

OVERSTRAND MUNICIPALITY	OVERSTRAND MUNISIPALITEIT	UMASIPALA WASE-OVERSTRAND
<p><b>ERF 249, 52 CREST ROAD, PEARLY BEACH: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: J DOUGLAS ON BEHALF OF A &amp; MV SMIT</b></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 application applicable to the above-mentioned property, namely:</p> <p><b><u>Removal of restrictive title deed conditions</u></b></p> <p>Application in terms of Section 16(2)(f) of the By-Law, for the removal of restrictive title deed conditions B.4(b) &amp; B.4(d) as contained in Title Deed 30507/2016 to accommodate a second dwelling and carport on the property.</p> <p>Full details regarding the proposal is available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning at 16 Paterson Street, Hermanus and at the Gansbaai Library, Main Road, Gansbaai. Any written comments may be submitted in accordance with the provisions of Sections 51 and 52 of the said By-Law to the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) <a href="mailto:alida@overstrand.gov.za">alida@overstrand.gov.za</a>) on or before <b>Friday, 20 December 2024</b>, quoting your name, address and contact details, interest in the application and reasons for comments. Telephonic enquiries can be made to <b>Senior Town Planner, Mr. SW van der Merwe</b> at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.</p>	<p><b>ERF 249, CRESTWEG 52, PEARLY BEACH: AANSOEK OM OPHEFFING VAN BEPERKENDE TITELAKTE VOORWAARDES: J DOUGLAS NAMENS A &amp; MV SMIT</b></p> <p>Kennis word hiermee gegee ingevolge Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening), van die volgende aansoek van toepassing op die bogenoemde eiendom, naamlik:</p> <p><b><u>Opheffing van beperkende titelaktwoorwaardes</u></b></p> <p>Aansoek ingevolge Artikel 16(2)(f) van die Verordening, vir die opheffing van beperkende titelaktwoorwaardes B.4(b) &amp; B.4(d) soos vervat in Titelakte 30507/2016 om 'n tweede woning en motorafdak op die eiendom te akkommodeer.</p> <p>Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en by die Gansbaai Biblioteek, Hoofweg, Gansbaai. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) <a href="mailto:alida@overstrand.gov.za">alida@overstrand.gov.za</a>) voor of op <b>Vrydag, 20 Desember 2024</b>, met die naam, adres en kontakbesonderhede, belang in die aansoek sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan <b>Senior Stadsbeplanner, Mnr. SW van der Merwe</b> by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.</p>	<p><b>ISIZA 249, CREST ROAD, E-PEARLY BEACH: ISICELO SOKUSUSWA KWEMIQATHANGO YESIVUMELWANO SOBUNINI ESITHINTELWEYO: J DOUGLAS EGAMENI LIKA A &amp; MV SMIT</b></p> <p>Isaziso siyanikezelwa ngokweCandelo lama-47 nelama-48 loMthetho kaMasipala woLungiso loLungiso lukaMasipala waseOverstrand kuCwangciso lokuSetyenziswa koMhlaba kaMasipala, ka-2020 (uMthetho kaMasipala) kwezi zicelo zilandelayo zisebenza kwezi propati zikhankanywe apha ngasentla, ezizezi:</p> <p><b><u>Ukususwa kweMiqathango yeSivumelwano soBunini esiThintelweyo</u></b></p> <p>Isicelo ngokuhambelana neCandelo le-16(2)(f) loMthetho kaMasipala sokususa imiqathango yesithintelo setayitile yobunini B.4(b) kunye B.4(d) njengoko equlethwe kwiSivumelwano soBuninimhlaba esinguNombolo 30507/2016, ukulungiselela indawo yokuhlala yesibini kunye nekhapoti kwipropathi.</p> <p>linkcukacha ezihambelana nesi siphakamiso ziyafumaneka kwiintsuku zaphakathi evekini ukuze zihlolwe phakathi kwentsimbi ye-08:00 ne- 16:30 kwiSebe: Izicwangciso ngeDolophu kwa16 Paterson Street, e-Hermanus. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zeSolotyia lama-51 nelama-52 loMthethwana kaMasipala ochazwe ngentla (16 Paterson Street, Hermanus / (f) 0283132093 / (e) <a href="mailto:alida@overstrand.gov.za">alida@overstrand.gov.za</a> ngomhla okanye ngaphambi ko<b>Lwesihlanu, 20 EyeMnga 2024</b> uchaze igama lakho, idilesi, neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zokuhlomla. Imibuzo ngefowuni ingabuzwa ku<b>Mcwangcisi weDolophu, uMnu. SW van der Merwe</b> kwa- 028-313 8900. UMasipala angala ukwamkela izimvo emva kokuvala. Nabani na ongakwazi ukufunda nokubhala angandwendwela kwiSebe leziCwangciso zeDolophu acele igosa limncede ukufaka uluvo lwakhe ngokusemthethweni.</p>
<p>Dr DGI O'Neill  <b>Municipal Manager / Munisipale Bestuurder / Umphathi Kamasipala</b>  PO Box / Posbus / Ibhokisi yePosi 20 HERMANUS 7200</p>		<p>Notice No / Kennisgewing nr / Inombolo yesaziso: <b>164/2024</b></p>



