

REMAINDER ERF 3349, 208 SEVENTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF E VAN SCHALKWYK

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), that an application has been received for the following:

- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law, to relax the eastern lateral building line from 2m to 1,220m, to accommodate the staircase and landing on the upper and first storey level and the balcony of the second dwelling on the first storey level; and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law, to legalize the existing structures on the property.

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. 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) alida@overstrand.gov.za) on or before **Friday, 8 December 2023**, quoting your name, address and contact details, interest in the application and reasons for comment. Telephonic enquiries can be made to the **Town Planner, Mr P Roux** 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.

REMANANT ERF 3349, SEWENDE STRAAT 208, VOËLKLIP, HERMANUS, OVERSTRAND MUNISIPALE AREA: AANSOEK OM AFWYKING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD- EN STREEKSBEPLANNERS NAMENS E VAN SCHALKWYK

Kennis word hiermee gegee ingevolge Artikel 48 van die Munisipaliteit Wysigingsverordening op Munisipale Grondgebruikbeplanning, 2020, (Verordening), dat 'n aansoek ontvang is vir die volgende:

- ❖ **Afwyking** ingevolge Artikel 16(2)(b) van die Verordening, om die oostelike laterale boulyn te verslap vanaf 2m na 1220m, om die trappe en landing op die boonste en eerste vloer en die balkon van die tweede woning op die eerste vloer te akkommodeer; en
- ❖ **bepaling van 'n administratiewe boete** ingevolge Artikel 16(2)(q) van die Verordening, om die bestaande strukture op die eiendom te wettig.

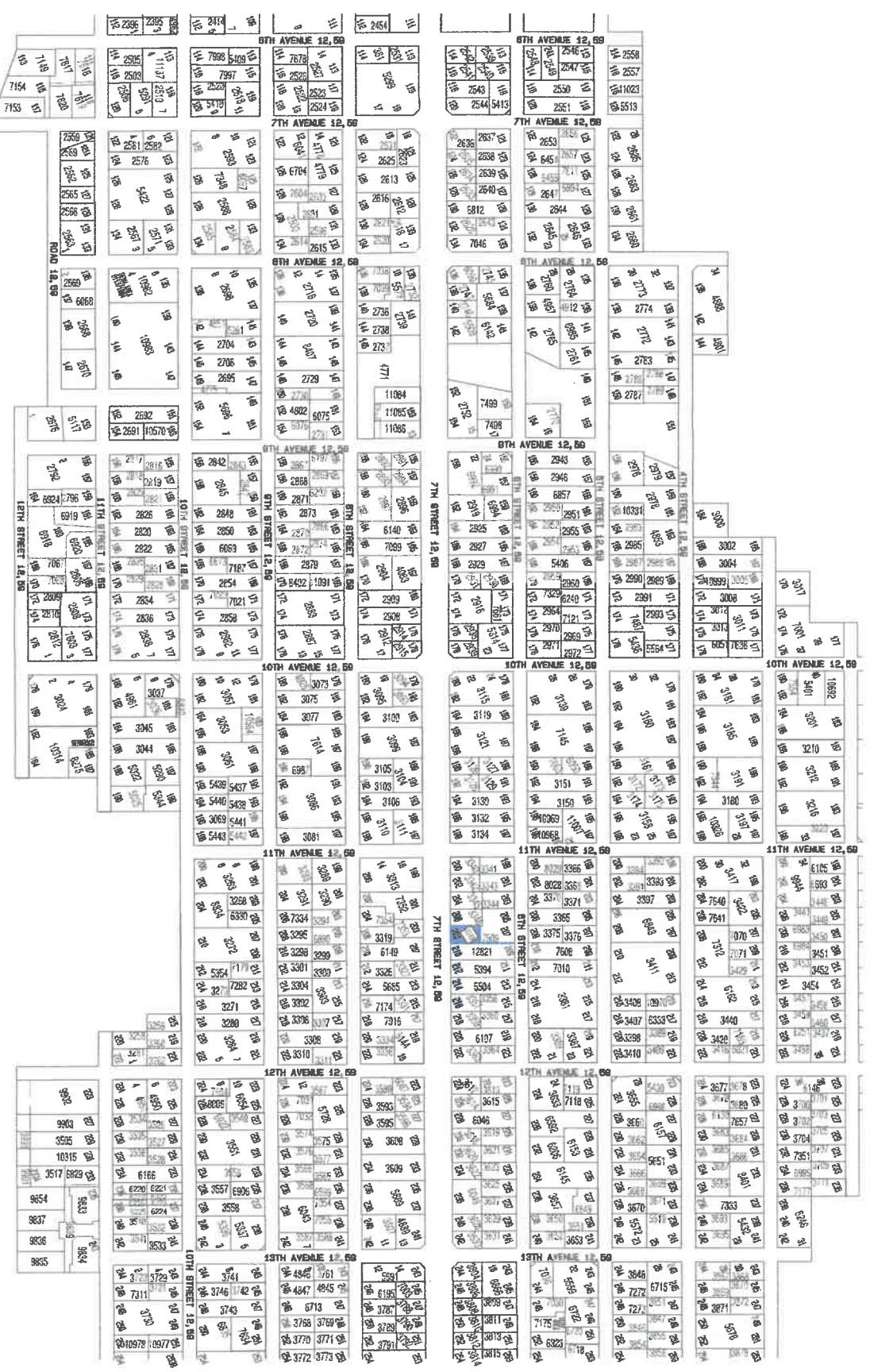
Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentaar op die voorstel moet skriftelik ingedien word in terme van Artikels 51 en 52 van die voorgeskrewe Verordening na die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) voor of op **Vrydag, 8 Desember 2023**, met die naam, adres en kontakbesonderhede, belang in die aansoek, sowel as redes vir die kommentaar aangedui. Telefoniese navrae kan gerig word aan die **Stadsbeplanner, Mnr P Roux** 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.

