



**OVERSTRAND MUNISIPALITEIT**

**ERWE 2350 & 2352, AUVERGNE RESIDENSIËLE LANDGOED, VERMONT: AANSOEK OM ONDERVERDELING, HERSONERING, SLUITING VAN 'N PUBLIEKE PLEK EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: PLAN ACTIVE STADS- EN STREEKBEPLANNERS (nms OVERSTRAND MUNISIPALITEIT / DIE AUVERGNE HUISEIENAARSVEREENIGING)**

**OVERSTRAND MUNICIPALITY**

**ERVEN 2350 & 2352, AUVERGNE RESIDENTIAL ESTATE, VERMONT: APPLICATION FOR SUBDIVISION, REZONING, CLOSURE OF A PUBLIC PLACE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN AND REGIONAL PLANNERS (nms OVERSTRAND MUNICIPALITY / THE AUVERGNE HOMEOWNERS ASSOCIATION)**

**UMASIPALA WASE-OVERSTRAND**

**IZIZA EZINGU-ERVEN 2350 & 2352, AUVERGNE RESIDENTIAL ESTATE, VERMONT: ISICELO SOKWAHLULAHULA UKUCANDA KWAKHONA KWENDAWO KAWONKOWONKE NENGOIKELELO YEPENALITHI: NGABAKWAPLAN ACTIVE TOWN AND REGIONAL PLANNERS (ngamntsi likaMASIPALA WASE-OVERSTRAND / THE AUVERGNE HOMEOWNERS ASSOCIATION)**

Kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Gewysigde Verordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening), asook Artikel 14 van die Wet op Plaaslike Regering: Munisipale Finansiëlebestuur (Wet 56 van 2003) (die Wet) word hiermee kennis gegee van die volgende aansoeke van toepassing op Erwe 2350 en 2352, Vermont, naamlik, die:

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), as well as Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) (the Act) of the following applications applicable to Erven 2350 and 2352, Vermont, namely, the:

Kukhutshwe isaziso esimayela neSolotya lama-47 nelama48 nguMasipala waseOverstrand elingoMthethwana Ongezicwangciso Zokusetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana) kunye neSolotya le-14 likaRhulumente waseKhaya: Umthetho Lawulo Lwemali kaMasipala (Umthetho wama-56 ka2003) osebenza kwezi zicelo zilandelayo nezisebenza kwiZiza ezaziwa ngeErven 2350 ne2352, Vermont:

- sluiting van publieke plek ingevolge Artikel 16(2)(n) van die Verordening om die sluiting van 'n publieke plek te akkomodeer (Erf 2350, Vermont) en 'n gedeelte van 'n publieke pad (gedeelte van Erf 2352, Vermont, Blue Cranestraat en Goshawkweg);
  - onderverdeling van Erf 2352, Vermont ingevolge Artikel 16(2)(d) van die Verordening in 2 gedeeltes, naamlik 'n Restant (±1260m²) en 'n Gedeelte A (±1925m²);
  - herosnering ingevolge Artikel 16(2)(a) van die Verordening van (i) Erf 2350, Vermont vanaf Oopruimtesone 2: Openbare Oopruimte (OS2) na Oopruimtesone 3: Privaat Oopruimte (OS3), en (ii) Gedeelte A, 'n gedeelte van Erf 2352, Vermont vanaf Vervoersone 2 B: Publieke Pad (TR2 B) na Vervoersone 2 A: Privaat Pad (TR2 A);
  - Bepaling van 'n administratiewe boete ingevolge Artikel 16(2)(q) van die Verordening vir die oprig van 'n onwettige toegangs- / veiligheidshek wat toegang bied tot Auvergne Residensiële Landgoed, en
- die Raad se voorneme ingevolge Artikel 14 van die Wet van die oordrag van Erf 2350, Vermont en Gedeelte A van Erf 2352, Vermont in 1. hierbo aan die Auvergne Huseienaarsvereniging met die volgende besonderhede:

- closure of public place in terms of Section 16(2)(n) of the By-Law to accommodate the closure of a public place (Erf 2350, Vermont) and a portion of a public road (portion of Erf 2352, Vermont, Blue Crane Street and Goshawk Road);
  - subdivision of Erf 2352, Vermont in terms of Section 16(2)(d) of the By-Law into 2 portions, namely a Remainder (±1260m²) and a Portion A (±1925m²);
  - rezoning in terms of Section 16(2)(a) of the By-Law of (i) Erf 2350, Vermont from Open Space Zone 2: Public Open Space to Open Space Zone 3: Private Open Space and (ii) Portion A, a portion of Erf 2352, Vermont from Transport Zone 2 B: Public Road (TR2 B) to Transport Zone 2 A: Private Road (TR2 A);
  - determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the unlawful access / security gate constructed in Blue Crane Street road reserve that provides controlled access to Auvergne Residential Estate; and
- the Council's intention in terms of Section 14 of the Act of the transfer of Erf 2350, Vermont and Portion A of Erf 2352 Vermont in 1. above to the Auvergne Homeowners Association with the following details:

