



OVERSTRAND MUNISIPALITEIT

ERF 4586, HARMONYLAAN 25, NORTHCLIFF, HERMANUS: AANSOEK OM BEPALING VAN 'N ADMINISTRATIEWE BOETE EN OPHEFFING VAN BEPERKENDE TITELAKTEVOORWAARDES: PLANACTIVE TOWN & REGIONAL PLANNERS NAMENS W & SK LOOTS

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) word hiermee kennis gegee van die onderstaande aansoeke van toepassing op Erf 4586, Northcliff, Hermanus naamlik:

Bepaling van Administratiewe Boete

Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete vir die onwettige aanbouings op die eiendom.

Opheffing van 'n Beperkende Titelaktevoorwaardes

Aansoek ingevolge Artikel 16(2)(f) van die Verordening vir die opheffing van beperkende titelaktevoorwaardes C.I.2 en C.I.4. soos vervat in Titelakte T7972/2018 van die eiendom om:

- Die posisie van die hoof woning op die 4,5m straat boulyn te akkommodeer;
- Die bestaande tweede woning eenheid te akkommodeer (die verandering van gebruik van die goedgekeurde motorhuis na 'n woonarea)
 - a. Om meer as een woning eenheid op die erf toe te laat;
 - b. Om die oortreding van die tweede woning eenheid oor die 4,72m van die titelakte straat boulyn (wat 4,352m van die boulyn geposisioneer is)

Besonderhede aangaande die voorstel lê ter insae gedurende weekdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning te Patersonstraat 16, Hermanus.

Enige kommentare moet skriftelik wees en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) bereik voor of op **Vrydag, 08 Maart 2024**, met u naam, adres en kontakbesonderhede, belang in die aansoek, en die redes vir kommentaar. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Me. H Van Der Stoep** by 028-3138900. Die Munisipaliteit mag weier om kommentare 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 om hul kommentare te formuleer.

Munisipale Bestuurder, Overstrand Munisipaliteit, Posbus 20, HERMANUS, 7200

Munisipale Kennisgewing Nr. 12/2024

OVERSTRAND MUNICIPALITY

ERF 4586, 25 HARMONY AVENUE, NORTHCLIFF, HERMANUS: APPLICATION FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY AND REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS: PLANACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF W & SK LOOTS

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 applicable to Erf 4586, Northcliff, Hermanus namely:

Determination of Administrative Penalty

Application in terms of Section 16(2)(q) of the By-Law for the determination of an administrative penalty for the illegal additions on the property.

Removal Of a Restrictive Title Deed Condition

Application for the removal of restrictive title deed conditions C.I.2. and C.I.4. of Title Deed no. T7972/2018 of the property to:

- Accommodate the main dwelling position on the 4,5m Street building line.
- Accommodate the existing second dwelling unit (change of use of the approved double garage to a habitable area):
 - a. To allow more than one dwelling unit on the subject property.
 - b. To address the encroachment of the second dwelling unit over the 4,72m title deed street building line (positioned 4,352m from the erf boundary).

Details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning at 16 Paterson Street, Hermanus.

Any comments must be in writing to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) on or before **Friday, 08 March 2024**, quoting your name, address and contact details, interest in the application, and the reasons for comment. Telephonic enquiries can be made to the **Senior Town Planner, Mrs. H Van Der Stoep** at 028-313 8900. The Municipality may refuse to accept comment 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 comments.

Municipal Manager, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

Municipal Notice No. 12/2024

UMASIPALA WASE-OVERSTRAND

ISIZA ESGU-ERF 4586, 25 HARMONY AVENUE, NORTHCLIFF, HERMANUS: ISICELO SENGQIKELELO YOBHALISO LOMDLIWO/LWEPENALTHI NOKUSHENXISWA KWEEMKO EZIYIMIQOBO KWITAYITILE ZOBUNINI: NGABAKWAPLANACTIVE TOWN & REGIONAL PLANNERS EGAMENI LIKA W & SK LOOTS

Kukhutshwe isaziso esimayela nemiba yeSoloty lama-47 nelama-48 nguMasipala wase-Overstrand OngesiHlomelo SoMthethwana Ngeziwangciso ZokuSetyenziswa koMhlaba kaMasipala ku2020 (uMthethwana), osebenza kwezi zicelo zilandelayo ezikwisiza esingu Erf 4586, Northcliff, Hermanus ezaziwa:

Inggikelelo YoBhaliso Lwepenalthi

Isicelo esingemiba yeSoloty le16(2)(q) loMthethwana ongobhaliso lwengqikelelo yobhaliso lwepenalthi yokongezelela ngokusemthethweni, kwisakhiwo esele sikhona.

Ukushenxiswa Kweemeko Eziyimiqobo Kwitayitile Zobunini

Isicelo sokushenxiswa kweemeko eziyimiqobo kwitayitile zobunini, u-C.I.2. & u-C.I.4. kwiTayitile yobunini, no. T7972/2018 kwisiza:

- Ukulungiselela eyona ndawo ilungiselelwe ukuhlala imiselwe kumgca wesakhiwo ngeemitha ezi4,5m;
- Ukulungiselela iyunithi yesibini esele ikhona (ukutshintsha ukusetyenziswa kwegaraji engena iimoto ezimbini esele iphunyeziwe):
 - a. Ukuvumela iyunithi zokulala ezingaphezu kwesinye kwisiza ekuthethwa ngaso;
 - b. Ukulungisa ungenelelo lweyunithi yesibini yokuhlala ekwiimitha eziyi-4,72m kumgca wesakhiwo ngaphaya kwesitrato setayitile yobunini (omiselwe kwimitha ezi-4,352m ukuska kumda wesiza).

Inkcukacha ezimayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evelini ukusuka Phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: iizcwnagciso zeDolophu kwa16 Paterson Street, Hermanus.

Naziphi na izimvo ezibhaliweyo mazifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) loretta@overstrand.gov.za) ngomhla okanye ngaphambi ko**LwesiHlanu, 08 eyoKwindla 2024**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo, nezizathu zokuhlomla. Imibuzo ngefowuni ingathunyelwa ku**Mcwangcisi Omkhulu weDolophu, Nkskz.H Van Der Stoep** at 028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokulala. Nabani ongakwazi ukufunda nokubhala angahambela kwiSebe leziwangciso zeDolophu apho igosa likamasipala lizakumnceda afake izimvo zakhe ngokusemthethweni.

Umlawuli kaMasipala, Overstrand Municipality, P.O. Box 20, HERMANUS, 7200

Inothis kaMasipala Nomb. 12/2024



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

ERF 4586 HERMANUS

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by W. & S.K. Loots, the owners of erf 4586 Hermanus, to apply for the administrative penalty and removal of the title deed conditions of the subject property.