INTSALELA YESIZA U-ERF 3349, 208 SEVENTH STREET, VOËLKLIP, HERMANUS, KUMMANDLA KAMASIPALA WASEOVERSTRAND: ISICELO SOKWAHLULA NENGQIKELELO YENTLAWULO YOBHALISA: ABANUMZANA PLAN ACTIVE TOWN AND REGIONAL PLANNERS EGAMENI LIKA E VAN SCHALKWYK

Kukhutshwe isaziso esimayela nemiba yeSolotyama48 nguMasipala waseOverstrand loMthethwana Osisihlomelo NgeeziCwanciso ZokuSetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana), isaziso esi sithi kufunyenwe isicelo esingale mibala ilandelayo:

- ❖ **Ukwahlula** ngokwemiba yeSolotyama16(2)(b) loMthethwana, ukunyenisa umgca wesakhiwo kwicala elisempuma ukusuka kwiimitha ezi-2m ukuya kwezi-1,220m, ukulungiselela ukwakha izitepsi ukunyukela phezulu nokuya kumgangatho wokuqala nebhalkoni/iveranda yendawo yesibini yokuhlala kumgangatho wokuqala; kwakunye
- ❖ **nengqikelelo yomdliwo/yepenalthi yobhaliso** ngokwemiba yeSolotyama16(2)(q) loMthethwana, ukubhalisa nokumisela ngokusemthethweni izakhiwo esele zikhona kwesi siza.

linkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka ukuze zihlolwe kwiintsuku zaphakathi evekini ukusuka kwiintsimbini ye08:00 neye16:30 kwiSebe: IziCwanciso zeDolophu, 16 Paterson Street, Hermanus. Naziphi na izimvo ezibhaliweyo mazingeniswe ngokwezibonelelo zeSolotyama51 nelama52 loMthethwana kaMasipala osele uchazwe ngentla (16 Paterson Street, Hermanus / (f) 0283132093/ (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi komhla **8 uDisemba 2023**, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla. Imibuzo ngefowuni ingabuzwa **kuMchwancisi weDolophu, Mnu P Roux** kwa-028-313 8900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. 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.



ATLANTIC OCEAN

PLAN
Active Town & Regional Planners

Stads- en Streekscheplanners
 and subject to survey.
 All distances approximate
 and subject to survey.
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Property Description:
REMAINDER ERF 3349
HERMANUS

Plan Description:
LOCALITY MAP

Scale:
 MTS
 Drawing Nr.:
 Item: 349L.dwg
 Date:
 SEPTEMBER 2023



**DETERMINATION OF AN ADMINISTRATIVE PENALTY &
PROPOSED DEPARTURE**

REMAINDER ERF 3349 HERMANUS

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Plan Active Town & Regional Planners has been appointed by E. van Schalkwyk, the owner of Remainder erf 3349 Hermanus, to apply for the administrative penalty and departure of the subject property.

There is an existing three storey (lower, upper and first) structure inclusive of a double garage (lower storey) situated on the subject property. The main dwelling is situated on the upper storey level. The second dwelling is on the first storey level. Our client bought the property in 2019 and appointed a professional team to assist with alterations and additions to the existing structures in 2021. Our client received feedback from the Architectural Consultant that the plans were approved by the Overstrand Municipality on 30 April 2021 and proceeded with the additions and alterations accordingly. However, it later came to light that the stamp / approval of the building plans was falsified by the architectural consultant at the time. The building plans were in fact refused since not all land use requirements were met.

This application proposes to address the unlawful As Built additions and alterations. No new additions or alterations are proposed.