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## 1. Background

The subject property Erf 249 is situated in the residential neighbourhood of Pearly Beach and is located along Crest Road with an extent of 833m<sup>2</sup>. According to the zoning map & Overstrand Municipal Land Use Scheme, 2020 the property is zoned as Single Residential Zone I: Single Residential (SRI). The property is developed with a one-bedroom dwelling house, with access gained from Crest Road.

It is the intent of the property owner to erect a new main dwelling house which will consist of a three-bedroom dwelling house with a garage and storage area as well as a carport that will be erected on the rear side of the property (261.26m<sup>2</sup>). The new dwelling house will be used as the main dwelling house and the existing dwelling house (73.31m<sup>2</sup>) will be used as a second dwelling.

The property owner consulted the relevant professional to ensure that their proposal would be successful. Upon consultation it was noted that the title deed of the property restricts the development of a second dwelling unit on the property and was therefore advised to remove the condition to allow the second dwelling unit on the property. As well as allowing the carport on the rear side of the property to encroach the title deed building line.

Jeané Douglas is hereby duly appointed by the property owner (Albertus Smit) to submit a land use planning application for the proposed development.

See Appendix-B for the Power of Attorney and Appendix-C for the Site Development Plan

## 2. Application

Application is hereby submitted in terms section 16.2.(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (ByOLaw) for the removal of the following restrictive title deed conditions contained Title Deed No. T.30507/2016 in order to accommodate a second dwelling and the proposed new carport over the 3.15m rear title deed building line:

- Restrictive title deed condition B.4(b); and
- Restrictive title deed condition B.4.(d)



### 3. Locality

The subject property is situated within the Overstrand Municipality, located 52 Crest Road, Pearly Beach. The location of the property is shown in the figure below as figure 1.

