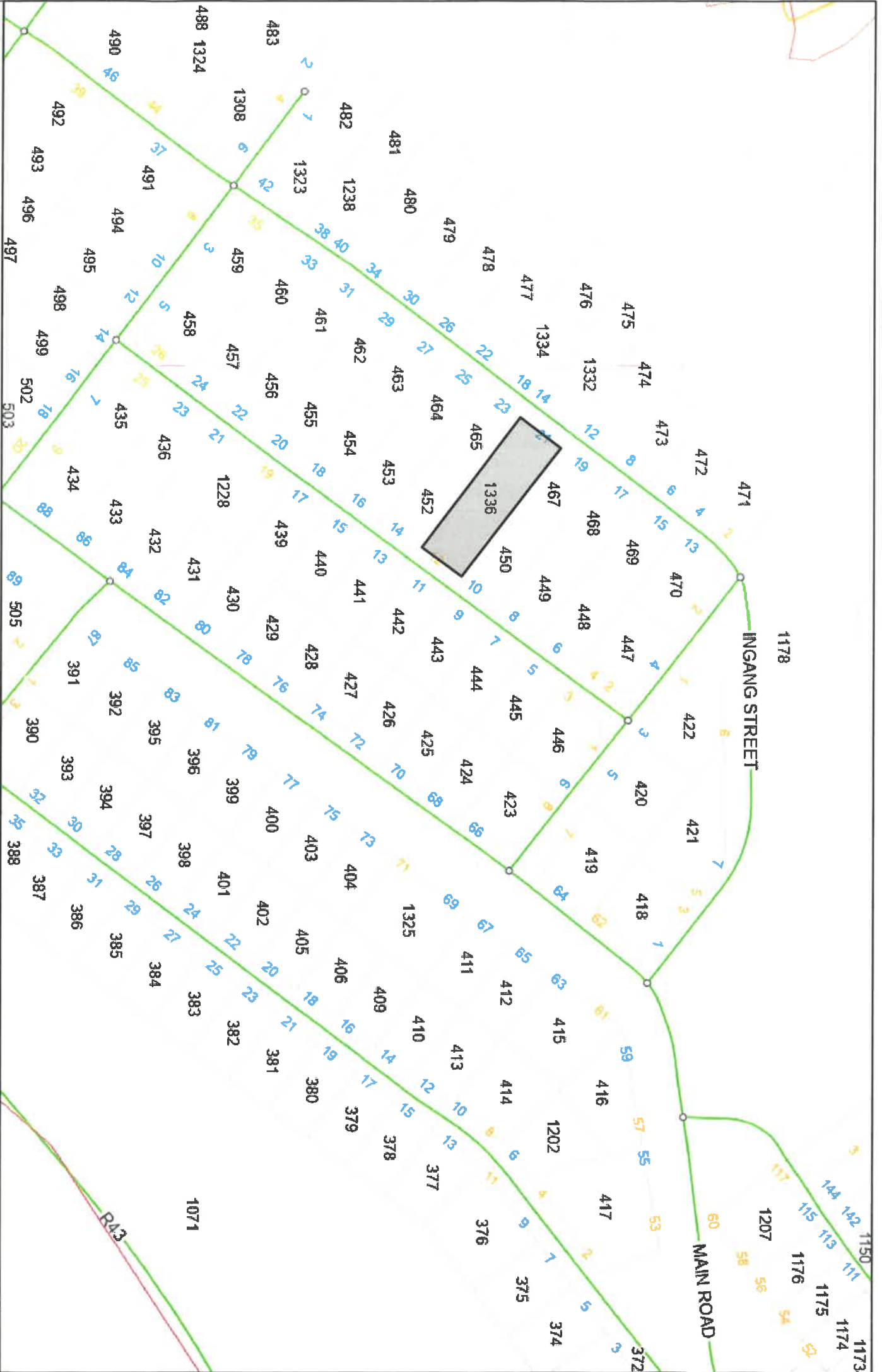


OVERSTRAND MUNICIPALITY	OVERSTRAND MUNISIPALITEIT	UMASIPALA I-OVERSTRAND
<p>ERF 1336, 21 INGANG STREET, DE KELDERS: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF PR JACOBS</p> <p>Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), of the following applications received and applicable to the above-mentioned property, namely:</p> <p>Removal of restrictive title deed conditions Application for removal of restrictive title deed conditions in terms of Section 16(2)(f) of the By-Law, to remove conditions I. F.(c) and (d) and II. E.(c) and (d) as contained in Title Deed 31858/2021, to accommodate the following:</p> <p>Departure Application for departure in terms of Section 16(2)(b) of the By-Law, to:</p> <ul style="list-style-type: none"> ❖ relax the north-eastern lateral building line from: <ul style="list-style-type: none"> • 2m to 1.41m to accommodate the change of use of the approved garage to a servant's quarter (existing) on ground floor; • from 2m to 0m to accommodate the existing stoep and the height restriction thereof from 1m to ±2.018 and ±2.91m above natural ground level (NGL); • from 2m to 1.61m to accommodate alterations to bedrooms 2 and 3 on ground floor and to accommodate alterations to bedroom 7 on the second floor; ❖ relax the south-western lateral building line from 2m to 0m, to accommodate the change of use of the approved carport to double garage (existing) on ground floor; ❖ relax the street building line from 4m to 0.4m and the height restriction thereof from 1m to ±2.018m and ±2.91m above natural ground level (NGL), to accommodate the existing stoep; ❖ deviate from the permissible height restriction applicable to single residential properties from 8m (lowest point) to 8.065m and 8.32m (highest point) respectively, to accommodate the existing roof and chimney of 9.32m. <p>Determination of an administrative penalty Application in terms of Section 16(2)(q) of the By-Law, to accommodate the existing structures on the property.</p> <p>Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus and Gansbaai Library, Main Road, Gansbaai. Any comment must be in writing, quoting your name, address and contact details, as well as your interest in the application and the reasons for comment, which comment must reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 (e) alida@overstrand.gov.za) on or before Friday, 14 March 2025. Telephonic enquiries can be made to the Senior Town Planner, Mr. SW van der Merwe at 0283138900. The Municipality may refuse to accept comments received after the closing date. Any persons who cannot read or write may visit the above appropriate Municipal Department where a Municipal official will assist them in formulating their comment.</p>	<p>ERF 1336, INGANGSTRAAT 21, DE KELDERS: AANSOEK OM OPHEFFING VAN BEPERKENDE TITELAKTE VOORWAARDES, AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE TOWN & REGIONAL PLANNERS NAMENS PR JACOBS</p> <p>Kennis word hiermee gegee ingevolge Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening), van die volgende aansoeke ontvang en van toepassing op die bogenoemde eiendom, naamlik:</p> <p>Opheffing van beperkende titelakte voorwaardes Aansoek vir opheffing van beperkende titelakte voorwaardes ingevolge Artikel 16(2)(f) van die Verordening om voorwaardes I. F.(c) en (d) en II. E.(c) en (d) soos vervat in Titelakte 31858/2021 op te hef, om die volgende te akkommodeer:</p> <p>Afwyking Aansoek om afwyking ingevolge Artikel 16(2)(b) van die Verordening, om:</p> <ul style="list-style-type: none"> ❖ die noordoostelike lateraleboulyn te verslap vanaf: <ul style="list-style-type: none"> • 2m tot 1.41m om die gebruiksverandering van die goedgekeurde motorhuis na bediendekwartiere op grondvloer te akkommodeer; • 2m tot 0m om die bestaande stoep en die hoogtebeperking daarvan van 1m na ±2.018 en ±2.91m bo natuurlike grondvlak (NGL) te akkommodeer; • 2m na 1.6m om veranderinge aan slaapkamers 2 en 3 op grondvloer en veranderinge aan slaapkamer 7 op die tweede vloer te akkommodeer; ❖ die suidwestelike lateraleboulyn vanaf 2m na 0m te verslap, om die gebruiksverandering van die goedgekeurde motorafdek na dubbelmotorhuis op grondvloer te akkommodeer; ❖ die straatboulyn vanaf 4m na 0.4m te verslap en die hoogtebeperking daarvan vanaf 1m na ±2.018m en ±2.91m bo natuurlike grondvlak (NGL), om die bestaande stoep te akkommodeer; en ❖ af te wyk van die toelaatbare hoogtebeperking van toepassing op enkel residensiële eiendomme vanaf 8m na 8.065m (laagste punt) en na 8.32m (hoogste punt) om die bestaande dak en skoorsteen van 9.32m te akkommodeer. <p>Bepaling van 'n administratiewe boete Aansoek ingevolge Artikel 16(2)(q) van die Verordening, om die bestaande strukture op die eiendom te akkommodeer.</p> <p>Volle besonderhede rakende die voorstel hierbo is beskikbaar vir inspeksie gedurende wekedae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en Gansbaai Biblioteek, Hoofweg, Gansbaai. Enige kommentare moet skriftelik wees, u naam, adres, en kontakbesonderhede bevat, sowel as u belang in die aansoek en die redes vir kommentaar, welke kommentaar die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) moet bereik voor of op Vrydag, 14 March 2025. Telefoniese navrae kan gerig word aan die Senior Stadsbeplanner, Mnr. SW van der Merwe by 028 313 8900. Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persone wat nie kan lees of skryf nie kan bogenoemde toepaslike Munisipale Departement besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.</p>	<p>ISIZA ESINGU-ERF 1336, 21 INGANG STREET, DE KELDERS: ISICELO SOKUSHENXISA IIMEKO EZIYIMIQOBO KWITAYITILE ZOBUNINI, UKWAHLUKA NENGQIKELELO YOMDLIWO/YEPENALTHI WOBHALISO: ABANUN BAKWAPLAN ACTIVE TOWN & REGIONAL PLANNERS ON EGAMINI LIKA- PR JACOBS</p> <p>Kukhutshwe inothisi eengemba yeSoloty lama47 nelama48 nguMasipala wase-Overstrand ngoMthethwana OsisiHlomelo ngeZicwangciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana), esi ssaziso sisebenziseka kwezi zakhiwo zichazwe ngentla, ezibizwa:</p> <p>Ukushenxisa iimeko eziyimiqobo kwiitayitile zobunini Isicelo sokushenxisa iimeko eziyimiqobo kwiitayitile zobunini nesisebenza ngokwemiba yeSoloty le16(2)(f) loMthethwana ongokushenxiswa kweemeko I. F.(c) ne (d) kunye ne II. E.(c) ne (d) njengoko ziquqlathwe kwiTayitile Yobunini 31858/2021, ukulungiselela oku kulandelayo:</p> <p>Ukwahluka Isicelo sokwahluka ngokwemiba yeSoloty le16(2)(b) loMthethwana, ukwenza oku kulandelayo:</p> <ul style="list-style-type: none"> ❖ ukunyenisa umgca wesakhiwo omelene nesakhiwo kwicala elisemntla-mpuma wesakhiwo: <ul style="list-style-type: none"> • Imitha ezi-2m ukuya kwi-1.41m ukulungiselela isicelo sivunyelweyo sokuguqula igaraji ibe ligumbi lokuhla abasebenzi (esele ikhona) kumgangatho osezantsi; • Ukusuka kwiimitha eziyi 2m ukuya kwi-0m ukulungiselela isituphu esele sikhona nemiqobo ngokobude esuka kwimitha e-1m ukuya ±2.018 ne ±2.91m ngaphezu kwenqanaba lomhlaba (NGL); • Ukusuka kwimitha ezi-2m ukuya kwi-1.61m ukulungiselela iinguquko kumagumbi okulala 2 no 3 kumgangatho osezantsi ukulungiselela iinguquko kwigumbi lokulala 7 kumgangatho wesibini; ❖ ukunyenisa umgca omelene nesakhiwo kwicala elisemzantsi-ntshona ukusuka kwiimitha ezi-2m ukuya ku-0m, ukulungiselela utshintsho oluvunyelweyo lokusebenza ikhaphoti ibe yi garaji engena iimoto ezimbini (esele ikhona) kumgangatho osezantsi; ❖ ukunyenisa umgca wesitrato omelene nesakhiwo ukusuka kwiimitha ezi-2m ukuya ku-0.4m nemiqobo ke ngoko ukusuka kwimitha e-1m ukuya ±2.018m ne ±2.91m ongaphezulu kwenqanaba lomhlaba (NGL), ukulungiselela isituphu esele sikhona; ❖ ukukhwebuka/ukuphuma ecaleni kumlinganiselo wobude obuqingqiweyo kwizindlu ezilungiselelwe ukuhlala usapho olunye ukusuka kwiimitha ezi-8m (inqanaba elisezantsi kakhulu) ukuya kwi- 8.065m ne-8.32m (kwinqanaba eliphezulu kakhulu) ngokuhambelanyo, ukulungiselela uphahla osele lukhona netshimini ezimitha ezi-9.32m. <p>Ungqikelelo yepenalthi/yomdlivo wobhaliso Isebenza ngokwemiba yeSoloty le16(2)(q) loMthethwana, ukulungiselela izakhiwo esele zikhona kwesi size.</p> <p>linckukacha eziphelelyo mayel anesis isphakamiso siyafumaneka ukuze zihlolwe kwiintsuku zaphakathi phakathi kwintsimbi ye-8:00 neye-16:30 kwiSebe: Lezicwangciso ZeDolophu, 16 Paterson Street, Hermanus and Gansbaai Library, Main Road, Gansbaai. Naziphi na izimvo mazibhalwe phantsi, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, kunye nomdla wakho kwesi sicelo nezizathu zakho zokuhlomla, izimvo zakho mazifike kwaMasipala 16 Paterson Street, Hermanus / (f) 0283132093 (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi koLwesihlanu, 14 EyoKwindla 2025. Imibuzo ngefowuni ingathunyelwa SkuMcwangciso weDolophu, Mnu. SW van der Merwe kwa-0283138900. UMasipala angal aukwamkela izimvo ezifike emva komhla wokuhlala. Nabani na ongakwazi ukufunda nokubhala angandwendwela kwiSebe likaMasipala ofanelekileyo apho igosa likaMasipala liza kumnceda ukufaka izimvo zakhe ngokusemthethweni.</p>