- ukualwa kwendawo kawonkewonke ngokwemiba yeSolotya le16(2)(n) loMthethwana ukulungiselela ukualwa kwendawo kawonkewonke (Iiziza esingu-Erf 2350, Vermont) nenxalenye yendlela kawonkewonke (inxalenye yesiza esingu-Erf 2352, Vermont, Blue Crane Street nase Goshawk Road;
  - ukwahlulwahlula kwesiza esingu-Erf 2352, Vermont ngokwemiba yeSolotya le16(2)(d) loMthethwana osebenza kwiinxalenye ezi-2, ezibizwa iNtsalela eyiRemainder (±1260m²) ne Nxalenye eyaziwa ngePortion A (±1925m²);
  - ukucanda kwakhona ngemiba yeSolotya le16(2)(a) loMthethwana (i) weSiza esingu-Erf 2350, Vermont ukusuka kwiNdawo Elibala neVulelekileyo enguZowuni 2: Indawo kaWongekwone Elibala Eilivulekileyo ibe yiNdawo Evulekileyo ebizwa iZowuni 3: Indawo Yabucala nangona Ivulelekile (ii) neNxalaenye enguPortion A, nenxalenye yeSiza esingu-Erf 2352, Vermont ukusuka kwiZowuni yeZithuthi ekuZowuni 2 B:Kwindlela kaWongekwone (TR2 B) ukuya kuZowuni yeZithuthi uZowuni 2 A: Indlela Yabucala (TR2 A);
  - ingqikelelo yepenalthi yobhaliso ngokwemiba yeSolotya le16(2)(q) loMthethwana ochaphazela ukwakhiwa/ ukufikelela kwigeyithi yokhuseleko eyakhiwe eBlue Crane Street eyindlela ebekelwe ukuqinisekisa ukulawula ukufikelel kwiNdawo Yokuhlala eyaziwa nge-Auvergne Residential Estate; kunye
- nenjongo yeBhunga ngokwemiba yeSolotya le14 loMthetho wokuhlulwahlula kwesiza esingu-Erf 2350, Vermont neNxalenye enguPortion A neSiza esingu-Erf 2352 Vermont ku-1. ngasentla eAuvergne Homeowners Association ngezinkukacha zilandelayo:

**Koper:** Auvergne Huseienaarsvereniging  
**A. Ligging:** Erf 2350 Vermont (Blue Cranestraat)  
**Grootte:** ±63m²  
**Koopsom:** R68,000.00 (BTW uitgesluit)  
**Doel:** Privaat Oopruimte  
**B. Ligging:** 'n Gedeelte van Erf 2352, Vermont (Blue Cranestraat)  
**Grootte:** ±2100m²  
**Koopsom:** R92.46/m² (BTW uitgesluit)  
**Doel:** Privaat Pad

**Purchaser:** The Auvergne Homeowners Association  
**A. Locality:** Erf 2350 Vermont (Blue Crane Street)  
**Size:** ±63m²  
**Purchase Price:** R68,000.00 (VAT excluded)  
**Purpose:** Private Open Space  
**B. Locality:** A Portion of Erf 2352 Vermont (Blue Crane Street)  
**Size:** ±2100m²  
**Purchase Price:** R92.46/m² (VAT excluded)  
**Purpose:** Private Road

**Umthengi:** Auvergne Homeowners Association  
**A. Indawo:** Isiza esingu-Erf 2350 Vermont (Blue Crane Street)  
**Isayizi:** ±63m²  
**Ixabiso Lokuthenga:**R68,000.00 (iVAT ayifakwangwa)  
**Injongo:** indawo elibala yabuCaala  
**B. Indawo:** InxalenyeA yeSiza u- Erf 2352 Vermont (Blue Crane Street)  
**Isayizi:** ±2100m²  
**Ixabiso Lokuthenga:**R92.46/m² (iVAT ayifakwangwa)  
**Injongo:** Indlela yabuCaala

Volle besonderhede rakende die voorstel in paragrawe 1.(a), (b), (c) en (d) hierbo is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentare moet skriftelik wees, u naam, adres, en kontakbesonderhede bevat, sowel as u belang in die aansoek en die redes vir kommentaar, welke kommentaar die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (epos) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) moet bereik voor of op 18 November 2022. Telefoniese navrae kan gerig word aan die Stadsbeplanner, Mnr. H Olivier by 028 313 8900.

Full details regarding the proposal in paragraphs 1.(a) (b), (c) and (d) above are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus. Any comment must be in writing, quoting your name, address and contact details, as well as your interest in the application and the reasons for comment, which comment must reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (email) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) on or before 18 November 2022. Telephonic enquiries can be made to the Town Planner, Mr. H Olivier at 0283138900.

linkkukacha ezipheleleyo mayela nesi siphakamiso kumhlathi 1.(a) (b), (c) no (d) ngasentla ziyafumaneka ukuzo zihlolewe kwiintsuku zaphakathi evekini phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Izicwangciso zeDolophu, kwa16 Paterson Street, Hermanus. Naziphina izimvo ezibhalweyo, uchaze igama lakho, idilesi neenkukacha ofumaneka kuzo, kwakunye nomdla wakho kwesi sicelo kunye nezizathu zokuhlomla emazifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (imeyile) [loretta@overstrand.gov.za](mailto:loretta@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama18 EyeNkanga 2022. Imibuzo ngefowuni ingathunyelwa kuMchwangciso weDolophu, uMnu. H Olivier kwa- 0283138900.

Volledige besonderhede rakende die voorstel in paragraaf 2 hierbo is per afspraak beskikbaar gedurende weksdae tussen 08:00 en 16:30 by die Departement: Eiendomsadministrasie, h/v Molteno- en Viljoenstraat, Onrustrivier. Enige kommentaar moet skriftelik wees, u naam, adres, en kontakbesonderhede bevat, sowel as u belang in die aansoek en die redes vir kommentaar, welke kommentaar die Munisipaliteit (h/v Molteno- en Viljoenstraat, Onrustrivier / (f) 0283163721 / (epos) [wmurtz@overstrand.gov.za](mailto:wmurtz@overstrand.gov.za)) moet bereik voor of op 18 November 2022. Telefoniese navrae kan gerig word aan die Hoofklerk, Mej. W Murtz by 0283165601.