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**;
- Chapter 4, Section 16(2)(b) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for **the departure** of remainder erf 3349 Hermanus.

3. NEED AND DESIRABILITY

3.1 PROPERTY DESCRIPTION

Remainder erf 3349 Hermanus is situated at 208 Seventh Street, Voëlklip, Hermanus. Refer to the locality plan attached. Remainder erf 3349 Hermanus is 421m² in extent and is held by title deed no. T7074/2019.

The subject property gently slopes in a southerly direction and is characterized by residential structures: main dwelling with double garage on lower and upper storey levels; second dwelling on first floor level with balcony and a garden area. The existing structure has a footprint of 171,7m² in extent.

3.2 ZONING

Remainder erf 3349 Hermanus has the following land use rights:

ERF NUMBER	ZONING
Remainder erf 3349	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 (lower, upper and first) structure inclusive of a double garage (lower storey) situated on the subject property. The main dwelling is on the upper storey level. The second dwelling with balcony is on first storey level. The subject property is therefore used for single residential living purposes.

Land uses that surround the subject property are single residential dwellings, public open spaces and public roads.

3.4 PROPOSAL

The following is proposed:

1. The determination of an **administrative penalty** for Remainder erf 3349 Hermanus to accommodate the existing As Built staircase and landing that serves as an entrance to the main dwelling and second dwelling and the balcony of the second dwelling 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 Remainder erf 3349 Hermanus 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 eastern lateral building line from 2m to 1,220m to accommodate the staircase and landing on the upper and first storey level and the balcony of the second dwelling on first storey level.

The potential of the subject property is discussed in detail in *Section 3.5 Potential of*

the property.

There is an existing three storey (lower, upper and first) structure inclusive of a double garage (lower storey) situated on the subject property. The main dwelling is on the upper storey level. The second dwelling with balcony is on first storey level. Our client bought the property in 2019 and appointed a professional team to assist with alterations and additions (second dwelling with balcony on first storey level) to the existing structures in 2021. Our client received feedback from the Architectural Consultant that the building plans were approved by Overstrand Municipality on 30 April 2021 and proceeded with the additions and alterations accordingly. However, it later came to light that the stamp / approval of the building plans was falsified by the architectural consultant at the time. The building plans were in fact refused since not all land use requirements were met.

This application proposes to address the unlawful As Built additions and alterations. No new additions or alterations are proposed.

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 (As Built staircase and landing and planter / flowerbox), 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**

Our client bought the subject property in 2019 with existing structures As Built. She appointed a professional team to assist with alterations and additions to the existing structures in 2021. Our client received feedback from the Architectural Consultant that the building plans were approved by Overstrand Municipality on 30 April 2021. A tender process followed after the building plan was "approved", a construction team was appointed, and construction work commenced in October 2021.

However, it later came to light that the stamp / approval of the building plans was falsified by the architectural consultant at the time. Our client was only made aware of the fraud on 7 July 2022. She made a case against the architectural consultant and submitted an affidavit to the police concerning the fraudulent act committed.

The site development plan attached to this application was compiled by a new architectural consultant to assist our client with the building plan approval. The municipality's building department confirmed in their letter dated 8 August 2023 that the building plan cannot be considered until the encroachments and minor amendments to the plan are addressed.

The additions and alterations in 2021 entailed the addition of a whole new first storey (second dwelling unit with balcony) with minor alterations on ground floor level to accommodate the first storey addition and to change the entrance to the main dwelling. The first storey is used as a second dwelling on the subject property. The first storey (second dwelling) is 136,01m² in extent with a balcony of 20,25m² in extent. The staircase and landing that serve as the entrance to the second dwelling as well as a portion of the balcony encroach the eastern lateral building line. A departure application is submitted simultaneously to address the building line encroachments.

The extent of the landing is 3,31m² and the balcony is 20,25m² in extent. The encroachment of the landing is a mere 1,42m² and the portion of the balcony that encroaches the eastern lateral building line is 4,1m² in extent.

The As Built staircase, landing and balcony form part of the second dwelling unit. The staircase and landing give access to the second dwelling on first storey level. It is therefore of utmost importance to our client that the structures be retained.

The unlawful second dwelling is considered a habitable area but was constructed outside of the building lines. A second dwelling unit is regarded as primary use and no land use approvals were required for the construction of the dwelling unit (merely building plan approval). The As Built staircase, landing and balcony are not considered habitable areas. The structures are used as entrance to the second dwelling (staircase and landing) and for leisure purposes.

The position and nature of the As Built first storey (second dwelling with balcony) and staircase and landing are unobtrusive in nature and do not impact negatively on the surrounding properties, as no complaint from surrounding property owners has been received up to date.

