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ERF 210 GANSBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING AND CONSENT USE (MINING) AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF SIZISA UKHANYO TRADING 410 CC AND OVERSTRAND MUNICIPALITY**210 GGB (3700/2021)****SW van der Merwe****21 September 2022****(028) 313 8900****Hermanus Administration****1. EXECUTIVE SUMMARY**

An application was received from Messrs WRAP Project Office (WRAP) applicable to Erf 210, Gansbaai on behalf of Sizisa Ukhanyo Trading 410 CC, trading as Gansbaai Sand en Klip with Power of Attorney from Overstrand Municipality for the following:

- ✚ subdivision in terms of Section 16(2)(d) of the By-Law of the Remainder of Erf 210, Gansbaai into two portions, namely Portion A approximately 7.3801ha and Remainder approximately 714.3413ha in extent;
- ✚ rezoning of the subdivided Portion A in terms of Section 16(2)(a) of the By-Law from Undetermined Zone (U) to Agricultural Zone 1 (AGRI 1);
- ✚ consent use in terms of Section 16(2)(o) of the By-Law applicable to Portion A for mining; and
- ✚ determination of an administrative penalty in terms of Section 16(2)(p) of the Bylaw.

A Locality Plan of the property concerned is attached as Annexure A, the Motivation Report in support of the proposal is attached as Annexure B and the proposed Site Development Plan (SDP) is attached as Annexure C. The mine right is attached as Annexure D.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 210, Gansbaai measures 728,2843ha in extent and is zoned Undetermined Zone. Primary uses are limited to lawful uses at the operative date of the land use scheme. In terms of the zoning there is no consent uses whilst no change of an existing use or expansion of a building or structure are permitted.

The existing sand mine, the subject of the application, is situated on Erf 210, Gansbaai, approximately 1,8km east of Gansbaai, 2,5km from De Kelders and 1,4km from Masakhane as depicted on the SDP attached as per Annexure C.

Erf 210 Gansbaai has a long history of sand mining that is evident on historical aerial photography dating back to the 1970's before landmark judgements such as Maccsand. The judgement amongst others clarified the position moving forward that a mine right or mine permit does not absolve the holder of such a right or permit from compliance with other applicable law such as planning and environmental legislation.

During 2011 a scoping report in terms of the Mineral and Petroleum Resources Development Act was advertised for comment from interested and affected parties in respect of a proposed mine right for the mining of sand applicable to Erf 210 and Erf 335, Gansbaai on behalf of Sizisa Ukhanyo Trading 410 CC (Sizisa). A mine right dated 21 August 2012 was granted to Sizisa for a period of 16 years. The mine right has an area of 11,6636ha and is applicable to both Erf 210 and Erf 335, Gansbaai mine rights is attached as Annexure D).

Following receipt of the mine right, Sizisa appointed WRAP to submit a departure application for a gravel and aggregate mine for which a mine permit was issued on a portion of Erf 210, as well as departure applicable to a portion of Erf 210 (adjacent to and Erf 335) for mining of sand during September 2013 under the former Gansbaai Zoning Scheme. At the time the municipality instructed Sizisa to stop with mining activity due to litigation regarding compensation to the municipality and the planning department was instructed not to process the application due to litigation. Following signing of the compensation agreement the planning department was informed on 3 May 2016 that processing of the application could proceed. In an email dated 18 May 2016 the applicant was instructed to submit an updated application as Sizisa now had new owners as well as the fact that the application was submitted under former repealed legislation. The applicant had been requested to submit an updated application in terms of the Overstrand Municipal Land Use Planning By-Law, 2015 and Overstrand Integrated Zoning Scheme Regulations, 2013.

WRAP submitted an updated application during December 2016. Following receipt of outstanding application information during 2017 public participation commenced during July 2017. The application submitted was for amendment of a Site Development Plan (SDP) in order to delineate the sand and gravel aggregate mine with the respective mine right and mine permit. Following a meeting with the applicant in April 2021 the application has been withdrawn, since the SDP was motivated as a non-conforming use without motivating the legality of the non-conforming use in terms of planning legislation. Interested and affected parties had been notified of the withdrawal of the application during December 2021.

Following a meeting with the shareholders, WRAP and municipal representatives from town planning and property administration during April 2021, the land use application was formally withdrawn. WRAP had been re-appointed to submit an application in terms of the Overstrand Municipal Land Use Planning Amendment By-law, 2020 during July 2021 that seeks to retrospectively obtain land use approval as set out below:

- ✚ subdivision in terms of Section 16(2)(d) of the By-Law of the Remainder of Erf 210, Gansbaai into two portions, namely Portion A approximately 7.3801ha and Remainder approximately 714.3413ha in extent;
- ✚ rezoning of the subdivided Portion A in terms of Section 16(2)(a) of the By-Law from Undetermined Zone (U) to Agricultural Zone 1 (AGRI 1);
- ✚ consent use in terms of Section 16(2)(o) of the By-Law applicable to Portion A for mining; and
- ✚ determination of an administrative penalty in terms of Section 16(2)(p) of the Bylaw.

4. SUMMARY OF APPLICANT'S MOTIVATION

- ❖ Mining right in terms of the Mineral and Petroleum Resource Development Act, 2002 is in place.

- ❖ There is a compensation agreement with Overstrand Municipality.
- ❖ Mining is conducted in accordance with an Environmental Management Plan (EMP) that contains guidelines, operating procedures, and rehabilitation and pollution control measurements.
- ❖ Title deed does not contain restrictive conditions that prevent the application.

Subdivision

- The proposed subdivision will not affect the character of the area and promotes economic development in an area where no other uses may take place.
- Access has already been established and additional accesses will not be required.
- The remainder and subdivided portion will remain in municipal ownership.
- Erf 335 is a historic subdivision approval.

Rezoning

- Current zoning (Undetermined Zone) does not permit mining legally to continue.
- Proposed rezoning will rectify the unauthorised land use, with all rights in place.
- Proposed rezoning of a portion to Agricultural Zone will not adversely affect the surrounding area.
- Proposed rezoning is motivated on the basis that mining is a consent use under Agricultural Zone.
- Proposed subdivision will isolate the mining area in an attempt to rectify the current illegal land use.

Consent use

- Rationale for consent use (mining) is the operation of the current sand mine by Gansbaai Sand & Klip.
- Gansbaai Sand & Klip is already in possession of a mining right to mine sand.
- Current zoning does not permit mining.
- Proposed rezoning, subdivision and consent use will legalise mining activity ensuring that Gansbaai Sand & Klip mining activities occur legally.

Determination of an Administrative Penalty

- Application is made since the mining occurs on the property.
- The municipality was aware of the operation of the mine that occurs in accordance with a compensation agreement between Gansbaai Sand & Klip and Overstrand Municipality.
- Up to the Maccsand judgement of 12 April 2012 there was no need for a person with a mining right or permit to obtain or possess a land use authorisation in terms of the former Land Use Planning Ordinance (LUPO).
- Maccsand judgements had far-reaching implications for municipalities as well as holders of mining rights.
- Aerial photography shows first signs of mining on Erf 210 Gansbaai as far back as 1973.

- With the coming into operation of LUPO on 1 July 1986, the land should have been zoned in terms of its land use, which was mining. The general perception of municipalities and permit holders at the time were that land use approval is not required.
- The same applied with the coming into operation of the Gansbaai Zoning Scheme Regulations in September 2003, before the Maccsand judgement in 2012.
- Implications of Maccsand judgement was still uncertain with the drafting and coming into operation of the Overstrand Municipality Integrated Zoning Scheme on 29 November 2013 and where mining rights and permits were issued such uses were treated as non-conforming uses as the perception was that the existing land use was being conducted lawfully in terms of a previous dispensation.
- In case of Erf 210, Gansbaai, the mining right is applicable to a specific area (i.e. the area of the mining right).
- To control and limit the non-conforming use to the area as per the approved mining right, the land use of the mining area needs to be rectified.
- Based on the above, the applicant requests that Overstrand Municipality waive the administrative penalty.

Heritage Protection Overlay Zone (HPOZ)

- Mining has been operational for several years dating back to 1973. Thus, the subject property will not have a further impact on the HPOZ.
- The subject area has been mined for the past 40 to 50 years

Environmental Management Overlay Zone (EMOZ)

- The property falls within the Urban Conservation Zone: Category C.
- The property is used as a mine with the necessary mining rights in place

- ❖ Proposal does not require municipal services
- ❖ Approval and implementation of proposal will allow for economic activities to prosper in the area opposed to non-approval that will affect the work force of the sand mine and building industry in the area, thus within the public interest
- ❖ Current agricultural land use will be retained whilst the proposal will not unlock additional land uses that could be a nuisance to the area
- ❖ Proposal is consistent with the PSDF
- ❖ Proposal is consistent with the SDF
- ❖ Proposal is consistent with the planning principles in terms of LUPA and SPLUMA

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Local Press	Yes	3 September 2021	8 October 2021
Notices	Yes	8 September 2021	8 October 2021
Ward Councillor	Yes	6 September 2021	8 October 2021
Total letters of support	NONE		
Total letters of objection	ONE (1)		

Was public participation undertaken in accordance with Section 46 - 50 of the By-Law on Municipal Land Use Planning?	Yes
Was the application processed correctly (if no, elaborate below):	Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments
Building Control	06/09/2021	No objection. Any built structure requires a building plan application that must comply with all applicable law. HPOZ Regulations state that the purpose and intent is to ensure that any application resulting in additional development rights complies with the existing character and contextual architecture of the area
ESKOM	08/09/2021	Annexure G.
Fire Services	08/09/2021	No objection.
Local Heritage	16/09/2021	NID to be submitted to Heritage Western Cape.
Open Serve	17/09/2021	Annexure H.
Tourism	20/09/2021	No objection.
Traffic	22/09/2021	Noted.
Waste Management	30/09/2021	No objection.
Department of Environmental Affairs and Development Planning: <i>Component: Environmental</i>	07/10/2021	Annexure I.
Engineering Services	07/10/2021	Annexure J.
Department of Transport and Public Works	11/10/2021	No objection.
Health	19/10/2021	Annexure K.
Property Administration	20/10/2021	No objection.

Breede-Gouritz Catchment Management Agency	06/12/2021	Annexure L.
CapeNature	15/11/2021	Annexure M.
Heritage Western Cape	17/12/2021	Annexure N.
Department of Agriculture, Land Reform and Rural Development	18/03/2022	Annexure O.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

One letter of objection was received from CR & FJ Hulme. The letter of objection is attached as per Annexure E and the applicant's response to the objections received is attached as Annexure F. The letter of objection represents CR Hulme (owner of C Hulme Sandmyn, Uilkraalsmond) and FJ Hulme (owner of FJ Hulme Vervoer). The main ground of objection is summarised as follows:

Municipal Steps & Occupation

Point of objection

- “1. Daar word in punt 7.4.2 van bogenoemde kennisgewing vermeld dat die munisipaliteit reeds vir die laaste 40 tot 50 jaar bewus is/was van die bedrywighede in die genoemde area:**

Watter stappe het die munisipaliteit in die genoemde tydperk geneem om te verseker dat 1) die area aangewend word tot voordeel van die hele gemeenskap? 2) geen onwettige aktiwiteite daar bedryf word nie? en 3) daar voldoen word aan alle nasionale, provinsiale en plaaslike wetgewing m.b.t die aanwending van grond in openbare besit?