There is an existing single storey dwelling, second dwelling and swimming pool situated on the subject property. The property owners were in the process of converting the approved double garage into a second dwelling unit (change of use) without the necessary building plan approvals. Although a second dwelling is a primary right on a Residential Zone 1: Single Residential (SR1) zoned property, the title deed of the subject property does not allow for a second dwelling. The approved main dwelling and second dwelling also encroach the title deed street building line.

The property owners want to legalize all existing As Built structures. No new additions or alterations are proposed. The application intends to address the unlawful structures and uses thereof and the removal of the restrictive title deed conditions.



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 4586 Hermanus;
- 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 4586 Hermanus.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

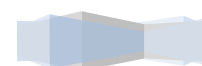
Erf 4586 Hermanus is situated at 25 Harmony Avenue, Northcliff, Hermanus. The subject property has a double street frontage (Harmony and Mossie Avenue). Refer to the locality plan attached. Erf 4586 Hermanus is 859m² in extent and is held by title deed no. T7972/2018.

The subject property is level sloped and is characterized by residential structures (dwelling, second dwelling in progress, swimming pool and garden). The structures on the subject property are single storey. The floor area of the As Built structures is 370m².

3.2 ZONING

Erf 4586 Hermanus has the following land use rights:

ERF NUMBER	ZONING
Erf 4586 Hermanus	Residential Zone 1: Single Residential (SR1)



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

3.3 LAND USE

There is an existing single storey dwelling, second dwelling in progress and swimming pool situated on erf 4586 Hermanus. The subject property is therefore used for single residential living purposes.

Land uses that surround the subject property are dwellings, public open spaces, municipal buildings and facilities, a bowling club and public roads.

3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for erf 4586 Hermanus to accommodate the As Built change of use of the double garage into a second dwelling over the title deed street building line and minor additions / alterations (within all respective building lines) 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 **removal of restrictive title deed conditions** of erf 4586 Hermanus 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 C.I 2. and 4. as stipulated on pages 2-3 of title deed no. T7972/2018 to:
 - Accommodate the approved main dwelling positioned on the 4,5m Harmony Avenue street building line;
 - Accommodate the existing second dwelling unit (change of use of the approved double garage to a habitable area):



- to allow more than one dwelling unit on the subject property;
- to address the encroachment of the second dwelling unit over the 4,72m title deed street building line (positioned 4,352m from the Mossie Avenue erf boundary).

The current property owners want to legalize all existing As Built structures. No new additions or alterations are proposed. This application will address the encroachments of the existing As Built structures and where applicable the change of use of these structures. 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 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**

The owners of erf 4586 Hermanus converted the existing garages into a habitable area (second dwelling) without the necessary land use and building plan approvals. The illegal alterations were done in the second quarter of 2023. A neighbour complained about the unlawful change of use of the double garage into a second dwelling unit. The municipality investigated the complaint issued and a notice to stop



building work was issued by Liezl Lubbe at Overstrand Municipality's Department of Infrastructure and Planning on 20 July 2023 (copy attached). According to our client they immediately stopped all building work when the notice was received via email.

Other alterations were also made to the dwelling (new window in the living area and internal walls addition in the living / dining area; alterations to laundry / scullery; new braai room (braai was added to existing structure); new yard wall; alterations to bathroom no. 3). These alterations and additions are mostly within the existing approved building footprint and do not encroach any land use scheme regulations or title deed building lines.

The change of use of the approved double garage into a second dwelling is considered unlawful and this structure encroaches the title deed street building line. Take note that the second dwelling unit does not encroach the land use scheme regulations' building lines. The second dwelling consists of:

- A family room;
- A bedroom (bedroom no. 5);
- Bathroom (bathroom no. 4);
- Open terrace.

The total extent of the existing unlawful (or change of use) structure that encroaches the title deed street building line is as follows:

	Title deed street building line encroachment
Second dwelling unit	Total: $\pm 47,8\text{m}^2$ Total habitable: $\pm 42\text{m}^2$ Total area over title deed street building line: $\pm 2,61\text{m}^2$ % of second dwelling over title deed building line: $\pm 0,054\%$

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.

A removal of restrictive title deed conditions application is included in this application to address the:

- Number of dwelling units on the subject property;



- The encroachment of the second dwelling unit over the title deed street building line.
- **The conduct of the person involved in the contravention**

The existing owners unknowingly undertook the internal alterations and change of the use of the double garage to a second dwelling unit on the subject property in 2023 under the impression that the changes to the structures can merely follow a building plan submission during / once the construction was complete, since the alterations were done within the land use scheme development parameters (with reference to building lines, coverage, height, etc.). The owners were unaware of the title deed conditions that prohibit a second dwelling unit and the stricter street building line. The approved double garage structure already encroached the title deed street building line marginally (the change of use was within the existing building footprint); therefore, they did not realise that the change of use will trigger any land use applications.

- **Whether the unlawful conduct was stopped**

The owners were unaware that the change of use and alterations / additions to the approved structures required any land use approvals as described above. The current owners became aware of the unlawful change of use of the double garage when the neighbour lodged a complaint at Overstrand Municipality. The current owners are now attempting to rectify the contravention by submitting the administration penalty application and subsequent removal of restrictive title deed conditions application in order to legalise the As Built structures and the respective uses thereof 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 / change of use, 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.

Our client confirmed that the total construction cost for the change of use of the double garage to a second dwelling unit was R251 468.55 in 2023.

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

To the best knowledge of the applicant and as confirmed by the landowners, 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 second dwelling unit has had and will continue to have on the surrounding area (as further motivated in the removal of title deed conditions application below). The internal alterations to the dwelling and change of use of the double garage as undertaken by the current owners were done within the existing approved building footprint. In addition, the change of use of the garage to accommodate a second dwelling unit does not encroach the relevant land use scheme regulations' building lines. The As Built structures have a minimal impact on the neighbouring properties since the footprint of the structures will remain unchanged.

The current owners have 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) removal of restrictive title deed conditions 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 Removal of restrictive title deed conditions

Title Deed no. T7972/2018 has restrictive title deed conditions that need to be removed to accommodate the As Built second dwelling unit 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 5 December 2023 attached.

Application is made for the removal of restrictive title deed conditions of erf 4586 Hermanus to:

- Accommodate the approved main dwelling positioned on the 4,5m Harmony Avenue street building line;
- Accommodate the existing second dwelling unit (change of use of the approved double garage to a habitable area):
 - to allow more than one dwelling unit on the subject property;
 - to address the encroachment of the second dwelling unit over the title deed street building line.

