the restriction on only one boundary for a specific distance would not be sufficient, as the encroachment extends across multiple boundaries and removing the restriction in its entirety is the appropriate course of action.

- ***The Rooiels Heritage Protection Overlay Zone prohibits the departure of wall heights above 2.1m***

The perception of the neighbouring landowner regarding the height of the boundary walls underscores their importance in providing privacy and security. This is particularly relevant given that neighbouring structures are situated at a significantly lower level than the dwelling on Erf 338 Rooi Els. Additionally, the street boundary wall aligns with the Heritage Protection Overlay Zoning Regulations, 2020, ensuring compliance with relevant regulations.

Furthermore, it's crucial to acknowledge that the boundary walls exceeding the 2.1m height restriction were constructed prior to the implementation of the Heritage Protection Overlay Zone regulations. This historical context underscores the need to consider the circumstances surrounding the construction of these walls.

Ultimately, the proposed departures from zoning regulations are primarily driven by the topography of the site. Constructing the dwelling on a suspended slab was deemed necessary to mitigate the risk of flooding, emphasizing the pragmatic approach taken to address site-specific challenges and ensure the safety and stability of the property.

- ***FOR request that no departures be allowed and no administrative levy be imposed***

Rejecting the request by Friends of Rooiels to disallow any departure and waive administrative levies do not provide a viable solution to the current circumstances. The decision to encroach upon the building lines was not arbitrary but rather a strategic response to the need to construct the dwelling on a suspended concrete slab. This measure was undertaken to prevent potential flooding damage, given the property's location within a natural depression significantly below road level. Therefore, it is essential to consider the practical necessity behind the encroachment and to seek a resolution that addresses the underlying challenges while ensuring compliance with relevant regulations. Simply refusing departures and levying administrative fees without addressing the root cause of the encroachment would not effectively resolve the situation at hand.

The encroachment issues came to the owner's attention for the first time during the submission of an application to the Overstrand Municipality for an occupation certificate. This occurred as the owner had entrusted the building project to a team of professional consultants. This implies that the owner relied on these consultants to manage the various aspects of the project, including compliance with regulations.

- ***FOR concerned that certain special title deed conditions have not been complied with by the owner of Erf 338 Rooiels.***

No comments can be made as no details pertaining to the title deed conditions that have not been complied with has been furnished.

- ***Demolition is requested by FOR for the infill of the open terrace within the building line, boundary walls, suspended concrete slab, the planter in the small courtyard and the water tanks. According to the FOR the cost of removal of the unauthorised building work that encroach the building lines would not be disproportionate to the benefit derived from the removal as per the judges opinion as quoted in the case between BSB International Link CC v Readam South Africa (Pty) Ltd.***

Demolishing all the building work encroaching the building lines, including the suspended concrete slab, is not a feasible option due to the extensive nature of the demolition required. Aligning the suspended building slab with the house position would result in a significant drop between the ground level and the level of the house, posing safety risks due to the void underneath the concrete slab. The variation in height between the natural ground level and the suspended concrete slab further underscores the impracticality of such a solution.

The water tanks situated within the boundaries of the subject property play a crucial role in collecting rainwater from the roofs of all structures on Erf 338 Rooi Els. This collected rainwater serves household and irrigation purposes and has a positive impact on neighbouring properties by reducing additional stormwater discharge onto Erf 337 Rooi Els and potentially adjacent lower-lying properties. The function of the water tanks resembles that of a retention pond, making their demolition unwarranted.

Similarly, the existing planter within the western building line, despite being higher than 1m above natural ground level, serves a beneficial purpose and has no adverse impact on neighbouring properties. The planter forms part of a waterwise courtyard and contributes to the aesthetic appeal and environmental sustainability of the property. Given these considerations, there is no valid reason for the demolition of the planter.

In summary, the proposed demolitions would not only be impractical but also unnecessary, as the existing features on the property serve important functions and do not pose any harm to neighbouring properties.

We trust that you find the above in order and that you will now be able to proceed with the processing of the application.

Yours faithfully



**J Mc Lachlan**  
**PLAN ACTIVE**

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED  
CONDITIONS, DEPARTURE & DETERMINATION OF ADMINISTRATIVE  
PENALTY, ERF 338, ROOIELS (3898/2021)**

Electricity	:	Eskom Area
Water	:	Refer to conditions
Sewer	:	Refer to conditions
Stormwater	:	Refer to conditions
Roads and traffic	:	Refer to conditions

**Conditions:**

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of *SANS 10400 – P: 2010: Drainage*;
3. that, should any upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Area Manager: Kleinmond for written approval;
4. that any additional and / or extended vehicle entrances will be for the owner's account;
5. that no reservation of on-street parking be allowed.
6. that stormwater discharged from higher lying properties and generated in the catchment area of the property be allowed to drain freely through the property;
7. that stormwater reticulation and connection(s) to the municipal system be provided at the owners cost, if required.