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

The additional As Built structures were constructed by the current owner of the subject property as set out above. The current owner has never contravened the land use planning By-law in the past. She addressed the matter related to the unlawful structures as soon as she was made aware of the fact that the building plans were in fact not approved and appointed the relevant consultants (architects and town planners) to assist her to obtain the necessary approvals.

A report / statement from Haaks Quantity Surveyors dated 11 July 2022 with regards to the conduct of the property owner (Mrs van Schalkwyk) is attached. The quantity surveyors concluded that *it is their professional opinion that Mrs van Schalkwyk was unaware of any falsifications of Council drawings and relied solely on the appointed Professional team to assist and guide her during the project period. Mrs van Schalkwyk furthermore ensured that all the contractual and best practice within the construction industry guidelines were followed by appointing all relevant professionals applicable to the project and the future by entering in best practice construction contracts to ensure the project can be completed within all set rules and standards.*

- **Whether the unlawful conduct was stopped**

The owner was unaware that the building plans for the proposed additions and alterations undertaken in 2021 were never truthfully approved. The unlawful structures cannot be demolished since it is now an integral part of the dwelling. The owner now attempts to rectify the contravention by submitting the administration penalty application and subsequent departure 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**

A project cost calculation report from the Haaks Quantity Surveyors dated 12 September 2023 is attached. The report indicates the total project cost as well as the cost of the unauthorised building work inside the building line.

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

To the best knowledge of the applicant and as confirmed by the landowner, she has never previously contravened this By-Law or any other previous planning law.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration the history and fraudulent activity by the architectural consultant with the building plan approval for the additions and alterations to the dwelling in 2021. Also consider the low impact of the As Built structures on the surrounding area. The As Built structures have a minimal impact on the neighbouring properties since the footprint of the structures will remain unchanged.

It should also be considered that no complaints from surrounding property owners were submitted with regards to the As Built structures.

The owner 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 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 owner for the reasons given above.

3.4.2 Departure

It is proposed to retain the portions of the staircase, landing and the balcony that encroach the 2m eastern lateral building line. The staircase and landing give access to both the main dwelling on upper storey level and second dwelling on first storey level. It is therefore of utmost importance to our client that the structures be retained.

The As Built staircase and landing on upper storey and first storey level and the balcony on first storey level were constructed within the 2m eastern lateral Land Use Scheme building lines. To accommodate the As Built structures an application is submitted for a departure to:

- o relax the eastern lateral building line from 2m to 1,220m to accommodate the staircase and landing on upper and first storey level and the balcony on the first storey level.

The As Built staircase is a brick and lintel staircase with balustrades of at least 1m high. The position and layout of the staircase are indicated on the site development plan (site plan, floor layout plans and elevations). Both the staircase (entrance steps) and landing are higher than 1,0m above the existing ground level and therefore a building line deviation applies.

The extent of the landing is 3,31m² and the balcony is 20,25m² in extent. The encroachment of the landing is a mere 1,42m² and the portion of the balcony that encroaches the eastern lateral building line is 4,1m² in extent. The balcony encroaches the eastern lateral building line by 0,8m.

All the As Built structures that encroach the building lines are located on the eastern boundary of the subject property. The structures are visible from neighbouring erven 7509 and 12821 Hermanus. The dwelling on erf 12821 Hermanus is however set

back (positioned on the northern section of the property); as a result, the As Built structures have a low impact on the adjacent property. Refer to the aerial image below:



Image 1: Remainder erf 3349 Hermanus and position of structures on adjacent properties

The following should be noted when considering the As Built structures:

- It was never the intention to construct the staircase, landing and balcony without the necessary building plan approvals in place. As explained our client appointed a project team to assist and the approval endorsement of the building plan was forged by the architectural consultant.
- The staircase, landing and balcony have existed for a period of two years without any complaints from neighbours.
- No new additions or alterations to the As Built structures are proposed.
- The visual impact is considered minimal. The subject property and surrounding properties slope in a southerly direction (keeping the impact on erf 7509 Hermanus to a minimum). There are no structures on the southern portion of erf 12821 Hermanus, directly adjacent to Remainder erf 3349 Hermanus to the east, where the As Built staircase, landing and balcony