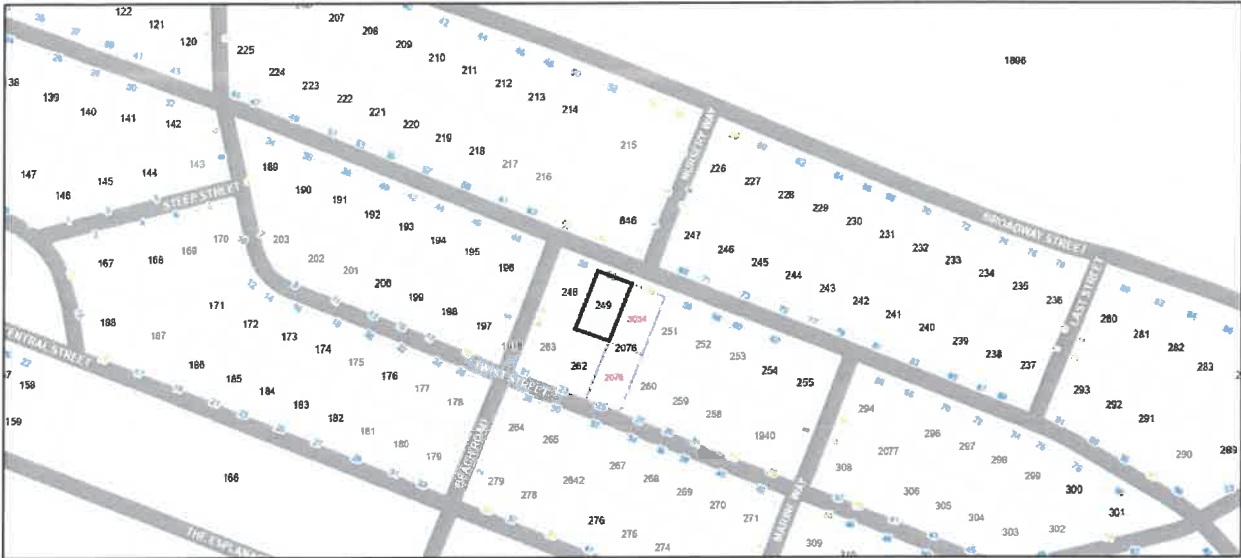


Figure 1: Locality Map of Erf 249, Pearly Beach

### 4. Land Use Environment

The property is situated in the residential neighbourhood of Pearly Beach where the predominant use of the area is for residential purposes. The zoning of the subject erf and the surrounding properties are zoned Single Residential Zone 1. The zoning in the area is shown below as Figure 2 and Appendix D.



Figure 2: Surrounding Zoning

## 5. Land Use Scheme Parameters

The property is zoned Single Residential Zone 1 in terms of the Overstrand Municipality Land Use Scheme, 2020. The table below indicates the applicable parameters in terms of the zoning and the proposed departure.

	<b>Scheme Parameters</b>	<b>Proposed Development</b>	<b>Departure Required</b>
<b>Coverage</b>	50%	29.23%	No
<b>Height</b>	8m	Not applicable, the proposed	No
<b>Street Building Line</b>	4m	Not applicable, as the proposal does not encroach the street building line.	No
<b>Title Deed Street Building Line</b>	4.72m	Not applicable, as the proposal does not encroach the street building line.	No
<b>Rear Building Line</b>	2m	Not applicable, as the proposal does not encroach the rear building line.	No
<b>Title Deed Rear Building Line</b>	3.15m	Applicable, carport is encroaching the title deed rear building line	Yes
<b>Lateral Building Line</b>	2m	Not applicable, as the proposal does not encroach the side building line.	No
<b>Title Deed Lateral Building Line</b>	1.57m	Not applicable, as the proposal does not encroach the side building line.	No
<b>Lateral Building Line</b>	2m	Not applicable, as the proposal does not encroach the side building line.	No
<b>Title Deed Lateral Building Line</b>	1.57m	Not applicable, as the proposal does not encroach the side building line.	No

## 6. Title Deed

In terms of the Title Deed No. T.30507/2016, Erf 249 Pearly Beach is registered in the name of Albertus and Moné Veronica Smit. Condition B.4.(b) as stipulated in the aforementioned title deed restricts the property of having no more than one (1) dwelling on the said property as well as condition B.4.(b) restricting the property owner to build over the title deed building lines. It is therefore proposed that Section B.4.(b) & B.4.(d) be removed from the title deed. The section to be removed reads as follows:

“B.4.(b) It shall be used only for the purpose of erecting thereon one dwelling together with such outbuildings as are ordinarily required to be used therewith;

B.4.(d) No building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4.72 metres to the street line which forms a boundary of this erf, nor within 3.15 metres of the rear or 1.57 metres of the lateral boundary common to any adjoining erf, provided that with the consent of

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the local authority, an outbuilding not exceeding 3.15 metres in height, measured from the floor to the wall plate and no portion of which will be used for human habitation, may be erected within the above prescribed rear space. On consolidation of any two or more erven, this condition shall apply to the consolidated area as one erf.”