  
DENNIS HENDRIKS  
SENIOR MANAGER:  
ENGINEERING SERVICES

  
DATE

**Survey Notes:**  
 1. Original Survey was done in November 2014  
 2. Contours represents natural ground level, and was taken before construction  
 3. New walls were surveyed in August 2017  
 4. Building footprint were surveyed in October 2020

**Height restriction calculation**

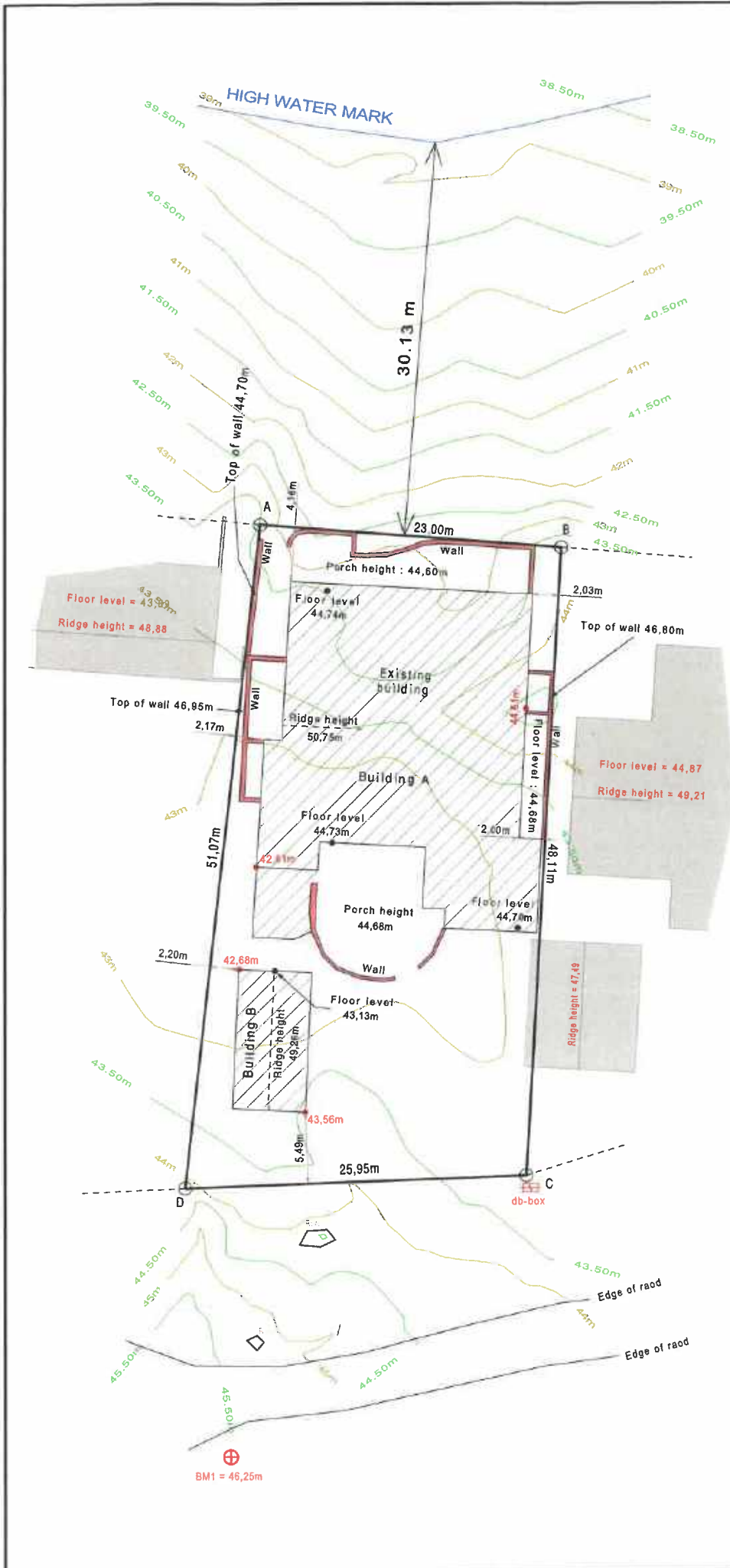
**Building A**



Lowest point of house : 42,61m  
 Highest point of house : 44,61m  
 Baseline : 43,61m  
 + allowable building height : 8,00m  
 Building height restriction : 51,61m

**Height restriction calculation**

**Building B**

Lowest point of house : 42,68m  
 Highest point of house : 43,56m  
 Baseline : 43,12m  
 + allowable building height : 8,00m  
 Building height restriction : 51,12m



Beacon Certificate: Beacon Description: A,B,C,D ... 12mm Iron peg	
Benchmark Description: BM1 ... 12mm Iron peg	
<b>VAN DYK &amp; ASS. inc.</b>	
	P.O.Box 2025 HERMANUS 7200 SOUTH AFRICA TEL. (028) 313 0077 E-MAIL : info@vandyksurvey.co.za
Stelsel: System:	WGS84 / Lo 19
Hoogte Stelsel: Height System:	Local
Skaal: Scale:	1 : 300
Datum: Date:	See Survey notes
Klient: Client:	Marita Muller
	
L A van Dyk PLS 1069 Professional Land Surveyor	
Projek Titel: Project Title:	ERF 338 ROOI ELS
Titel: Title: <b>TOPOGRAPHICAL / BUILDING FOOTPRINT SURVEY</b>	
Tekening Nummer: Drawing Number:	V20436
Geteken deur: Drawn by:	DJP
Vel Sheet	1 van of 1
Hers: Rev:	

PROVINSIALE ADMINISTRASIE  
VAN DIE KAAP DIE GOEIE HOOP  
DEPARTEMENT VAN PLAASLIKE BESTUUR

PROVINSIALE GEBOU, WAALSTRAAT, KAAPSTAD  
POSADRES: PRIVAATSAK X 9083, KAAPSTAD 8000

400



TELEGRAMADRES:  
TELEGRAPHIC ADDRESS:  
"PROVADMIN"