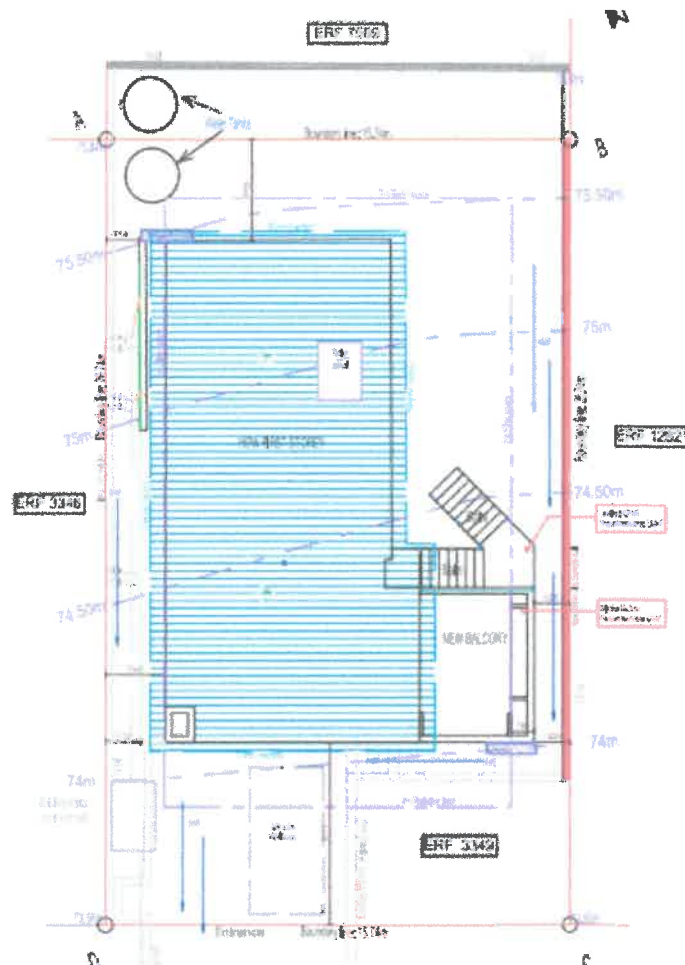
encroach the eastern lateral building line (see aerial image above).

- The materials used are aesthetically pleasing.
- The As Built staircase, landing and balcony are an integral part of the dwellings on the subject property thus to demolish the structures to make it compliant to the eastern lateral building line, will not only take away the entrance to the dwelling and second dwelling, but also diminish the aesthetic value and property value.

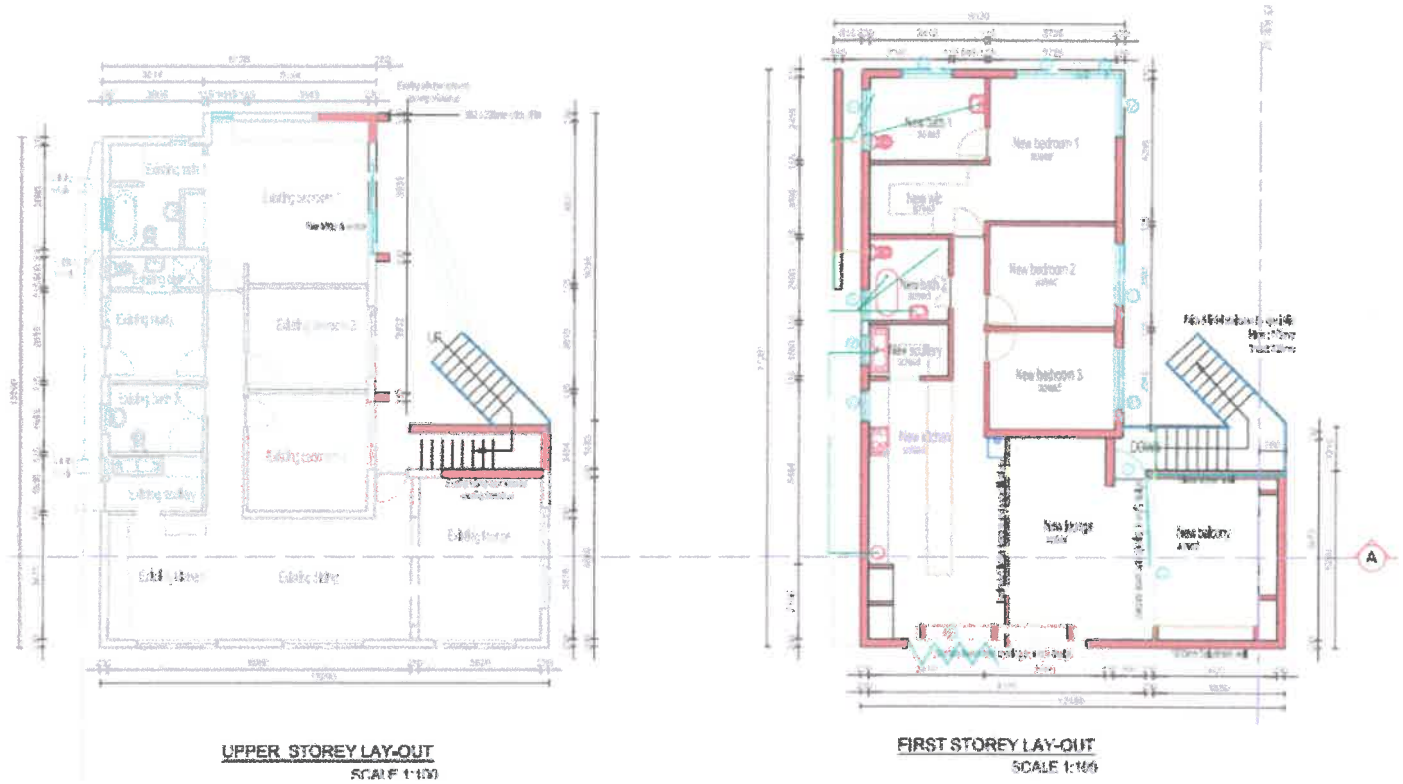
Refer to the attached site development plan, floor layout and elevations.