Dit veral in die lig van die streng vereistes van die Departement van Minerale Hulpbronne m.b.t. mynbou aktiwiteite, maar ook munisipale regulasies m.b.t. oop en deursigtige tenders vir bedrywe op grond in openbare besit.”

- “3. Wat sou die redes vir die privaat ondernemer se oorskryding van Erf 335 na Erf 210 wees? En waarom is die munisipaliteit nie daarvan verwittig nie? Indien wel, waarom het die munisipaliteit nie onmiddelik stappe geneem om die oorskryding te stuit nie?”**

- “7. Kan die munisipaliteit dit as 'n feit stel watter tipe toestemming Sizisa Ukhanyo Trading 410 CC het? aangesien daar groot verskille tussen myn permitte, lisensies en regte is. Genoemde maatskappy sou ook toestemming van die grondeienaar moes kry: Het die munisipaliteit dit verleen? was dit regmatig? en op watter terme is dit verleen? t.o.v. beide areas.”**

Response from applicant

Sizisa Ukhanyo Trading 410 CC (Sizisa) has a compensation agreement with the Overstrand Municipality. Sizisa has a valid mining right, approved by the Department of Mineral Resources for their mining activities which was issued subject to the provisions of an approved Environmental Management Plan (EMP) to ensure that the mine is operated and controlled by the guidelines set out within.

The most important fact is that the applicant is attempting to legalise the land use aspect of the mining activity on the subject property.

The objector's comment with regards to Erf 335 is not relevant to this application and is therefore not addressed.

Response from town planner

The applicants comment above is agreed with. In addition to the comment from WRAP cognisance should be taken of the fact that the State is the custodian of South Africa's mineral rights and not the municipality. The minister of Mineral Resources issued a mine right in accordance with the Mineral and Petroleum Resources Development Act (MPRDA). The MPRDA grants the holder of the mine right access to the property, thus a lease agreement is not the appropriate mechanism to regulate the applicant's use of the areas it received a mining right for, nor can it be put out on tender. The municipality and applicant therefore entered into a compensation agreement on 6 May 2015 in respect of the mine right area (the application area) that was issued under the MPRDA. The aforesaid involved an extensive public participation process where the municipality as well as the objector had the opportunity to comment, prior to the issue of the mine right. Monitoring of the mine right and EMP is the responsibility of the Department of Mineral Resources.

Historical Application**Point of objection**

"2. Ons is bewus van verskeie voorleggings, klagtes en besware deur wyle Gerda Wessels en die Gansbaai Belastingbetalers Vereniging m.b.t die Gansbaai Meent en voortgesette mynbou aktiwiteite daar: Is hierdie skriftelike besware volledig aangespreek, afgehandel en in ag geneem voor die publikasie van kennisgewing 124/2021?"

Response from applicant

The submission of the land use application is one of the steps to address the complaints and objections previously submitted.

The application was also advertised for public comment which afforded the public, including the Gansbaai Ratepayers Association to submit their comments, who however did not submit any comment on the application.

Response from town planner

The applicant's comment above is agreed with as the application cannot be assessed on the basis of former public representations, comment or objections made outside the public participation process of the current planning application.

Penalties and Fines

Point of objection

“3. *Bogenoemde kennisgewing verwys na ‘voorgenome’ administratiewe boetes, maar dit is voorheen voorgehou dat die privaat ondernemer reeds boetes betaal het, asook 'n onbekende bedrag per kubieke meter sand en/of ander materiale wat daar verwyder is/word. Sou dit nie in openbare belang wees om aan te dui watter bedrae reeds deur die privaat ondernemer betaal is? en of dit boetes insluit nie? asook watter redelike stappe die munisipaliteit geneem het om te verseker dat die korrekte kubieke meters aan hulle gerapporteer word?*”

“10. *Punt 7.4.1 verwys na die vasstelling van 'n administratiewe boete: Die bekendmaking van die boete sal in openbare belang wees om ook te toon dat daar gevolge is vir onwettige grondgebruik, ongeag die doelstelling. Sou die munisipaliteit die inligting weerhou kan dit die indruk skep dat daar nie gevolge vir onwettige grondgebruik is nie, en 'n presedent skep vir ander privaat ondememers om dieselfde te doen.*”

Response from applicant

Distinction must be made between fines, payment for the sand per cubic meters and the determination of an administrative penalty in terms of the Overstrand Municipality By-Law on Municipal Planning, 2020.

As indicated in the land use application, it is required for the applicant to apply for the determination an administrative penalty for the land use contraventions on the subject property.

Mining related activities is not a primary right in terms of the current zoning of the subject property. In Section 7.4 of the land use application document submitted, it was motivated why the administrative penalty can be waived. Only after the Maccsand judgement the land use on the subject property became illegal.

Any previous penalties or previous- and existing agreements are confidential information, and the objector can approach the municipality to gain access to the information in terms of the Promotion of Access to Information Act, 2000. The municipality will consider such application in terms of their policy and guidelines and decide if the information can be made available to the public.

Response from town planner

The applicant’s comment above is agreed with. In terms the By-Law, the decision to waive or impose an administrative penalty lies with the Authorized Official (AO), Municipal Planning Tribunal (MPT) or Appeal Authority (AA). Thus, the comment pertaining to fines and compensation is not relevant to the application under consideration.

Application Fees & Money

Point of objection

- “1. Die munisipaliteit bring die voorgenome aansoek, maar wie is verantwoordelik vir die koste daarvan? Sou dit redelik wees om aan te neem dat dit die grondeienaar (munisipaliteit) sal wees?”**
- “2. Is dit in openbare belang om belastingbetalers fondse te gebruik om onwettige aktiwiteite van 'n privaat ondernemer te wettig? dit, terwyl aktiwiteite voortgaan?”**
- “11. Punt 7.4.2 verwys na 'n vergoedingsooreenkoms tussen die munisipaliteit en Sizisa Ukhanyo Trading 410 CC. Vir hoeveel van die 40 tot 50 jaar is dit geldig? hoeveel is reeds betaal? En waarvoor is die fondse aangewend? Was daar ook 'n vergoedings ooreenkoms met vorige onwettige mynoperateurs? en is daar nog gelde wat aan die munisipaliteite verskuldig is? Watter stappe word geneem. word om dit in te vorder?”**

Response from applicant

The property is owned by Overstrand Municipality and a power of attorney was provided to WRAP to compile and submit the application. Sizisa Ukhanyo Trading 410 CC as mining right holder and who has a compensation agreement with the municipality and who is receiving the benefit from the subject property, is responsible for all costs pertaining to the submitted application and not the Overstrand Municipality. No municipal funds are therefore used in any aspect of this application.

As already mentioned, the information with regards to the compensation agreement is confidential, but the objector can apply to the municipality to access the information in terms of the legislation mentioned above.

Response from town planner

The application is brought by WRAP on behalf of Sizisa Ukhanyo Trading 410 CC as holder of the mine right with power of attorney from Overstrand Municipality as property owner. The application is not a municipal application.

Stopping of activities & legalising the mining activities

Point of objection

- “4. Sou dit nie redelik wees om te verwag dat onwettige bedrywighede onmiddellike gestaak word ten spyte van die administratiewe boetes wat nog steeds betaalbaar is nie? Administratiewe boetes opsigself kan tog nie 'n onwettige bedryf wettig, of 'n presedent skep waar openbare grond eers beset (en verbruik) word, en daarna deur die munisipaliteit gewettig word ten behoeve van 'n oortreder nie?”**
- “8. Punt 7.2.1 en 7.2.2 is nodig om wettige mynbou te laat plaasvind, maar is geen rede om huidige onwettige praktyke te kondoneer en te laat voortgaan nie. Die voldoening aan wetsvereistes is die privaatondememer se plig, en nie die munisipaliteit sin nie. Die tydsduur**

van die mynbou aktiwiteite wat skynbaar ongestoord met minimum vereistes voortgaan behoort kommer te wek by die grondeienaar, en 'n deeglike ondersoek behoort te volg na die voorwaardes van mynbou in die area, toegestane tydsduur en volumes.”

“9. Punt 7.3.1 haal aan dat daar reeds mynbou in die area plaasvind, maar die feit dat iets reeds plaasvind of plaasgevind het, maak dit nie wettig of noodwendig kondoneerbaar nie.”

“12. Punt 10.1 verwys na werkskepping en die verskaffing van bousand aan die plaaslike omgewing. Daar is en was ander sandmyne in die omgewing wat nie die voordeel van 'n onbekende vergoedings ooreenkoms met die munisipaliteit het of gehad het nie, plus onwettige oorskrydings sonder gevolge nie. Intendeel, die munisipaliteit het duidelik 'n ander stel reëls vir ander wettige of voormalige wettige sand myne in die Gansbaai area wat ook daarop kan/kon aanspraak maak dat hulle bousand verskaf en werk skep. Werkskepping is baie belangrik, maar dit kan nooit 'n verskoning wees vir wetteloosheid en ondeursigtige of onbevoegde adminstrasie van openbare eiendom nie.”

Response from applicant

The issue with regards to the determination of an administrative penalty was already explained and addressed.

The same applies to the compensation agreement with the Overstrand Municipality.

The application serves as motivation to rectify the land use contraventions on the subject property. Due to the uncertainties after Maccsand judgement, several options were considered on the steps required to rectify the situation and the submitted application was determined as the appropriate approach to legalise the mining activities.

Response from town planner

The applicant's comment is agreed with. The application as submitted will be evaluated on the basis of its individual merit as per the evaluation below.

Economic Activity

Point of objection

“5. Punt 7.1.1 verwys na die bevordering van ekonomiese ontwikkeling in areas waar daar tans geen ander bedrywe is nie. Wie het dit bepaal in die afwesigheid van 'n openbare deelname proses? saamgelees met 'n onwettige oorskryding wat reeds aangegaan is ten behoeve van 'n ondememng in privaatbesit.”

Response from applicant

Economic activities are being created as a workforce for the mining activities are employed and the municipality is also receiving compensation for the extraction of the sand on the subject property.

The comment regarding the public participation required to promote economic development is not clear and can therefore not be commented on.

Response from town planner

The applicant's comment is agreed with, save for public participation. Although the objector is not clear, the planning application adhered to the required public participation requirements in terms of the By-Law. It must also be pointed out that prior to the issue of the mine right the matter was subject to a detailed public participation process in terms of the MPRDA, during which process the objector also made representations. The accusation of a lack of public participation is unfounded.