Annexure I 1/16  
PROVINCIAL ADMINISTRATION AF 17/1/2  
OF THE CAPE OF GOOD HOPE

DEPARTMENT OF LOCAL GOVERNMENT

PROVINCIAL BUILDING, WALE STREET, CAPE TOWN  
POSTAL ADDRESS: PRIVATE BAG X 9083, CAPE TOWN 8000

REGISTERED MAIL

Messrs H.W. Shaws, Robinson & Co  
P.O. Box 1476  
Cape Town  
8000

NAVRAE  
ENQUIRIES

TELEFOON  
TELEPHONE 45-9314

VERWYSING  
REFERENCE

AF 17/1/21/4

Sir/Sirs/Madam

REMOVAL OF RESTRICTIONS ACT, 1967 : *af 87, Rovi Els, baledon Division*

1. Your *CC/LS/3309 a* dated *8/3/83*
2. The relevant conditions have now been removed by Proclamation No. *72* of *1983* of which two copies are enclosed for your information.
3. Deed of Transfer/~~Certificate of Consolidated Title~~ No. *53982* of *1981* duly endorsed by the Registrar of Deeds, is returned herewith.

Yours faithfully

DIRECTOR OF LOCAL GOVERNMENT

Endorsements

- (1) THE ~~TOWN CLERK~~, *Secretary, Divisional Council, P.O. Box 5, baledon 7230*

Your *T/3/2/6* dated *25/10/82*

Two copies of the Proclamation are attached.

for DIRECTOR OF LOCAL GOVERNMENT

- (2) FILE AF. *17/1/21*
- (3) THE SURVEYOR-GENERAL, PRIVATE BAG 9028, CAPE TOWN 8000  
Your reference S/—

(1 Copy of the  
Proclamation)  
B.919/1/4/7

25 March 1983

The Province of the Cape of Good Hope Official Gazette

4260

471

No. 72, 1983

**CALEDON DIVISION: REMOVAL OF RESTRICTIONS**

Under section 2 (1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), and on application by the owners of Erf 87, Rooi Els, Caledon Division, and with the approval of the Minister of Community Development, I declare that conditions F.4 (a) and (b) in Deed of Transfer 53982 of 1981 are hereby removed.

Dated at Cape Town this 23rd day of March 1983.

**E. LOUW, ADMINISTRATOR**

No. 72, 1983

**AFDELING CALEDON: OPHEFFING VAN BEPERKINGS**

Kragtens artikel 2 (1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaars van Erf 87, Rooi Els, Afdeling Caledon, en met die goedkeuring van die Minister van Gemeenskapsontwikkeling, verklaar ek dat voorwaardes F.4 (a) en (b) in Transportakte 53982 van 1981 hierby opgehef word.

Gedateer te Kaapstad op hede die 23ste dag van Maart 1983.

**E. LOUW, ADMINISTRATEUR**



VERGADERING VAN UITVOERENDE KOMITEE  
EXECUTIVE COMMITTEE MEETING

10 DEC 1982

1705

MINUTE NO. / 1982

REMOVAL OF RESTRICTIONS ACT, 1967: ERF 87, ROOI ELS, CALEDON DIVISION

(AF.17/1/21/4

Local Government Department  
(Removals Section))

RESOLVED that a proclamation be issued with the approval of the Minister of Community Development whereby certain restrictive condition of title of the above-mentioned property be expunged to enable it to be subdivided into 4 portions and to change the use thereof from hotel to single residential purposes provided that -

- (1) development is restricted to single-storeyed buildings, and
- (2) the average floor level not to be more than 0,5 m above natural ground level.

  
 KLERK VAN DIE UITVOERENDE KOMITEE  
 CLERK TO THE EXECUTIVE COMMITTEE



DJD/RS

E.47



AF-17/1/21/CI. 4/16

# AFDELINGSRAAD VAN CALEDON DIVISIONAL COUNCIL OF CALEDON

TELEPHONE }  
TELEPHONES } 21120/1/2/3/4

NAVRAE  
ENQUIRIES Mr De Waal

POSBUS }  
P.O. BOX } 5

Alle korrespondensie moet aan  
die Sekretaris gerig word  
All communications must be  
addressed to the Secretary

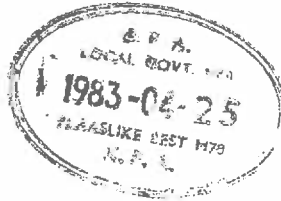
VERWYS NA NR.  
IN REPLY QUOTE NO.

T/3/2/6

KERKSTRAAT  
CHURCH STREET  
CALEDON  
7230

1983-04-21

The Director of Local Government  
Private Bag X9083  
CAPE TOWN  
8000



Sir

ROOI ELS : ERF 87 : SUBDIVISION

An application has been received from messrs H M Shaw, Robinson & Case on behalf of E S Ratcliffe, D P A Briers-Danks and T E Loftus for subdividing erf 87.

The subdivision of the said erf was approved by Council on 15/4/81 on the same conditions as proposed by the Rooi Els local area representatives.

Please refer to Council's letters T/3/2/6/ of 9/9/81 and 25/10/82, copies of which are included for your convenience.

A copy of Mrs Mouton's letter, which contains the conditions the ratepayers wish to have imposed, is also included.

The subdivision form and 8 plans are attached.

Thanking you.