ERF 1336, 21 INGANG STREET, DE KELDERS

**DETERMINATION OF AN ADMINISTRATIVE PENALTY,
PROPOSED DEPARTURE & REMOVAL OF
RESTRICTIVE TITLE DEED CONDITIONS**

**ERF 1336 DE KELDERS
OVERSTRAND MUNICIPALITY**

MOTIVATION REPORT – Revision 1

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by P.R. Jacobs, the owner of erf 1336 De Kelders, to apply for the administrative penalty, departure and removal of the restrictive title deed conditions of the subject property.

There is an existing three storey dwelling and a double garage situated on the subject property. Mrs and Mrs Jacobs bought erven 451 and 466 De Kelders in 1994. The aforementioned erven were consolidated in 2021 and simultaneously transferred into Mrs Jacobs name since the current owner's husband, Jacobus Johannes Swart Jacobs, passed away on 6 April 2017.

The current owner indicated that her late husband was responsible for the unauthorized construction on the property. They believed that proper measures were taken with the assistance of Martin Prinsloo, Jonty Abrahams, and IM Williams to handle additions and alterations made in 2015. The owners, who resided in the Free State, appointed Martin Prinsloo as the Project Manager, and Gawie Krugel was the builder involved.

A land use application was submitted and approved in 2015 for the consolidation of erven 466 and 451 De Kelders and a departure (building line deviation) to accommodate the As Built bedrooms positioned on the 1,57m north-eastern lateral building lines. Copies of the approved building plans and the decision letter dated 11 November 2016 are attached. The owners were under the impression that by

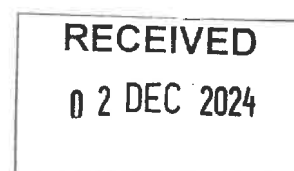
consolidating their two properties and acquiring a portion of the neighbour's land through a registered servitude to widen their driveway, they were acting within permissible limits for accommodating their alterations. However, despite these efforts, it seems there are still issues regarding the legality of the constructions, possibly due to the unauthorized nature of the initial work carried out by our client's late husband.

Now, our client intends to rectify the situation by addressing all As Built encroachments and submitting building plans for approval in the future. Mrs Jacobs is taking the necessary steps to legalize the unauthorized construction and bring the property into compliance with building regulations.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an **administrative penalty** for erf 1336 De Kelders;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **departure (building lines and height)** of erf 1336 De Kelders;
- Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the **removal of restrictive title deed conditions** of erf 1336 De Kelders.



3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Erf 1336 De Kelders has two street fronts and therefore has two addresses: 12 Colenso Avenue and 21 Ingang Street, De Kelders. Refer to the locality plan attached. The subject property is 1190m² in extent and is held by title deed no. T31858/2021.

The subject property gently slopes in a north north-westerly direction and is characterized by residential structures (three storey dwelling that consists of a main dwelling with a stoep, balconies, staff quarters, storeroom and double garage). A topographical survey was undertaken by Van Dyk Land Surveyors – copy of the plan dated January 2023 attached.

3.2 ZONING

Erf 1336 De Kelders has the following land use rights:

ERF NUMBER	ZONING
Erf 1336 De Kelders	Residential Zone 1: Single Residential

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

3.3 LAND USE

There is an existing three storey dwelling that consists of a main dwelling with stoep, balconies, staff quarters, storeroom and double garage situated on erf 1336 De Kelders. The subject property is therefore used for single residential living purposes. Building plans were approved for erf 466 De Kelders (now consolidated erf 1336 De Kelders) in 2010, 2012 and 2014 respectively.

All As Built structures were indicated on the respective building plan submissions. A land use application was submitted and approved in 2015 for the consolidation of erven 466 and 451 De Kelders and a departure (building line deviation) to accommodate the As Built bedrooms positioned on the 1,57m north-eastern lateral building lines. Copies of the approved building plans and the decision letter dated 11 November 2016 are attached.

Land uses that surround the subject properties are guest houses, dwellings, vacant erven, public open spaces and public roads.

3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 1336 De Kelders to accommodate the existing As Built structures in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020;
2. The **departure** of erf 1336 De Kelders in terms of Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to:
 - relax the north-eastern lateral building line:
 - from 2m to 1,41m to accommodate the change of use of the approved garage to a servant's quarter (As Built) on ground floor level;
 - from 2m to 0m to accommodate the As Built stoep, and to relax the height restriction thereof from 1m to $\pm 2,018\text{m}$ (1,018m stoep plus 1m balustrade) and $\pm 2,91\text{m}$ (1,91m stoep plus 1m balustrade) above natural ground level (NGL);
 - from 2m to 1,61m to accommodate the alterations to bedrooms no. 2 and 3 on ground floor level (walk-in-closets and bathroom) and to accommodate the alterations to bedroom no. 7 on second floor level;

- relax the south-western lateral building line from 2m to 0m to accommodate the change of use of the approved carport to double garage (As Built) on ground floor level;
 - relax the street building line from 4m to 0,4m to accommodate the As Built stoep, and to relax the height restriction thereof from 1m to $\pm 2,018\text{m}$ (1,018m stoep plus 1m balustrade) and $\pm 2,91\text{m}$ (1,91m stoep plus 1m balustrade) above natural ground level (NGL);
 - deviate from the maximum permissible height allowed for SR1 zoned properties of 8m as stipulated in the Overstrand Land Use Scheme Regulations (2020), section 6.1.2 c)(i) to 8,065m (lowest point) and 8,32m (highest point) respectively to accommodate the As Built dwelling's new and approved concrete roofs and section 16.1.1 b)(i) to 9,32m (1m on top of the 8,32m height of the top of roof) to accommodate the As Built braai flue / chimney.
3. The removal of restrictive title deed conditions of erf 1336 De Kelders in terms of Chapter 4, Section 16(2)(f) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, to remove conditions I F.(c) and (d) and II. E. (c) and (d) on pages 3-4 and 6 of title deed no. T31858/2021 to:
- Accommodate the existing servants' quarters (second dwelling) and As Built stoep that encroach the 1,57m north-eastern lateral building line;
 - Accommodate the As Built double garage that encroaches the 1,57m south-western lateral building line;
 - Accommodate the As Built stoep that encroaches the 4,72m title deed street building line.

The current property owner wants to address all existing, unlawful As Built structures. No new additions or alterations are proposed. Here follows the detail of the proposed application for consideration:

3.4.1 Rectification of contravention

In terms of Chapter 5, Section 90(1) a person who is in contravention of the Municipal Planning Amended By-Law (2020), and submits an application to rectify the contravention, must apply to the Municipality for the determination of an

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administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

As the application is for the rectification of a contravention of the By-Law, an application is submitted for the determination of an administrative penalty fee in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020. However, the Municipal Planning Tribunal (MPT) has the authority not to impose such a fee. In terms of Section 90(3) of the MPBL, the MPT must at least consider the following factors when determining an appropriate administrative penalty:

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

There is an existing three storey dwelling, a servant's quarters and a double garage situated on the subject property. Mrs and Mrs Jacobs bought erven 451 and 466 De Kelders in 1994. Building plans for the subject property were approved in 2010, 2012 and 2014. Copies of the available information is attached. The 2010 approved building plan (that was submitted for the carport addition to the subject property) indicates an existing garage. On the 2012 building plan (that was for alterations / additions on first floor level), the garage use was changed to storeroom and servant's quarters, but not indicated as proposed alterations / additions (i.e. unlawful change of use). In addition, the 2010 indicated no stoep on the street boundary side of the dwelling. However, on the approved 2012 and 2014 building plans and the draft 2015 plan the stoep was indicated as "existing". The stoep does however not meet the height requirement of a structure allowed to encroach the street building line (the stoep is higher than 1m above NGL) and therefore must be addressed.

It is unclear when and how the height deviations occurred – most likely when the dwelling was developed into a three-storey dwelling in 2012 / 2013 and in a time when the 8,5m Gansbaai Zoning Scheme Regulations were thought to still be relevant. Our client was only recently made aware of the height encroachments.

The aforementioned erven were consolidated in 2021 and simultaneously transferred into Mrs Jacobs name since the current owner's husband, Jacobus Johannes Swart Jacobs, passed away on 6 April 2017. The owners did not intentionally contravene any regulations and have been eagerly trying to rectify the situation since 2015 in

order to be compliant. The consolidation of the stands was however interrupted by the untimely death of Mr. Jacobs as the completion of his estate took almost four years. Thereafter Mrs. Jacobs has been tirelessly trying to conclude this matter.

The current owner indicated that her late husband was responsible for the unauthorized construction on the property. They believed that proper measures were taken with the assistance of Martin Prinsloo, Jonty Abrahams, and IM Williams to handle additions and alterations made in 2015. The owners, who resided in the Free State, appointed Martin Prinsloo as the Project Manager, and Gawie Krugel was the builder involved.

A land use application was submitted and approved in 2015 for the consolidation of erven 466 and 451 De Kelders and a departure (building line deviation) to accommodate the As Built bedrooms positioned on the 1,57m north-eastern lateral building lines. The consolidation was registered; however new building plans were not submitted for approval. Copies of the previous approved building plans (2010, 2012 and 2014) and the decision letter dated 11 November 2016 are attached. The owners were under the impression that by consolidating their two properties and acquiring a portion of the neighbour's land through a registered servitude to widen their driveway, they were acting within permissible limits for accommodating their alterations. However, despite these efforts, it seems there are still issues regarding the legality of the constructions, possibly due to the unauthorized nature of the initial work carried out by our client's late husband.