Full details regarding the proposal in paragraph 2. above are available per appointment for inspection during weekdays between 08:00 and 16:30 at the Department: Property Administration, c/o Molteno and Viljoen Street, Onrustrivier. Any comment must be in writing, quoting your name, address and contact details, as well as your interest in the application and the reasons for comment, which comment must reach the Municipality (c/o Molteno and Viljoen Street, Onrustrivier / (f) 0283163721 / (email) [wmurtz@overstrand.gov.za](mailto:wmurtz@overstrand.gov.za)) on or before 18 November 2022. Telephonic enquiries can be made to the Principal Clerk, Ms. W Murtz at 0283165601.

linkkukacha ezipheleleyo mayela nezi zindululo zikumhlathi we-2 ngasentla ziyafumaneka ngokwenza idinga ukuzo zihlolewe kwiintsuku zaphakathi evekini ukusukela kwikesha eliphakathi kwentsimbi ye08:00 neye16:30 kwiSebe:Ubhaliso noLawulo Lwezindlu, c/o Molteno neViljoen Street, Onrustrivier. Naziphi na izimvo mazibhalwe phantsi, uchaze igama lakho, idilesi yakho neenkukacha zakho, umdla wakho kwesi sicelo nezizathu zakho zokuhlomla nemazifike kwaMasipala (c/o Molteno neViljoen Street, Onrustrivier / (f) 0283163721 / (imeyile) [wmurtz@overstrand.gov.za](mailto:wmurtz@overstrand.gov.za)) ngomhla okanye ngaphambi komhla wama18 EyeNkanga 2022. Imibuzo ngefowuni ingathunyelwa kuMabhalana Oyintloko, uNkszn W. Murtz kwa-0283165601.

Die Munisipaliteit mag weier om kommentare te aanvaar na die sluitingsdatum. Enige persone wat nie kan lees of skryf nie kan bogenoemde toepaslike Munisipale Departement besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formuleer.

The Municipality may refuse to accept comments received after the closing date. Any persons who cannot read or write may visit the above appropriate Municipal Department where a Municipal official will assist them in formulating their comment.

Umasipala anagala ukwamkela izimvo ezifunyenwe emva komhla wokuvula. Nabani na ongakwazi ukufunda nokubhala ngama kwesiza likaMasipala apho igosa likaMasipala liza kumnceda ukubhala izimvo zakhe ngokusmthethweni.

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

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

Munisipale Kennisgewing Nr. 124/2022

Inothisi kaMasipala. 124/2022

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

Municipal Notice No. 124/2022





Scale: NTS  
 Drawing Nr: VERM321215W  
 Date: FEBRUARY 2022

Plan Description:  
**LOCALITY MAP**

Property Description:  
**ERVEN 2350 & 2352 VERMONT**

All distances approximate and subject to survey.  
**PL'N Active** Stads- en Streeksplanners  
 Town & Regional Planners  
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**PROPOSED DETERMINATION OF AN  
ADMINISTRATIVE PENALTY,  
PUBLIC OPEN SPACE CLOSURE, CLOSURE OF A  
PORTION OF PUBLIC ROAD, SUBDIVISION &  
REZONING**

**ERVEN 2350 & 2352 VERMONT**

**DIVISION: CALEDON  
OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Mrs A. le Roux on behalf of Overstrand Municipality, the owner of erven 2350 and 2352 Vermont, and Mr J.J. Visser on behalf of Auvergne Residential Estate (Vermont), have instructed the company Plan Active Town and Regional Planners to apply for the determination of an administrative penalty, closure of a public open space, the closure of a portion of public road, subdivision and rezoning of erven 2350 and 2352 Vermont.

Auvergne Residential Estate (Vermont) received an in principle approval from Property Administration: Overstrand Municipality to acquire erf 2350 Vermont (Public Open Space) and a portion of  $\pm 2100\text{m}^2$  of erf 2352 Vermont (Public Road). Refer to the decision letter dated 1 March 2019 attached. In the decision letter our client was given two options to finalize the acquisition of the land process. Our client opted for option 2. The Deed of Sale was signed on 13 and 17 December 2021 by the respective parties (copy attached). The next step in the sequence of the process stipulated for option 2 is to submit the necessary town planning applications.

The minutes of the meeting for the acquisition of land application confirmed that the respective portions are not considered viable properties, hence the alienation is granted in principle (subject to conditions as stipulated in the decision letter and Deed

of Sale). The determination of an administrative penalty is for the existing access / security gate constructed within the Blue Crane Street road reserve that serves as controlled access to the residential estate.

A Status Report has been issued by the Surveyor-General indicating that Erven 2350 and 2352 are ordinary erven and not public place and public street in their records, but that it must still be closed officially in terms of Section 37 (Part 5) of the Western Cape Land Use Planning Act.3 of 2014.

## **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 the unlawful access / security gate constructed in Blue Crane Street road reserve that provides controlled access to Auvergne Residential Estate;
- Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the closure of a public space (erf 2350 Vermont) and portion of public road (portion of erf 2352 Vermont – Blue Crane Street and Goshawk Road);
- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the subdivision of erf 2352 Vermont;
- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, for the rezoning of erf 2350 Vermont and Portion A, a portion of erf 2352 Vermont.

### **3. GENERAL APPLICATION INFORMATION**

#### **3.1 PROPERTY DESCRIPTION**

Erf 2350 Vermont is a public open space situated between two erven (erven 2337 and 2338 Vermont) within the Auvergne Residential Estate, Vermont. Erf 2352 Vermont is a public road (Blue Crane Street and Goshawk Road) that gives access to Auvergne Estate. The road also serves as the internal access road within the estate. Refer to the enclosed locality map.

Both erven 2350 and 2352 Vermont are held by title deed no. T40120/2020. Erf 2350 Vermont is 63m<sup>2</sup> in extent. Erf 2352 Vermont is 3185m<sup>2</sup> in extent.

#### **3.2 ZONING**

Erf 2350 Vermont is zoned Open Space Zone 2: Public Open Space (OS2). Erf 2352 Vermont is zoned Transport Zone 2: Road and Parking B – Public Road (TR2 B).

Surrounding properties are zoned Residential Zone I: Single Residential and Transport Zone 2: Road and Parking purposes and being utilised as such.