The site plan, floor layout plan and elevations below indicate the As Built structures that must be addressed:

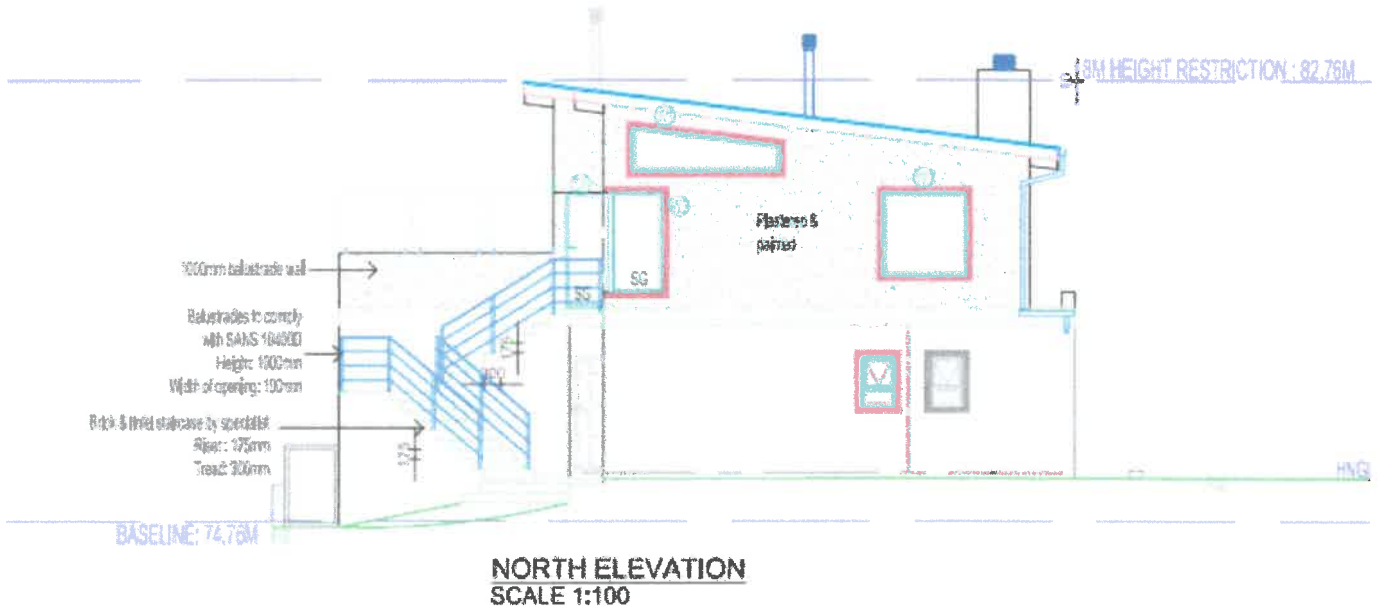
1. Site plan



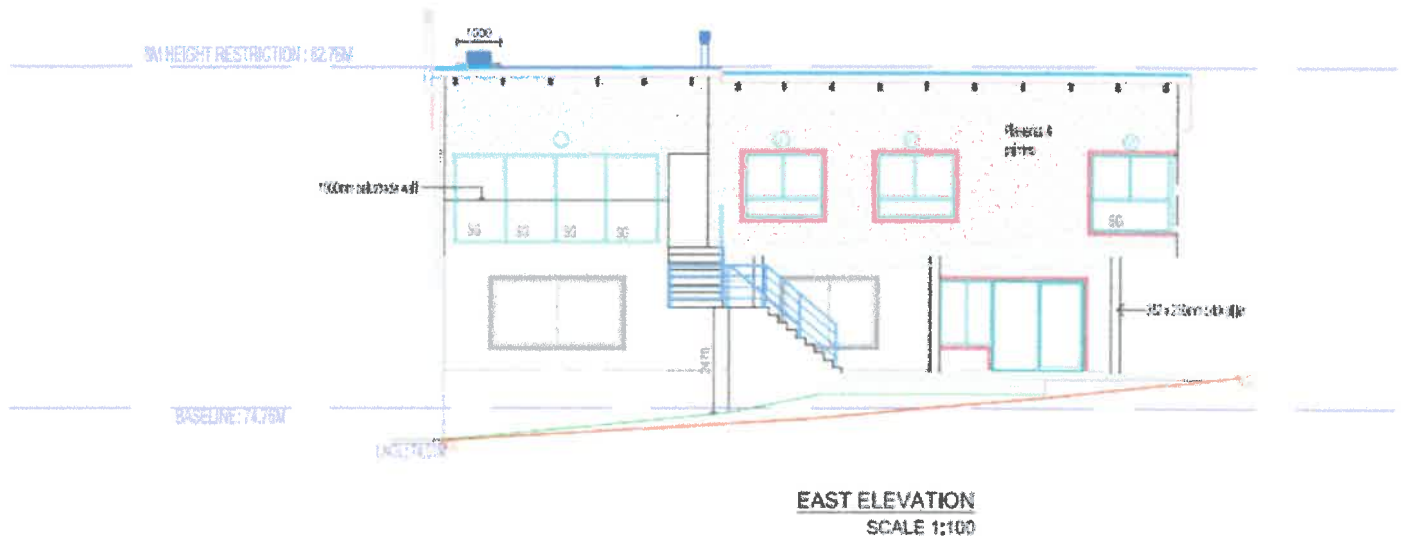
2. Floor layout plans (upper storey & first storey showing the As Built staircase and balcony)



3. North elevation (view of the staircase, landing and balcony (with flower box))



4. East elevation (view of the staircase, landing and balcony (with flower box))



The proposed application does not have any impact on the character or property values of the surrounding properties. 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 and the low impact use of the respective structures.

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 Remainder erf 3349 Hermanus will remain unchanged (Residential Zone I: Single Residential) as well as the primary land use (single residential purposes). The height of all the structures on the subject property complies with the permissible height requirements for SR1 zoned properties. All buildings and uses thereof that encroach the applicable building line, as indicated on the site development plan, already exist and the application addresses existing structures that encroach the building line. Consequently, the proposed departure will not have a greater visual impact on the surrounding properties. The impact on the adjacent property owners and the passers-by will therefore be marginally higher than if these structures did not exist.

The area schedule and coverage for the subject property are as follows:

SINGLE RESIDENTIAL OCCUPATION CLASSIFICATION : H 4			
TOWN PLANNING REQUIREMENTS			
	NEW	EXISTING	COVERAGE
LOWER STOREY - GARAGE		51,26m ²	
UPPER STOREY - DWELLING		153,49m ²	15,44m ²
FIRST STOREY - 2ND DWELLING	136,01m ²		136,01m ²
BALCONY	20,25m ²		20,25m ²
TOTAL	156,26m ²	204,75m ²	171,7m ²
ERF SIZE : 421M ²			40,7%

The total coverage of 40,7% does not exceed 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 building line deviation, 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 of Remainder erf 3349 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, second dwelling, guest house and home occupation uses). The proposed departure will not hinder any possible future land use applications on Remainder erf 3349 Hermanus.