The following structures were unlawfully (but unknowingly) constructed over the relevant scheme and title deed building lines:

- As Built additions to en-suite bedrooms no. 2 and 3 on ground floor level encroaching the north-eastern scheme lateral building line = 2,72m² encroachment (16,75% of the total extent of the bedrooms);
- As built additions to en-suite bedroom no. 7 on second floor level encroaching the north-eastern scheme lateral building line = 1,5m² encroachment (4,61% of the total extent of the bedroom);
- Change of use of the approved garage to a servant's quarters encroaching the north-eastern scheme and title deed lateral building lines = 1,15m² (4,73% of the total extent of the servant's quarters);

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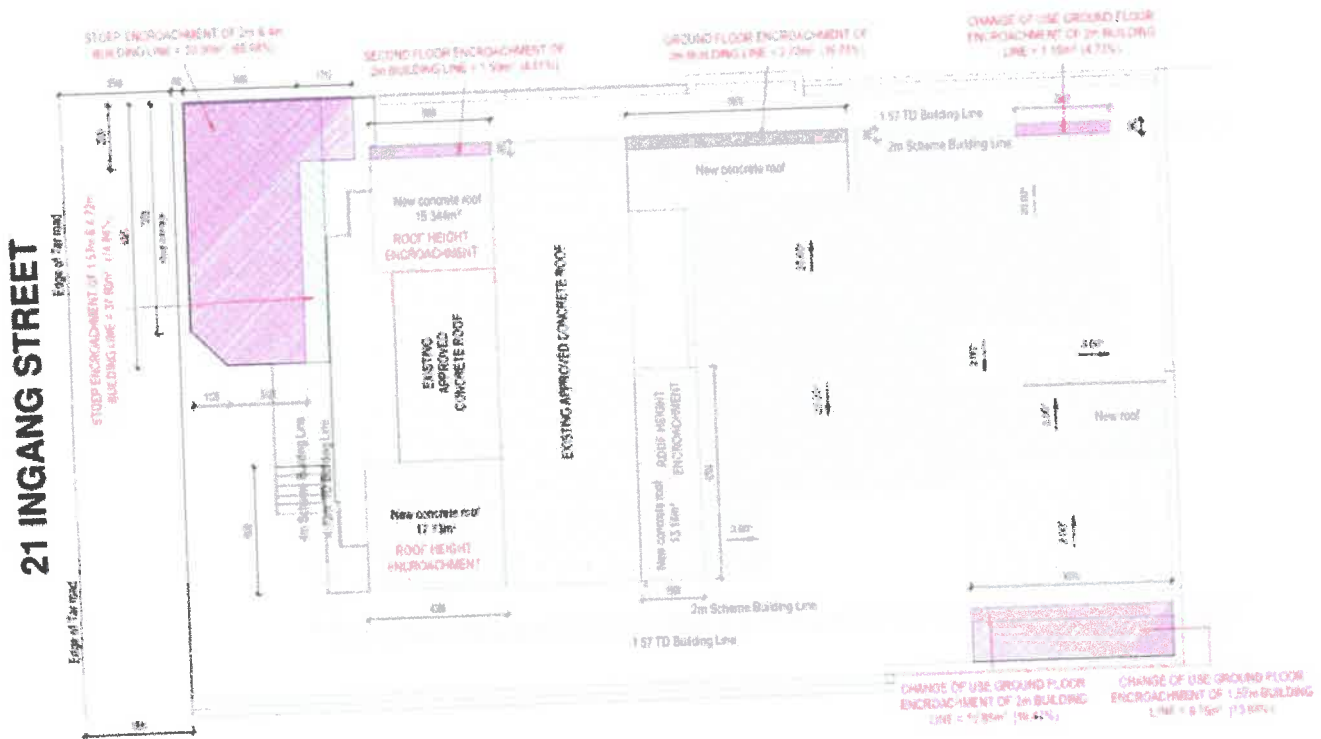
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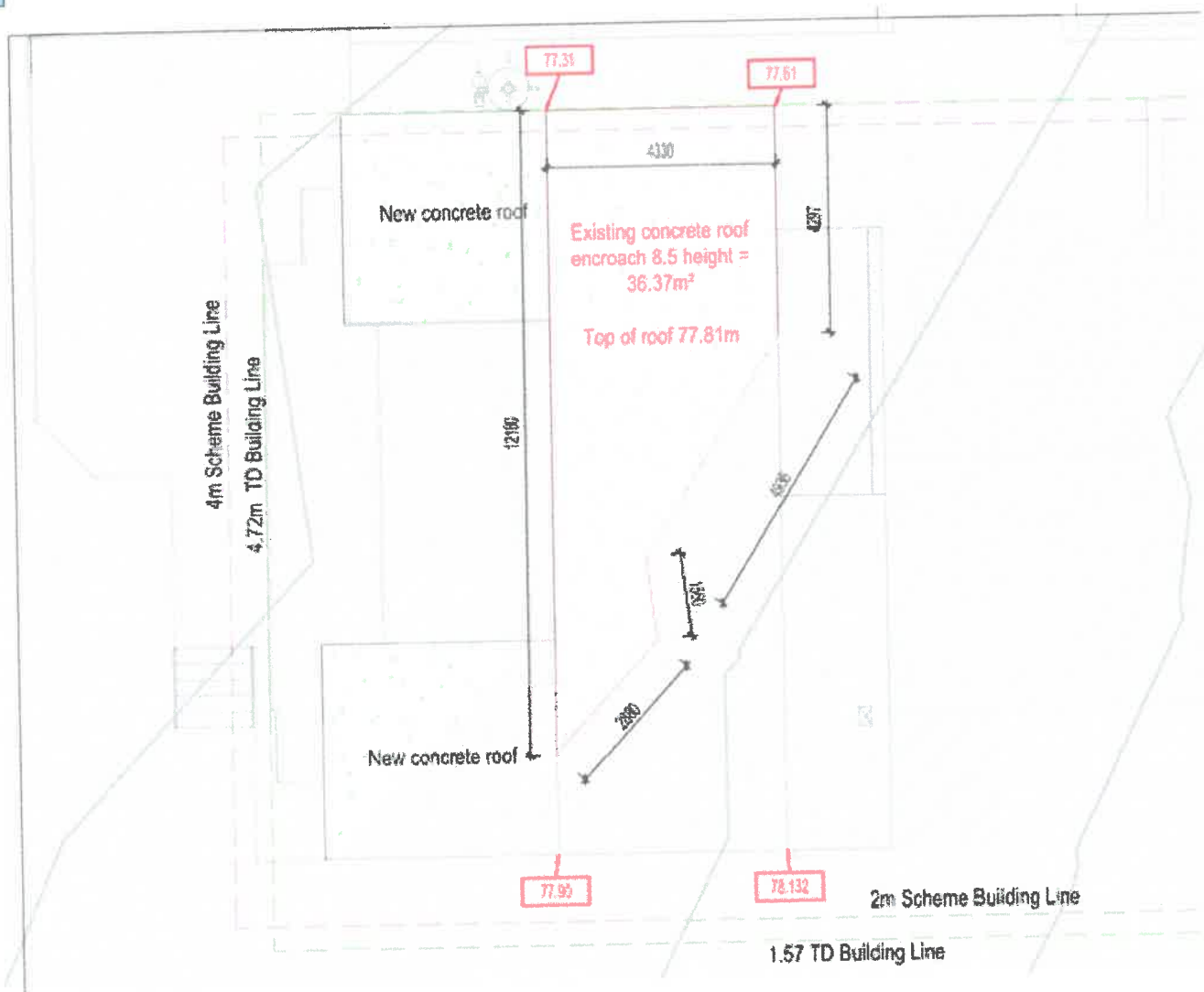
Motivation report

- As built stoep encroaching the Ingang Street, street building line and the north-eastern lateral building line (land use scheme and title deed building lines):
 - land use scheme building lines: 33,00m² (65,68% of stoep);
 - title deed building lines: 37,60m² (74,84%).
- Change of use of the carport to a double garage encroaching the south-western lateral building line (land use scheme and title deed building lines):
 - Land use scheme building line: 10,85m² (18,47%);
 - Title deed building line: 8,15m² (13,88%).
- As Built concrete roofs and braai flue deviating from the maximum permissible height:
 - Approved and new concrete roofs of 15,344m², 17,73m², 13,14m² and 36,37m² respectively

All encroachments / unlawful additions and alterations are shown on the encroachment plans below (and attached):



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Maps 1 and 2: Site Plan – encroachments

The current landowner was responsible for the existing concrete roof encroachment (roof higher than the permissible 8,5m in terms of the previous zoning scheme). The height of the dwelling on the north-western and north-eastern elevations is 0,32m higher than the previous 8,5m height restriction. Refer to the elevation plans below and attached indicating the deviation from the previous zoning scheme's 8,5m height restriction:

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NW Elevation 8.5m

1 : 100

Map 3: North-west elevation plan



NE Elevation 8.5m

1 : 100

Map 4: North-east elevation plan

The construction was completed around 2013, and it appears that there were clear calculation errors regarding the height between the contractor and the draughtsman. This is the only explanation – although the contractors continue to maintain that the structure complies with the height restrictions that were in place at the time. Interestingly, the municipal building inspector at that time was apparently present on-site for most of the work. Thus, it seems that the responsibility for the issue lies between these individuals, since the property owner was residing in the Free State at

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the time. The existing concrete roof that exceeds the 8,5m height restriction aligns with the previous zoning scheme's 1,57m building line, although the majority of the roof complies with the current 2m building line requirement.

Other alterations and additions to the dwelling as shown on the As Built site plan were undertaken but do not encroach any land use scheme or title deed development parameters.

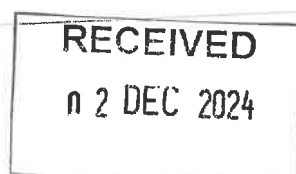
A topographical survey was carried out and all structures are As Built. No new structures or additions are proposed.

The owners were not aware or informed that they needed to submit a request for updating the house plans when they converted the garage between 2006 and 2009 (however, the 2010 approved building plans did not show the conversion). It is therefore evident that there might have been a regulatory requirement they missed. However, the 2012 house plans did incorporate the converted areas (servant's quarters and storeroom), as well as the swimming pool and stoep area.

The position and nature of the As Built structures and the subsequent uses thereof are unobtrusive in nature and do not impact negatively on the surrounding properties, and no complaints from surrounding property owners have been received up to date.

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

The owners were under the impression that by consolidating their two properties and acquiring a portion of the neighbour's land through a registered servitude to widen their driveway, they were acting within permissible limits for accommodating their alterations. However, despite these efforts, it seems there are still issues regarding the legality of the constructions, possibly due to the unauthorized nature of the initial work carried out by our client's late husband.



- **Whether the unlawful conduct was stopped**

The property owner is now attempting to rectify the contravention by submitting the administration penalty application and subsequent departure and removal of restrictive title deed conditions application in order to legalise the As Built structures on the subject property.

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

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

The owner is not familiar with construction costs, as this was handled by her late husband. However, these alterations were made during the building project and not after its completion. Therefore, the plans were adjusted as the construction progressed, subsequent to the latest approved building plans in 2014, and any expenses related to this matter were considered part of the building alteration costs. No further changes have been made since then.

PQS Africa Quantity Surveyors were appointed to calculate the construction costs pertaining to the encroachments. Refer to the QS report dated 21 November 2024 attached. Their breakdown (QS Calculation sheet) of the estimated building costs associated with the encroachments is attached. Please take note that no. 4 on the list "*Proposed covered area between garage and staff quarters*" does not encroach the relevant title deed or scheme regulations' building lines. The total building cost for encroachments must therefore exclude the aforementioned covered area and amounts to R455 744.14 (excluding VAT).

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

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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.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the low impact the As Built structures have had and will continue to have on the surrounding area (as further motivated in the departure and removal of title deed conditions application below). It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures.

The current owner has agreed on the way forward to address the unlawful structures and never hesitated to immediately give instruction to the consultants to assist in the matter to rectify the contravention by submitting a complete (and fully motivated) departure and removal of restrictions application and submitting a determination of an administrative penalty application. We therefore respectfully request that a minimal / no penalty fee be imposed on the property owners for the reasons given above.

3.4.2 Departure (building line relaxations)

3.4.2.1 Existing bedrooms

The en-suite bedrooms no. 2 and 3 obtained an approval for the relaxation of the building line in 2016 to accommodate the As Built structures. The layouts of the en-suite bedrooms were slightly altered / additions were made and therefore we include the structures as part of the deviation application. In addition, bedroom no. 7 on second floor is also not as per the approved building plans and slightly encroaches the building line.

Two existing bedrooms on the north-eastern side of the existing dwelling on the subject property were previously renovated and extended and are situated on the 1,57m lateral building line. At the time the renovations and additions took place the previous Gansbaai Zoning Scheme allowed for a 1,57m lateral building line. The building plans were however never submitted for approval and since then the Overstrand Land Use Scheme replaced the Gansbaai Zoning Scheme. A 2m lateral

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building line now applies to Residential Zone I: Single Residential erven. Consequently, the two existing bedrooms encroach the north-eastern lateral building line. Since the bedrooms already exist the impact on neighbouring properties will remain unchanged. Furthermore, the greater extent of the existing dwelling is already positioned (and building plans were approved accordingly) on the 1,57m lateral building line, therefore the impact will not be greater than what was already approved in the past.

An application was submitted and approved in 2015 / 2016 for a departure to relax the north-eastern lateral building line from 2m to 1,57m to accommodate the alterations to bedrooms no. 2 and 3 on ground floor level. Building plans were however never submitted thereafter. Application is therefore made to relax the north-eastern lateral building line from 2m to 1,61m to accommodate the alterations to bedrooms no. 2 and 3 on ground floor level and to accommodate bedroom no. 7 on second floor level.