The Title Deed is attached hereto as Appendix E.

**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 value of the rights in terms of the restrictive condition vests in the surrounding property owners of Erf 249 Pearly Beach. The removal of the restrictive conditions will allow the property owners to accommodate the additions of a proposed second dwelling located on the front (northern portion) of the property as well as the proposed carport that will encroach the rear title deed building line. The financial benefit of removing the rights is that the additions will increase the value of the property (as any addition will increase the value of the property) and will allow the current property owners to increase the asking price when placed on the market. Additionally, by having the title deed building line parameters removed, the purchaser of the subject property will benefit by not going through a removal or title deed relaxation process if the property owners decide to develop the residential property further.

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

The restrictive title deed conditions were imposed by the Administrator for the benefit of the property owners of the Township Pearly Beach. With most municipalities adopting their own land use scheme the only benefit that accrues to the holder of these rights is that the property owners have more restrictive land use parameters in place when developing their property. Keeping the restrictive condition in place will not benefit the administrator, the applicable municipality (Overstrand Municipality) nor will it benefit the property owner.

- **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 conditions will benefit the property owners by being able to erect a second dwelling unit and erecting a carport that encroaches the rear title deed building line. The proposal will still be subject to provisions of the Overstrand Municipal Land Use Scheme.

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

There is not a social benefit if the restrictive conditions are to remain in place.

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

The removal of the restrictive conditions will allow the scheme building line regulation to set the guidelines for future developments on the subject property. The social benefit will only be for the property owner as it will allow the owner to erect a second dwelling unit and erect a carport encroaching the rear title deed building line on the subject property and will allow future developments constructed to be in line with the scheme regulations only.

- **Whether the removal 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 the rights enjoyed by the owners, as it will expand the value of the property by accommodating the proposal of a second dwelling and a carport encroaching the rear title deed building line. This will not have an impact on the rights of anyone or the character of the area.

Conclusion:

With reference to the above-mentioned, the proposal to remove the specific title deed restrictive conditions is only to allow the development of a second dwelling unit which is a primary land use right in terms of the current Overstrand Municipality Land Use Scheme. Additionally, the proposal to construct a carport over the 3.15m rear title deed building line up to the 2m scheme building line should also be considered due to the intent of the property owners to develop their property which is permitted in the current Overstrand Municipality Land Use Scheme. The removal of the above-mentioned title deed conditions should therefore be considered favourably from a town planning perspective.

## 7. Engineering Services

The subject property is connected to the existing Overstrand Municipality services network which includes electricity, water, sewage and solid waste.

## 8. Policies and Regulations

### Overstrand Municipal Spatial Development Framework, 2020 (MSDF)

The Municipal Spatial Development Framework is a sectoral component of the IDP that, in terms of the MSA, is aimed at providing general direction to guide decision making on an ongoing basis, aiming at the creation of integrated, sustainable and habitable regions, cities, towns and residential areas.

The proposed application is located within the urban edge and is indicated as part of the “urban development area”. The proposed additions to the residential zoned property are therefore in line with this forward planning document.

### Overstrand Municipality Spatial Growth Management Strategy, 2010 (OMSGMS)

The Growth Management Strategy promotes the longer-term sustainability of the municipal area and its sub-regions. The property falls within the planning unit 3 of Pearly Beach; this section of Pearly Beach is predominantly for residential use. Since the proposed additions are of a normal residential nature, the proposal is therefore in line with the OMSGMS strategy.

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## 9. Planning Principles

### Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)

Section 7 of the "Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)" list 5 development principles based on which any development application must be evaluated.

The principles referred to are as follows:

#### **1. Spatial Justice**

Spatial Justice refers to planning proposals which do not contribute towards the perpetuation of apartheid spatial development imbalances. This proposal for the removal of title deed restrictions does not perpetuate apartheid spatial development imbalances.