It is proposed to remove the following restrictive title deed conditions registered by the Administrator (now the Overstrand Municipality) to accommodate the As Built second dwelling on erf 4586 Hermanus:

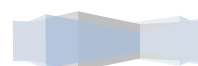
Title deed no. T7972/2018, pages 2-3, paragraph C.I 2. and 4. that read as follow:

“C. SUBJECT FURTHER to the following conditions contained in Deed of Transfer No. T5340 dated 27th April 1945:

- I. Imposed by the Administrator of the Cape Province when approving the establishment of Hermanus Township Extension No. 4 in terms of Ordinance No. 33 of 1934 namely:*

As being in favour of the registered owner of any erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:

- 2. That only one dwelling together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.*
- 4. That 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. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf."

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

- Condition I.C.2. restricts the use of the subject property to one dwelling with associated outbuildings only. A second dwelling unit is a primary right in terms of the SR1 zoning. The subject property is already developed with a second dwelling unit where the double garages were previously approved and situated (bedroom no. 5, bathroom no. 4, family room and open terrace). Provision is made for an additional parking bay on site for the second dwelling unit. It is therefore proposed to remove this condition to allow the owners to retain the second dwelling unit;
- The street building line restriction / condition I.C.4. in Title Deed no. T7972/2018 is more restrictive (4,72m) than the land use restrictions prescribed in the Overstrand Municipality Land Use Scheme Regulations, 2020 (4m). The Land Use Scheme Regulations now govern land use planning in Hermanus. The As Built main dwelling and second dwelling unit meet the 2,36m lateral building lines.

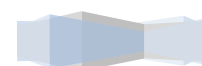
- a) A small section of the As Built second dwelling unit encroaches the 4,72m title deed street building line on Mossie Avenue's side:

The As Built second dwelling unit meets the 4m Land Use Scheme Regulations street building line requirement; however the aforementioned As Built structure slightly encroaches the 4,72m Title Deed street building line as indicated on the site development plan:

- Second dwelling unit is positioned on the 4,352m street building line (at nearest point to the Mossie Avenue street boundary).

- b) A small section of the As Built approved main dwelling encroaches the 4,72m title deed street building line on Harmony Avenue's side:

The As Built main dwelling meets the 4m Land Use Scheme Regulations street building line requirement; however the aforementioned approved structure slightly encroaches the 4,72m Title Deed street building line as indicated on the site development plan:



- Main dwelling is positioned on the 4,5m street building line (at nearest point to the Harmony Avenue street boundary).

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 change of use of the double garage to a second dwelling unit by the current owners. The value of the rights is vested in the owners of the properties of Extension No. 4 of Hermanus.

Property owners not seeking that the title deed building line restrictions should be in line with the zoning 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. As previously mentioned, the As Built structures meet the 2,36m title deed building lines requirement.

The existing As Built development (and its encroachments) is not an unusually large-scale form of development that encroaches the building lines. The street building line condition is more restrictive than the zoning scheme regulations’ building lines. 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.

- ***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 property owners of Extension No. 4 of Hermanus. The only personal benefit to each holder is that the property is more restricted in terms of developing



structures on the subject property. However, all structures addressed in this application are As Built and no additions or alterations are proposed. 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.

- ***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 second dwelling unit and accommodate the approved main dwelling 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 has a negative impact on the developable area of the land since it shrinks it with $\pm 15,87\text{m}^2$ ($22,05\text{m} \times 0,72\text{m}$) on both street boundary sides (i.e. in total with $\pm 31,74\text{m}^2$ since the subject property has two street frontages).

The existing property owners will be able to enjoy the personal benefits of the existing structures instead of demolishing the structures and / or reverting the use to a double garage use again. The latter will have a great financial burden on the current property owners given the construction costs already spent. To remove the title deed restrictions will allow the property owners to keep the existing structures and uses thereof as indicated on the As Built site development plan. It will also imply that the building plans for erf 4586 Hermanus can be approved.

- ***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 structure will be minimal. If the conditions remain unchanged, the owner must adhere to the title deed's stricter street building line, the second dwelling unit will have to revert to the approved use



of a double garage to comply with the street building line and one dwelling unit only requirements. It will be ludicrous to partially demolish the main dwelling to address the 0,2m title deed street building line encroachment. 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. In addition, second dwelling units are a primary right for SR1 zoned erven and not considered to be a land use that is out of context of the already established urban / residential area.

To keep the 4,72m street building line and the only one dwelling unit permitted requirement in the Title Deed will have no benefit to neither the property owner nor the adjacent properties since the existing structure already encroaches the street building line and number of units allowed in terms of the title deed.

- ***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 to set the rules for future development on the subject property. The social benefit will therefore only be to the property owners of erf 4586 Hermanus since it will allow them to keep the existing As Built structure that encroaches onto the title deed street building line on the subject property and allow future additions (if any) to be constructed in line with the land use scheme regulations' building lines only. In addition, it will allow the property owner to retain the second dwelling unit and continue to benefit from the financial 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 beneficiaries, but only some rights and will instead expand the value of these rights to accommodate the existing structures 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 a bond registered against erf 4586 Hermanus. The bondholder's consent dated 28 November 2023 is attached.

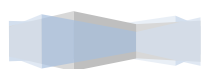
2.4.3 General information

The approved double garage was converted to a second dwelling unit. The change of use occurred within the approved building footprint. The second dwelling unit does not encroach any land use scheme building lines. The second dwelling only encroaches the title deed street building line and it is proposed to remove the latter to accommodate the As Built second dwelling unit on the 4,352m Mossie Avenue street building line. The main dwelling is an approved structure with no alterations / additions undertaken on the Harmony Avenue side (eastern side) of the dwelling.

The second dwelling consists of:

- A family room;
- A bedroom (bedroom no. 5);
- Bathroom (bathroom no. 4);
- Open terrace.

Refer to the extract from the site plan below:





	Title deed street building line encroachment
Second dwelling unit	<p>Total: ±47,8m²</p> <p>Total habitable: ±42m²</p> <p>Total area over title deed street building line: ±2,61m²</p> <p>% of second dwelling over title deed building line: ±0,054%</p>

ERF. 4586	860m ²
EXISTING	342.0m ²
NEW	<u>28.0m²</u>
TOTAL	<u>370.0m²</u>

SINGLE RESIDENTIAL

FOOTPRINT	370.0m ²
COVERAGE (370m ²)	43%

The total coverage of 43% adheres to the maximum permissible coverage of 50% for SR1 zoned properties.