The following structures were unlawfully (but unknowingly) constructed over the relevant scheme and title deed building lines. As Built additions to bedrooms no. 2 and 3 on ground floor level encroaching the north-eastern scheme lateral building line amounts to a 2,72m² encroachment (16,75% of the extent of the bedrooms). The As built additions to bedroom no. 7 on second floor level encroaching the north-eastern scheme lateral building line amounts to a 1,5m² encroachment (4,61% of the extent of the bedroom).

The As Built bedrooms no. 2, 3 and 7 do not encroach the 1,57m lateral title deed building line.

3.4.2.2 Existing servant's quarters

Building plans for the subject property were approved in 2010, 2012 and 2014. Copies of the available information is attached. The 2010 approved building plan (that was submitted for the carport addition to the subject property) indicates an existing garage. On the 2012 building plan (that was submitted for alterations / additions on first floor level), the garage use was changed to storeroom and servant's quarters, but not indicated as proposed alterations / additions (i.e. unlawful change of use). The owner intends to retain the use and therefore an application for departure

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is submitted to relax the north-eastern lateral building line from 2m to 1,41m to accommodate the change of use of the approved garage to a servant's quarters (As Built) on ground floor level.

The servant's quarters are 15,08m² in extent. Only a section of the approved garage was converted to the servant's quarters. The remaining extent of the approved garage is now used as a storeroom (household storage as indicated on the plan). The servant's quarters is a single storey unit that consist of an en-suite bedroom. The change of use of the approved garage to a servant's quarters encroaching the north-eastern scheme lateral building line amounts to only 1,15m² of the total extent of the unit (4,73% of servant's quarters) as indicated on the encroachment plan.

The As Built servant's quarters was also constructed within the 1,57m title deed lateral building line. In addition, the servant's quarters constitute a second dwelling. It is proposed to remove the restrictive title deed conditions to accommodate the As Built structure and the use thereof (refer to Section 3.14).

3.4.2.3 As built uncovered stoep

The 2010 approved building plan indicated no stoep on the street boundary side of the dwelling. However, on the approved 2012 and 2014 building plans and the draft 2015 plan the uncovered stoep was indicated as "existing". The stoep does however not meet the height requirements of a structure allowed to encroach the street and lateral building lines (the stoep is higher than 1m above NGL) and therefore must be addressed.

It is therefore proposed to relax the building lines as follows to address the stoep:

- The north-eastern lateral building line from 2m to 0m to accommodate the As Built stoep;
- The street building line from 4m to 0,4m to accommodate the As Built stoep; and
- To relax the height restriction thereof from 1m to $\pm 2,018\text{m}$ (1,018m stoep plus 1m balustrade) and $\pm 2,91\text{m}$ (1,91m stoep plus 1m balustrade) above natural ground level (NGL).

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The stoep is 68,16m² in extent. The As Built stoep encroaches the Ingang Street, street building line and the north-eastern lateral building line (land use scheme and title deed building lines):

- land use scheme building lines: encroachment of 33,00m² (65,68% of the total extent of the stoep);
- title deed building lines: encroachment of 37,60m² (74,84% of total extent of the stoep).

The stoep was also constructed over the 1,57m lateral and 4,72m street title deed building lines. It is proposed to remove the restrictive title deed conditions to accommodate the As Built stoep (refer to Section 3.14).

3.4.2.4 Change of use of carport to garage

In 2010 the building plan was approved to construct a carport on the subject property. The carport was converted to a garage and therefore no longer meets the requirements of a carport on the 0m lateral boundary. The owner wants to retain the As Built double garage to avoid making other alterations to the dwelling to retain the storage of vehicle use. It is therefore proposed to relax the south-western lateral building line from 2m to 0m to accommodate the change of use of the approved carport to double garage (As Built) on ground floor level.

The As Built garage that encroaches the lateral building line is not higher than 3,5m above the existing ground level on the common boundary as indicated on the elevation plans. The length and width of the structure does not exceed one third of the lateral boundary concerned or 9,0m. All other requirements as stipulated in the land use scheme for the consideration of the garage on the 0m south-western erf boundary are met.

There is an existing servitude right of way registered over erf 465 De Kelders in favour of erf 1336 De Kelders as indicated on the attached noting sheet. The servitude was registered to allow our client to widen the driveway to access the As Built double garage. The servitude right of way will remain unchanged.

The As Built double garage was constructed within the 1,57m title deed lateral building line. It is proposed to remove the restrictive title deed condition to

accommodate the As Built structure (refer to Section 3.14).

3.4.2.5 As built roof height encroachments

The As Built new and approved concrete roofs and braai flue deviates from the maximum permissible height. It is unclear when these deviations occurred – most likely when the dwelling was developed into a three-storey dwelling in 2012 / 2013. It is unclear how the deviations occurred, and our client was only recently made aware of the height encroachments.

The land surveyor indicated the value for the "top of building" as 77,810 and the calculated value for the 8m height restriction as 77,490. The two "level" lines are indicated on the site development plan.

An application is therefore submitted for a departure to deviate from the maximum permissible height allowed for SR1 zoned properties of 8m as stipulated in the Overstrand Land Use Scheme Regulations (2020), section 6.1.2 c)(i) to 8,065m (lowest point) and 8,32m (highest point) respectively to accommodate the As Built dwelling's concrete roofs (new and approved), and section 16.1.1 b)(i) to 9,32m (1m on top of the 8,32m height of the top of roof) to accommodate the As Built braai flue / chimney.

The existing approved concrete roof encroached the applicable 8,5m height requirement when the dwelling was redeveloped in 2013. The approved concrete roof deviates from the previous zoning scheme's 8,5m height requirement to 8,7m (lowest point) and 8,999m (highest point). In terms of the current land use scheme, the existing approved concrete roof is now at a height of 8,32m (measured from the base level to the top of the structure directly above that point in meters) and is therefore addressed in the height deviation application for all roofs described above. The discrepancy between the height specified in the previous zoning scheme and that in the current zoning scheme is attributable to changes in the definitions of "base level" and "height" between the two schemes.

The roof height encroachments are indicated on the encroachment plans and elevation plans. The extent of the As Built concrete roofs and braai flue deviating from the maximum permissible height is 15,344m², 17,73m², 13,14m² and 36,37m²

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respectively.

The current landowner was responsible for the existing concrete roof encroachment (roof higher than the permissible 8,5m in terms of the previous zoning scheme). The height of the dwelling on the north-western and north-eastern elevations is 0,32m higher than the previous 8,5m height restriction. For clarity, the architect has separated the views due to the increasing complexity of the matter (height encroachments in terms of the previous and current zoning scheme). The first set of views illustrates the current 8m height restriction, while the second set reflects the previous zoning scheme's 8,5m height restriction. Additionally, the additional contour values are highlighted in red on the views. The existing approved concrete roof is now at a height of 8,32m (measured from the base level to the top of the structure directly above that point in meters) and is therefore addressed in the height deviation application described above.

All measurements are clearly shown on the site development plan, and the base levels are explicitly marked on all elevations.

3.4.2.6 General

The following should be noted when considering the As Built structures and proposed new additions:

- The As Built structures have existed for ±10-12 years without any complaints from neighbours. Most structures were indicated on approved building plans in the past; however, in most instances the changes / additions were made without specifically applying for / indicating that specific additions / changes.
- No alterations to the As Built structures or new additions are proposed with this application.
- The visual impact of the As Built structures is considered minimal. All properties situated in Ingang Street enjoy unobstructed ocean views. In addition, the slope of the subject property minimalizes the impact on the views of the adjacent properties (keeping the impact on the properties at the back to a minimum).
- The As Built garage provides two parking bays to the main dwelling.
- There are no windows facing the relevant erf boundaries where the servant's

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quarters and double garage encroach the north-eastern and south-western lateral building lines.

- The As Built en-suite bedrooms, servant's quarters and stoep are considered an integral part of the design and value of the subject property. Thus, to demolish the structures to make it compliant to the relevant building lines, will diminish the aesthetic and property value of the dwelling.
- While theoretically the building exceeds the calculated height limit, in appearance seen against the current ground level does not appear to exceed the height limit nor to be any higher than the surrounding buildings.

The removal of the restrictive title deed conditions application is addressed in Section 3.14.

The proposed application does not have any impact on the character or property values of the surrounding properties since all structures and uses thereof already exist on the subject property. The existing structures on the subject property do not create an infringement to any passing traffic or public activity due the position of the As Built structures on site in relation to the existing structures on the neighbouring properties. It is submitted that the massing and height of the existing structures are compatible with the character of the area, regardless of the departure being applied for.

The zoning of erf 1336 De Kelders will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures / encroachments did not exist.

The schedule of rights for the subject property is as follows:

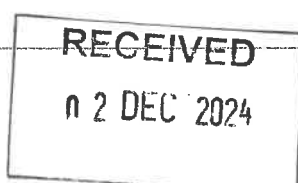


SCHEDULE OF RIGHTS	
PROPERTY DESCRIPTION	
Erf Number: 1336 Site Area: DE KELDERS Erf size: 1193m ²	
ZONING INFORMATION	
Town planning Scheme: OVERSTRAND Use Zone: GENERAL RESIDENTIAL ZONE	
DEVELOPMENT CONTROL MEASURES	
Existing Ground Floor	: 242.29m ²
Existing Carport	: 39.96m ²
Existing First Floor	: 131.84m ²
Existing Second Floor	: 84.84m ²
New Ground Floor Addition	: 28.58m ²
New Ground Floor Stoep	: 68.16m ²
New Covered Area	: 24.68m ²
New First Floor Addition	: 13.14m ²
New Second Floor Addition	: 41.49m ²
TOTAL	: 674.98m²
Coverage 395,61m ²	33.16%
The information provided above is hereby certified to be correct & precise	
Name: JLS GERICKE	Signature:
Date: 10 APRIL 2024	Plan No: 21/DR/24

The total coverage of 33,16% meets the maximum permissible coverage of 50% for SR1 zoned properties.

It is submitted that the existing structures are compatible with the character of the area, do not impact negatively on the rights of anyone else and that no good reason exists for not approving this application. When considering the proposed departures and removal of restrictive title deed conditions, the point of departure is the need to discourage the phenomenon of urban sprawl and to encourage densification and more compact towns and cities, all of which relates to more responsible resource use or sustainable development.

The proposed departure and removal of restrictive title deed conditions for erf 1336 De Kelders are consistent with the existing land use patterns in the surrounding area. Therefore, we anticipate no issues with the proposed application.



3.5 THE POTENTIAL OF THE PROPERTY

The zoning and primary land use of the subject property will remain unchanged. The location of the subject property within a single residential area allows the property to be developed for low impact land uses only (such as bed-and-breakfast establishments, day care, guest house and home occupation uses). The proposed departure and removal of restrictive title deed conditions will not hinder any possible future land use applications on erf 1336 De Kelders.

The subject property has the potential and allows for the deviations being applied for since most of the As Built structures have been on the subject property for a considerable period without any complaints from neighbours. From the building plans submitted and approved since 2010 until 2014 and the land use application that was submitted in 2015, it is evident that our client did not intentionally contravene any regulations and always attempted to meet all requirements.

The proposed additions and improvements since 2010 are aesthetically pleasing as is evident from the 3D images included in the site development plan.

The slope of the subject property and the fact that the proposal adheres to the maximum coverage requirements also mitigate any possible impact that the As Built Structures will have on the neighbouring properties. The position and height of the dwelling, servant's quarters, stoep and garage have not received complaints up to date and are aesthetically pleasing.

The massing and scale of the As Built structures are compatible with the area. All As Built structures form an integral part of the design of the dwelling thus to demolish the structures to make it compliant with the relevant building lines and height requirements will diminish the aesthetic and property value of the dwelling.

The scale of the surrounding built environment and the low impact on the streetscape are also factors that must be considered when contemplating the potential of the property to accommodate the departure and the removal of the title deed conditions.

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The following factors confirm the potential of the property to accommodate the proposed building line deviations:

- Good quality materials were used when the existing structures were built;
- The architectural style of the additions and alterations made to the dwelling over the years matches the architectural style of the As Built (approved) structures and add value to the subject property;
- The As Built roofs form an integral part of the design of the dwelling and garage thus to demolish / alter the roofs to make it compliant with the relevant height restriction will diminish the aesthetic and property value of the dwelling and garage;
- No new structures or additions / alterations are proposed with this application.