#### **2. Spatial Sustainability**

Spatial sustainability refers to planning proposals which result in communities that are viable. This proposal for the removal of title deed restrictions intends to ensure the subject property is utilized to its maximum capabilities.

#### **3. Spatial resilience**

This proposal is not in conflict with any spatial planning policies or other regulations of the Overstrand Municipality.

#### **4. Efficiency**

This proposal intends to maximize the owner's utilisation of the property by erecting a second dwelling and a carport.

#### **5. Good administration**

The Overstrand Municipality has a credible track record of good administration regarding the method of public participation which invites and accepts comments from the public to make an informed decision as well as complying with the prescribed time frames pertaining to the processing of applications.

## 10. Need and Desirability

The proposal needs to be evaluated on the basis that the current situation is not utilizing the available space efficiently. The proposal to develop a carport over the title deed building line as well as to develop a second dwelling is considered normal residential structures which is in line with the character of the residential area in Pearly Beach as well as in residential areas across the Overstrand Municipal jurisdiction. The proposal is only for the removal of the restrictive title deed conditions B.4.(b) & B.4.(d) which restricts the development of a second dwelling as well as the development of a carport in its current proposed location. If the subject property were to have no restrictive title deed conditions, no land use planning application would be required since the current Overstrand Municipality Land Use Scheme permits a second dwelling as a primary right and no scheme building lines are encroached. The proposal is therefore to have the Erf 249 Pearly Beach to be subject to the Overstrand Municipal Land Use Scheme- Residential Zone1: Single Residential zoning's permitted land uses as well as its applicable parameters which is enjoyed by the majority of the Overstrand Municipal property owners.



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With the above-mentioned, the proposal to remove the afore-mentioned restrictive title deed conditions should be considered favourable from a town planning perspective.

## 11.Recommendations

Based on the abovementioned motivation, it is recommended that the following be approved:

1. Application in terms of section 16(2)(f) for the removal of the following restrictive title deed conditions contained Title Deed No. T.30507/2016 in order to accommodate a second dwelling and the proposed new carport over the 3.15m rear title deed building line:
  - Restrictive title deed condition B.4(b); and
  - Restrictive title deed condition B.4.(d)

**GENERAL:**  
All measurements must be checked on site.

**NOTES:**  
1. All work must comply with the NATIONAL BUILDING REGULATION.  
2. Provide lines to all openings 2.4m min width.  
3. All natural and artificial light must comply with Part O of the NBR or as specified by a competent person.  
4. All water services must comply with Part O of the NBR or as specified by a competent person.  
5. Roots, external walls and floors that form the building envelope and any other external fabric shall be constructed to minimize air leakage.  
6. A clean or rubber compressible strip or a lipous seal to restrict air leakage shall be provided to all external doors and other such components around the perimeter of a conditioned space or habitable room.  
7. CHIMNEYS:  
Chimney must comply with Part V of the NBR or as specified by a competent person.  
8. Chimney or flue of an open solid fuel burning appliance shall be provided with a cap or other such component to prevent rainwater ingress.  
9. SANS 10400 XA:2021  
10. WALLS:  
Walls must comply with Part K of the NBR or as specified by a competent person.  
11. Provide DPC to all walls and windows.  
12. FLOORS:  
To be in accordance with Part J of the NBR.  
13. For water supply:  
Sewer water supply systems will comply with SANS 10106, SANS 10254 and SANS 10253-1.  
14. SANS 10254 and SANS 10253-1.  
15. SANS 10254 and SANS 10253-1.  
16. External walls, Energy usage will comply with SANS 10100 XA:2021.  
17. Floors:  
Where an existing building is demolished, the floor shall be insulated with insulation that has a minimum U-value of 0.10 W/m<sup>2</sup>K such as to prevent heat loss to the surrounding and adjacent building envelope shall have insulation under slab conditions and be installed depending on the Energy zone.  
18. The floor shall be insulated with insulation that has a minimum U-value of 0.10 W/m<sup>2</sup>K such as to prevent heat loss to the surrounding and adjacent building envelope shall have insulation under slab conditions and be installed depending on the Energy zone.  
19. All thermal insulation will be in accordance with SANS 428 and Part 4 of NBR.  
20. All piping for hot water will comply with SANS 10114-1.  
21. This drawing is copyright. The drawing may be used, display, print and reproduce only for use on the project as described.  
22. This drawing stays the property of FMBuilding consultants.