#### **3.3 LAND USE**

Erf 2350 Vermont is a vacant public open space land situated between two single residential erven in the Auvergne Estate. The homeowner's association of Auvergne Residential Estate currently maintains this portion of land due to the position of the public open space within the estate.

Erf 2352 Vermont is a public road – Blue Crane Street and Goshawk Road. Blue Crane

Street gives access to Auvergne Estate and both Blue Crane and Goshawk Roads serve as the internal access roads to the residential estate.

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

### 3.4 PROPOSED APPLICATION

- The determination of an administrative penalty in terms of Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the unlawful access / security gate constructed in Blue Crane Street road reserve that provides controlled access to Auvergne Residential Estate;
- The closure of a public open space, erf 2350 Vermont, in terms of Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;
- The closure of a portion of a public road, a portion of erf 2352 Vermont, in terms of Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;
- The subdivision of erf 2352 Vermont in terms of Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020, into two portions as follow:
  - Portion A:  $\pm 1925\text{m}^2$
  - Remainder:  $\pm 1260\text{m}^2$ ;
- The rezoning of:
  - erf 2350 Vermont from Open Space Zone 2: Public Open Space to Open Space Zone 3: Private Open Space, in terms of Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amendment By-law on Municipal Land Use Planning, 2020;

- Portion A, a portion of erf 2352 Vermont, from Transport Zone 2 B: Public Road (TR2 B) to Transport Zone 2 A: Private Road (TR2 A).

### **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 (due to the unlawful access gate constructed for the Auvergne Residential Estate), 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.

As previously mentioned, Auvergne Estate is an existing residential estate in Vermont. The estate is a security complex – with an access gate installed at the entrance of the estate. The access gate was constructed illegally on erf 2352 Vermont, i.e. within the Blue Crane road reserve. The administrative penalty application submitted is to address the illegal access / security gate of the Auvergne Estate.

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 land use approval to develop the Auvergne Estate was approved in January 2007 subject to the conditions specified. The General Plan was approved in April 2007. Our client bought the Auvergne Residential Estate erven in 2011. At the time it took two years to deal with the services agreement and hence the properties were only transferred to our client in 2013. When our client bought the property all the estate

boundary walls (peripheral boundary walls) were already constructed, except for the boundary wall adjacent to Blue Crane Street. Building plans were submitted for changes to existing boundary walls and to construct the new boundary walls in 2014. At the same time a proposal to change the streetlights of the estate was also granted. The access gate was constructed at the entrance to the estate at approximately the same time in November / December of 2014.

One of the land use approval conditions reads as follows:

*“(b) that an amended layout showing the position of the proposed access gate, stacking distance, visitors entrance lane, existing Milkwood trees and position of refuse bins should be submitted to Council.”*

From the above it is evident that an access gate was always part of the planning for the estate. The access gate was already present on site when the changes to the boundary walls, new boundary wall and changes to the streetlights were granted. Yet, the issue of the existing “unlawful” access gate was never brought to our client’s attention.

The first transfer of the properties within the Auvergne Estate took place in September 2015. It should be noted that fifteen (15) building plans have been approved for the Auvergne Estate since 2015, therefore after the access gate was constructed at the end of 2014. Yet, once again the municipality did not raise any concerns for the As Built access gate of Auvergne Estate.

The access gate is merely a sliding galvanized iron gate, and not a built access boom gate with security building as seen at other estates in the area.

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

Our client constructed the access gate at the end of 2014 under the impression that an access gate was allowed for the development. As stipulated above the developer was under the impression that the access gate was permitted under the existing land use approval. When nobody questioned the construction of the gate along with the boundary wall adjacent to Blue Crane Street, the developer assumed that all is in order.

Issues with the access gate and the unlawfulness thereof were also never raised with the submission and approval of fifteen of the estate erven's building plans.

Our client was informed of the unlawfulness of the access gate in February 2018 per mail. The property owner immediately proceeded with the necessary discussions and property administration application to address the matter at hand. Overstrand's Property Administration Department granted an in-principle approval for the acquisition of land (on which the access gate is positioned) on 1 March 2019. The sales agreement between Overstrand Municipality and the Auvergne Homeowners Association was signed in December 2021. Our firm was appointed in December 2021 to proceed with the necessary land use application to address the access gate and the acquisition of land in line with Property Administration's approval conditions.

- **Whether the unlawful conduct was stopped**

The unlawful access gate cannot be removed since this is a security feature of the estate that needs to remain. The homeowner's association now attempts to rectify the contravention by submitting the administration penalty and land use application in order to legalise the position of the structure 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 works, we will submit a report from a quantity surveyor with reference to the unauthorised building works. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.

The developer of the Auvergne Residential Estate confirmed that the construction costs of the access gate was R48 000.00 in 2014.

- **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 our client, neither the developer nor the Auvergne Homeowners Association has previously contravened this By-Law or any other previous planning law concerning the Auvergne Residential Estate.

- **Summary**

We appeal to the Overstrand Municipality to take into consideration that there is no impact of the existing access gate on the surrounding area. It should also be considered that no complaints from surrounding properties have been submitted with regards to the access gate. In addition, the access gate is a prime security feature to ensure the safety of the residents in the estate. Given the role the access gate plays at the estate as well as the history of the development of Auvergne Estate, we respectfully request that no penalty fee be imposed on our client for the reasons given above.

#### **3.4.2 Land use applications: closure of public open space, closure of a portion of public road, subdivision and rezoning**

The homeowner's association of Auvergne Residential Estate, Vermont, applied to purchase erf 2350 Vermont (63m<sup>2</sup> in extent) and a portion of erf 2352 Vermont (±1925m<sup>2</sup> in extent) from the Overstrand Municipality. Subsequently the Mayoral Committee resolved at their meeting held on 27 February 2019 that the public street portion (portion of Blue Crane Road and Goshawk Road), be sold to the homeowner's association and that erf 2350 Vermont be rezoned and erf 2352 Vermont be subdivided and rezoned. Refer to the copy of the Deed of Sale entered between Overstrand Municipality and J.C. Davis for erven 2350 and 2352 Vermont signed on 13 and 17 December 2021 respectively by the buyer and seller. The decision letter from Overstrand Municipality's Property Administration department dated 1 March 2019 is also attached.