3.6 ECONOMIC IMPACT

The proposed departure and removal of restrictive title deed conditions are to accommodate existing structures and uses thereof on the subject property. The proposed departure and removal of restrictive title deed conditions will allow the owner to legalise the structures and their respective uses. This will have a positive impact on the property value of the site and favour the resale of the property in the future and have a positive impact on the adjacent properties.

The approval of the As Built structures will save the owner the cost of demolishing these structures. The proposed departure and removal of the subsequent restrictive title deed conditions will have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departure and removal of restrictive title deed conditions will have no impact on the social status quo of the area. The deviations and removal of restrictive title deed conditions will however allow the owner to keep the existing As Built structures on the subject property.

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

3.8 COMPATIBILITY WITH SURROUNDING LAND USES

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

The surrounding properties are developed with mostly multiple storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 1336 De Kelders (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

The proposed application will contribute towards the value of the subject property and consequently have a positive impact on the area. The use of the subject property will primarily remain for residential purposes (main dwelling, servant's quarters and garages).

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

3.9 IMPACT ON EXTERNAL ENGINEERING SERVICES

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

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

3.10 IMPACT ON SAFETY, HEALTH AND WELLBEING OF SURROUNDING COMMUNITY

The proposed departure and removal of restrictive title deed conditions will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that one family will continue to occupy the subject property.

Since the proposed departure and removal of restrictive title deed conditions are not associated with a noxious trade with polluting air emissions the impact on the health of the community will be kept to a minimum.

3.11 IMPACT ON HERITAGE

The application does not involve changing the character of a site larger than 5 000m². Consequently, the proposed application for departure and removal of restrictive title deed conditions does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erf 1336 De Kelders is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme Heritage Protection Overlay Zone (2020). The subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

In the light of the above mentioned it is evident that the proposed departure and removal of restrictive title deed conditions will not have a negative impact on the heritage value of the De Kelders or Greater Gansbaai area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure and removal of title deed conditions do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act

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no. 107 of 1998). The subject property is not situated within the Overstrand Municipality's Zoning Scheme Environmental Overlay Zone (2020).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to erf 1336 De Kelders will remain unchanged and will be from Ingang Street. Refer to the site development plan. There is an existing servitude right of way registered over erf 465 De Kelders in favour of erf 1336 De Kelders as indicated on the attached noting sheet and site plan. The servitude was registered to allow our client to widen the driveway to access the As Built double garage. The servitude right of way will remain unchanged.

The Overstrand Municipality Land Use Scheme Regulations (2020) stipulate that a minimum of two parking bays are required for a dwelling house. The subject property is developed with a double garage (carport converted to garage) addressed in this application. The servant's quarters is not used as a second dwelling unit. In addition, it is not a requirement to provide parking for domestic quarters. Provision is therefore made for two parking bays for the main dwelling only on site. The dwelling house on erf 1336 De Kelders therefore complies with the minimum parking requirements for SR1 zoned properties.

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

3.14 TITLE DEED

Title Deed no. T31858/2021 has restrictive title deed conditions that need to be removed to accommodate the departure of the prescribed building lines and the As Built servants' quarters on the subject property. Refer to a copy of the conveyancer's certificate compiled by Mr H.L. van Zyl of Van Zyl Kruger Attorneys dated 30 July 2024 attached.

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It is proposed to remove the following restrictive title deed conditions registered by the Administrator (now the Overstrand Municipality) to accommodate the proposed departure and existing primary land uses of erf 1336 De Kelders:

Title deed no. T31858/2021, pages 3-4 and 6, paragraph I. F. (c) and (d) and paragraph II. E (c) and (d) that read as follow:

I. As regards the figure CDba on diagram SG No 1973/2015:

F. SUBJECT to the following conditions, contained in Deed of Transfer No. T27638/1982 imposed by the Administrator in Terms of the provisions of Ordinance 33 of 1934, when approving the Township:-

AS BEING IN FAVOUR OF THE REGISTERED OWNER OF EACH ERF IN THE TOWNSHIP:

(c) That not more than one dwelling, together with necessary outbuildings and appurtenances be erected on this erf.

(d) That no building shall be erected within four comma seven two (4,72) metres of any street line which forms a boundary of this erf or within one comma five sven (1,57) metres of the boundary of any adjoining erf provided that this latter restriction shall not apply to the common boundary of erven held as one erf under consolidated title.

II. As regards the figure ABab on diagram SG No 1973/2015:

E. SUBJECT to the following conditions mentioned in Deed of Transfer No. T52958/1984 imposed by the Administrator in Terms of the provisions of Ordinance 33 of 1934, when approving the Township:-

AS BEING IN FAVOUR OF THE REGISTERED OWNER OF EACH ERF IN THE TOWNSHIP:

(c) That not more than one dwelling, together with necessary outbuildings and appurtenances be erected on this erf.

(d) That no building shall be erected within four comma seven two (4,72) metres of any street line which forms a boundary of this erf or within one comma five seven (1,57) metres of the boundary of any adjoining erf provided that this latter restriction shall not apply to the common boundary of erven held as one erf under consolidated title."

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The reasons for the removal of the conditions specified above are as follow:

- Condition I. F (c) and II. E (c) restricts the use of the subject property to one dwelling with associated outbuildings only. The Overstrand Municipality considers a servant's quarters as a second dwelling unit in terms of the land use scheme regulations. The approved garage structure was unlawfully converted to a servant's quarters as explained in the previous sections. Although the servant's quarter is shown on the 2012 approved building plan; however, the title deed condition that prohibits a second dwelling unit (in this case a servant's quarters) was not removed. Both a servant's quarters and second dwelling unit are considered primary land uses on a SR1 zoned property. The specified title deed condition that permits only one dwelling is therefore considered restrictive. It is therefore proposed to remove this condition to allow the owner to retain the servant's quarters;
- The street building line condition is more restrictive (4,72m) than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme, 2020 (4m). Although the lateral building lines prescribed in the title deed are less restrictive, some of the As Built structures encroach this building line. In addition, the Land Use Scheme now governs land use planning in De Kelders and therefore the building line conditions are considered superfluous. The following As Built structures encroach the title deed lateral and street building lines:
 - Ground floor level:
 - As Built servant's quarters (1,57m north-eastern lateral building line encroachment);
 - As Built stoep (1,57m north-eastern lateral building line and 4,72m street building line encroachment);
 - As Built double garage (1,57m south-western lateral building line encroachment).

There are no windows facing the relevant erf boundaries where the servant's quarters and double garage encroach the north-eastern and south-western lateral building lines.

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Section 39(5) of the Land Use Planning Act (LUPA), 2014, stipulates that a Municipality should have regard to the following factors when considering the "removal, suspension or amendment of a restrictive condition":

- ***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 vest in the person as the owner of a dominant tenement***

The removal of the restrictive conditions intends to increase the use rights of the property to permit the As Built structures and the uses thereof (servant's quarters, uncovered stoep and double garage) as described above. The value of the rights is vested in the owners of the specific extension of the entire De Kelders township.

Property owners not seeking that the title deed building line restrictions should be in line with the land use scheme regulations' restrictions will favour the restrictive title deed conditions since the conditions impede the development of a residential property in line with the zoning scheme and retaining the As Built structures.

The As Built development and its encroachments are not an unusually large-scale form of development that encroaches the building lines. The street building line condition is more restrictive than the land use scheme regulations' building lines. And where scheme building lines are encroached, it is to address the existing structures only. Furthermore, the primary use for SR1 zoned erven includes a second dwelling. Removing the "one dwelling only" condition will allow the owners to continue to exercise their primary land use right – i.e. to retain the servant's quarters that is considered a second dwelling unit in terms of the land use scheme regulations.

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

The conditions were imposed by the Administrator for the benefit of the registered owners of the De Kelders township. The only personal benefit to each holder is that the property is more restricted in terms of retaining As Built structures and developing new structures on the subject property (if any in future). The Administrator is now the

Overstrand Municipality, who governs land use applications in line with the existing Land Use Scheme Regulations and relevant spatial planning policies. To keep the title deed conditions will neither have any personal benefit to the Administrator / Overstrand Municipality nor the properties in whose favour the conditions were registered. As previously explained the structures have been on the subject property for ±10-14 years with no direct neighbour's views or privacy being threatened.

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

The removal of the restrictive title deed conditions will bring about personal benefits to the current landowners since it will allow them to legalise the existing structures (and the uses thereof) that will in turn benefit the resale value of the property in future. The 4,72m street building line as stipulated in the title deed makes the developable area of the property smaller.

The existing property owner will be able to enjoy the personal benefits of the existing structures instead of demolishing the structures. The latter will have a great financial burden on the current property owner.

- ***The social benefit of the restrictive conditions remaining in place in its existing form***

The social benefit if the title deed conditions were to remain unchanged and enforced on the existing As Built structures will be minimal. If the conditions remain unchanged, the owner must adhere to the title deed's stricter street building line, the servant's quarters will have to be altered to form part of the main dwelling unit or revert to an outbuilding and a large extent of the As Built dwelling and / or outbuildings will have to be demolished to comply with the building line requirements. The impact on the neighbouring properties with regards to privacy, noise, impact on the street scape, etc. will be marginally lower since the title deed's street building line is more restrictive than the scheme regulations' street building line.

To keep the 4,72m title deed street building line and the one dwelling only requirement will have no benefit to neither the property owners nor the adjacent properties since the existing structures already encroach the street and lateral

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building lines and no complaints have been received from the immediate property owners over the years.

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

The removal of the restrictive title deed conditions will allow the scheme regulations' building lines and primary uses to set the rules for future development on the subject property. The social benefit will therefore only be to the property owner of erf 1336 De Kelders since it will allow them to keep the existing As Built structures that encroach onto the title deed street and lateral building lines on the subject property. It will also allow the property owner to retain the servant's quarters (second dwelling unit) and continue to benefit from the social gain such a unit brings to a SR1 zoned property.

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

The removal of the restrictive conditions will not remove all rights enjoyed by the beneficiary, but only some rights and will instead expand the value of these rights to accommodate the existing and new structures with departures where applicable. The latter is more desirable for the zoning and extent of the subject property without having a detrimental impact on the rights of anyone else or the character of the area. All other title deed conditions not mentioned in this report will be retained.

There is no bond registered against erf 1336 De Kelders.

From the above as well as the motivation in Sections 3.4 and 3.5 of this report it is evident that the removal of the restrictive title deed conditions can be favourably considered.

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3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where erf 1336 De Kelders is situated, for urban development purposes. The subject property falls within the demarcated urban edge but falls outside of the Coastal Management line. A large extent of the development footprint has approved building plans and therefore the application is merely to an improved erf within the urban edge with no impact on the biophysical environment.

The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed departure and removal of the restrictive title deed conditions on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

The *Overstrand Municipal Growth Management Strategy (OMGMS, 2010)* specifies that erf 1336 De Kelders forms part of Planning Unit no. 1. This planning unit stipulates an increase in density from 11,3du/ha to 14,7du/ha. Part of the application is to accommodate an existing servant's quarters (second dwelling) on the subject property. The slight increase in density for the area by means of second dwellings is a preferred choice of densification for the area. The land use application for the subject property therefore falls within the existing planning for the De Kelders area.

The proposal will promote land development in a location that is sustainable. The proposed departure and removal of restrictive title deed conditions are to an improved erf within an established residential area and will not impact on urban sprawl or upon a sensitive environment. The impact on the overall density of this part of De Kelders will therefore be kept to a minimum since the proposed application still promotes a low-density residential area.

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

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3.16 PLANNING PRINCIPLES

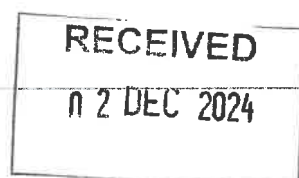
The planning principle of spatial resilience does not apply to this application.

Spatial justice: The proposed land use application ties in with the existing character of the area and will not have a negative impact on the surrounding neighbours. The impact on the biophysical environment will be low as the subject property has been in existence since 1938 (and consolidated in 2021).

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

Spatial sustainability: The proposed departure and removal of restrictive title deed conditions will have a minimal impact on the visual elements of the subject property and surroundings as motivated in this report. It is submitted that the proposed application is compatible with the character of the area (as motivated in previous sections of this report). The encroachment of the building lines has no impact on the massing of the buildings and the impact on the streetscape or passers-by. The As-Built unlawful structures and the uses thereof merge well with the approved structures.