Environmental Impact

Point of objection

“6. Punt 7.1.3 bevestig dat die grond in openbare besit sal bly, maar sou dit die geval wees het die munisipaliteit 'n plig om onwettige bedrywighede te stop totdat alle regsprosesse afgehandel is, insluitende 'n behoorlike ondersoek na skade aan die omgewing en beoordeling van praktyke wat reeds daar plaasgevind het, en of dit voldoen aan die voorskrifte vir wettige mynbou ondememings.”

Response from applicant

The mining right holder needs to follow the provisions of the Environmental Management Plan approved by the Department of Mineral Affairs that ensures that strict measures are taken to protect the environment. The Environmental Management Plan was attached as an annexure to the submitted application.

Response from town planner

The applicant's comment is agreed with. Monitoring of the EMP is the responsibility of the competent authority. Non-compliance should be reported to the department. The objector is not clear regarding the alleged non-compliance and damage to the environment. The objector appears to be mostly concerned with the history of the mining activities on the subject property and how the municipality addressed compliance issues, which is not completely relevant to the application. The land use application is submitted in an attempt to address the unauthorised land use and is to be considered on merit as per the evaluation below.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

See Paragraph 7 above.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

The proposal will not further perpetuate apartheid spatial imbalances.

Spatial Sustainability

Mining operations are considered spatially sustainable as it occurs in accordance with an approved Environmental Management Plan to ensure it is not to the detriment of the environment nor will it impact sensitive agricultural land.

Efficiency

The property is ideally situated being about 1,4km from Gansbaai allowing easy access for trucks to the surrounding road network, making transportation convenient with easy access to markets.

Spatial Resilience

The development is compliant with the SDF and PSDF that is underpinned by the principles of spatial resilience to accommodate economic and environmental shocks in a timely and efficient manner.

Good Administration

The application followed the required planning procedures, and a good public participation process has been followed.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

Consistent with the Spatial Development Framework.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

No municipal services required.

10.7 Outcomes of investigations/applications i.t.o other legislation

The planning application aligns with the mine permit that was approved in terms of the MPRDA attached as per Annexure D.

The existing mining activities commenced prior to EIA regulations coming into effect. Thus, DEADP confirmed that the application does not trigger listed activities in terms of NEMA.

Heritage Western Cape confirmed that the application does not impact upon heritage resources and no further action under Section 38 of the National Heritage Resources Act is required.

The Surveyor-General Western Cape also confirmed that the commonage is exempt from the Subdivision of Agricultural Land Act 70 of 1970.

10.8 Existing and proposed zoning comparisons and considerations

The subject property is zoned Undetermined Zone and does not accommodate primary, or consent uses, save for lawful uses at the promulgation of the zoning scheme. The current mining operations in accordance with the mine right commenced after the Maccsand judgement. The application seeks to legalise the land use by means of an application process (i.e. subdivision, rezoning, consent use for mining and determination of an administrative penalty).

The property is situated within the HPOZ and the application was referred to OHAC for comment that required the applicant to submit a NID to Heritage Western Cape. Following receipt of the NID the department confirmed that there is no impact on heritage resources.

The property is also situated within the EMOZ. The application was circulated to Environmental Management Services who did not object based on the EMOZ.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

The land use application seeks to legalise the existing mining operations that occurs with a valid mine right in accordance with an approved EMP. The application does not entail upgrading of land use rights, beyond that provided for in the aforesaid mine right obtained in 2012.

The Gansbaai commonage has a history of mining activity dating back to the early 1970's according arial photography. With the coming into operation of LUPO on 1 July 1986, the land should have been zoned in terms of its land use, which was mining.

With the promulgation of the Gansbaai Zoning Scheme on 1 September 2003 the Gansbaai Commonage was zoned Undetermined Zone and has been carried forward in Overstrand Integrated Zoning Scheme, 2013 as well as the Overstrand Land Use Scheme, 2020 as such without any objection based on the zoning of

Erf 210 Gansbaai as reflected on the zoning map, nor the application area. Prior to the Maccsand judgement on 12 April 2012 the general perception of municipalities and permit holders at the time were that land use approval is not required in terms of LUPO. The judgement had far-reaching implications for municipalities as well as holders of mining rights in that it confirmed that the holder of mining rights is not exempted from obtaining permission in terms of other applicable law, i.e. planning or environmental legislation.

Proposed subdivision, rezoning and consent use (mining)

The surrounding area is characterised by mining activities, natural vegetation, a mountain, and waste disposal site. The proposed subdivision of the Gansbaai commonage will not adversely impact the character of the surrounding area or impact upon vested right of properties in the vicinity and remain in ownership. No municipal services are required whilst access to the property exist and is supported by the Department of Transport.

The proposed rezoning and consent use is aligned with the mine right area. The proposed zoning will permit mining to take place in accordance with an approved EMP and is not considered to detract from the character of the area or vested rights of the surrounding area.

The property is situated within the HPOZ Landscape Significance, the purpose of which is to protect the character and sense of place and its economic base. Mining had been operational in the area since the 1970's, thus it is not believed to have an adverse impact upon the HPOZ. The application was circulated to Overstrand Local Heritage as well as Heritage Western Cape for comment. Local Heritage required a NID to be submitted following which Heritage Western Cape confirmed they have no further requirements in terms of Section 38 of the NHRA. The development is therefore not considered to detract from the purposes of the HPOZ.

The property is also situated within the Urban Conservation Category C EMOZ. Mining rights were obtained prior to the promulgation of the EMOZ as part of the Overstrand Land Use Scheme in 2020. Environmental Management Services did not raise any objection based on the purpose of the EMOZ.

The opinion is held that the development is desirable since the sand mine will provide a legal source of building sand in support of the local building / construction industry in and around Gansbaai and the local economy of Overstrand. The development does not trigger NEMA, or Heritage Legislation whilst the operation thereof is subject to an approved EMP that provides for mitigation measures, monitoring and rehabilitation. Various specialist studies (i.e. Botanical, Heritage, Ground Water, Geology etc as part of the scoping report that was subject to public participation during 2011. The opinion is therefore held that the development subject to compliance with the EMP is not to the detriment of the natural environment.

The objectors did not put forward a substantiated proof with regard to non-compliance with the mine right conditions and the EMP, the latter which is to be monitored by the Department of Mineral Resources (DMR). Thus, the opinion is held that the socio-economic benefits of mining currently taking place (i.e. provision of construction material to the building industry, associated employment opportunities (direct and indirect) supports the local economy of the Gansbaai area and beyond and is not detrimental to the safety and wellbeing of the public at large.

Thus, from a planning point of view, the proposal is considered desirable subject to compliance with the conditions of approval, including but not limited to the mine right and EMP.

The PSDF amongst others highlights that mineral resources are non-renewable assets that are important underpinnings of the western cape economy. The applicant demonstrated that the property is situated providing easy access to markets, whilst the approved EMP ensures that the natural environment is not unacceptably impacted upon.

The application is consistent with the SDF as mining contributes to the local economy and not considered to detract from the natural environment subject to compliance with the EMP. DEADP confirmed that the application does not trigger listed activities in terms of NEMA, whilst the proposal is supported by Cape Nature, as mining occurs in accordance with the mine right and approved EMP and subject to the conditions of the 2021 Environmental Authorisation. It must be pointed out that the EA referred to relates to the future extension of the mining area, which is not part of the land use application under consideration.

No objections were received from government departments against the application.

Administrative Penalty

The application for determination of an administrative penalty relates to the unauthorised mining in terms of the Overstrand Municipal Land Use Planning By-Law. The applicant motivated that an administrative penalty not be imposed but did not specifically address the criteria stipulated in Section 90(3) of the By-Law.

The relevant criteria are as follows:

(a) The nature, duration, gravity and extent of the contravention

Mining activity occurred for a number of years without municipal approval, dating back to 2013 / 2014.

(b) The conduct of the person (allegedly) involved in the contravention

Litigation between Sizisa and Overstrand Municipality resulted in a compensation agreement being concluded between the parties in terms of which mining on the property occurred.

(c) Report by a quantity surveyor in matters of unauthorised building / construction

Report had not been provided as there is no unauthorised building or construction activities involved.

(d) Whether the unlawful conduct was stopped

Mining activity is ongoing. A stop notice had not been issued in terms of the By-law, since a planning application had been submitted.

(e) Whether the person allegedly involved in the contravention has previously contravened this B-law of a previous planning law.

There are no former contraventions known caused by Sizisa's current shareholders since 2016.

The applicant motivated that an administrative penalty not be imposed for the following reasons:

- Mining occurred for the past 40 to 50 years on the comanage with municipal knowledge.
- With the coming into operation of LUPO on 1 July 1986 the land had not been zoned according to its utilisation which was mining, and the general perception was that municipal approval was not required. The same applied with the coming into operation of the Gansbaai Zoning Scheme during 2003.
- Prior to the Maccsand judgement the position was that the holder of a mining right is not required to obtain further approvals (i.e. in terms of Planning or Environmental Legislation).
- Following the Maccsand judgement mining is not permitted without approval all other relevant approvals (i.e. in terms of planning or environmental legislation).
- With the drafting of the Integrated Zoning Scheme promulgated in 2013, the implications of Maccsand were still uncertain with mining permits / rights that were issued being treated as non-conforming uses.
- To control and limit the non-conforming use to the mine right area the land use of the mining area needs to be rectified.

In addition to the applicant's motivation Sizisa appointed WRAP who over a number of years submitted planning applications on three occasions to rectify the land use. Having had regard to the history pertaining to mining activity on the Gansbaai commonage, the fact that litigation against Sizisa's former directors regarding compensation significantly delayed the processing of the land use applications, the opinion is held that an administrative penalty should not be imposed.

Conclusion

Sizisa is in possession of a valid mine right and an approved EMP. To date DMR did not report any non-compliance with reference to the EMP. The mine is strategically located, with convenient access to markets in support of the construction industry in Gansbaai and beyond, thereby supporting the local economy resulting in direct and indirect employment opportunities. The objector failed to demonstrate that the application is not in the public interest. The application is considered desirable.

Strategic policies with regard to mining seek to minimise negative impacts on ecosystems, whilst also promoting efficient use of resources, whilst avoiding adverse impacts on the core urban area.