Erf 2350 Vermont is a public open space erf situated between two of the erven in Auvergne Estate. It is a vacant portion of land currently maintained by the Auvergne Homeowner's Association. Auvergne is a closed residential estate and this portion of public open space (that cannot be closed off to avoid the public from gaining access to the estate) currently poses as a security risk to residents of the residential estate. The motivation for the acquisition of this portion of land was to allow the estate to include this portion of land in the residential estate as a private open space portion. This way the safety of the residents is no longer compromised.

In addition, the largest extent of Blue Crane Street and Goshawk Road are considered private roads that only give access to the Auvergne Residential Estate. As part of the property administration application the municipality granted the estate the opportunity to acquire the portion of road that only serves the Auvergne Residential Estate.

Firstly, an application is submitted for the closure of a public open space of 63m<sup>2</sup> in extent, being erf 2350 Vermont.

Secondly, it is proposed to rezone erf 2350 Vermont from Open Space Zone 2: Public Open Space (OS2) to Open Space Zone 3: Private Open Space (OS3). The subject property will be alienated to Auvergne Residential Estate. This will allow the HOA to include this portion of land in the estate and continue to maintain it as part of the existing private open space in the estate. The reason for the alienation of this portion of land is to allow the Auvergne HOA to close / fence off this portion to prevent trespassers in the residential estate. Currently erf 2350 Vermont is an alley / vacant portion of land that allows uncontrolled public access to the Auvergne Residential Estate. The estate is a security complex and the status of erf 2350 Vermont contradicts the security that the estate offers to its residents.

Thirdly, to give effect to the approval from Property Administration, it is proposed to subdivide erf 2352 Vermont (Blue Crane Street) as follows:

- Portion A: ±1925m<sup>2</sup>;
- Remainder: ±1260m<sup>2</sup>.

Remainder erf 2352 Vermont will keep its existing zoning of Transport Zone 2 B (Public Road). The reason for the alienation of Portion A, a portion of erf 2352 Vermont, is to allow the subject portion to be used as private access road to the Auvergne Residential Estate. As a result, it is lastly proposed to rezone Portion A, a portion of erf 2352

Vermont, from Transport Zone 2 B (Public Road) to Transport Zone 2 A (Private Road) to allow a portion of Blue Crane Street and Goshawk Road for private use by the residents of the Auvergne Residential Estate only. The rezoning of this portion will also allow the estate to keep the existing controlled access gate on Portion A, a portion of erf 2352 Vermont.

Refer to the Subdivision Plan attached.

Special conditions specified for the alienation of erf 2350 Vermont and Portion A, a portion of erf 2352 Vermont, are included in the Deed of Sale Agreement (copy attached).

It is submitted that the proposal is compatible with the character of the area, does not impact negatively on the rights of anyone else and that no good reason exists for not approving this application.

When considering the proposed land use application, 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 land use application 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 CHARACTER OF THE ENVIRONMENT**

The current uses of the subject properties are for Public Open Space and Public Road purposes. It was already confirmed by the Property Administration department that the properties are considered non-viable portions of land. The proposal to alienate erf 2350 Vermont and change the use from public open space to private open space will not take away viable open space currently used by the public.

The same is true for erf 2352 Vermont. The road layout for the area will remain unchanged – it is merely the use of Blue Crane Street (private versus public road) and maintenance thereof in future that will change. The impact on the character of the area will therefore be minimal. The proposed land use application will not have a negative impact on the neighbouring properties or residential character of the area.

### **3.6 POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)**

The Property Administration department confirmed that the subject properties approved for alienation (erf 2350 Vermont and a portion of erf 2352 Vermont) are classified as non-viable portions of land (refer to Property Administration's decision letter dated 1 March 2019). The alienation of erf 2350 Vermont and change of use from Public Open Space to Private Open Space will not take away public open space area that currently serves the residents of Vermont. The property is situated between two residential erven within a residential estate. To allow the alienation and subsequent change of use to Private Open Space will allow the estate to incorporate this portion into their existing private open space areas while simultaneously enhancing the security of the estate.

Erf 2352 Vermont has the potential to be alienated, subdivided and rezoned since the portion of Blue Crane Street approved for alienation only serves the Auvergne Residential Estate and not the greater Vermont area. The change of use from Public Road to Private Road has no impact on the greater road network in the area. The security gate / controlled access point is already positioned at the entrance of the estate in Blue Crane Street. The gate at its current position has no negative impact on the traffic in the area; therefore, the alienation and land use application for erf 2352 Vermont can be considered positively.

No additional buildings or erven are proposed that will put strain on municipal services. The municipality will instead be alleviated from the burden of the upkeep of this portion of public street that can serve Auvergne Estate better as a private road with controlled access.

### **3.7 ECONOMIC IMPACT**

The proposed public open space and portion of a public street closure, subdivision and rezoning will neither have a negative impact on the property values of the existing Auvergne Residential Estate nor the portion of Blue Crane Street that will remain a public road. Property values of surrounding erven will not be negatively affected by the proposed application since both erven 2350 and 2352 Vermont already exist and are used for similar land uses (public open space versus private open space; public road versus private road).

The proposed land use application will ensure that the Auvergne Homeowners Association meets all the conditions of approval for the acquisition of a public open space and a portion of public street.

The municipality will receive funds for selling both the public open space and road portion, versus an unused and non-viable public open space positioned between two erven within the Auvergne Residential Estate and a portion of public road that can actually serve the Auvergne Residential Estate better as a private road (in terms of controlled access and the security of the estate). The future maintenance of the private road will now also become the financial responsibility of the Auvergne Home Owners Association – thus the financial burden on the municipality for the maintenance of Blue Crane Street and Goshawk Road is lessened.