The subject property has the potential and allows for the deviations being applied for since the As Built structures have been on the subject property for a considerable period without any complaints from neighbours. All existing structures meet the maximum of 8m height requirement for SR1 zoned properties as depicted on the site development plan.

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

- The visual impact will be kept to a minimum since the structures have been on the property for a few years now and no new additions / alterations are proposed.
- The massing and scale of the As Built structures are compatible with the area.
- Except for the building line deviation, all other land use parameters are met.
- The As Built staircase, landing and balcony are an integral part of the dwellings on the subject property thus to demolish the structures to make it compliant to the respective building line, will not only take away the entrance to the dwelling and second dwelling, but also diminish the aesthetic value and property value.

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. 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 height of the As Built and approved structures will remain unchanged;
- The As Built unlawful structures have been in existence for a few years, with no complaints from neighbours. No alterations or additions to these structures are proposed;
- The As Built structures add value to the subject property.

3.6 ECONOMIC IMPACT

The proposed departure is to accommodate existing structures and uses thereof. The proposed departure will allow the owner to legalise the existing structures on the subject property. This will also favour the resale of the property in the future.

The approval of the existing structures will save our client the cost of demolishing these structures. The proposed building line deviation will have a low but positive impact on the local economy.

3.7 SOCIAL IMPACT

The proposed departure will have no impact on the social status quo of the area. The building line deviation will however allow the owner to keep the existing As Built structures 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 double storey dwellings and the use of the surrounding properties is for permanent residences and holiday houses. The scale of the structures on Remainder erf 3349 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 structures that encroach

the eastern lateral 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 remain for residential purposes.