Other internal alterations and additions were also made as described in the administrative penalty section above; however, these alterations and additions did not affect the applicable building lines.

The following should be noted when considering the As Built second dwelling unit:

- The visual impact of the As Built structures is considered minimal. The second dwelling unit is still a single storey structure within the approved building footprint. The unit does not encroach the 4m street and 2m lateral land use scheme building lines and meets all other development parameters.
- The As Built second dwelling is considered an integral part of the design and value of the subject property. Thus, to demolish the structure to make it compliant to the relevant building lines, will diminish the aesthetic and property value of the dwelling.

Refer to the As Built site development plan (additions and alterations plan) attached for the ground storey plan, site / drainage plan, elevations, pool and boundary wall information.

The 4,72m street building line as stipulated in the title deed has a negative impact on the developable area of the land since it shrinks it with $\pm 15,87\text{m}^2$ ($22,05\text{m} \times 0,72\text{m}$) on both street boundary sides (i.e. in total with $\pm 31,74\text{m}^2$ since the subject property has two street frontages). The double street erf frontage has to be considered when evaluating the desirability of the removal of the stricter 4,72m street building line.

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. It is submitted that the massing and height of the existing structures are compatible with the character of the area. In addition, 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 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 removal of restrictive title deed conditions of erf 4586 Hermanus is not in contrast to the existing land use tendencies in the surrounding environment and we therefore do not foresee any problems with the proposed application.

3.5 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 removal of restrictive title deed conditions will not hinder any possible future land use applications on erf 4586 Hermanus.

The subject property has the potential and allows for the deviations being applied for since all land use scheme regulations' development parameters are met.

The following should be noted when considering the potential of the site:

- The visual impact will be kept to a minimum since the structures meet all land use scheme regulations' development parameters;
- A second dwelling is a primary right on a SR1 zoned property;
- 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 title deed street building lines and compliant with the number of dwelling units allowed in terms of the title deed, 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 removal of the title deed conditions. 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 As Built second dwelling matches the architectural style of the approved main dwelling;
- The height of the As Built and approved structures will remain unchanged;
- The As Built second dwelling unit adds value to the subject property;
- The position of the second dwelling within the built dwelling structure favours the positive consideration thereof.

3.6 ECONOMIC IMPACT

The proposed removal of restrictive title deed conditions is to accommodate an existing structure and use thereof. The proposed removal of restrictive title deed conditions will allow the owners to legalise the existing second dwelling unit, and this will favour the resale of the property in the future and have a positive impact on the adjacent properties.

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

3.7 SOCIAL IMPACT

The proposed removal of restrictive title deed conditions will have no impact on the social status quo of the area. The proposed application will however allow the



owners to keep the existing As Built structure (second dwelling unit) on the subject property.

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 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 single storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on erf 4586 Hermanus (and the respective uses thereof) merges well with the scale of the surrounding dwellings in the immediate area.

In addition, to accommodate (legalise) the existing As Built second dwelling unit that encroaches the relevant title deed street building line 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 and second dwelling unit).

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 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 removal of restrictive title deed conditions will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of two families (one family in the main dwelling and one person / small family in the second dwelling unit) will continue to occupy the subject property.

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

3.11 IMPACT ON HERITAGE

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

Erf 4586 Hermanus is not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality's Land Use Scheme Heritage Overlay Zone (2020). The subject property is not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010). It is also not demarcated as part of a Heritage Protective Overlay Zone (2020) for the area.

The dwelling on the subject property is not older than 60 years. The subject property is not associated with any important persons or groups or important events and



activities. The subject property has no association with the history of slavery and is not used for living heritage.

In the light of the above mentioned it is evident that the proposed removal of restrictive title deed conditions will not have a negative impact on the heritage value of the Hermanus (Northcliff) or Greater Hermanus area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed removal of the title deed conditions does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act 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 4586 Hermanus will remain unchanged and will be from both Harmony and Mossie Avenue. Refer to the site development plan. No new access points are proposed. The main dwelling will take access from Harmony Avenue. The second dwelling unit will take access from Mossie Avenue.

The Overstrand Municipality Land Use Scheme Regulations (2020) stipulate that a minimum of two parking bays are required for a dwelling house and an additional parking bay for a second dwelling unit. Provision is made for three parking bays on site. The dwelling house and second dwelling on erf 4586 Hermanus therefore comply with the minimum parking requirements for SR1 zoned properties.



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

3.14 **FORWARD PLANNING AND LAND USE DOCUMENTS**

The ***Overstrand Spatial Development Framework (2020)*** earmarks the area where erf 4586 Hermanus is situated, for urban development purposes. The zoning and use of the subject property will remain unchanged (Residential Zone 1: Single Residential). As a result, the impact of the proposed removal of 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 4586 Hermanus forms part of Planning Unit no. 12. This planning unit stipulates an increase in the density of the area from 7,6du/ha to 9,9du/ha. A main dwelling and second dwelling already exist on the subject property. The second dwelling is considered an appropriate densification option for this area. The land use application for the subject property therefore falls within the existing planning for the Hermanus Central area.

The proposal will promote land development in a location that is sustainable. The proposed removal of restrictive title deed conditions is 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 Northcliff 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.



3.15 **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 1944.

The proposed application will not promote spatial development imbalances. This application is for an erf as per the establishment of the existing Hermanus 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 removal of restrictive title deed conditions will have no impact on the visual elements of the subject property and surroundings since all the structures already exist. 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 title deed street building line has no impact on the massing of the buildings or on the streetscape or passers-by. The As-Built unlawful second dwelling unit merges well with the approved structures. The impact on the biophysical environment will also be kept to a minimum since the second dwelling unit already exists.

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 (two street fronts), etc. allow for the consideration and approval of the proposed removal of restrictive title deed conditions without having an adverse impact on the spatial sustainability of the area.



The application is considered spatially sustainable as the existing property will be more optimally utilised without affecting natural vegetation. The property will be 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 the Hermanus CBD and major routes. The massing and height of the property will be in line with the relevant land use scheme regulations. It proves to be resourceful to approve the As Built second dwelling and the uses thereof since it is compatible with the existing built environment and the way the additions and alterations were done by the current property owners is aesthetically pleasing.

It proves to be efficient to accommodate the existing second dwelling unit by approving the proposed removal of restrictive title deed conditions of erf 4586 Hermanus instead of reverting the structure to the approved use.

The proposed removal of restrictive title deed conditions prove to be efficient since it discourages the phenomenon of urban sprawl, encourages densification and more compact towns and cities, all of which relates to more responsible resource and infrastructure use and sustainable development. Furthermore, the proposal is efficient in that it optimizes existing resources and infrastructure and continues the existing suburban development typology.