### **3.8 SOCIAL IMPACT**

The proposed closure of a public open space, closure of a portion of public street, subdivision and rezoning will have a positive impact on the social status quo of the area.

By allowing the acquisition of land (and in turn approving the land use application) it will eliminate the security risk the existing public open space (erf 2350 Vermont)

currently poses for the Auvergne Residential Estate. In addition, the Auvergne Residential Estate can remain a security / access controlled residential estate since the approval of the application will allow them to keep the existing gate positioned in Blue Crane Street.

The impact that the proposed application will have on the social wellbeing of the surrounding community will only be beneficial and no negative impacts are anticipated.

### **3.9 COMPATIBILITY WITH SURROUNDING LAND USES**

The subject properties are public open space and public road portions situated in an existing residential area. Erf 2350 Vermont will still be an open space portion after rezoning (now private instead of public). Portion A, a portion of erf 2352 Vermont, will still be used as a road (now private instead of public). As a result, the proposed zonings of the respective portions are still compatible with the surrounding land uses.

In effect no open space or street portions are "lost" with this application since – they merely change use from public to private to be incorporated as part of the Auvergne Residential Estate. Both erf 2350 and Portion A, a portion of erf 2352 Vermont, are already managed as part of the Auvergne Residential Estate. All erven in the immediate vicinity will retain their existing accesses.

The look and feel of the proposed land use are still in line with the general look and feel of the existing residential character of the area. Thus, there will be no impact on the character of the area.

### **3.10 IMPACT ON EXTERNAL ENGINEERING SERVICES**

#### **3.10.1 PROVISION OF SERVICES**

Property Administration's decision letter dated 1 March 2019 stipulates the following in par. 8:

*“8. that it be noted that the Municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council’s Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 58 of 2003).”*

A condition was also included in the Deed of Sale that stipulates should the municipality need to install services on the subject properties in the future they will have the right to do so with prior notice to the purchaser.

The proposal 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.

### **3.10.2 TRAFFIC IMPACT AND ACCESS**

Auvergne Residential Estate will continue to take access from Blue Crane Street. The section of the road that serves Auvergne Estate will however change from public to private road. The controlled access to Auvergne Residential Estate will remain unchanged. Erf 2350 Vermont will become a private open space within the residential estate with access from the internal / private Blue Crane Road. No new access points are proposed.

The section of Blue Crane Street south of the Auvergne Residential Estate will remain a public road to potentially serve future residential extensions in this area. The change in use of a portion of Blue Crane Street from public road to private road will have no impact on the larger road network since the portion to be subdivided (Portion A, a portion of erf 2352 Vermont) already serves as private / controlled access to the Auvergne Residential Estate.

No new residential portions are proposed and therefore the impact on the traffic flow in the area will remain unchanged.

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

#### **3.11.1 HERITAGE VALUE**

The application does not involve changing the character of a site larger than 5 000m<sup>2</sup>. In addition, no development is proposed. Consequently, the proposed land use application does not trigger Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

Erven 2350 and 2352 Vermont are not situated within the Heritage Overlay Zone as determined by the Overstrand Municipal Growth Management Strategy (2010) and the erven are not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009). In addition, the subject properties do not fall within the Heritage Protection Overlay Zone (2020).

The subject properties are not associated with any important persons or groups or important events and activities.

Considering the above it is evident that the proposed public open space closure, portion of a public street closure, subdivision and rezoning will not hinder any future land use applications on the subject erven. From the above it is evident that the proposed application does not encompass any heritage significance and therefore the impact on the heritage value of the area will be kept to a minimum.

### **3.11.2 IMPACT ON THE BIOPHYSICAL ENVIRONMENT**

The proposed closure of a public open space, a portion of a public street, subdivision and rezoning (land use application) do not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998). In addition, the subject properties do neither fall within the Coastal Management Zone nor the Environmental Management Overlay Zone (2020).

### **3.12 TITLE DEED**

Title deed no. T40120/2020 has no restrictions that need to be removed for this application to be approved. A conveyancer's certificate is not included with this application since the title deed is straight forward.

There is no bond registered against erven 2350 and 2352 Vermont.