Yours faithfully

*C Hancke*

C HANCKE  
ACTING SECRETARY

HWdW/ms

*Loft*

*free*

Stipulation to be incorporated into title deeds of each and every erf of original Hotel site. The following clear restrictions

- A) All the restrictions imposed on existing residential erve of Rowels.
- B) No prefabricated buildings whatsoever nor any wooden buildings of any type whatsoever.
- C) No double storied buildings. If split-level design only one extra level to be allowed not exceeding 0.5 ~~one~~ meters above normal flow level. Normal flow level not to exceed 0.5 meters ~~from~~ above the ground level taken at the lowest point on the erf exactly where house is to be constructed before levelling for construction.
- D) The corner of any building may not be further away from the erf boundary on Hotel CRESCENT than 2.25 meters.
- E) The ecology of the erf abutting on the seafront must not be disturbed in any way such as levelling of hills or cleared nor the removal of the natural indigenous growth.

In the above connection I also refer you to a letter to Div Council Calcutta during beginning 1982 from M/s.

P.G. van Rhyne and accepted  
 by Council at their meeting when  
 request was tabled by developers  
 for subdivision of this Hotel  
 site. This letter contains very  
 much the same conditions  
 as I have requested that must  
 be strictly imposed for my  
 permission to be granted for  
 this subdivision.

As this requested subdivision  
 is for financial gain I accept  
 that a betterment fee of at least  
 7 1/2% per cent will be levied on  
 the sellers for the benefit of  
 the whole of Rooi Let's Township.

H.A. Wouton.

Mrs. H.A. Wouton.

## Endorsements

✓ (2) THE SECRETARY, DIVISIONAL COUNCIL, P.O. BOX 5, CALEDON 7230 (7.3/2/6)

With reference to the building clause referred to in the Third Annexure, your Council is required to take steps to ensure that when rates clearance certificates are given for any of the deducted portions, the transferee or his agent be specifically advised of the existence of this condition in order to protect his/her interests.

DIRECTOR OF LOCAL GOVERNMENT

*[Handwritten signature]*

PROVINSIALE ADMINISTRASIE  
VAN DIE KAAP DIE GOEIE HOOP

+  
DEPART. ENT VAN PLAASLIKE BESTUUR

PROVINSIALE GEBOU, WAALSTRAAT,  
PRIVAATSAK X-9083, KAAPSTAD 8000



PROVINCIAL ADMINISTRATION  
OF THE CAPE OF GOOD HOPE

DEPARTMENT OF LOCAL GOVERNMENT

PROVINCIAL BUILDING, WALE STREET,  
PRIVATE BAG X.9083, CAPE TOWN 8000

┌ Messrs H.M. Shaw, Robinson & Case ┐  
└ Land Surveyors ┘  
501-505 Gannor House  
127 Plein Street  
CAPE TOWN  
8000

TELEKS 5722368  
TELEX  
TELEGRAM PROVADMIN  
TELEFOON 45-9315  
TELEPHONE  
NAVRAE Mr. Van der Merwe  
ENQUIRIES  
VERWYSING AF 17/1/21/C1  
REFERENCE  
DATUM  
DATE

~~Sir~~/Sirs

SUBDIVISION OF *ERF 87, ROOD ELS*

1. Your application — dated *12 April 1983.*
2. Attached are two copies of the subdivisional plan, on which the Administrator's approval has been endorsed as well as two copies of the conditions imposed.
3. The endowment referred to in the second annexure is payable on *the first two portions to be deducted.*
4. Attached is a copy of the local authority's requirements dated *11 May 1981.*

Yours faithfully

*[Signature]* DIRECTOR: LOCAL GOVERNMENT

Endorsements - *Cont. - see attached*

- ✓ (1) THE SURVEYOR-GENERAL, PRIVATE BAG 9028, CAPE TOWN 8000
- ✓ (1) THE TOWN CLERK,
- ✓ (1) THE SECRETARY, DIVISIONAL COUNCIL

ANNEXURE

SUBDIVISION APPROVED IN TERMS OF SECTION 9 OF ORDINANCE NO. 33 OF 1934, SUBJECT TO THE CONDITIONS SPECIFIED HEREUNDER, AND IN THE SECOND, ~~AND THIRD~~ ~~FOURTH, FIFTH, SIXTH, SEVENTH AND EIGHTH~~ ANNEXURES AND PROVIDED THAT IN THE EVENT OF THE PROPERTY BEING SUBJECT TO THE PROVISIONS OF A TOWN PLANNING SCHEME AND THE PROPOSAL IS IN CONFLICT THEREWITH, THIS APPROVAL SHALL NOT BE ACTED UPON UNTIL THE NECESSARY AMENDMENT IN TERMS OF SECTION 35 BIS OF ORDINANCE NO. 33 OF 1934 HAS BEEN GRANTED WHERE SUCH AMENDMENT IS CONSIDERED NECESSARY BY THE LOCAL AUTHORITY: AND PROVIDED FURTHER THAT -

1. *development be restricted to single-storied buildings; and*
  2. *the average floor level not be more than 0,5 m above ground level.*
- 
- 
- 

1. No deducted portion shall be transferred, separately registered or built upon until the local authority has certified that -
  - 1.1 all abutting streets have been constructed to gravel standards to its satisfaction to give vehicular access to such portion, and the Remainder. Where circumstances such as the gradient etc. require it, the Council may require such additional protection of the carriage way or alternative covering as it considers necessary. No road certificate issued by the local authority shall be valid for a period in excess of 12 months from the date of issue thereof.
  - 1.2 satisfactory arrangements have been made for the provision of services (as well as electricity). The local authority should be consulted for further particulars.
2. ~~Temporary servitude access to be registered in favour of por-~~  
~~tion(s)~~  
 until such time as public access thereto has been provided, the position of the ~~servitude~~ to be indicated on the servient property.
3. This approval cannot be acted on until any registered condition prohibiting subdivision has been expunged and no conditions other than those specified in the succeeding paragraph ~~and in the Fourth Annexure~~ may be registered against any portion of the subdivision.