**OWNER SIGNATURE:**

**PROJECT:** PROPOSED 2ND DWELLING  
**ERF:** 249  
**TOWNSHIP:** PEARLY BEACH  
**OWNER:** MR & MRS SMIT

**AREA GROUND FLOOR:**  
**EXISTING:** 73.31m<sup>2</sup>  
**NEW:** 261.26m<sup>2</sup>

**LOWER GROUND:**  
**NEW:** 124.77m<sup>2</sup>

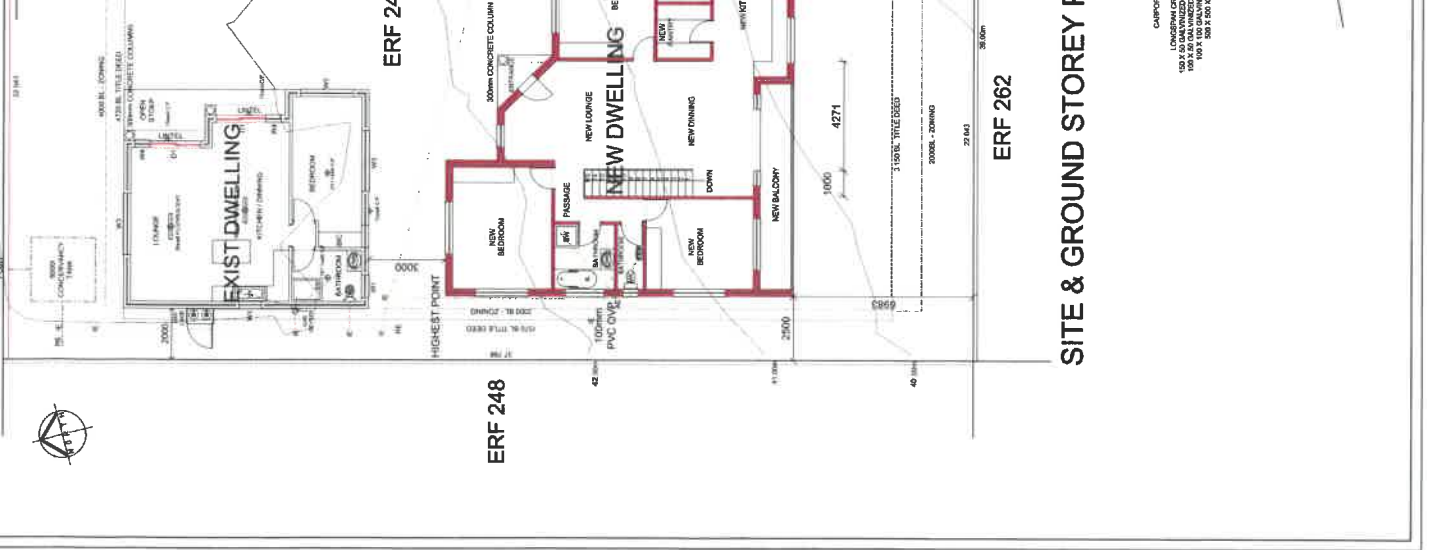
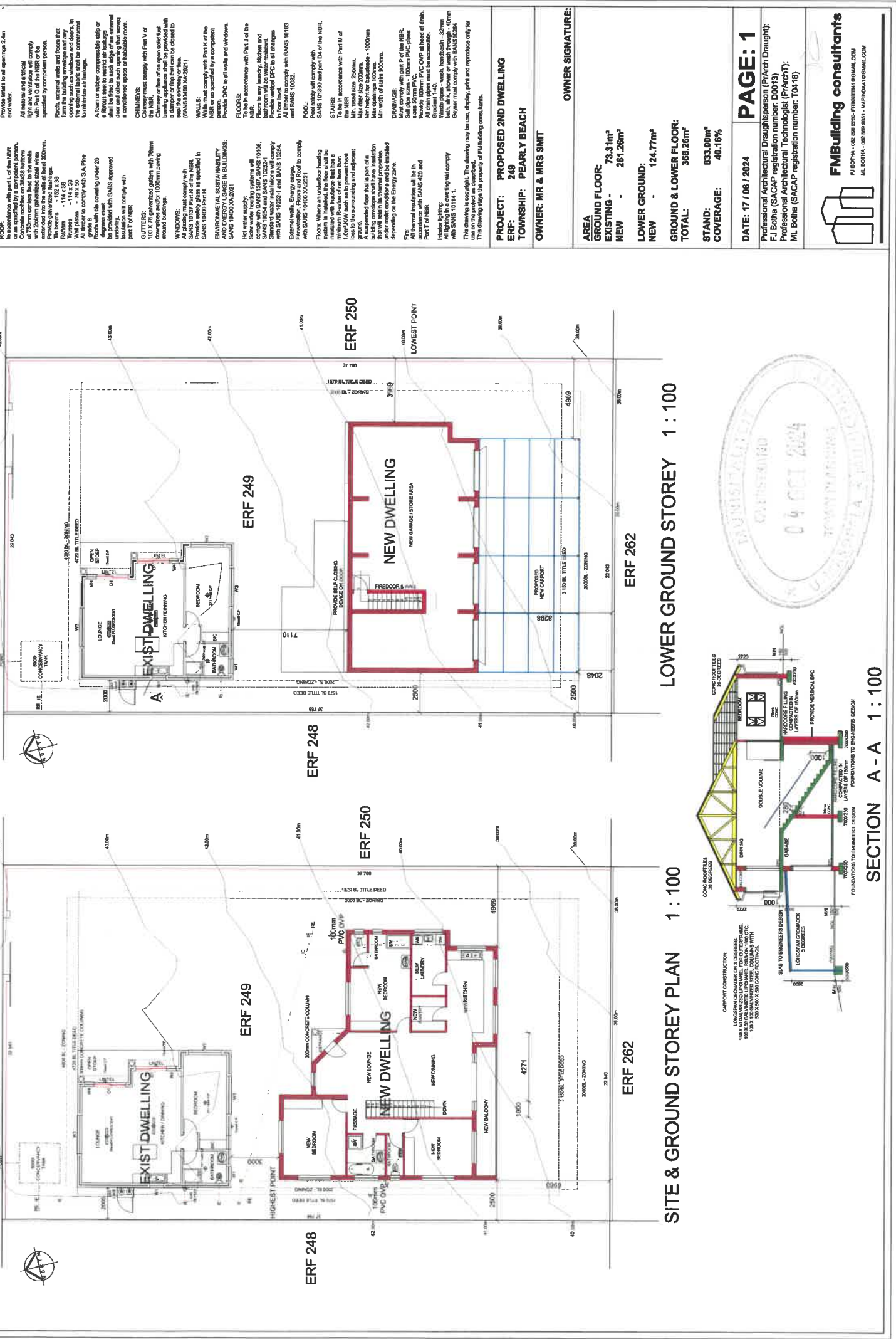
**GROUND & LOWER FLOOR:**  
**TOTAL:** 368.26m<sup>2</sup>

**STAND:** 833.00m<sup>2</sup>  
**COVERAGE:** 40.16%

**DATE:** 17 / 08 / 2024  
**PAGE:** 1

Professional Architectural Draughtsperson (PArch Draught):  
F.J. Botha (SACAP registration number: 00019)  
Professional Architectural Technologist (PArchT):  
M.L. Botha (SACAP registration number: T0418)

**FMBuilding consultants**  
F.J. BOTHA - REG. NO. 2206 - PEARLY BEACH  
M.L. BOTHA - REG. NO. 899 899 - HARTENBACH



**SECTION A-A 1:100**