- development provides an opportunity for the productive use of the premises, which currently comprises under-utilised agricultural land;
- the potential impacts can be managed satisfactorily in terms of the EMP, that amongst others provides for noise and dust mitigation and rehabilitation, hours of operation etc;
- the proposed development will benefit the local economy (i.e. building and infrastructure projects) and create employment opportunities; and

- the proposed development will provide a legal source of building sand, thereby supporting the building and infrastructure projects/development and as such will contribute to the local economy.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(d) of the By-Law for subdivision of the Remainder of Erf 210, Gansbaai into two portions, namely: Portion A approximately 7.3801ha and Remainder approximately 714.3413ha, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(a) of the By-Law for rezoning of Portion A from Undetermined Zone to Agricultural Zone 1, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(o) of the By-Law for consent use (mining) applicable to Portion A, **be approved** in terms of the provisions of Section 61 of the By-Law; and
4. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised land use activities stipulated above, **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law;
5. that the recommendations in paragraphs 1. to 3. above be subject to the following conditions:
 - (a) that mining on the subject property be subject to a valid mine right;
 - (b) that the provisions of the Environmental Management Plan at all times be complied with;
 - (c) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (d) that mining be restricted to the area of 7.3801ha and coordinates indicated on the Surveyor's Mining Plan dated February 2015 as submitted with the application (attached as Annexure C);
 - (e) that rehabilitation of the mining area be conducted in accordance with the EMP to the satisfaction of the Overstrand Municipality;
 - (f) that all the conditions in the Services Report and District Health (attached as Annexure J and K), be complied with;
 - (g) that all the conditions imposed by Eskom, Open Serve, Department of Environmental Affairs and Development Planning, *Component: Environmental*, Breede-Gouritz Catchment Management Agency, CapeNature, Heritage Western Cape and Department of Agriculture, Land Reform and Rural Development (attached as Annexures G-I and L-O) be complied with

- (h) that this approval does not absolve the applicant from compliance with any other applicable legislation
 - (i) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with.
6. that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

- ❖ The application followed due process.
- ❖ The proposal is consistent with the SDF.
- ❖ The proposal is consistent with the Planning Principles in terms of LUPA and SPLUMA.
- ❖ The proposal is supported by relevant government departments.
- ❖ The associated impacts of the proposed mining activity could be sufficiently mitigated in terms of the EMP incorporated in the approval conditions.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation Report
Annexure C:	Site Development Plan
Annexure D:	Mining Right
Annexure E:	Objection
Annexure F:	Applicant's comment on objection
Annexure G:	Comment: Eskom
Annexure H:	Comment: Open Serve
Annexure I:	Comment: Department of Environmental Affairs and Development Planning, <i>Component: Environmental</i>
Annexure J:	Services Report
Annexure K:	Comment: Health
Annexure L:	Comment: Breede-Gouritz Catchment Management Agency
Annexure M:	Comment: CapeNature
Annexure N:	Comment: Heritage
Annexure O:	Comment: Department of Agriculture, Land Reform and Rural Development

SIGNATURE

REGISTERED PLANNER

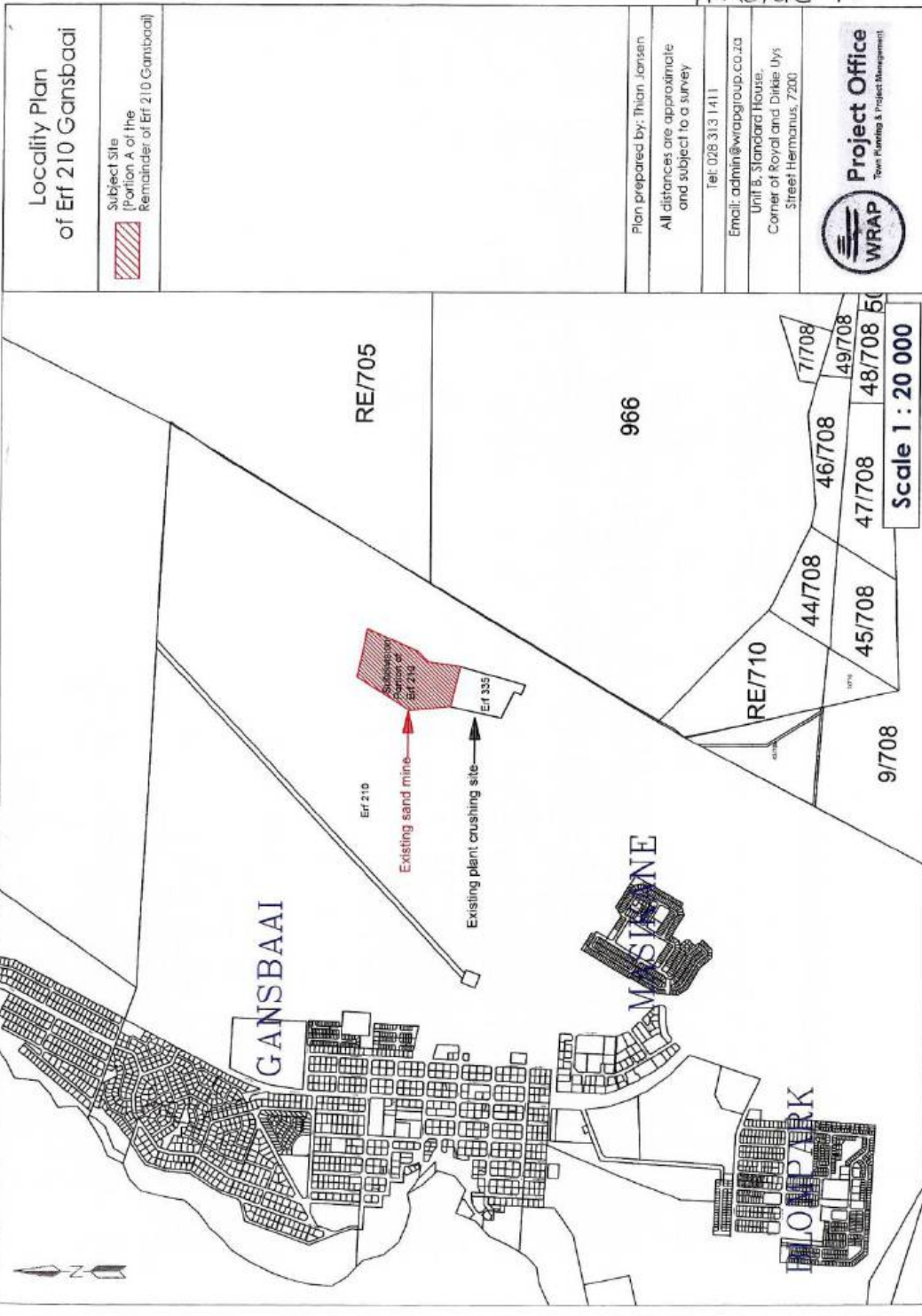
Name: **SW VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature: _____

Date: _____

Ameyuc A



Annexure B1/22



EXECUTIVE SUMMARY

1. ABBREVIATIONS

1.1	OMLUS	Overstrand Municipality Land Use Scheme, 2020
1.2	SDF	Overstrand Municipality Spatial Development Framework, 2020
1.3	OM	Overstrand Municipality
1.4	OM By-Law	Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (as amended)
1.5	DEADP	Western Cape Department of Environmental Affairs and Development Planning
1.6	PSDF	Western Cape Provincial Spatial Development Framework, 2014
1.7	SDP	Site Development Plan

2. SUMMARY OF STATUS QUO PROPERTY DETAILS

2.1	Property description	Remainder of Erf 210, Gansbaai
2.2	Registered owner	Overstrand Municipality
2.3	Consultant	WRAP Project Office
2.4	Restrictive title deed conditions	None
2.5	Property extent	721,7214 Ha
2.6	Current zoning	Zoning: Undetermined Zone (U) Primary uses are limited to only lawful uses existing at the operative date of this land use scheme. Consent uses: none.

3. BACKGROUND AND APPLICANTS' INTENT

- 3.1 The owner of the subject property is Overstrand Municipality and Sizisa Ukhanyo Trading 410 CC (Reg. No. 2005/035636/23) trading as Gansbaai Sand & Klip has a compensation agreement with the Overstrand Municipality to mine sand, gravel & aggregate. The main objective of the application is to rectify the land use situation of the property.

By subdividing a portion of the remainder of Erf 210 Gansbaai and rezoning such portion of the property and allowing a consent use to continue the mining activity on the current portion of the remainder of Erf 210, Gansbaai, will legalise the current land use.

- 3.2 The following approvals, relating to the subject property, were obtained:

Mining Right

An application for a mining right was obtained by Sizisa Ukhanyo Trading 410 CC (Reg. No. 2005/035636/23) and in a letter dated April 2012 from Joel Maleatlana Raphela the Deputy Director General: Mineral Regulation Department of Mineral Resources the following was granted (refer **Annexure C**):

'I, JOEL MALEATLANA RAPHELA, in my capacity as Deputy Director General of Mineral Resources, by virtue of the powers delegated to me in terms of Section 103 of the Mineral and Petroleum Resource Development Act, 2002, a Power of

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EXECUTIVE SUMMARY

Attorney to the Regional Manager: Western Cape Region of the Department of Mineral Resources to sign the mining right contemplated in section 23(1) of the said Act, in favour of Sizisa Ukhanyo Trading 410 CC (Reg. No. 2005/035636/23) to mine sand (General) in respect of Portion 15 of Erf 210 and Erf 335 for a period of sixteen (16) years, situated in the Magisterial District of Hermanus according to the approval signed by me today'.

And amended in August 2015 to include the following:

'The Deputy Director-General: Mineral Regulation herewith amends the Power of Attorney signed on the 25th of April in the year 2012, to read as follows: Portion of Erf 210 Gansbaai and Erf 335 Gansbaai situated in the Magisterial District Hermanus.

The necessary mining right is therefore in place for the current mining activities to operate in terms of the Mineral and Petroleum Resource Development Act, 2002.

Environmental Management Plan (Revised) dated 20 March 2015

An Environmental Management Plan containing the guidelines, operating procedures and rehabilitation/pollution control requirements which will be binding to the holder of the mining right/prospecting permission/reconnaissance permission after approval of the Environmental Management Plan was signed by Dirk Jacobus Heyns who is duly authorised by Sizisa Ukhanyo Trading 410 CC (refer **Annexure D**).

- 3.3** In addition to the subdivision, rezoning and consent use applications a determination of an administrative penalty is also being applied for due to the operation of the mine without the necessary land use approval in the past.

4. PROCEDURE TO ACHIEVE THE APPLICANT'S INTENT

The following applications need to be approved for the applicant to achieve the intent highlighted in Section 3 of this report:

- 4.1 Subdivision** of the remainder of Erf 210, Gansbaai to create Portion A – a portion of the remainder of Erf 210 (±7.3801ha) and the Remainder of Erf 210 (±714.3413ha) Gansbaai in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.
- 4.2 Rezoning** of Portion A – a portion of the remainder of Erf 210 from Undetermined to Agricultural Zone 1 in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.
- 4.3 Consent use** on Portion A – a portion of the remainder of Erf 210 to allow the land use of *mining*, in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.
- 4.4 Determination of an administrative penalty**, in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.