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



4. **RECOMMENDATION**

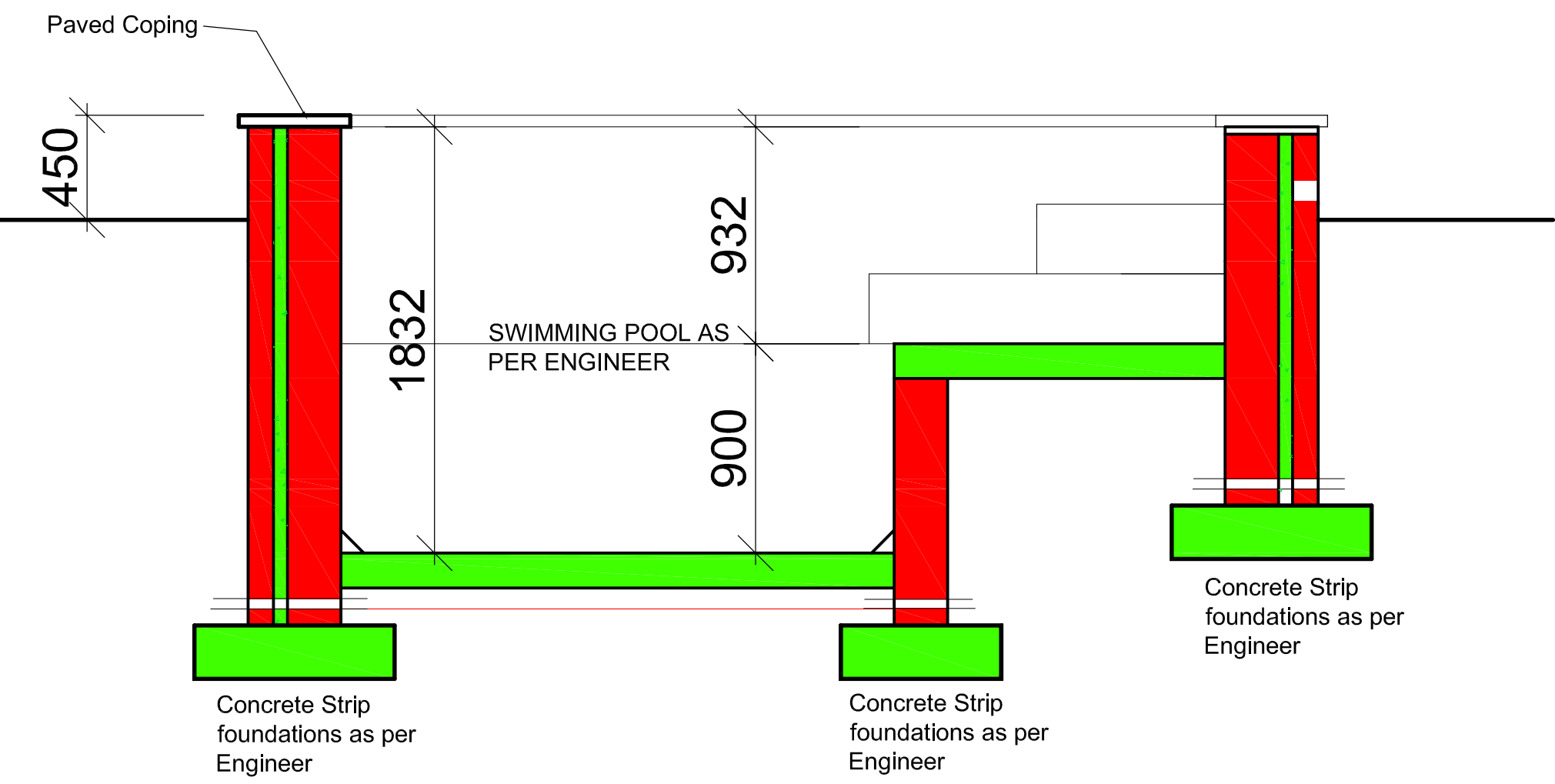
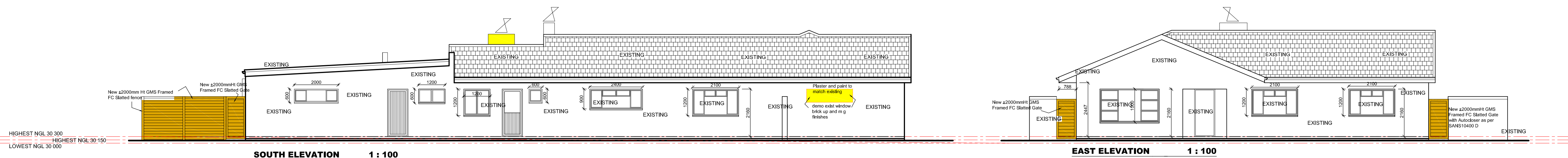
When this application is evaluated, it is important to take note of the following:

- 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 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 As Built second dwelling unit meets all the land use scheme regulations' development parameters;
- 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 for both the main dwelling and second dwelling;
- 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.