4. / ...

B.386/11/80

4. The following conditions are to be inserted as conditions of title against every deducted portion and the remainder unless they or similar conditions are already registered against the parent property(ies):-
- 4.1 The owner of this erf shall without compensation, be obliged to allow gas mains, electricity, telephone and television cables and/or wires and main and/or other waterpipes and the sewage and drainage, including stormwater of any other erf or erven to be conveyed across this erf, and surface installations such as mini-substations, meter kiosks and service pillars to be installed thereon, if deemed necessary by the local authority and in such manner and position as may from time to time be reasonably required. This shall include the right of access to the erf at any reasonable time for the purpose of constructing, altering, removing or inspecting any works connected with the above.
- 4.2 The owner of this erf shall be obliged, without compensation, to receive such material or permit such excavation on the erf, as may be required to allow use of the full width of the street and provide a safe and proper slope to its bank owing to difference between the levels of the street as finally constructed and the erf, unless he elects to build retaining walls to the satisfaction of and within a period to be determined by the local authority.

#### NOTES

1. The Surveyor-General, will, when approving the diagrams, indicate on the back by means of a rubber stamp, the date and reference no. of this approval. The Registrar will not register the transfer of such land until the application for title or Power of Attorney has been further endorsed by the Provincial Secretary authorising the transfer. This endorsement will be given on submission of proof that the conditions of establishment have been complied with. If conditions of title have been imposed these must be quoted in the Power of Attorney or application for title which document must be submitted together with the diagrams for endorsement by this office.
2. These documents may be lodged at Room 138, 1st Floor, Provincial Building, Wale Street, during office hours.
3. This approval lapses unless separate registration of at least one erf, lot, plot or piece therein is effected in the Deeds Registry within twenty-four months of the date of this letter in which case application should be made in writing to the Administrator for the extension of the validity of this approval, together with a letter of consent from the relevant local authority to such extension.

SECOND ANNEXURE

1. The owner shall prior to the transfer of any deducted portion pay to the local authority an endowment of 5 % of the sale price of such deducted portion.
2. If the Administrator is of opinion that the sale price of any deducted portion does not represent the true market value thereof at the date of sale, he may call upon the owner to pay the endowment required by the foregoing conditions on such amount as he may determine to be the value of the deducted portion at the date of sale.
3. The provisions of the foregoing conditions, relating to the payment of endowment shall, mutatis mutandis, apply to -
  - 3.1 partition, donation and exchange transfers and the taking out of certificates of registered title, except that in such cases the endowment shall be payable on such sum as the Administrator may determine to be the value of the affected portion;
  - 3.2 the transfer of any erf in consequence of expropriation in which event the endowment shall be payable on the amount of compensation paid for such erf, and
  - 3.3 the transfer of land as a result of a testamentary bequest, in which event the endowment shall be payable on the amount at which the portion is valued for Death or Estate Duty purposes.
4. The provisions of condition No. 1 above are not applicable to roads or reserved land.
5. No vacant deducted portion may be built upon prior to the payment of any endowment required in respect of such deducted portion in terms of these conditions without the consent of the Administrator who may as a prerequisite of any such consent require the said endowment to be paid immediately on such amount as he may determine to be the value of the said deducted portion.
6. If there is a building on any erf at the date of sale then the amount on which any endowment required by the foregoing conditions is payable shall be such amount as the Administrator shall determine to be the value of the said erf.

THIRD ANNEXURE

1. This subdivision has been approved subject to the conditions contained in the preceeding annexures and provided that a building of a valuation of not less than R7 000 shall be erected on each vacant deducted portion (including the first deducted portion) within a period of 2 (two) years from the date of registration in the Deeds Office, of each such deducted portion. (Section 14.A of Ordinance No. 33 of 1934).
2. The owner shall disclose the existence of the aforesaid condition in any deed of sale in respect of these portions.
3. The effect of the aforesaid building clause is that if that condition is not complied with, every rate which is levied by the local authority, shall be payable on such deducted portion as if a building with the specified valuation has been erected thereon.

B.385/8/81

412

13/16  
0081  
2/20

**AFDELINGSRAAD VAN CALEDON**  
**DIVISIONAL COUNCIL OF CALEDON**

TELEFONE  
TELEPHONES } 49-50

NAVRAE  
ENQUIRIES } Mnr Viljoen

KERKSTRAAT  
CHURCH STREET  
CALEDON

POSBUS  
P.O. BOX } 5

Alle korrespondensie moet aan  
die Sekretaris gerig word.

VERWYS NA NR.  
IN REPLY QUOTE NO.

All communications must be  
addressed to the Secretary.