EXECUTIVE SUMMARY

5. CHARACTER OF THE SURROUNDING AREA

- 5.1** The subject mining area is situated approximately (linear distance) 1.8 km from the Gansbaai town, 2.5 km from De Kelders, 1.4 km from Masakhane and 2.7 km from Blompark (refer to **Plan 1** indicating the locality).
- 5.2** The sand mine is located north of the existing crushing plant site located on Erf 335 - Gansbaai, the crushing plant borders agricultural small holdings to the south. To the east of the subject property is a mountain, to the north of the subject delineation is the commonage of Gansbaai and to the north is another mining area. To the west of the subject delineation is the commonage of Gansbaai which is covered with vegetation. Approximately 800 m south west from the subject delineation is the Gansbaai waste disposal site.
- 5.3** The character of the immediate surrounding properties is that of mining activities, natural vegetation, a mountain, and a waste disposal site. The subject sand mine is therefore ideally located and compatible with surrounding land uses.

6. TITLE DEED

Title deeds G160/1938 & T17640/2001 were perused and no restrictive conditions were identified which prohibits the proposed application. The following table contains details regarding of the remainder of Erf 210 Gansbaai:

Property description	Ownership	Title Deed Number
Gansbaai Commonage, located in the division of Caledon, Province of the Western Cape	Overstrand Municipality	G160/1938 & T17640/2001

Please take note Section 4 of the title deed indicates that no portion of the property (Erf 210 Gansbaai) may be subdivided, sold, transferred, donated without the permission of the "Minister van Lande" is first obtained.

The implication of this condition may be that the Minister of Agriculture's consent may be required for the subdivision. We requested the Surveyor General to confirm if Erf 210 Gansbaai is still subject to the Subdivision of Agricultural Land Act, 70 of 1970.

Previous subdivisions from Erf 210 Gansbaai were investigated and it is indicated on the diagrams that such subdivisions are exempt from the provisions of Section 1(a) of the Subdivision of Agricultural Land Act, 70 of 1970.

The consent of the Minister of Agriculture is therefore not required for this application.



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7. MOTIVATION

- 7.1 Subdivision of the remainder of Erf 210, Gansbaai to create Portion A – a portion of the remainder of Erf 210 (±7.3801ha) and the Remainder of Erf 210 (±714.3413ha) Gansbaai in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.**
- 7.1.1** The proposed subdivision promotes economic development in an area where no other uses may take place. The proposed application is in line with the character of the surrounding area and would not have any adverse effect on the area.
- 7.1.2** Due to the mining activities already in operation, the access points have already been established and do not require any additional consent. The application will, however, also be circulated to the Western Cape Department of Transport for comment.
- 7.1.3** The proposed size of the subdivision is only ±7.3801ha, which in relation to the Remainder of Erf 210 Gansbaai, ±714.3413ha, is a very small portion thereof. Both the Remainder and Portion A will remain in the current owner's possession. Refer to **Plan 3 - Subdivision Plan**, that also provides the coordinates of the proposed area to be subdivided.
- 7.1.4** There is an historic subdivision approval in the area, Erf 335 Gansbaai, which has been subdivided from Erf 210 Gansbaai. According to the mining permit, Erf 335 Gansbaai is also being utilised by Sizisa Ukhanyo Trading 410 CC.
- 7.1.5** As mentioned, **Plan 3 - Subdivision Plan** illustrates the subdivision.
- 7.2 Rezoning of Portion A – a portion of the remainder of Erf 210 from Undetermined to Agricultural Zone 1 in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.**
- 7.2.1** The rationale for the rezoning application is that the current zoning (Undetermined) does not allow for the current mining operation to operate legally.
- 7.2.2** The proposed rezoning will rectify this, allowing the mining operation to continue with all the rights in place.
- 7.2.3** The rezoning will not have any adverse effects on the surrounding properties or surrounding areas.
- 7.2.4** The rezoning proposes the rezoning of ±7.3801ha (Portion A) a portion of the remainder Erf 210 Gansbaai from Undetermined to Agricultural Zone 1.



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7.2.5 The reason for proposing Agricultural Zone 1 is that *mining* is a consent use under the zoning (also included in this application).

7.2.6 Current Zoning:

Undetermined	
Primary Use	Primary uses are limited to only lawful uses existing at the operative date of this land use scheme.
Consent Use	None
Development Parameters	
No change of an existing use or expansion of an existing building or structure is permitted.	
No rezoning of any property to this zone is permitted after the operative date of this land use scheme.	
If additional uses or development rights are required, a rezoning application to another, more appropriate zone in terms of this land use scheme must be processed.	

Proposed Zoning:

Agriculture Zone 1: Agriculture			
Development Parameters		Proposal	Deviate or comply
Primary use	Agriculture, Crèche, Dwelling House, Guest Rooms and Home Occupation.	N/A	N/A
Consent use	Additional Dwelling Units, Agricultural Industry, Animal Care Centre, Aquaculture, Day Care Centre, Farm Shop/Stall, Fertiliser Plant, Guest House, Hotel, Institution, Intensive Animal Farming, Intensive Horticulture, Lodge, Mining , Place of Assembly, Place of Entertainment, Place of Instruction, Plant Nursery, Riding Stables, Service Trade, Tourist Accommodation, Tourist Facilities, Transmission Apparatus, Utility Services, Wellness Centre And 4x4 Trail.	Mining	Applied for and motivated
Floor space	The total floor space of all buildings on the land unit may not exceed 5,000m ² , provided that the Municipality may relax this requirement if it is satisfied that such	No buildings are being proposed	Comply

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	buildings are required for bona fide farming activities on the land unit.		
Building lines	Area of Land Unit (Greater than 10ha) Street Boundary Building Line – 30m Common boundary building lines – 30m	No buildings are being proposed	Comply
Height	The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m, provided that agricultural buildings other than dwelling units shall not exceed a height of 12,0 m, measured from the base level to the top of the structure, and where the Municipality is satisfied that a greater height is necessary for the agricultural function of the building, it may permit such greater height.	No buildings are being proposed	Comply
Parking	No Parking requirement set out for Mining within the OMLUS.		Comply

7.3 Consent use on Portion A – a portion of the remainder of Erf 210 to allow the land use of mining, in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

- 7.3.1** The rationale for the proposed land use (mining) is that a sand mine is currently operated on the subject property. As previously mentioned Sizisa Ukhanyo Trading 410 CC has a mining right to mine sand on the Portion of the remainder of Erf 210 Gansbaai;
- 7.3.2** As mentioned above, with the proposed zoning being Agricultural Zone 1 it allows for a consent use for **mining**.
- 7.3.3** The subdivision of the remainder of Erf 210 Gansbaai to isolate the mining area is an attempt to rectify the current illegal land use on the property.
- 7.3.4** The current zoning (Undetermined) does not allow for this type of land use to occur. This rezoning and consent use application will allow the proposed land use to be legal and ensure Sizisa Ukhanyo Trading 410 CC are not operating the sand mine illegally.



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7.4 Determination of an administrative penalty, in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

- 7.4.1 A mine is already operated on the subject property and to ensure compliance with the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended, it is important to include the determination of an administrative penalty in this application.
- 7.4.2 In addition, throughout the past 40 to 50 years the municipality has been aware of the operation of the mine on the subject property and a compensation agreement was entered into between Sizisa Ukhanyo Trading 410 CC and the Overstrand Municipality.
- 7.4.3 Up to the decision in *Maccsand (Pty) Ltd v. City of Cape Town* 2011 (Judgement on 12 April 2012), it was generally accepted that there is no need for a person to whom a mining right or mining permit has been issued to possess or obtain any land use authorisation in terms of the previous Land Use Planning Ordinance (LUPO), 15 of 1985 or any applicable land use schemes thereafter.

This was also the view of the Department of Mineral Resources and Energy Affairs that legislation concerned with a competence vested in the national sphere of government, prevails over LUPO to the extent that the two conflict.

It was also contended that LUPO is not a 'relevant law' in terms of s 23(6) of the Mineral and Petroleum Resources Development Act, 28 of 2002 (MPRDA) and therefore that the holder of a mining right is not required to comply with LUPO. It was also argued in the *Maccsand* case that the MPRDA incorporates aspects of NEMA in order to give effect to Section 24 of the Constitution in the context of mining and that the aspects that it does not incorporate do not apply to mining. It is common knowledge that this perception changed in 2012 when the Constitutional Court ruled in favour of the City of Cape Town that the concern of the MPRDA is mining, not municipal planning and that LUPO continues to operate alongside the MPRDA.

It was ruled that once a mining right or mining permit has been issued, a holder of such mining right will not be able to mine unless LUPO allows for that use of the land in question.

The *Maccsand* judgement had far-reaching implications for holders of mining rights as well as for Municipalities. In the case of the remainder of Erf 210 Gansbaai, historic aerial photography shows the first signs of mining on the property in 1973. With the coming into operation of LUPO on 1 July 1986, as discussed, the land should have been zoned in terms of its land use, which was mining, but the general perception with

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permit/right holders as well as municipalities were that land use approval is not required.

The same applied with the coming into operation of the Gansbaai Zoning Scheme Regulations in 2003, promulgated in terms of Section 7 of LUPO, before the Maccsand judgement in 2012.

With the drafting and coming into operation of the Overstrand Municipality Zoning Scheme on 29 November 2013, the implications of the Maccsand case was still uncertain and where mining permits/rights were issued on land, such use was treated as con-conforming uses as the general perception was that the existing land use was being utilised lawfully in terms of a previous dispensation.

In the case of the remainder of Erf 210 Gansbaai, the mining right is applicable to a specific area, limiting the non-conforming use to the area approved in terms of the mining right.

As no rezoning application was approved, the diagram for the mining area on which the mining right is based, is also the Site Development Plan legalising the non-conforming use.

To control and limit the non-conforming use to the area as per the approved mining right, the land use of the mining area needs to be rectified. As the mining area was extended after the Maccsand judgement, the relevant land use needs to be put in place.

- 7.4.4** Based on the above motivation, we request that the Overstrand Municipality waive the administrative penalty.



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8. ENVIRONMENTAL MANAGEMENT OVERLAY ZONE AND HERITAGE PROTECTION OVERLAY ZONE

8.1 HERITAGE PROTECTION OVERLAY ZONE

The subject property is located outside the urban edge and falls in the Heritage Protection Overlay Zone as a 'Significant landscape' as illustrated by the figure below:



Figure 1: HPOZ in terms of the subject property

The subject property is located within a significant landscape area and it is of importance to note that the gravel mine has been operational for several years dating back to 1973. It is predicted the subject site will not have a further impact on the HPOZ.

To ensure the application may be considered, compliance with the HPOZ it is of importance and certain aspects need to be provided and addressed in terms of Overstrand Municipality Heritage Protection Overlay Zone Regulations, 2020:

Section 20 – 22 states the following -

'20

The Overstrand Municipality By-Law on Municipal Planning, 2020, will apply in respect of all applications, processes and decisions contemplated in these regulations.