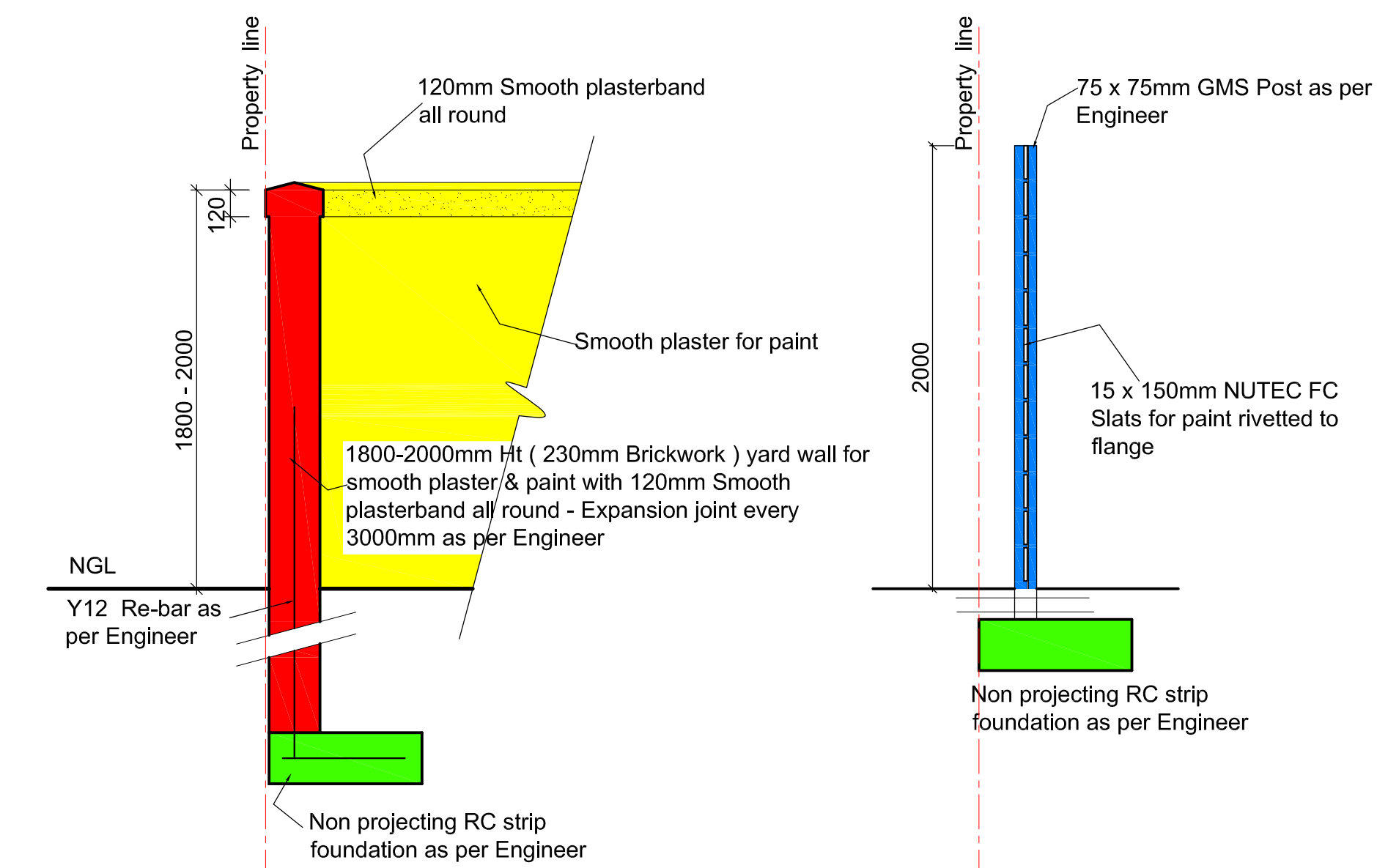
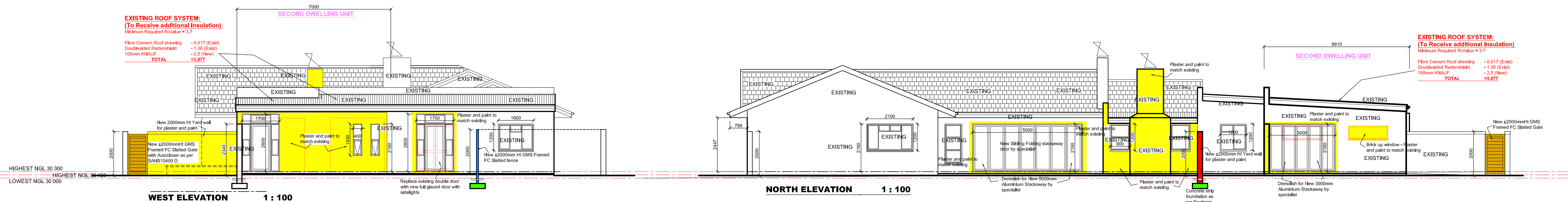