T/3/2/5

1981-05-11

Die Direkteur van Plaaslike Bestuur  
Privaatsak X9083  
KAAPSTAD  
8000

Meneer

ROOI ELS PLAASLIKE GEBIED : HERSONERING EN ONDERVERDELING : ERF 87

h Afskrif van onderverdeling en hersonering is ontvang van Landmeters Shaw, Robinson & Gluckman namens Mnr Ritbar Investments (Pty) Ltd, soos aangedui op die aangehegte diagramme. Tydens h vergadering wat gehou was op 15 April 1981 het my raad goedkeuring verleen kragtens Artikel 9 van Ordonnansie No 33 van 1934 tot gemelde hersonering en onderverdeling en wel op die volgende voorwaardes :

1. h Terreinplan moet deur die eienaar van die onderverdeelde erf saam met sy bouplanne ingedien word, vir goedkeuring saam met die bouplan.
2. Die terreinplan moet die volgende aandui :
  - 2.1 Die ligging van die geboue en septiese tenk met betrekking tot :
    - 2.1.1 die grense van die erf
    - 2.1.2 geboue op alle aangrensende erwe
  - 2.2 Die plek waar toegang tot die erf verkry sal word;
  - 2.3 Natuurlike kenmerke soos rotsformasies, inheemse bome en ander plantegroei;
  - 2.4 Hellings van die terrein en
  - 2.5 Uitgrawings, verwydering van rotse en grond en ander terreinwerke wat nodig sal wees.
3. Indien daar nie met die onderverdeling voortgegaan word nie, mag slegs een wooneenheid op erf 87 opgerig word.
4. Weens die besonder sensitiewe ekologiese balans aan die noordelike grens van Rooi-Els mag die sandduine op erf 87 of onderverdelings daarvan nie platgestoot of enigsins mee gehandel word nie.
5. Na onderverdeling mag slegs een wooneenheid op h onderverdeelde erf opgerig word.

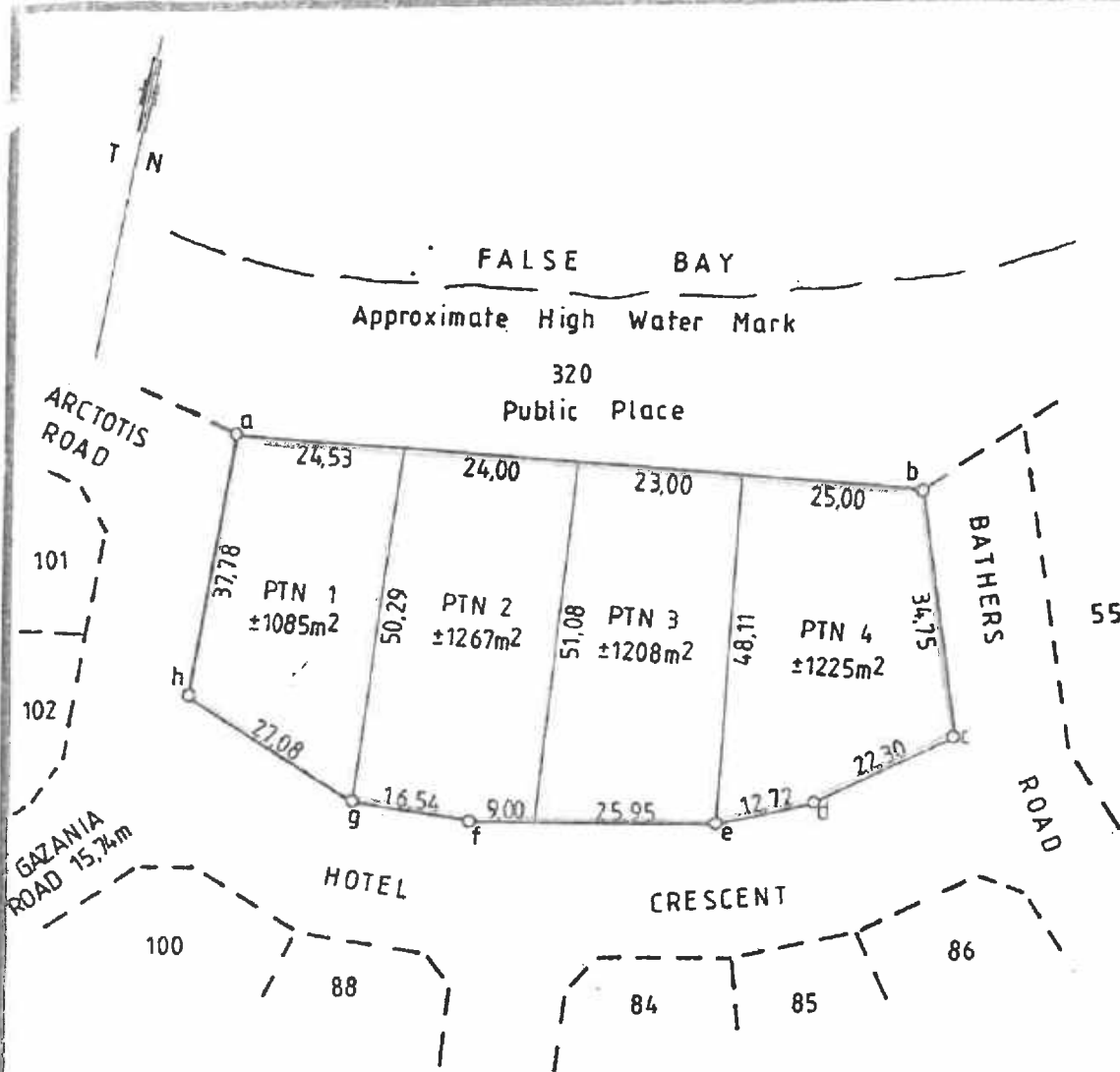
U gunstige oorweging sal waardeer word.