21

In considering an application for written consent in order to undertake an activity in terms of the Heritage Protection Overlay Zone, the Municipality may require from an



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applicant whatever information it deems necessary in order for an informed decision to be made regarding the application.

22 This could include, inter alia:

- 22.1 statements of significance;
- 22.2 heritage research;
- 22.3 photographs, including contextual photographs;
- 22.4 results of public consultation;
- 22.5 impact assessments; and
- 22.6 comment from affected and interested bodies.'

8.1.1 Statements of significance

The subject area included in this application has been mined over the past 40 to 50 years. Siza Ukhanyo Trading 410 CC always has the environment and the impact that the mining operation may have in mind.

Ensuring no other area are affected by the mining activities are of great importance to Siza Ukhanyo Trading 410 CC.

8.1.2 Heritage Research

No heritage research was done for purposes of this application.

8.1.3 Photographs, including contextual photographs.

Refer to Annexure E.

8.1.4 Results of Public Consultation

With the applications for mining rights on the subject properties, extensive public participation was done.

8.1.5 Impact Assessments

No impact assessment has been done for purposes of this application. It must be reiterated that mining activities has been taking place on the subject property since 1973.

8.1.6 Comment from Affected and Interested Bodies

The application will be circulated to affected and interested bodies for comment.



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8.2 ENVIRONMENTAL MANAGEMENT OVERLAY ZONE

The proposed subdivided Portion A, does fall within the Urban Conservation Environmental Management Overlay Zone as a category C site which means the following:

"Category C:

Modified ecosystems with a limited biodiversity function to be managed as recreational areas with medium to high impact (Operational Services Function with input from EMS when necessary)."

Please refer to **Annexure D** for an Environmental Management Plan containing the guidelines, operating procedures and rehabilitation/pollution control requirements.

the application was evaluated in terms of the provisions of Schedule A & B of the Environmental Management Overlay Zone 2020:

SCHEDULE A PROHIBITED ACTIVITIES IN OVERSTRAND ENVIRONMENTAL MANAGEMENT OVERLAY ZONES		
Prohibited Activity	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Urban Conservation	
Agricultural practices within this EMOZ which may cause water logging and siltation.	X	N/A
Planting or harbouring of declared emerging weeds on properties within and adjacent to this EMOZ.	X	N/A
Development or agriculture on slopes steeper than 1:4.	X	N/A
Development above the 120m geographical contour line.	X	N/A
Development on the crest of a mountain, ridge or hill.	X	N/A
Establishment of Informal settlements or Temporary Relocation Areas.	X	N/A
No land user within this EMOZ may utilise the vegetation in a vlei, marsh or within the flood area of watercourse in a manner that may cause the deterioration or damage to the natural agricultural resources.	X	N/A
Placement of religious symbols or memorabilia.	X	N/A
Harvesting /collection of kelp / seaweed in municipal designated "no-take" zones.	X	N/A



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Harvesting, collection, moving, loading drying of kelp /seaweed, with a valid Seaweed Harvesting Permit or an exemption in terms of Section 81 or the MLRRA issued by the DAFF.	X	N/A
Stockpiling, drying, processing or loading of marine resources beyond areas designated, demarcated and signposted by the Municipal Council for such purposes.	X	N/A
Modification of the littoral active zone / functional dune systems in absence of approved management plans.	X	N/A
Feeding, disturbing / pursuit of fauna.	X	N/A
Disturbance, modification or destruction of the environment or species within special management areas designated, demarcated and signposted by the Municipal Council from time to time.	X	N/A
Defacing/damaging / removing of any notice, sign, barrier building or other infrastructure.	X	N/A
Playing or tampering with any rope, float, buoy, vessel, shelter or similar life - saving device.		N/A
Staying overnight.	X	The application area is operated as a mine and is a worksite. No overnighting will occur.
The discharging of domestic effluent / grey water into all natural systems.	X	N/A
Tampering with security / surveillance infrastructure.	X	N/A
Defacing of rocky outcrops and placement of memorial plaques, religious symbols or structures on natural features.	X	N/A
Graffiti, vandalism or damaging of municipal infrastructure.	X	N/A
Littering	X	N/A
Disposal of cigarette butts, ash or other hazardous materials in any place or manner other than a receptacle designated for such items	X	N/A
Dog walking / exercising of dogs in non- designated zones.	X	N/A



MOTIVATION

SCHEDULE B ACTIVITIES ONLY PERMITTED WITH COUNCIL CONSENT IN OVERSTRAND ENVIRONMENTAL OVERLAY ZONES		
A) Activities Only Permitted With Council Consent	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Urban Conservation	
Permission for the utilization of access routes to permitted kelp / seaweed harvesting sites.	X	N/A
Removal or destruction of vegetation which is protected and/or of conservation concern.	X	The application site has been operating as a mine for approximately 40 – 50 years.
Dune maintenance on private land as per approved dune maintenance management plans.	X	N/A
Excavation and destruction or removal of substrate (soil, substrate, rock, shellgrit, dune sediment, mineral deposits).	X	The site is used as a mine with the required mining rights.
Discharging of pool backwashing or untreated grey water or the channelling of storm water into open spaces without the necessary approval from the Municipality.	X	N/A
B) Permit Upon Approval By Delegated Authority and / Receipt of Tariff	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Urban Conservation	
Installation of conservancy tanks or biological treatment plants within 50 metres from the edge of a watercourse / wetland.	X	N/A
Access from private properties to open spaces, including the removal of vegetation and the establishment of paths, structures and infrastructure.	X	N/A
Commercial filming.	X	N/A
Construction or placement of any temporary object, building, shelter, path or structure.	X	N/A
Use of engine or motor driven vehicles, remotely piloted aircraft or any other means of transport or other conveyances beyond designated, demarcated and signposted areas.	X	N/A
Launching of vessels at registered launch sites.		N/A

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C) Council Authorisation Pending Consent Use Application / Lease Agreement / Applicable Tariffs as applicable	Applicable Environmental Management Overlay Zone (EMOZ)	Applicable to the application or not
	Urban Conservation	
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Buildings / Structures associated with: Taking of water, storing of water, impeding or diverting flow, stream flow reduction, altering the bed, banks, course characteristics, outflow structures or discharge pipes.	X	N/A
Application for the designation of industrial sites and activities associated with the seaweed harvesting, collection, drying, transport and processing fishery.	X	N/A
Encroachment of private buildings, structures, infrastructure, access routes.	X	N/A
Commercial	X	N/A
Harvesting/collection and removal of any natural resource.	X	The site is operated as amine with the required mining rights
Construction or placement of any permanent object, building, shelter, pathway or structure.	X	There are no structures on the proposed subdivided portion A.

9. SERVICES

No services are required on the subdivided Portion A, as this entire area is earmarked for mining operations and the employees of the sand mine make use of restrooms and other facilities on Erf 335 Gansbaai.

10. SPLUMA MOTIVATION REQUIREMENTS

The following are relevant considerations in terms of Section 42 (c) of SPLUMA and are motivated as follows:

10.1 Public interest

The approval and implementation of this proposal would allow for economic activities to prosper in an area, versus if this is not allowed, several industries may be affected, including the current work force of the sand mine and the building industry of the surrounding area to whom the building sand is sold. No adverse effect of the public's interest is proposed or motivated.



MOTIVATION

10.2 Respective rights and obligations of all those affected.

This proposal entails retaining the agricultural land uses on the remainder of the subject property and not unlock additional to the existing mining land uses that could be a nuisance to the surrounding area.

11. POLICY FRAMEWORK

11.1 The compliance of this proposal with the applicable spatial development policies was assessed. These policies are instrumental in guiding development and providing prescripts of what constitutes sound town planning development patterns. The compliance of this proposal in conjunction with provincial and local policies which are key development informants will be illustrated.

11.2 PSDF

The aim of the PSDF is to give spatial expression to the national and provincial development agendas and serves as a basis for coordinating, integrating, and aligning ground delivery of national and provincial departmental programmes. The framework also aims to communicate the government's spatial development intentions to the private sector and civil society. This section will outline how the proposed development is aligned with the aims of the PSDF.

The PSDF outlines that mineral resources are non-renewable assets that are important underpinnings of the Western Cape economy. The continued extraction of construction materials near infrastructure and property investment is cited as being inevitable and necessary to facilitate economic growth and reduces transport costs and carbon.

The PSDF also outlines that the spatial implications of farming and mining and this table will unpack on the consistency of this application with these spatial implications.

Spatial implications	Alignment of the proposal with the spatial implications
The PSDF promotes sustainable farming and mining activities that generate positive socio-economic returns and do not pose significant risk to the environment.	A revised Environmental Management Plan was compiled which contains the guidelines, operating procedures and rehabilitation/pollution control requirements which is binding on the holder of the mining right (refer to Annexure D). This is to ensure that mining activities that are currently under way on the subject property do not in any way pose a significant risk to the environment.
A prerequisite for sustainable farming and mining is coherent land use planning and environmental management systems that are aligned with	The mining activities of the subject sand mine are occurring within the well-defined parameters as set out in the mining right application (refer to Annexure C) and in

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the Provincial Strategic Objectives.	alignment with the approved environmental management plan.
Record the location of mineral deposits and known reserves of construction materials in municipal SDFs and introduce and apply land use policies that reserve these assets for possible use.	There is no record of known mining reserves in the municipal SDF. Sizisa Ukhanyo Trading 410 CC (trading as Gansbaai Sand en Klip) has however, identified the sand reserves (construction material) that exist on the subject property. As there is a compensation agreement in place with the Overstrand Municipality, record is kept of the volume of sand mined from the property.

11.3 **SDF**

11.3.1 **Policy preface**

The SDF intends to ensure compliance with national, provincial and district legislation policies and principles. The SDF aims to provide sufficient guidance regarding what constitutes appropriate spatial development, land uses and direction. The SDF was drafted after considering input from other state departments and the public and provides a shared spatial vision which development proposals should ideally attempt to synchronise with.

11.3.2 **Broad policy objectives**

The broad policy objectives of the SDF include enhancing the image of the Overstrand as a liveable urban and rural area that accommodates a variety of life. Development proposals should also ensure the protection of environmentally sensitive areas, while promoting a healthy balance between conservation and economic opportunities.

11.3.3 **Consistency of the proposal with the policy**

11.3.3.1 The SDF cites in Section 3.7 that the Overstrand should stimulate economic growth and improve stability by diversifying its economy by means of introducing new sectors and expanding existing sectors with growth potential. The proposal to allow mining activities is in line with the above mentioned as it motivates that economic growth should be stimulated and with the approval of the proposal the mining operation may continue to bring economic power into an area where else there may not be any.