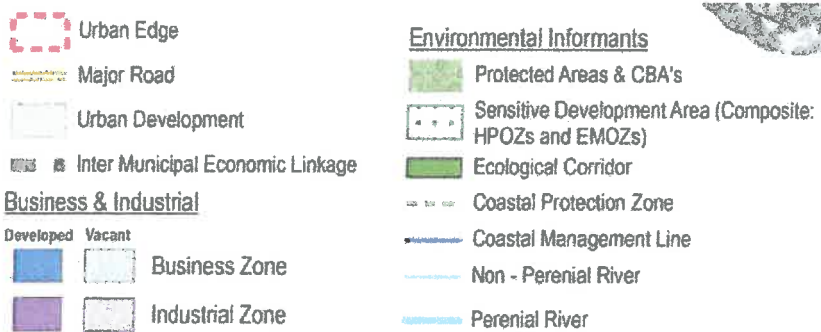
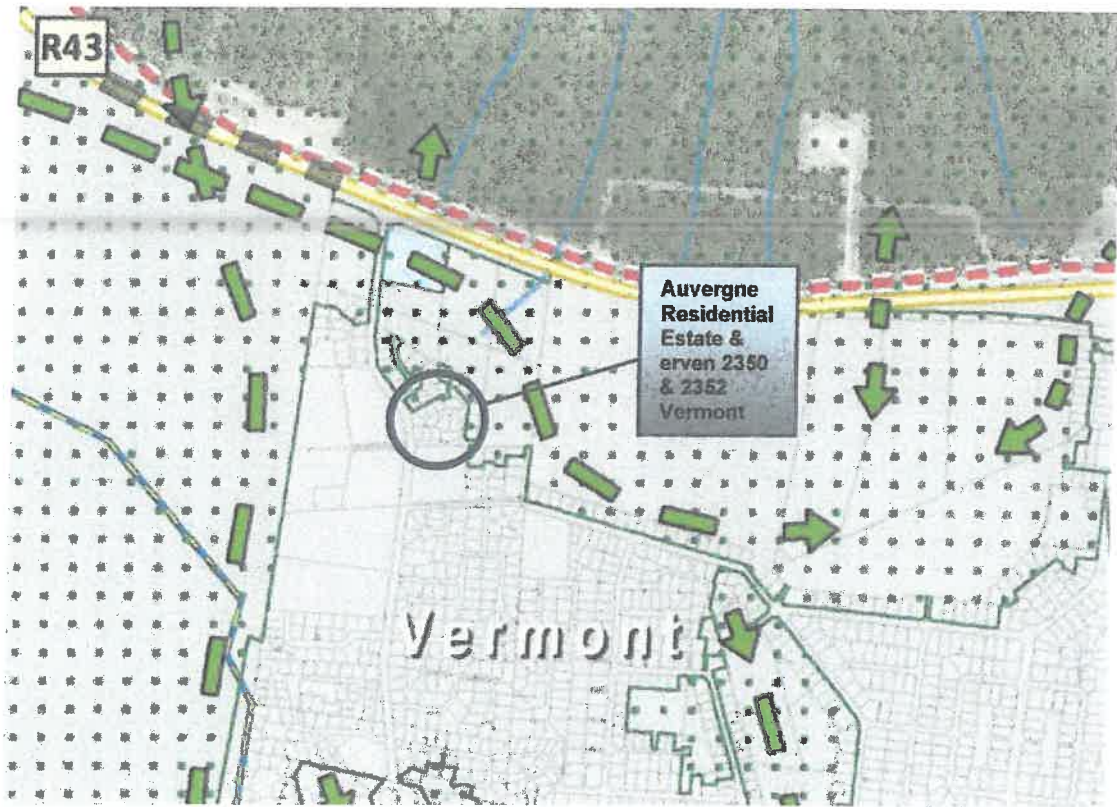
### **3.13 FORWARD PLANNING AND LAND USE DOCUMENTS**

#### **3.13.1 OVERSTRAND SPATIAL DEVELOPMENT FRAMEWORK (2020)**

The Overstrand Spatial Development Framework (2020) earmarks the area where erven 2350 and 2352 Vermont are situated, for urban development purposes. Refer to the Spatial Development Framework Plan (2020) below. The status quo of the respective erven after subdivision and rezoning will remain unchanged (open space and road uses). As a result, the impact of the proposed road closure, subdivision and rezoning on the spatial integrity of the area will be minimal and is therefore consistent with the Overstrand SDF (2020).

**3.13.2 OVERSTRAND MUNICIPAL GROWTH MANAGEMENT STRATEGY (2010)**

The Overstrand Municipality’s densification policy stipulates that it is important to enhance and protect the character of the existing low-density residential area such as Vermont, while still sensitively densifying where appropriate. This ensures that a wide range of erf sizes and types of development are available within the Vermont area.



The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that erven 2350 and 2352 Vermont are part of Planning Unit no. 1 that consists of the established Vermont residential area. No densification for this planning area is proposed.

This application does not propose to create any additional residential portions, nor does it propose the construction of an additional dwelling unit on the subject properties. The density will therefore remain unchanged.

From the above it is evident that the proposed public open space closure, closure of a portion of public street, subdivision and rezoning adhere to the spatial planning policies for the Vermont area and subsequently falls within the existing planning for the Vermont area.

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### **3.14 PLANNING PRINCIPLES**

The planning principle of spatial resilience is not applicable to this application.

Spatial justice: This principle addresses the need to address the past imbalances regarding opportunity. This application is for erven as per the establishment of the existing Vermont Township and this principle does therefore not apply to this application.

Spatial sustainability: The proposed closure of a public open space, the closure of a portion of public street, subdivision and rezoning will have no impact on the road network and availability of viable public open spaces in the area. The proposed land use application is to an improved residential estate within an established residential area and therefore will not impact on urban sprawl, or upon a sensitive environment.

It is submitted that the proposal is compatible with the character of the area and will not impact negatively on the existing rights of anyone else. The impact on the biophysical environment will also be kept to a minimum (i.e. no impact on natural, heritage or agricultural resources). Furthermore, the proposed application will have no adverse impact on the spatial sustainability of the area and is in keeping with the existing residential area as discussed in this report.

Efficiency: Erf 2350 Vermont and Portion A, a portion of erf 2352 Vermont, are non-viable portions of land. Erf 2350 Vermont has no function as a public open space due to its location and accessibility. Portion A, a portion of erf 2352 Vermont, only serves as an access road to the existing Auvergne Residential Estate. As motivated in this report both the portions can be better utilised by the Auvergne Residential Estate / Homeowners Association. Subsequently the Overstrand Municipality will not have the burden to maintain erf 2350 Vermont and Portion A, a portion of erf 2352 Vermont. The Overstrand Municipality also gains from a financial point of view since erf 2350 and Portion A, a portion of erf 2352 Vermont will be purchased from the Overstrand Municipality at market value.