Die uwe

  
J. W. LAMBRECHTS  
SEKRETARIS

JV/ss

5



*[Faint, mostly illegible text and signatures, possibly including a date of 1984 and a reference to a subject.]*

DATE: APRIL 1983	SCALE: 1/1000
DRAWN BY: D.M.	
CHECKED BY: C.C.	
<b>PROPOSED SUBDIVISION OF ERF 87 ROOI ELS SITUATE IN THE LOCAL AREA OF ROOI ELS, CALEDON DIVISION</b>	
OWNER/S: E.S. RATCLIFFE D.P.A. BRIERS-DANKS T.E. LOFTUS	
SUBMITTED BY SHAW, ROBINSON & CASE LAND SURVEYORS, 127 PLEIN STREET CAPE TOWN	
PREPARED BY: <i>[Signature]</i>	
REMARKS:	
DIAGRAM NOS. G.P. TP 690	ROLL NO. S.G. SHEET NO. AH-4BA/232 VAL REF NO.
D/T NOS. T 53982/1981	

PROVINSIALE ADMINISTRASIE  
VAN DIE KAAP DIE GOEIE HOOP

DEPARTEMENT VAN PLAASLIKE BESTUUR

PROVINSIALE GEBOU, WAALSTRAAT,  
PRIVAATSAK X.9083, KAAPSTAD 8000



PROVINCIAL ADMINISTRATION  
OF THE CAPE OF GOOD HOPE

DEPARTMENT OF LOCAL GOVERNMENT

PROVINCIAL BUILDING, WALE STREET,  
PRIVATE BAG X.9083, CAPE TOWN 8000

Mr M.C. Preiss  
63 Ritchie Street  
UNIVERSITY ESTATE  
7925

TELEKS 5722368  
TELEX  
TELEGRAM PROVADMIN  
TELEFOON 45-9314  
TELEPHONE  
NAVRAE Mr Dauth  
ENQUIRIES  
VERWYSING REFERENCE AF.17/1/21/4  
REFERENCE  
DATUM DATE

86-7-1983

Sir

REMOVAL OF RESTRICTIONS ACT, 1967: ERF 87, ROOI ELS, CALEDON  
DIVISION

1. With reference to your letter of 2 August 1982, I have to inform you that the above-mentioned application and your objection were carefully considered by the Administrator-in-Executive Committee.
2. The Administrator has decided, in the light of all aspects of the case and with the approval of the Minister of Community Development, that your objection be not upheld and in the circumstances has granted approval of the application subject to the following conditions -
  - 2.1 development is restricted to single-storeyed buildings, and
  - 2.2 the average floor level not to be more than 0,5 m above natural ground level.

Yours faithfully

4 DIRECTOR: LOCAL GOVERNMENT  
DJD/MS

*[Handwritten signature]*  
DUTH  
8/7

# AFDELINGSRAAD VAN CALEDON DIVISIONAL COUNCIL OF CALEDON

TELEFONE } 21120/1/2/3/4  
TELEPHONES }

NAVRAE  
ENQUIRIES Mr de Waal

POSBUS } 5  
P.O. BOX }

Alle korrespondensie moet aan  
die Sekretaris gerig word  
All communications must be  
addressed to the Secretary

VERWYS NA NR.  
IN REPLY QUOTE NO.

T/3/2/6

KERKSTRAAT  
CHURCH STREET  
CALEDON  
7230

1982/10/25

The Director of Local Government  
Private Bag X9083  
CAPE TOWN  
8000

Sir

ROOI ELS : REMOVAL OF RESTRICTIONS ACT, 1967 : ERF 87

Your letter 17/1/21/4 of 13 August 1982 to Messrs H M Shaw, Robinson & Case, a copy of which has been addressed to the Caledon Divisional Council, refers.

Objections attached, were noted.

On 15 April 1981 Council approved the application for rezoning and subdividing of Erf 87 on the same conditions as proposed by the Rooi Els Local Area Representatives, and resolved to recommend it to the Director of Local Government.

It is now recommended that the objections to the removal of restrictions be rejected, and that the conditions for rezoning contained in Mrs H A Mouton's letter, which are very much the same as proposed by the Secretary of the Ratepayers Association, be improved as far as possible.

Yours faithfully

*C. H. Lambrechts*  
J W LAMBRECHTS  
SECRETARY

HWdeW/ss



T: +27 (0) 21 850 6400  
 F: +27 (0) 21 852 1770  
 1st Floor, Titanium House  
 19 Gardner Williams Avenue  
 Paardevlei, Somerset West, 7130  
 P O Box 5101, Heldervue, 7135  
 DX 15 Somerset West  
 HeinN@stbb.co.za  
 www.stbb.co.za

### CONVEYANCERS CERTIFICATE

### REMAINDER ERF 338 ROOI ELS

I, the undersigned Conveyancer, HEIN CONRAD NAUSCHUTZ, practicing at STBB Attorneys, Somerset West, Cape Town, do hereby certify that a comprehensive search was conducted at the Deeds Registry, Cape Town, regarding the title deed conditions that burden and/or benefit the below property, re:

#### NAME OF REGISTERED OWNERS

HMMM BELEGGINGS TRUST  
 REGISTRATION NUMBER IT22009/2014(T)

#### PROPERTY DESCRIPTION

REMAINDER ERF 338 ROOI ELS (hereinafter the "Property")  
 IN THE OVERSTRAND MUNICIPALITY  
 DIVISION CALEDON  
 WESTERN CAPE PROVINCE  
 MEASURING 1202 (ONE THOUSAND TWO HUNDRED AND TWO) SQUARE METERS  
 HELD BY DEED OF TRANSFER no. T73556/2014 (hereinafter the "Title")