11.3.3.2 Section 3.7 continues that urban and regional planning and urban design may contribute to creating economic prosperity and diversity in a number of ways: One of which states that "By ensuring that land uses sensitive to influences from its surroundings are buffered" the current land use is already operating in a location that does not affect any of its surroundings;

11.3.3.3 Across the policy the importance of ensuring that environmental sensitive areas are protected, is stressed. The Environmental Management Plan mentioned above containing the guidelines, operating procedures and rehabilitation/pollution control requirements, will ensure that the area is properly managed and

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protected. it is also of utmost importance for Sizisa Ukhanyo Trading 410 CC to manage the area in line with the EMP.

12. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

12.1 Spatial Justice

Spatial justice in the context of land use planning refers to addressing spatial development imbalances caused by apartheid planning. The proposed subdivision, rezoning & consent use application will in no way add to development imbalances caused by apartheid planning.

12.2 Spatial Sustainability

The mining operation is be deemed to be spatially sustainable as it does not adversely impact on sensitive agricultural land and an EMP has been drafted and approved to ensure mining activities are not to the detriment of the environment. The mining operation is located 1.8 km from Gansbaai town, 2.5 km from De Kelders, 1.4 km from Masakhane and 2.7 km from Blompark and due to these distances, the mine will not result in sand granules being blown into the surrounding residential areas.

12.3 Efficiency

The mine is also ideally situated 1.8 km from Gansbaai and it is easy for the trucks that transport the sand from the mining area to access tarred roads nearby and this makes the entire transportation convenient and markets may be easily accessed.

12.4 Spatial Resilience

The spatial plans and policies compiled by the PSDF and the SDF all promote spatial resilience in land use management. The proposal is therefore aligned with these spatial plans and policies as the spatial initiatives section of this report has proven and this will result in the proposal being able to accommodate economic and environmental shocks in a timely and efficient manner.

12.5 Good administration

The proposed development will promote consultative planning as the Municipality will advertise the proposal to the public to allow the comments of the public to be taken into consideration. WRAP Project Office will also respond to the comments of the public and take the comments into consideration in the planning of the project. All the above measures will ensure that a joint planning approach is pursued to the benefit of the property owner and the community.



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13. NEED AND DESIRABILITY

The need and desirability for the approval and implementation of this proposal will be illustrated in accordance with Section 66 (1) (c) of the OM By-Law and DEADP Provincial Support Document on Relevant Considerations.

13.1 Need and desirability

Desirability, amongst others, refers to two components where need refers to "time" and desirability refers to "place". In other words, is it the right time and is it the right place for locating the proposed type of land use/activity? The subdivision will allow the portion to obtain the zoning it requires for the mining operation to operate legally.

13.2 Economic impact

The approval of this proposal will enable the property owner to continue with the compensation agreement with Sizisa Ukhanyo Trading 410 CC that allows them to employ and compensate employees of the sand mine. Also, the compensation agreement states that the owner (Overstrand Municipality) also receive economic compensation for the use of their land.

13.3 Impact on safety and wellbeing

There will be no impact on public safety as the portion of the remainder of Erf 210 Gansbaai is not located close to the urban area. In addition, the employees working at the sand mine will follow prescribed safety measures.

13.4 Environmental considerations

The mining operation is deemed to be environmentally sustainable as it does not adversely impact on sensitive agricultural land, an EMP has been drafted and approved to ensure mining activities are not to the detriment of the environment.



EVALUATION AND RECOMMENDATION

14. EVALUATION

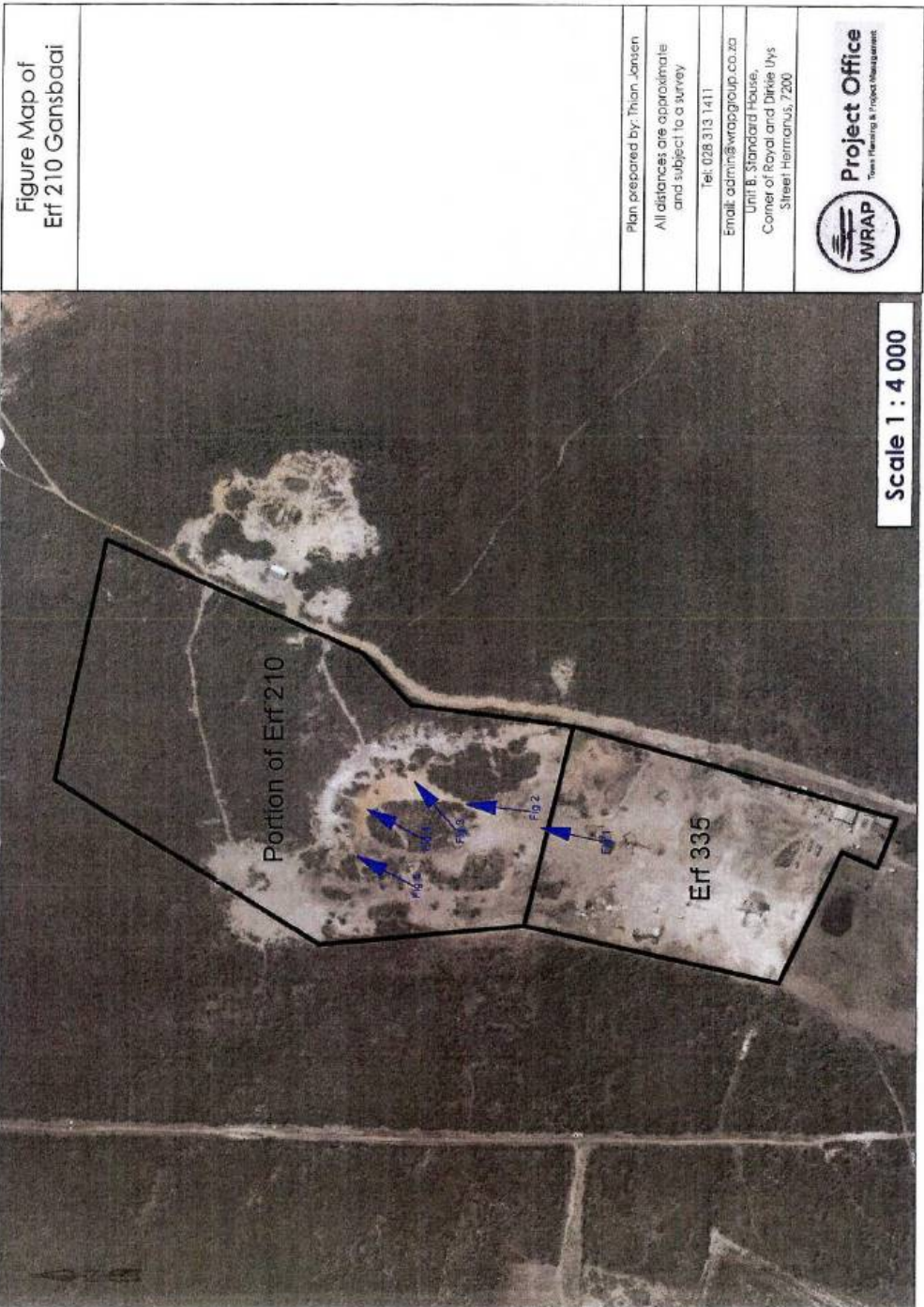
- 14.1** This motivation report has illustrated that the rationale for this proposal is to ensure the current land use is legalised and to ensure that sand can be mined legally from the property;
- 14.2** It has also been illustrated that this proposal was carefully crafted and aligned with relevant planning policies, statutory legal requirements contained in SPLUMA and general principles of what constitutes desirability. The approval and implementation of the proposal may therefore be regarded as contextually appropriate.

15. RECOMMENDATION

It is recommended that the following applications are approved:

- 15.1 Subdivision** of the remainder of Erf 210, Gansbaai to create Portion A – a portion of the remainder of Erf 210 (±7.3801ha) and the Remainder of Erf 210 (±714.3413ha) Gansbaai in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.2 Rezoning** of Portion A – a portion of the remainder of Erf 210 from Undetermined to Agricultural Zone 1 in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended;
- 15.3 Consent use** on Portion A – a portion of the remainder of Erf 210 to allow the land use of *mining*, in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended; and
- 15.4 The waiving of an administrative penalty**, in terms of Section 16(2)(q) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

e/c/p/e



Scale 1 : 4 000

<p>Figure Map of Erf 210 Gansbaai</p>	<p>Plan prepared by: Thon Jansen All distances are approximate and subject to a survey Tel: 028 313 1411 Email: admin@wrapgroup.co.za Unit B, Standard House, Corner of Royal and Dirkie Oys Street Hermanus, 7200</p>
<p>WRAP</p>	<p>Project Office Town Planning & Project Management</p>

21/02


Photo Map of the subject property	<div data-bbox="430 1288 718 1646" data-label="Image"> </div> <div data-bbox="430 896 718 1254" data-label="Image"> </div> <div data-bbox="430 504 718 862" data-label="Image"> </div> <div data-bbox="829 1176 1117 1534" data-label="Image"> </div> <div data-bbox="829 660 1117 1019" data-label="Image"> </div>
Photos taken by: Seo Jankie	
All distances are approximate and subject to a survey	
Tel: 028 313 1411	
Email: admin@wragroup.co.za	
Unit 8, Standard House, Corner of Royal and Dicks Lys Street Hermanus, 7200.	
 Project Office <small>Water Reclamation & Pollution Abatement</small>	



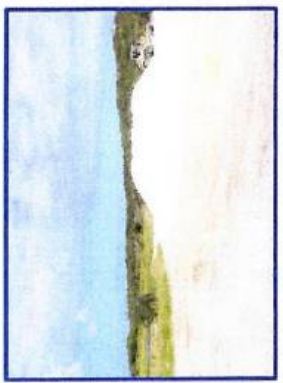


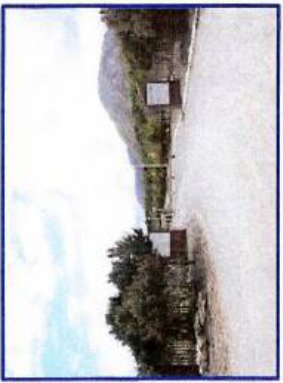

Fig 3: Sand mining area

Fig 2: Access road

Fig 1: Access road

Fig 5: Sand mining area

Fig 4: Sand mining area

<p>Photo Map of the Surrounding Properties</p>	<div data-bbox="395 1276 678 1646">  <p>Fig 1: some animals on a Rural Zone 1</p> </div> <div data-bbox="395 884 678 1265">  <p>Fig 2: Crushing plant</p> </div> <div data-bbox="395 492 678 873">  <p>Fig 3: Crushed product</p> </div> <div data-bbox="858 1276 1141 1646">  <p>Fig 4: Neighboring mountain</p> </div> <div data-bbox="858 884 1141 1265">  <p>Fig 5: Gansbaal Offroad Eco Club</p> </div> <div data-bbox="858 492 1141 873">  <p>Fig 6: Gansbaal Waste Disposal Site</p> </div>
<p>Photos taken by: Rco Janke</p>	<p>All distances are approximate and subject to a survey</p>
<p>Tel: 028 212 1411</p>	<p>Email: admin@wragroup.co.za</p>
<p>Unit 8, Standard House, Corner of Ruyd and Olive Ops Street Hermanus, 7201</p>	
	