Factors such as the good quality materials used, the overall layout of the structures on the subject property, the scale of the surrounding built environment, the low impact on the streetscape, the location of the subject property, the slope of the subject property, the trail of building plans submitted over the years, the existence of the structures on the subject property for the past few years, etc. allow for the consideration and approval of the proposed deviations and removal of restrictive title deed conditions without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures and the subsequent uses thereof are



to an improved erf within an established residential area will not impact on urban sprawl, or upon a sensitive environment.

The application is considered spatially sustainable as the existing property is optimally utilised. The property is compatible with the character of the area and does not impact negatively on the rights of any adjacent property owner.

Efficiency: The subject property is easily accessible and conveniently located close to Gansbaai, Hermanus and major routes. It proves to be resourceful to approve the As Built structures and the uses thereof since it is compatible with the existing built environment and the way the additions and alterations were by the late Mr Jacobs is aesthetically pleasing.

It proves to be efficient to accommodate the existing structures and its uses by approving the proposed departure and removal of restrictive title deed conditions of erf 1336 De Kelders instead of demolishing the structures and as a result negatively impact on the whole look and feel of the subject property. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

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

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4. RECOMMENDATION

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

- All services on the subject property already exist and no additional loading of the existing infrastructure is anticipated;
- The densification in the form of a second dwelling unit to accommodate the existing servant's quarters is in line with the relevant densification policies for the area;
- The zoning and primary land use of the subject property will remain unchanged;
- The deviations from the applicable scheme regulations' and title deed building lines and the height requirements are to accommodate As Built structures only;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic and services will be kept to a minimum;
- Ample parking bays are provided on site;
- There are no heritage aspects that will negatively impact the application;
- There are no environmental aspects that will negatively impact the application and the application will not have a negative impact on any environmental factors;
- The proposal is compatible with the spatial planning strategies for the area;
- The application is fully compliant with the applicable planning principles described in the LUPA (2014) and SPLUMA (2013);
- We request that a penalty fee not be imposed.

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

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Erf 450

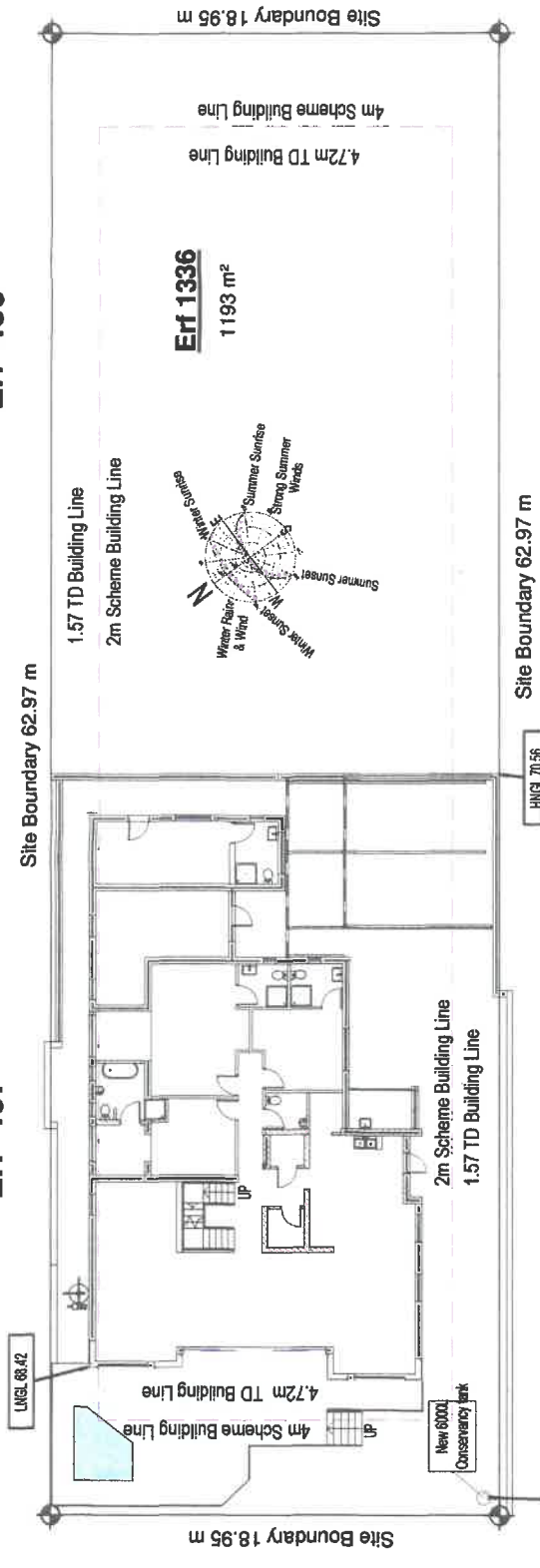
Erf 467

Erf 452

Erf 465

COLENSO STREET


21 INGANG STREET



LNGL 88.42

HNGL 70.56

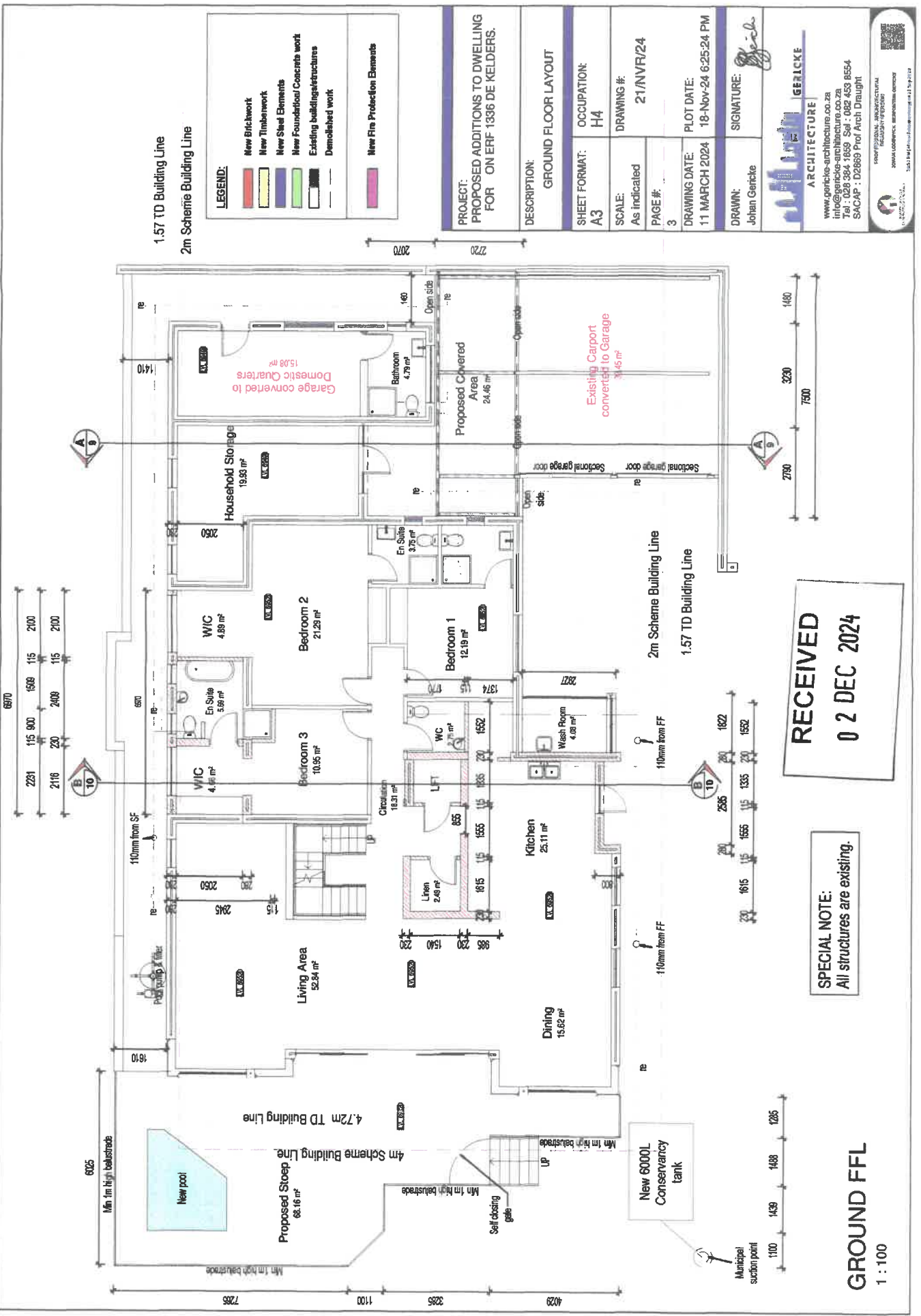
SITE PLAN - GROUND FFL
1 : 200

PROJECT: PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.	
DESCRIPTION: SITE PLAN	
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SCALE: As indicated	DRAWING #: 21/NVR/24
PAGE #: 1	PLOT DATE: 18-Nov-24 6:25:22 PM
DRAWING DATE: 11 MARCH 2024	SIGNATURE: <i>Johan Gericke</i>
DRAWN: Johan Gericke	
 ARCHITECTURE GERICKE www.gericke-architecture.co.za info@gericke-architecture.co.za Tel: 028 384 1859 Fax: 082 453 8554 SACAP : D2669 Prof Arch Draught	

SCHEDULE OF RIGHTS	
PROPERTY DESCRIPTION	OVERSTRAND
Erf Number: 1336 Site Area: DE KELDERS	Use Zone: GENERAL RESIDENTIAL ZONE
Erf size: 1193m ²	
ZONING INFORMATION	
Town planning Scheme:	OVERSTRAND
DEVELOPMENT CONTROL MEASURES	
Existing Ground Floor	: 242.28m ²
Existing Carport	: 39.86m ²
Existing First Floor	: 131.84m ²
Existing Second Floor	: 84.84m ²
New Ground Floor Addition	: 28.58m ²
New Ground Floor Stoop	: 68.16m ²
New Covered Area	: 24.68m ²
New First Floor Addition	: 13.14m ²
New Second Floor Addition	: 41.49m ²
TOTAL	: 674.98m ²
Coverage	33.16%
The information provided above is hereby certified to be correct & precise	
Name: JLS GERICKE	Signature:
Date: 10 APRIL 2024	Plan No: 21/DR/24

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10 APRIL 2024





LEGEND:

- New Brickwork
- New Timberwork
- New Steel Elements
- New Foundational Concrete work
- Existing buildings/structures
- Demolished work
- New Fire Protection Elements

PROJECT:
PROPOSED ADDITIONS TO DWELLING
FOR ON ERF 1336 DE KELDERS.

DESCRIPTION:
GROUND FLOOR LAYOUT

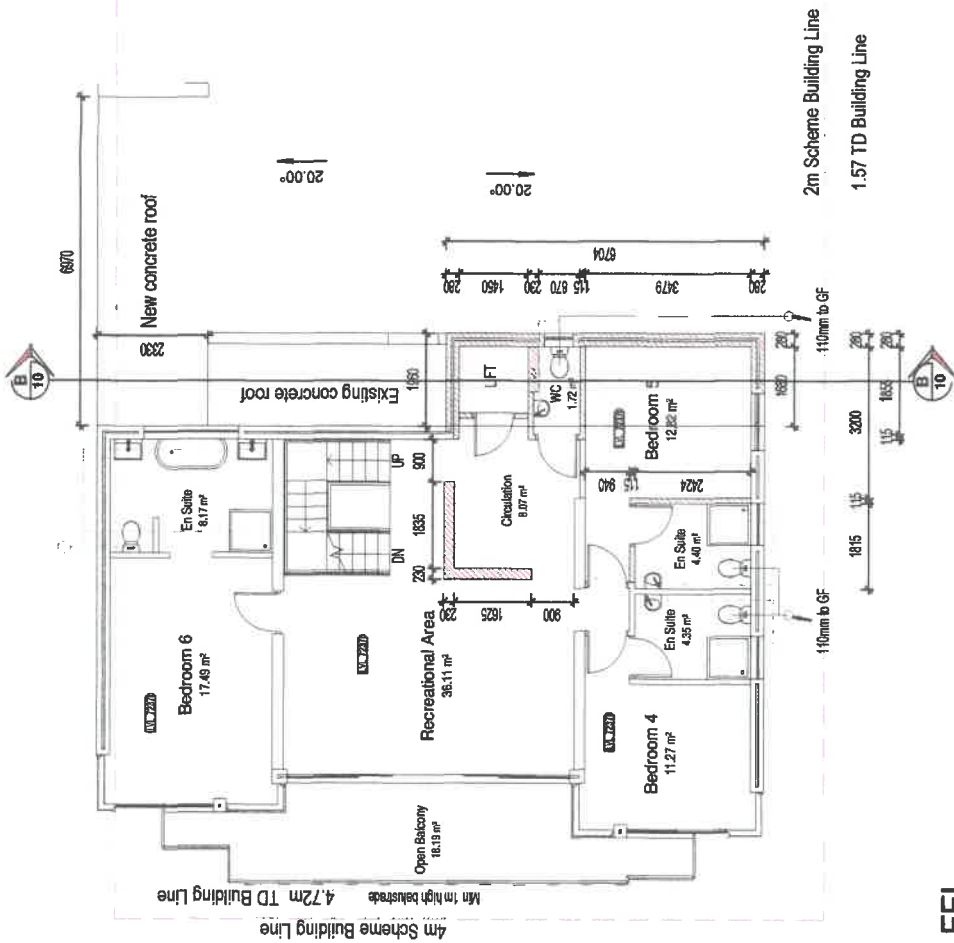
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PAGE #: 3	PLOT DATE: 18-Nov-24 6:25:24 PM
DRAWING DATE: 11 MARCH 2024	SIGNATURE: <i>Johann Gericke</i>
DRAWN: Johann Gericke	

ARCHITECTURE
GERICKE
www.gericke-architecture.co.za
info@gericke-architecture.co.za
Tel : 028 384 1859 Sel : 082 453 8554
SACAP : D2869 Prof Arch Draught

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SPECIAL NOTE:
All structures are existing.