The Big Small Firm

stbb.co.za

Commercial Law | Conveyancing | Development Law | Labour Law | Estates | Family Law | Utigation | Personal Injuries & Third Party Claims

Cape Town: 021 406 9100	Bedfordview: 011 453 0577	Blouberg: 021 521 4000	Centurion: 012 001 1546
Claremont: 021 673 4700	East London: 043 721 1556	Fish Hoek: 021 784 1580	Fourways: 010 001 2632
Helderberg: 021 850 6400	Illovo: 011 219 6200	Tyger Valley: 021 943 3800	

DIRECTORS: Jonathan Steytler (Managing) | Stoffel Ackermann | Ghislaine Barends | Martin Bey | Jacques Bignaut | Steven Borwick | Maryna Botha | Darren Brander | Michael Bromley | Luthfeya Cassim | Annelie Coetsee | Tiaan Esterhuysen | Refqah Fataar Ho-Yee | Hanlie Ferreira | Niel Grundlingh | Hein Nauschutz | Van Wyk Jooste | Belinda Lewis | Robert Matlhare | Nicole Mentoor | Hennie Mouton | Mikhail Munsamy | Martine Newmar | James Phillipson | Martin Sheard | Nicole Stevens | Philip Steyn | Lauren Sullivan | Marlize Swart | David Thompson | Andreas Tsangarakis | Annemarie van Vuuren | Shereen Volks | Allan White

SENIOR ASSOCIATES: L Bickar | L Daniels | C Dippenaar | D Du Plessis | H Dyssel | D Els | J Foxcroft | W Graham | S Grobler | J Hamers | M Hennig | S Hougaard | L Mace | B Mostert | C Mostert | C Robberts

L Solomon | C Symington | A Wile

ASSOCIATES: A Abrahams | S Ada | Lebotschy | Avenant | R Botas | K Buys | T Chanane | N Erwee | S Fish | C Geas | K Govindasamy | E Grobbelaar | N Harvey | O Harvey | J Hickman | T Jaffer | K Leach | D |

M Lotzw | Z Madlanga | L Majahun | C Moonsamy | E Moore | T Mrubata | M Naidoo | O Ndungane | Z Nonkasana | I Salle | R Siebers | L Steenkamp | C van Vuuren | C Williams-Short

EXECUTIVE CONSULTANTS: Peter | Tim Chase | Gerhard Kotze | Lizelle Kilbourn | Andy McPherson | Christoff Pauw | June Theron | Richard Volks

FINANCIAL MANAGER: Pierre Four

SMITH TABATA BUCHANAN BOYES INC

REGISTRATION NO: 1992/003316/21

VAT REG NO: 467013 7

**APPLICATION FOR LAND USE**

1. to legalise the existing structures on the Property which encroaches the building lines; and
2. proposed building line departures.

**RESTRICTIONS**

In respect of the aforementioned Title, it was found that there are restrictions in respect of the applications sought.

Condition F contained in the Title was imposed by the Administrator in terms of Ordinance No. 33 of 1934, with particular reference made in (4)(c) and (d), which stipulate:

"(4)(c) not more than 60% of the area shall be built upon; and

(4)(d) no building or structure except boundary wall and fences shall be erected nearer than 4.72 meters to the street line which forms a boundary of this erf within 1.57 meters of any other boundary."

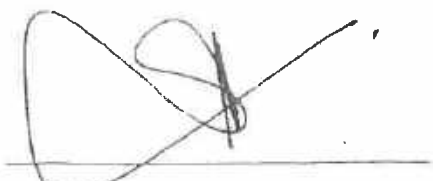
**AMENDMENT, SUSPENSION OR DELETION OF RESTRICTIVE CONDITIONS**

The restrictive conditions referred to above, must either be suspended from the Title, or relaxed, by means of an application in terms of the provisions of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (hereinafter the "By-Law"), followed by the requirements as set out in Section 35 of the By-Law which relates to the requirements for the notification of the Owners' application in the Provincial Gazette.

Once the placing of the application in the Provincial Gazette have taken place and no objections to the application was received, the Municipality must cause their decision to be published in the Provincial Gazette, after which the amendment, suspension or deletion of the restrictive condition must, in terms of the provisions of Section 36 of the By-Law, be attended to at the Deeds Registry, Cape Town.

Apart from the aforesaid, there are no further restrictive conditions contained in any previous deeds relating to the Property.

DATED AT SOMERSET WEST ON 20 June 2022



HEIN CONRAD NAUSCHUTZ  
CONVEYANCER



CK / 92/32992/23  
VAT / BTW: 4450173499

P O Box / Posbus 633  
KLEINMOND  
7195

Tel Faks/Fax  
(028) 271-4630

Cell / Sel  
082 789 7574

E-Mail  
admin@huart.co.za



RE: 338 Rooi Els

This is rates we used for building works in year 2017 – 2018 House Muller

Infill and Compaction	23m <sup>2</sup>	@ R280/m <sup>2</sup>	R 6,440.00
Boundary walls	4.84m <sup>2</sup>	@ R660/m <sup>2</sup>	R 3,194.40
Concrete Slab	35m <sup>2</sup>	@ R1080/m <sup>2</sup>	R 37,800.00
Water Tank 10 000lt	2	@ R 4,510.00	R 9,020.00
Water Tank 20 000lt	1	@ R 8,500.00	<u>R 8,500.00</u>
Total			R 64,954.40

JC Human  
Owner/CEO