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

#### **4. RECOMMENDATION**

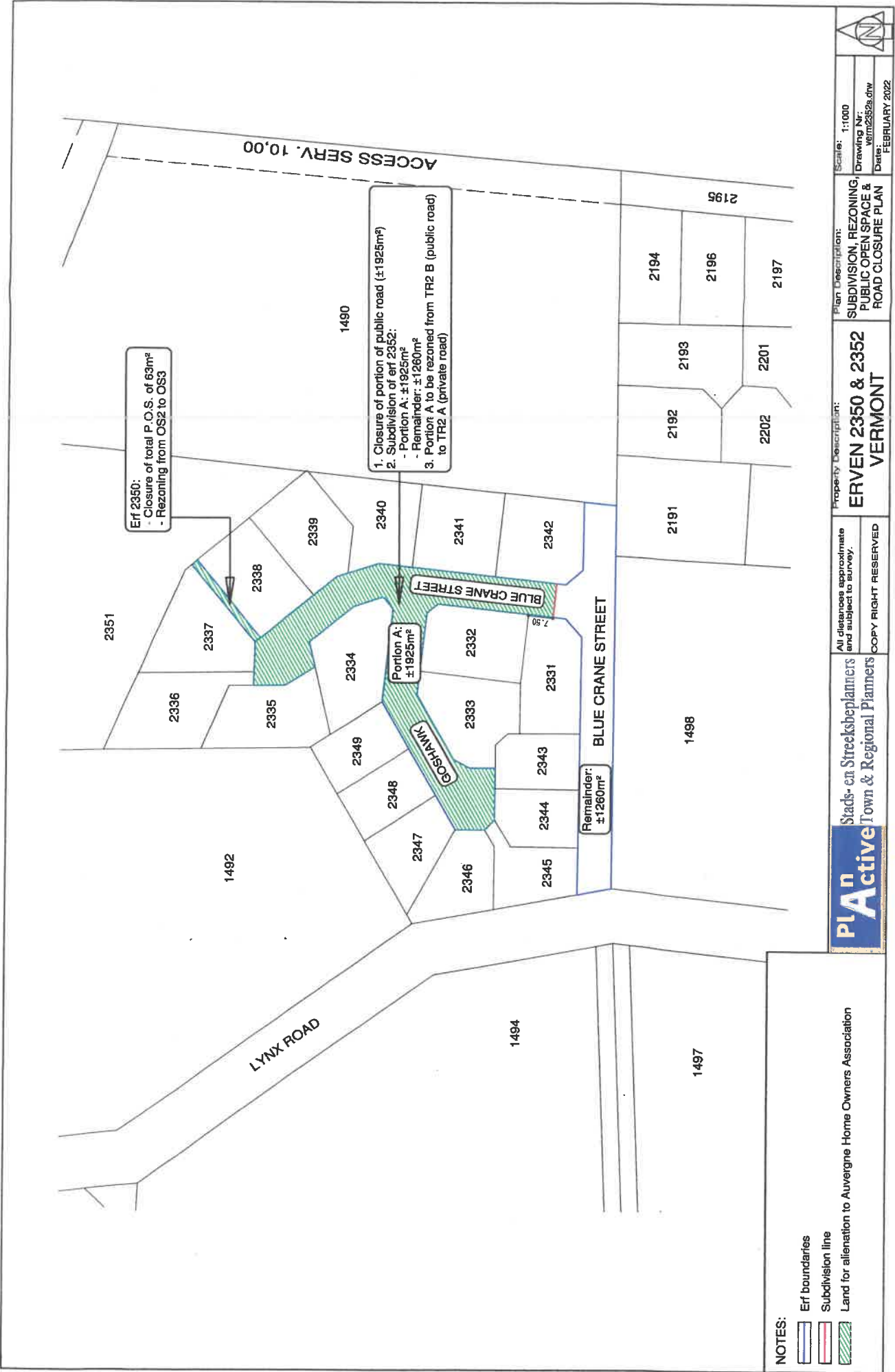
When this application is evaluated it is important to take note of the following:

- Erf 2350 and Portion A, a portion of erf 2352 Vermont, will be alienated to allow Auvergne Homeowners Association to buy the respective portions of land;
- Erf 2350 Vermont will change use from public open space to private open space;
- Portion A, a portion of erf 2352 Vermont, will change use from public road to private road and continue to provide access to the Auvergne Residential Estate and to allow the Estate to keep the existing access gate / controlled access;
- No new residential portions are created;
- The impact on the traffic will remain unchanged;

- The proposed public open space closure, closure of a portion of public street, subdivision and rezoning are compatible with the existing built character of the area;
- The proposed public open space closure, closure of a portion of public street, subdivision and rezoning will not have a negative impact on the land values of the surrounding erven;
- The Overstrand Municipality gains capital since erf 2350 Vermont and Portion A, a portion of erf 2352 Vermont, will be purchased from the municipality at market value;
- The municipality will be alleviated from the burden of upkeeping a public open space that has no function as a public open space. In addition, the maintenance of the private road (portion of Blue Crane Street) will now also be the responsibility of the Auvergne Homeowners Association;
- This application is to incorporate non-viable portions of public open space and public street with Auvergne Residential Estate to ensure the estate continues to have controlled access and heightened security with the public open space portion no longer open to the public / trespassers.

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would approve the public open space closure, a portion of a public street closure, subdivision and rezoning applicable to erven 2350 and 2352 Vermont.

Copy of A3



Erf 2350:  
 - Closure of total P.O.S. of 63m<sup>2</sup>  
 - Rezoning from OS2 to OS3

1. Closure of portion of public road (±1925m<sup>2</sup>)  
 2. Subdivision of erf 2352:  
 - Portion A: ±1925m<sup>2</sup>  
 - Remainder: ±1260m<sup>2</sup>  
 3. Portion A to be rezoned from TR2 B (public road) to TR2 A (private road)

Portion A:  
 ±1925m<sup>2</sup>

Remainder:  
 ±1260m<sup>2</sup>

NOTES:

- Erf boundaries
- Subdivision line
- Land for alienation to Auvergne Home Owners Association

**PIA n** Stads- en Streekskeplanners  
 Town & Regional Planners

All distances approximate  
 and subject to survey.  
 COPY RIGHT RESERVED

Property Description:  
**ERVEN 2350 & 2352  
 VERMONT**

Plan Description:  
 SUBDIVISION, REZONING,  
 PUBLIC OPEN SPACE &  
 ROAD CLOSURE PLAN

Scale: 1:1000  
 Drawing Nr.:  
 Data: verim2352a.dwg  
 Date: FEBRUARY 2022