8m HIGH RESTRICTION 36 150



SECTION B - B (Swimming Pool) 1 : 25

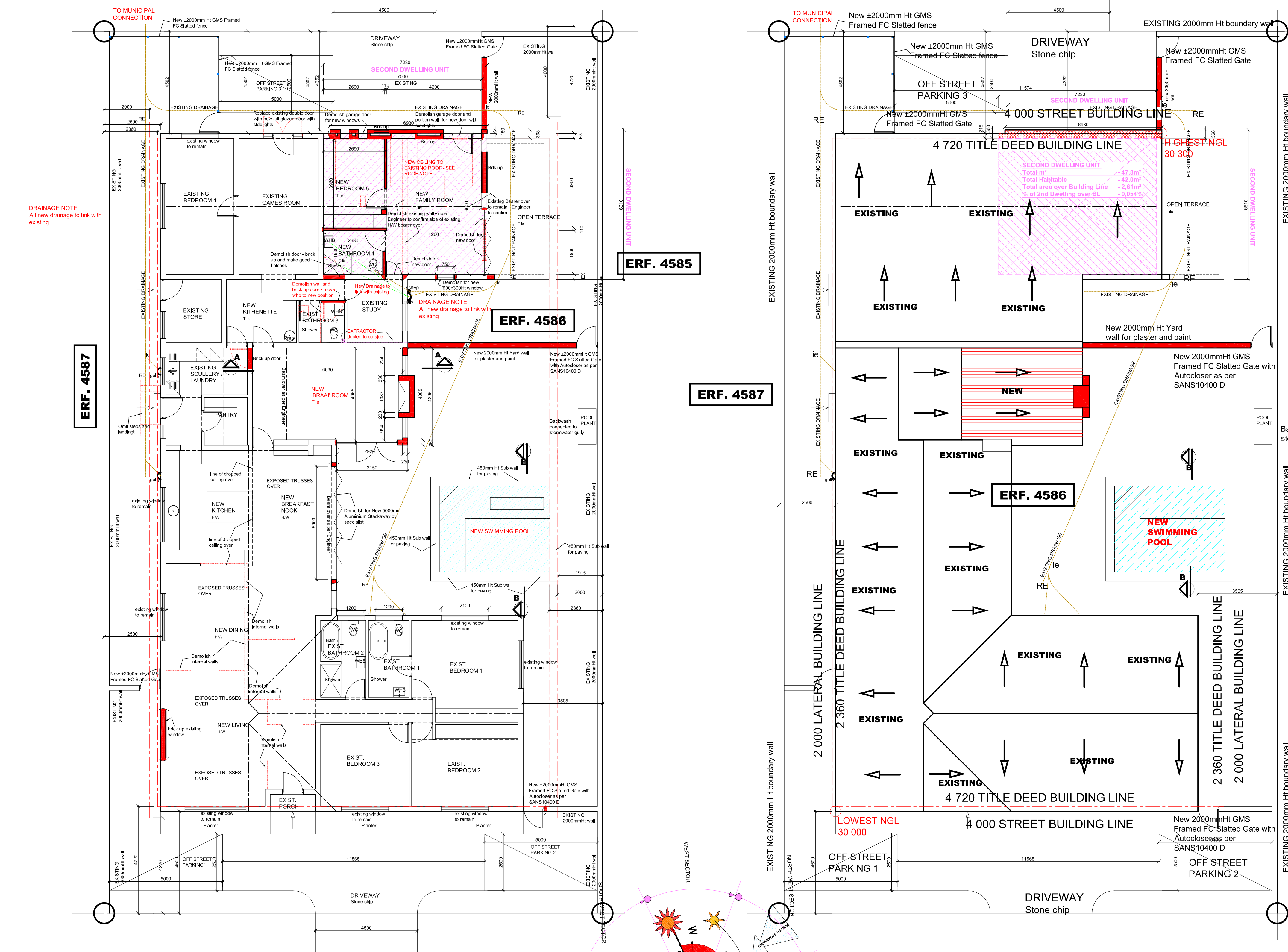
8m HIGH RESTRICTION 36 150



BOUNDARY/YARD WALL & GMS/FC SLATTED FENCE SECTION 1 : 25

MOSSIE AVENUE

MOSSIE AVENUE



GROUND STOREY PLAN 1 : 100

SITE, ROOF & DRAINAGE PLAN 1 : 100

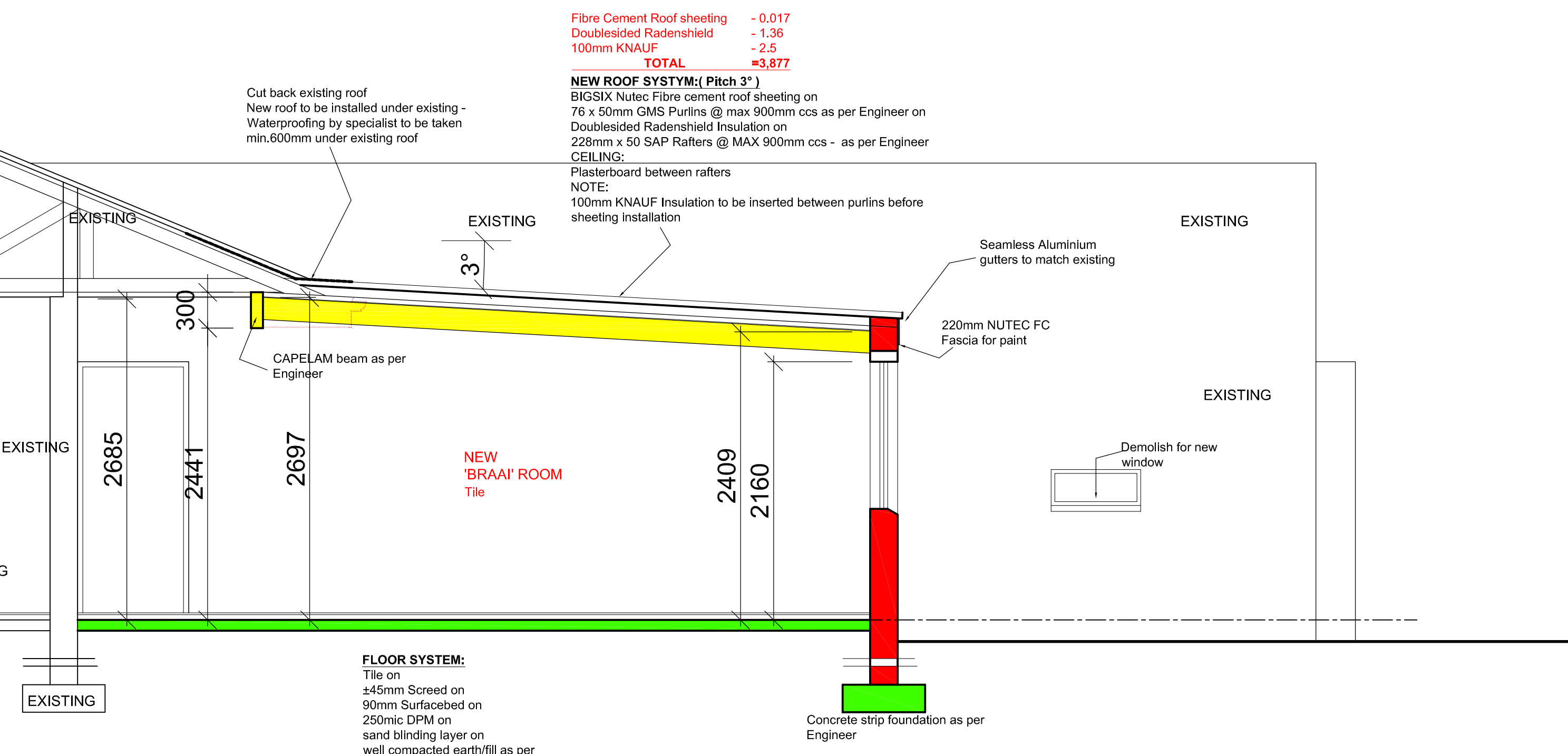
4586																
25 Harmony Rd Hermanus																
Erf	House Loo's		346													
	Ground Storey Net Floor Area		346													
	Glazing area		58,70													
	Glazing as % of net floor area		17,0%													
Dwelling	Glazing Elements				Glazing Element size				Glazing Element				Achieved			
Orientation	Storey Level	Glazing Ref	Type of Glazing	Quantity	Width (m)	Height (m)	Area (m²)	(Ht) Height (m)	(M) Lat. Multiplier	Required P	Measured P	Shade?	U-Value	SHGC	Conductance	SHGC
North	Ground Storey	No Ref	Single Clear Safety	1	3,000	2,100	6,300	2,100	0,540	1,134	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
North	Ground Storey	No Ref	Single Clear Safety	1	1,200	1,200	1,440	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
North	Ground Storey	No Ref	Single Clear Safety	2	0,800	1,200	2,160	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
North	Ground Storey	No Ref	Single Clear Safety	1	5,000	2,100	10,500	2,100	0,540	1,134	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
North	Ground Storey	No Ref	Single Clear Safety	1	0,750	1,800	1,350	1,800	0,540	0,972	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
North	Ground Storey	No Ref	Single Clear Safety	1	2,200	2,100	2,320	2,100	0,540	1,134	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
West	Ground Storey	No Ref	Single Clear Safety	2	2,600	1,700	8,840	1,700	0,540	1,404	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
West	Ground Storey	No Ref	Single Clear Safety	2	0,400	1,400	1,120	1,400	0,540	0,756	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
West	Ground Storey	No Ref	Single Clear Safety	1	1,400	1,200	1,520	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
West	Ground Storey	No Ref	Single Clear Safety	2	2,200	0,900	2,160	0,900	0,540	0,486	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
West	Ground Storey	No Ref	Single Clear Safety	1	2,100	1,500	3,150	1,500	0,540	0,81	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	2,000	0,600	1,200	0,600	0,540	0,324	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	1,200	0,600	0,720	0,600	0,540	0,324	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	1,200	1,200	1,440	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	0,600	0,600	0,360	0,600	0,540	0,324	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	2,400	0,900	2,160	0,900	0,540	0,486	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
South	Ground Storey	No Ref	Single Clear Safety	1	2,100	1,200	2,520	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
East	Ground Storey	No Ref	Single Clear Safety	2	2,100	1,500	3,150	1,500	0,540	0,81	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
East	Ground Storey	No Ref	Single Clear Safety	2	2,100	1,200	2,520	1,200	0,540	0,648	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
East	Ground Storey	No Ref	Single Clear Safety	1	0,750	0,900	0,225	0,900	0,540	0,162	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution
East	Ground Storey	No Ref	Single Clear Safety	1	0,832	2,100	1,747	2,100	0,540	1,134	0,1	No	Any Solution	Any Solution	Any Solution	Any Solution