GROUND FFL
1 : 100



LEGEND:

- New Brickwork
- New Timberwork
- New Steel Elements
- New Foundational Concrete work
- Existing building/structures
- Demolished work
- New Fire Protection Elements

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FIRST FFL
1 : 100

SPECIAL NOTE:
All structures are existing.

1.57 TD Building Line
2m Scheme Building Line

SCHEDULE OF RIGHTS		PROPERTY DESCRIPTION	
Erf Number: 1336 Site Area: DE KELDERS		Erf size: 1193m ²	
ZONING INFORMATION			
Town planning Scheme: OVERSTRAND		Use Zone: GENERAL RESIDENTIAL ZONE	
DEVELOPMENT CONTROL MEASURES			
Existing Ground Floor	: 242.29m ²	Existing Carport	: 39.86m ²
Existing First Floor	: 131.84m ²	Existing Second Floor	: 84.84m ²
New Ground Floor Addition	: 28.58m ²	New Ground Floor Sleep	: 68.16m ²
New Covered Area	: 24.68m ²	New First Floor Addition	: 13.14m ²
New Second Floor Addition	: 41.49m ²	TOTAL	: 674.99m ²
		Coverage	: 33.19%
The information provided above is hereby certified to be correct & precise			
Name: JLS GERICKE		Signature: <i>JLS</i>	
Date: 10 APRIL 2024		Plan No. 21DR/24	

PROJECT:		PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.	
DESCRIPTION:		FIRST FLOOR PLAN	
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		PLOT DATE:	18-Nov-24 6:25:24 PM
DRAWN:	John Gericke	SIGNATURE:	<i>John Gericke</i>
ARCHITECTURE			
JLS GERICKE ARCHITECTURE			
www.gericke-architecture.co.za info@gericke-architecture.co.za Tel: 028 384 659 Fax: 028 459 8584 SACAP : D28619 Prof Arch Draught			
PROFESSIONAL ARCHITECTURAL TRAINING BOARD JOHN GERICKE ARCHITECTURE			



INCL. 70.55

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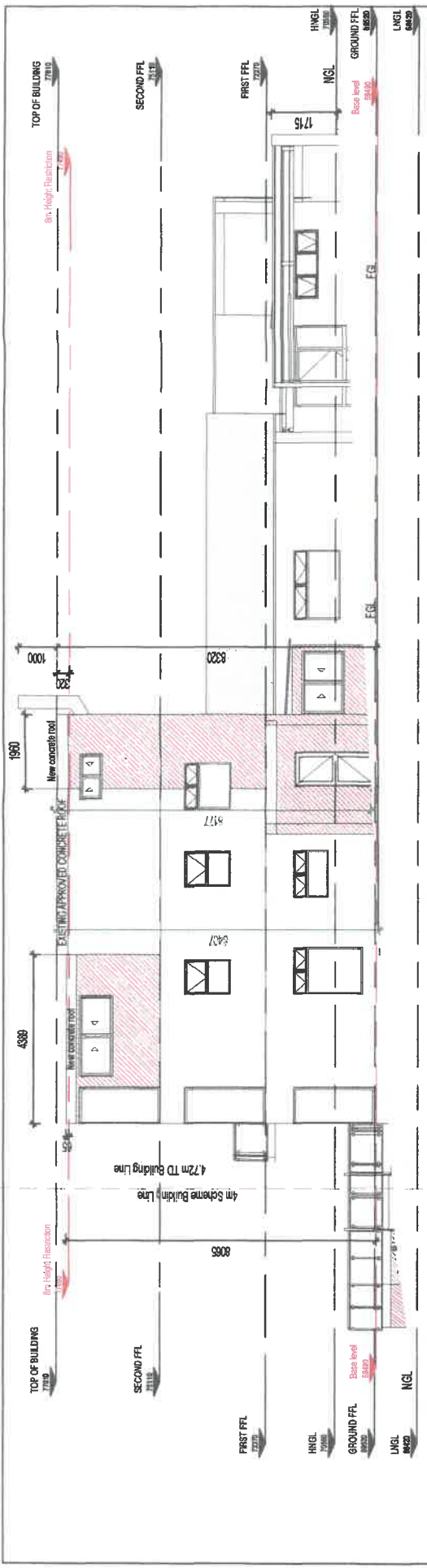
SITE PLAN - ROOF PLAN
1:100

PROJECT: PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.	
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PAGE #: 6	DRAWING DATE: 11 MARCH 2024
PLOT DATE: 18-Nov-24 6:25:25 PM	
DRAWN: Johan Gericke	SIGNATURE: 




ARCHITECTURE GERICKE
 www.gericke-architecture.co.za
 info@gericke-architecture.co.za
 Tel : 028 384 1659 Sel : 082 453 8554
 SACAP : D2889 Prof Arch Draught

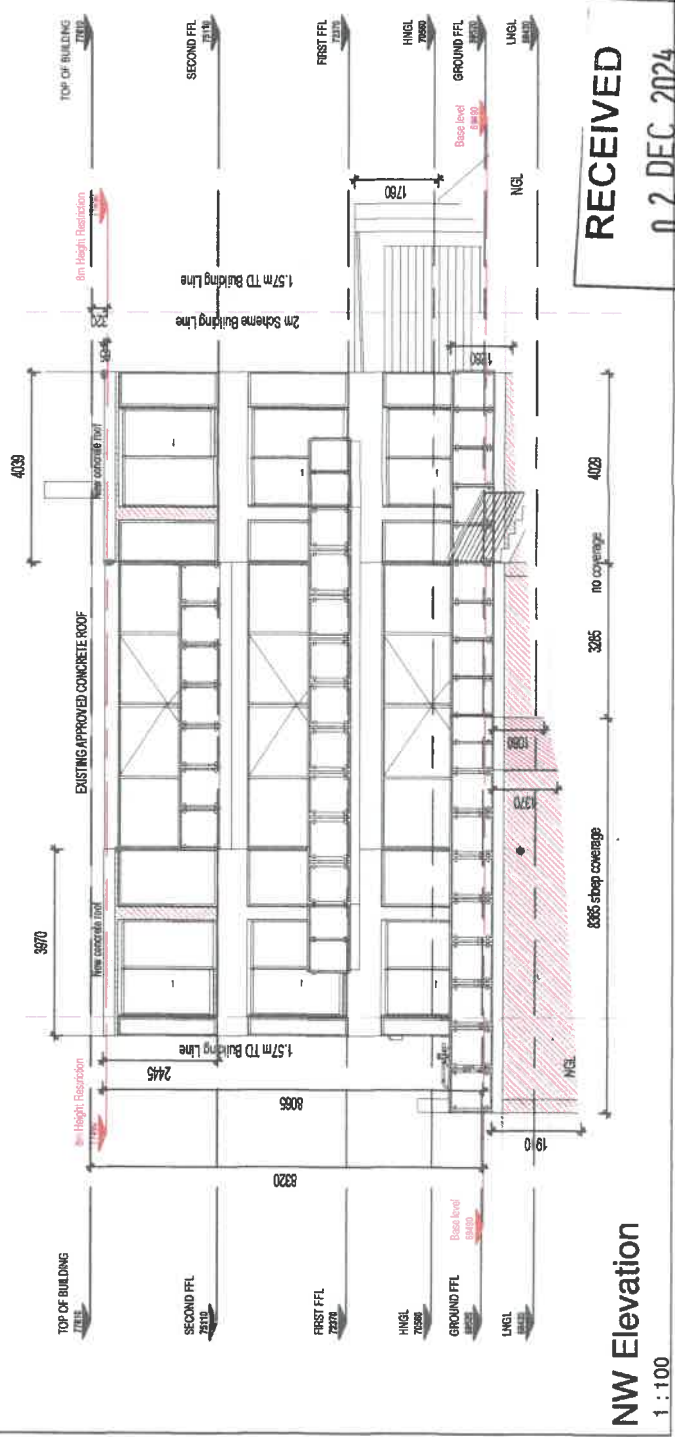




SW Elevation
1 : 100

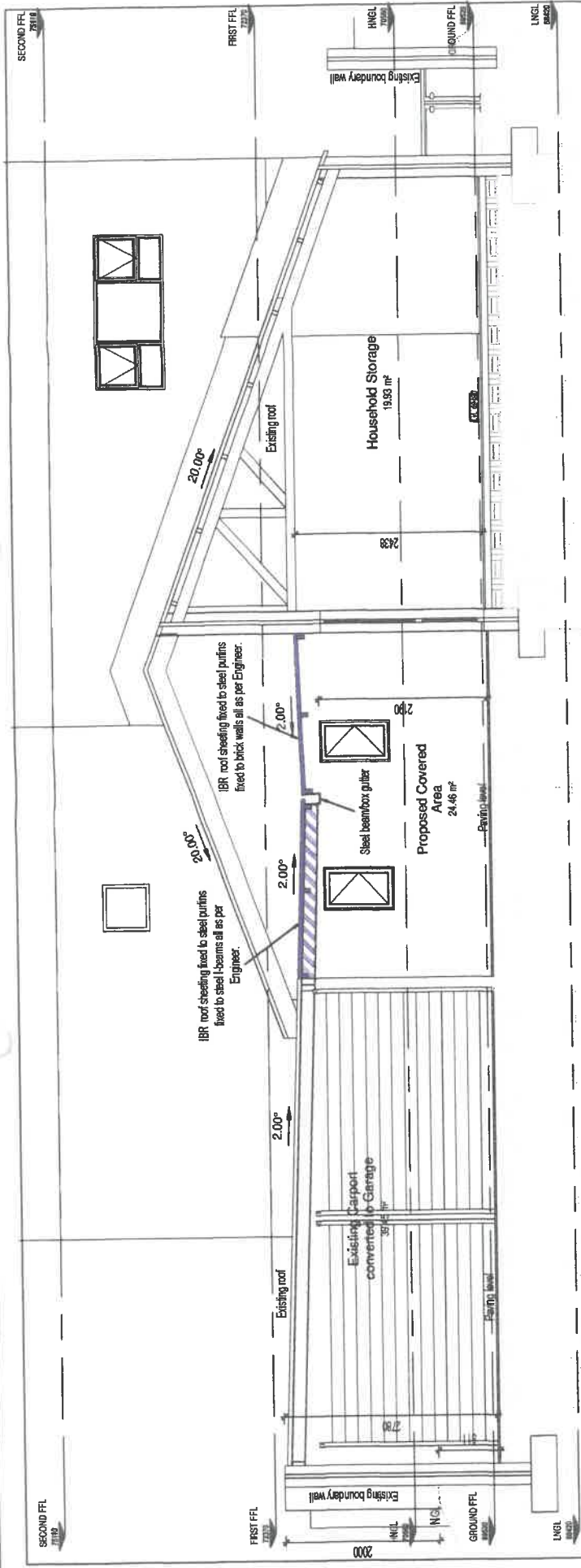
SPECIAL NOTE:
All structures are existing.