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 scale and 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 will have no impact on the general safety and wellbeing of the surrounding community. It is anticipated that a maximum of two families (primary dwelling on upper storey level and second dwelling on first storey level) will continue to occupy the subject property.

Since the proposed departure 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 departure does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Remainder erf 3349 Hermanus is not situated within the Heritage Protection Overlay Zone as determined by the Overstrand Municipality's Zoning Scheme (2020). The

subject property is also not earmarked for heritage conservation purposes with reference to the Overstrand Municipal Growth Management Strategy (2010).

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 departure will not have a negative impact on the heritage value of the Voëlklip or Greater Hermanus area.

3.12 IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed departure 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 Management Overlay Zone (2020).

3.13 TRAFFIC IMPACT, PARKING AND ACCESS

Access to Remainder erf 3349 Hermanus will remain unchanged and will be from 7th Street. Refer to the site development plan. No new access points are proposed.

The Overstrand Municipality Land Use Scheme (2020) stipulates that a minimum of two parking bays are required for a dwelling house (main dwelling) and one parking bay for a second dwelling. There is an approved double garage on lower storey level on Remainder erf 3349 Hermanus that provides parking for the main dwelling. A third parking bay is indicated on the site plan for the second dwelling unit.

Considering the above the main dwelling and second dwelling on Remainder erf 3349 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 TITLE DEED

Title Deed No. T7074/2019 has no restrictions that need to be removed to accommodate the proposed departure of Remainder erf 3349 Hermanus. A conveyancer's certificate is not included with this application since the title deed is straight forward.

There is a bond registered against the subject property. The bondholder's consent dated 14 September 2023 is attached.

3.15 FORWARD PLANNING AND LAND USE DOCUMENTS

The *Overstrand Spatial Development Framework (2020)* earmarks the area where Remainder erf 3349 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 departure 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 Remainder erf 3349 Hermanus forms part of Planning Unit no. 3. This planning unit stipulates an increase in the density of the area from 11du/ha to 14,3du/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 and the As Built structures that encroach the eastern lateral building line are to accommodate the entrance and flower box of the second dwelling unit. The land

use application for the subject property therefore falls within the existing planning for the Hermanus East area.

The proposal will promote land development in a location that is sustainable. The proposed departure 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 Voëlklip 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.

3.16 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 1943. 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 departure will have no impact on the visual elements of the subject property and surroundings since all the structures that encroach the building lines 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 building line has no impact on the massing of the

buildings and the impact on the streetscape or passers-by. The As-Built unlawful structures merge well with the approved structures. The impact on the biophysical environment will also be kept to a minimum since the structures already exist.

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 existence of the structures on the subject property for the past few years, etc. allow for the consideration and approval of the proposed deviations without having an adverse impact on the spatial sustainability of the area. To accommodate the As Built structures 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 will be more optimally utilised without affecting natural vegetation. The property is compatible with the character of the area and do not impact negatively on the rights of any adjacent property owners.

Efficiency: The subject property is easily accessible and conveniently located close to Hermanus CBD and major routes. The massing and height of the property will be in line with the relevant zoning scheme regulations. It proves to be resourceful to approve the As Built structures with the proposed uses thereof to the subject property since it is compatible with the existing built environment and the way the additions were done is aesthetically pleasing.

It proves to be efficient to accommodate the existing structures and its proposed uses by approving the proposed departure of Remainder erf 3349 Hermanus instead of demolishing the structures and as a result negatively impact on the whole look and feel of the subject property.

The proposed departure proves 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 zoning and primary land use of the subject property will remain unchanged;
- The deviation from the applicable scheme regulations' building line is to accommodate As Built structures only;
- The proposal is compatible with the existing built character of the area;
- Impact on the traffic will be kept to a minimum;
- 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.

Note

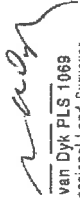
Contours represent Natural Ground Levels, and not Actual Ground Levels.

Height restriction calculation

- Lowest Natural Ground Level of house : 74.01m
- Highest Natural Ground Level of house : 75.51m
- Baselevel : 74.76m
- + allowable building height : 8.00m
- Building height restriction : 82.76m
- Existing Ridge Height : 82.75m

Beacon Certificate

Beacon Description:
A,B Drill Hole in Wall
C,D 12mm Iron peg



L A Van Dyk PLS 1069
Professional Land Surveyor

Client:

Lita van Schalkwyk

VAN DYK & ASS. inc.

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SYSTEM: WGS 84 (Lo 19)

HEIGHT SYSTEM	Local
SCALE	1 : 250
DATE	June 2023

Project Title:

ERF 3349
HERMANUS

Title:

AS BUILT
SURVEY

Project Number:

V23292

Drawn By:

DWF

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van 1
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