EXISTING ROOF SYSTEM:
(To Receive additional Insulation)
Minimum Required R-Value = 3.7

Fibre Cement Roof sheeting - 0.017
Double-sided Radsheathall - 1.36
100mm KNAUF TOTAL = 3.877

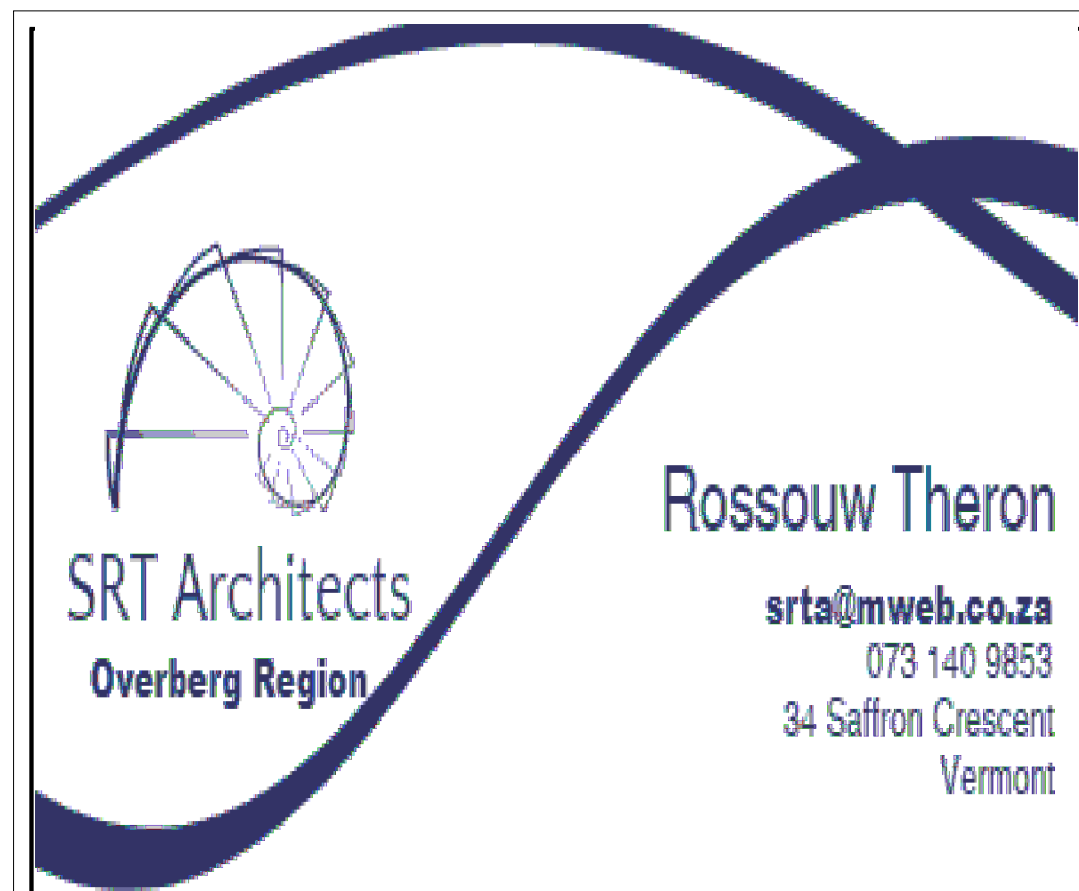
NEW ROOF SYSTEM (Pitch 3°)
BIGSIX Nutek Fibre cement roof sheeting on
75 x 50mm GMS Purlins @ max 900mm c/c as per Engineer on
Double-sided Radsheathall Insulation on
225mm x 50 SAP Rafter @ MAX 900mm c/c - as per Engineer

CEILING:
Plasterboard between rafters
NOTE:
100mm KNAUF Insulation to be inserted between purlins before
sheeting installation



SECTION A - A 1 : 50

ERF. 4586	860m²
EXISTING	342.0m²
NEW	28.0m²
TOTAL	370.0m²
SINGLE RESIDENTIAL	
FOOTPRINT COVERAGE (370m²)	370.0m²
	43%



THIS DRAWING IS COPYRIGHT.

CONTRACTOR TO VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING WORK.

USE FIGURED DIMENSIONS IN PREFERENCE TO SCALING.

ALL WORK TO COMPLY WITH NATIONAL BUILDING REG'S AND LOCAL AUTHORITY REQUIREMENTS.

ALL DRAWINGS TO BE READ IN CONJUNCTION WITH SPECIFICATION AT ALL TIMES.

ANY DISCREPANCIES TO BE REPORTED TO ARCHITECT TIMEOUSLY.

ALL DIMENSIONS ARE IN mm.

CLAY BRICK WALLS OF THICKNESS SHOWN ON PLAN.

SLABS & BEAMS TO ENGINEER'S SPEC.

CLIENT

ARCHITECT

No.	Revision/Issue	Date

ADDITIONS AND ALTERATIONS

GROUND STOREY PLAN SITE/DRAINAGE PLAN ELEVATIONS & POOL&BOUNDARY WALL SECTION

HOUSE LOOTS

ERF. 4586
25 HARMONY AVENUE
HERMANUS
OVERSTRAND

Project	LOO / 023	DWG.NO. 1.1A
Date	20 / 11 / 23	
Scale	1 : 100, 1 : 50 & 1 : 25	