PROJECT: PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.	
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SCALE: As indicated	DRAWING #: 21/NVR/24
PAGE #: 7	DRAWING DATE: 11 MARCH 2024
	PLOT DATE: 18-Nov-24 6:25:26 PM
DRAWN: Johan Gericke	SIGNATURE: <i>Johan Gericke</i>
	
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NW Elevation
1 : 100



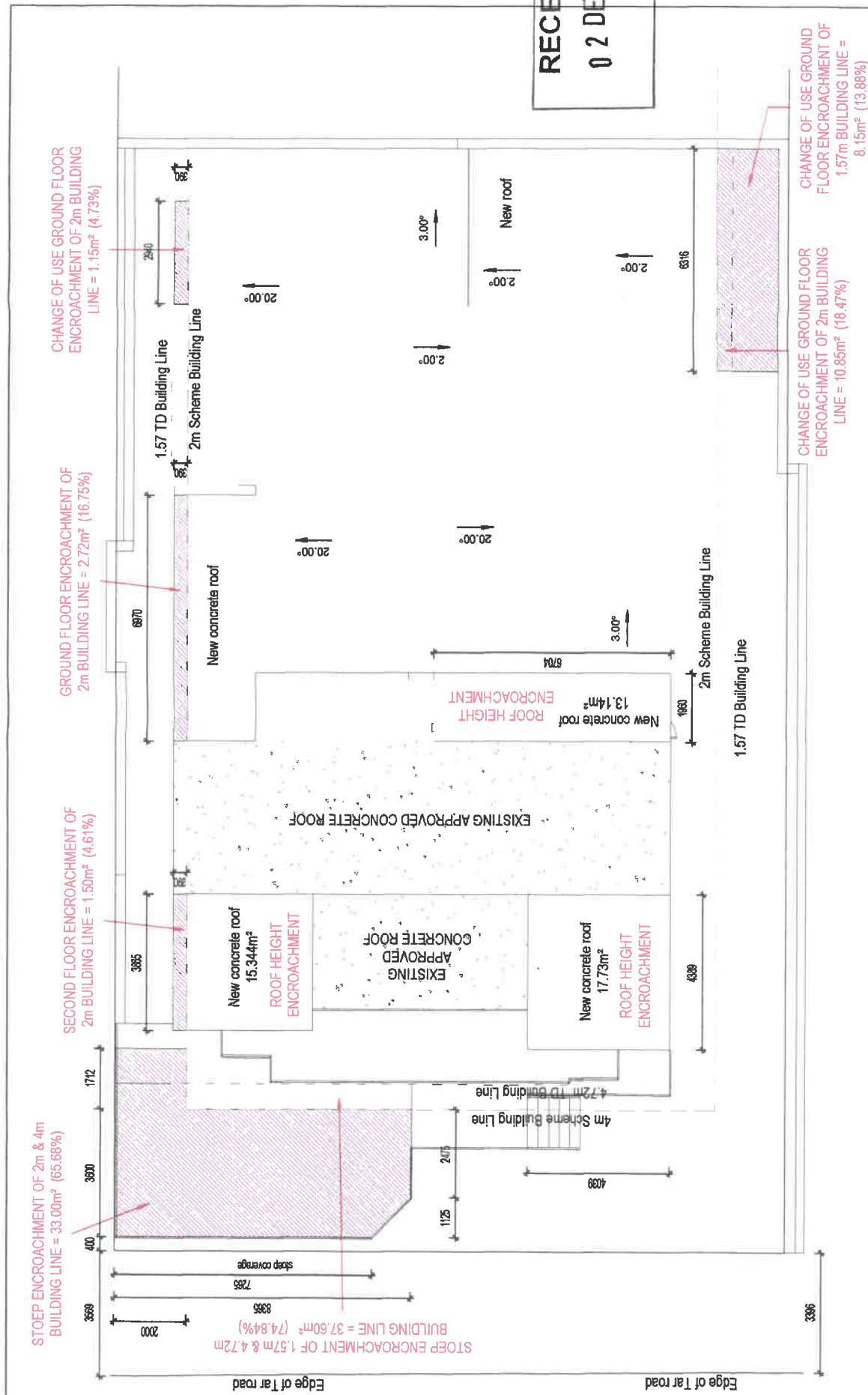
Section A-A
1 : 50

SPECIAL NOTE:
All structures are existing.

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<p>PROFESSIONAL ARCHITECTURAL DRAWING SERVICE 18 21 81 1/2 (18/21/81) 1/2</p>	<p>DRAWING DATE: 11 MARCH 2024 PAGE #: 9</p>	<p>IMPORTANT NOTE: THE FOLLOWING MUST BE STRICTLY ADHERED TO AND INSTALLED BEFORE SIGN OFF OF DWELLING! 1. ALL GLAZING ACCORDING FENESTRATION CALCULATIONS 2. ISOTHERM INSULATION IN ROOF VOID 3. SOLAR GEYSER/GAS GEYSER</p>	<p>www.gericke-architecture.co.za info@gericke-architecture.co.za Tel : 028 384 1659 Fax : 082 453 8554 SACAP : D2869 Prof Arch Draught</p>

21 INGAN STREET



STEEP ENCROACHMENT OF 2m & 4m BUILDING LINE = 33.00m² (65.66%)

SECOND FLOOR ENCROACHMENT OF 2m BUILDING LINE = 1.50m² (4.61%)

GROUND FLOOR ENCROACHMENT OF 2m BUILDING LINE = 2.72m² (16.75%)

CHANGE OF USE GROUND FLOOR ENCROACHMENT OF 2m BUILDING LINE = 1.15m² (4.73%)

STEEP ENCROACHMENT OF 1.57m & 4.72m BUILDING LINE = 37.60m² (74.84%)

New concrete roof 13.14m² ROOF HEIGHT ENCROACHMENT

New concrete roof 15.34m² ROOF HEIGHT ENCROACHMENT

New concrete roof 17.79m² ROOF HEIGHT ENCROACHMENT

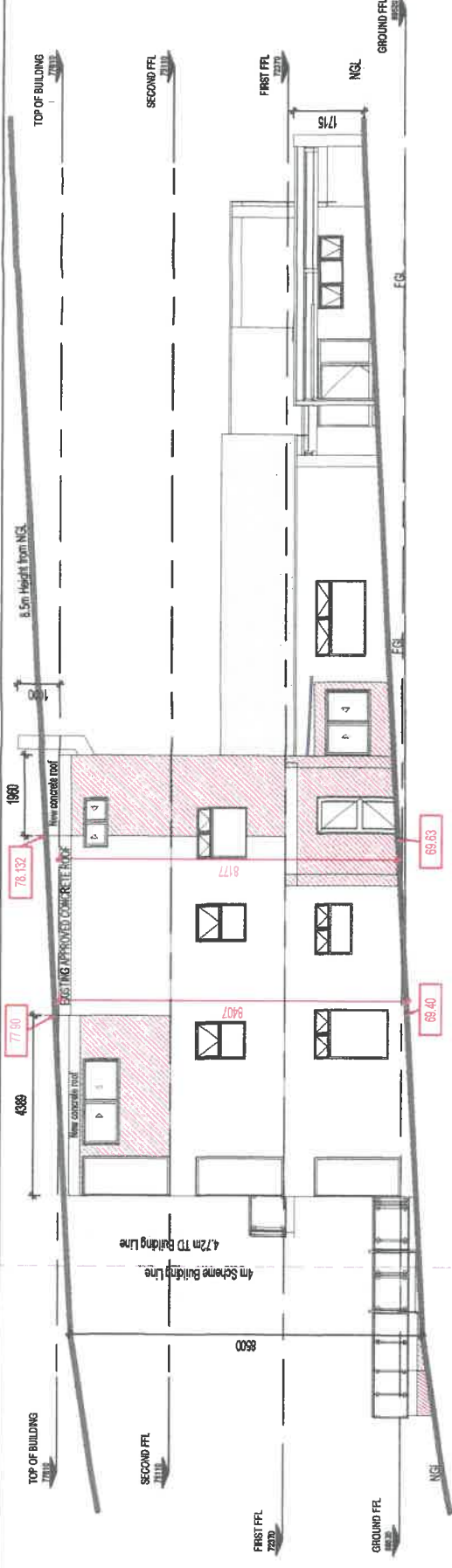
CHANGE OF USE GROUND FLOOR ENCROACHMENT OF 2m BUILDING LINE = 10.85m² (18.47%)

CHANGE OF USE GROUND FLOOR ENCROACHMENT OF 1.57m BUILDING LINE = 8.15m² (13.88%)

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<p>DRAWN: Johan Genicke</p> <p>SIGNATURE: <i>Johan Genicke</i></p> <p>OCCUPATION: H4</p>	<p>SHEET FORMAT: A3</p>	<p>IMPORTANT NOTE:</p> <p>THE FOLLOWING MUST BE STRICTLY ADHERED TO AND INSTALLED BEFORE SIGN OFF OF DWELLING!</p> <ol style="list-style-type: none"> 1. ALL GLAZING ACCORDING FENESTRATION CALCULATIONS 2. ISOTHERM INSULATION IN ROOF VOID 3. SOLAR GEYSER/GAS GEYSER 	<p>PROJECT: PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.</p> <p>DESCRIPTION: ENCROACHMENTS</p>	<p>SCALE: 1 : 100</p> <p>DRAWING DATE: 11 MARCH 2024</p>	<p>DRAWING #: 21/NVR/24</p> <p>PAGE #: 11</p>	<p>www.genicke-architecture.co.za info@genicke-architecture.co.za Tel : 028 384 1659 Fax : 082 453 8554 SACAP : D2669 Prof Arch Draught</p>
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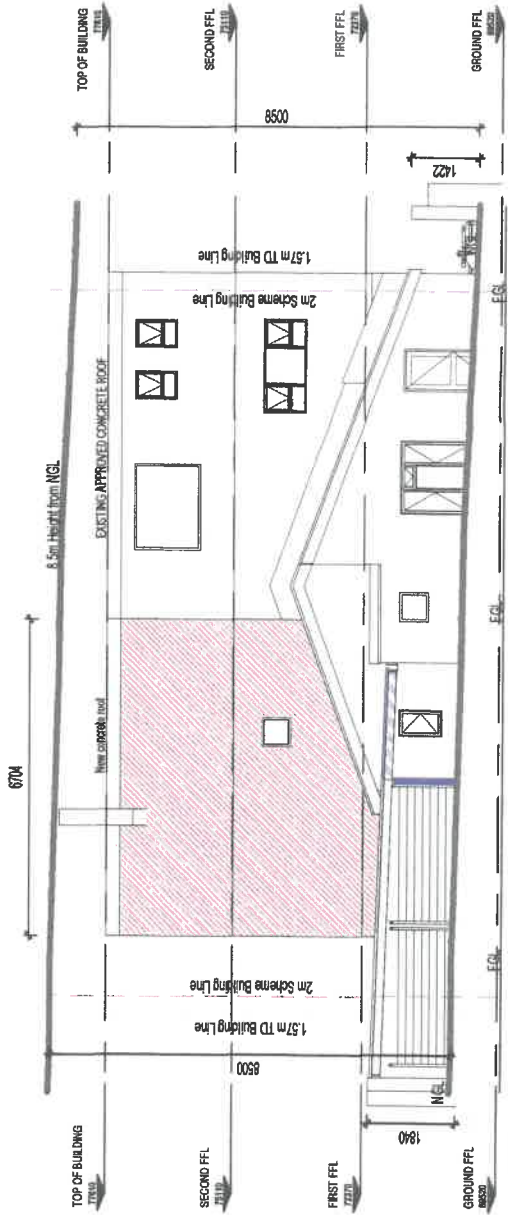




SW Elevation 8.5m
1 : 100

SPECIAL NOTE:
All structures are existing.

PROJECT: PROPOSED ADDITIONS TO DWELLING FOR ON ERF 1336 DE KELDERS.	
DESCRIPTION: ELEVATIONS - 8.5m	
SHEET FORMAT: A3	OCCUPATION: H4
SCALE: As indicated	DRAWING #: 21/NVR/24
PAGE #: 14	PLLOT DATE: 18-Nov-24 6:25:32 PM
DRAWING DATE: 11 MARCH 2024	SIGNATURE: 
DRAWN: Johan Gerlicke	ARCHITECTURE: 
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SE Elevation 8.5m
1 : 100

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