Annexure C

Subdivision Plan of Erf 210 Gansbaai

Co-ordinates

Name	Y	X
A	-33961	3628470
B	-33945	3628592
C	-34089	3623044
D	-34259	3628109
E	-34020	3628329
F	-34154	3628371
G	-34135	3628512

Central Meridian: 19 degrees E
Projection: WG19

Extent
A, B, C, D, E, F, G, To A measures 7,3801ha

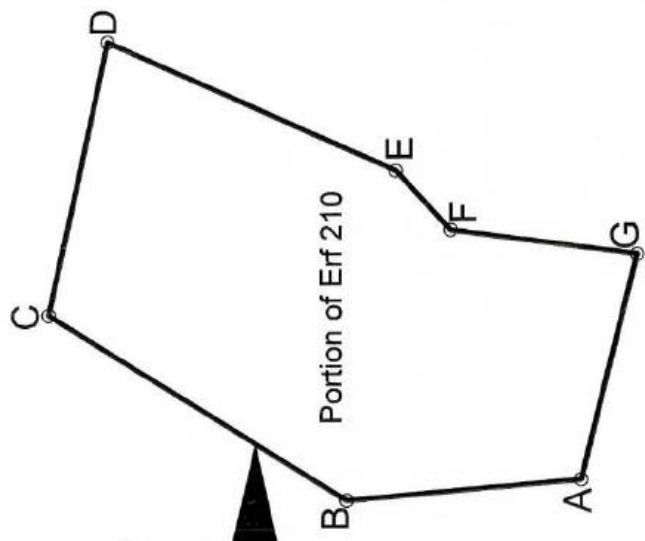
Plan prepared by: Thion Jansen

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
Corner of Royal and Dirke Uys
Street Hermanus, 7200



Erf 210

Subject site

Portion of Erf 210

Scale 1 : 4 000

Annexure D1/3



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

DMR 10

WC 30/5/1/2/2/397MR

WHEREAS The Holder applied for a Mining Right in terms of section 22 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002).

AND WHEREAS The Deputy Director-General: Mineral Regulation has by virtue of the powers delegated to him granted to the holder a Mining Right in terms of section 23(1) of the of the Act.

AND WHEREAS The signed Power of Attorney included the following properties: Portion 15 of Erf 210 and Erf 335 which is situated in the Magisterial District of Hermanus.

NOW THEREFORE

The Deputy Director-General: Mineral Regulation herewith amends the Power of Attorney signed on the 25th of April in the year 2012, to read as follows: **Portion of Erf 210 Gansbaai and Erf 335 Gansbaai situated in the Magisterial District Hermanus.**

The original Power of Attorney amended herewith shall remain valid and of full force and effect.

Signed at Pretoria on this 21 day of August 2015

**DEPUTY DIRECTOR-GENERAL
MINERAL REGULATION**

AS WITNESSES:

1.

2.



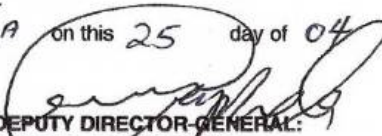
WC 30/5/1/2/2/397MR
A/2011/01/11/001

**DEPARTMENT OF MINERAL RESOURCES
REPUBLIC OF SOUTH AFRICA**

POWER OF ATTORNEY

I, **JOEL MALEATLANA RAPHELA**, in my capacity as Deputy Director-General of Mineral Resources, by virtue of the powers delegated to me in terms of section 103 of the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002), hereby grant a Power of Attorney to the Regional Manager: Western Cape Region of the Department of Mineral Resources, to sign the mining right contemplated in section 23(1) of the said Act, in favour of **Sizisa Ukhanyo Trading 410 CC (Reg. No. 2005/035636/23)** to mine for **Sand (General)** in respect of **Portion 15 of Erf 210 and Erf 335** for a period of **sixteen (16) years**, situated in the Magisterial District of Hermanus, according to the approval signed by me today.

Signed at **PRETORIA** on this **25** day of **04** 2012


**DEPUTY DIRECTOR-GENERAL:
MINERAL REGULATION
DEPARTMENT OF MINERAL RESOURCES**

AS WITNESSES:

1. 
2. 

Application for a Mining Right by: Sizisa Ukhanto Trading 410 CC on Portion 15 of Erf 210 and Erf 335, situated in the Magisterial District of Hermanus.

TP. N. Theart
(S. J. van der Merwe)

Anneure E1/3

FILE NO: <u>GF 210</u>
<u>Gansbaai</u> ✓
SCAN NO: <u>GB 210</u>
COLLABORATOR NO: <u>1584626</u>



Posbus 111
Gansbaai
7220
Tel: (028) 384-0967
Sel: (083) 754-5242
20 September 2021

Aandag: Senior Stadsbeplanner - Mnr. SJ van der Merwe
(e) alida@overstrand.gov.za
Overstrand Munisipaliteit
Patersonstraat 16
Hermanus
7200

**KOMMENTAAR: MUNISIPALE KENNISGEWING NR. 124/2021
VOORGENOME AANSOEK M.B.T. RESTANT VAN ERF 210, GANSBAAI DORPSGEBIED**

**BELANGEVERKLARING: CR HULME EN FJ HULME
CR HULME: EIENAAR VAN C HULME SANDMYN GELEË NABY UILENKRAALSMOND
FJ HULME: EIENAAR VAN FJ HULME VERVOER (VERVOER VAN BOUMATERIALE)**

Dit is met groot ontsteltenis dat ons verneem van die Overstrand Munisipaliteit (hierna 'munisipaliteit') se voorgenome aansoek om onderverdeling, hersonering, vergunningsgebruik en bepaling van administratiewe boetes; m.b.t. die restant van Erf 210 in die Gansbaai dorpsgebied of 'Gansbaai Meent'; om die eenvoudige rede dat dit 'n jarelange hangende kwessie met verskeie onbeantwoorde vrae is.

Hierdie kwessie is van belang vir die hele gemeenskap, aangesien dit openbare eiendom is, en nie net vir die privaat ondernemer wat tans onwettig daar myn nie – soos beskryf deur die munisipaliteit in bogenoemde kennisgewing as motivering vir die aansoek.

Ons het die volgende algemene vrae m.b.t. tot die geskiedenis van hierdie kwessie:

1. Daar word in punt 7.4.2 van bogenoemde kennisgewing vermeld dat die munisipaliteit reeds vir die laaste 40 tot 50 jaar bewus is/was van die bedrywighede in die genoemde area: Watter stappe het die munisipaliteit in die genoemde tydperk geneem om te verseker dat 1) die area aangewend word tot voordeel van die hele gemeenskap? 2) geen onwettige aktiwiteite daar bedryf word nie? en 3) daar voldoen word aan alle nasionale, provinsiale en plaaslike wetgewing m.b.t. die aanwending van grond in openbare besit? Dit veral in die lig van die streng vereistes van die Departement van Minerale Hulpbronne m.b.t. mynbou aktiwiteite, maar ook munisipale regulasies m.b.t. oop en deursigtige tenders vir bedrywe op grond in openbare besit.

20 SEP 2021

TP

2. Ons is bewus van verskeie voorleggings, klagtes en besware deur wyle Gerda Wessels en die Gansbaai Belastingbetalers Vereniging m.b.t. die Gansbaai Meent en voortgesette mynbou aktiwiteite daar: Is hierdie skriftelike besware volledig aangespreek, afgehandel en in ag geneem vir die publikasie van kennisgewing 124/2021?
3. Bogenoemde kennisgewing verwys na 'voorgenome' administratiewe boetes, maar dit is voorheen voorgehou dat die privaat ondernemer reeds boetes betaal het, asook 'n onbekende bedrag per kubieke meter sand en/of ander materiale wat daar verwyder is/word. Sou dit nie in openbare belang wees om aan te dui watter bedrae reeds deur die privaat ondernemer betaal is? en of dit boetes insluit nie? asook watter redelike stappe die munisipaliteit geneem het om te verseker dat die korrekte kubieke meters aan hulle gerapporteer word?

Spesifieke vrae m.b.t. Munisipale Kennisgewing Nr. 124/2021:

1. Die munisipaliteit bring die voorgenome aansoek, maar wie is verantwoordelik vir die koste daarvan? Sou dit redelik wees om aan te neem dat dit die grondeienaar (munisipaliteit) sal wees?
2. Is dit in openbare belang om belastingbetalers fondse te gebruik om onwettige aktiwiteite van 'n privaat ondernemer te wettig? dit, terwyl aktiwiteite voortgaan?
3. Wat sou die redes vir die privaat ondernemer se oorskryding van Erf 335 na Erf 210 wees? en waarom is die munisipaliteit nie daarvan verwittig nie? Indien wel, waarom het die munisipaliteit nie onmiddellik stappe geneem om die oorskryding te stuit nie?
4. Sou dit nie redelik wees om te verwag dat onwettige bedrywighede onmiddellike gestaak word ten spyte van die administratiewe boetes wat nogsteeds betaalbaar is nie? Administratiewe boetes opsigself kan tog nie 'n onwettige bedryf wettig, of 'n presedent skep waar openbare grond eers beset (en verbruik) word, en daarna deur die munisipaliteit gewettig word ten behoeve van 'n oortreder nie?
5. Punt 7.1.1 verwys na die bevordering van ekonomiese ontwikkeling in area waar daar tans geen ander bedrywe is nie. Wie het dit bepaal in die afwesigheid van 'n openbare deelname proses? saamgelees met 'n onwettige oorskryding wat reeds aangegaan is ten behoeve van 'n onderneming in privaatbesit?
6. Punt 7.1.3 bevestig dat die grond in openbare besit sal bly, maar sou dit die geval wees het die munisipaliteit 'n plig om onwettige bedrywighede te stop totdat alle regsprosesse afgehandel is, insluitende 'n behoorlike ondersoek na skade aan die omgewing en beoordeling van praktyke wat reeds daar plaasgevind het, en of dit voldoen aan die voorskrifte vir wettige mynbou ondernemings.
7. Kan die munisipaliteit dit as 'n feit stel watter tipe toestemming Siziza Ukhanyo Trading 410 CC het? aangesien daar groot verskille tussen myn permitte, lisensies en regte is. Genoemde

maatskappy sou ook toestemming van die grondeienaar moes kry: Het die munisipaliteit dit verleen? was dit regmatig? en op watter terme is dit verleen? t.o.v. beide areas.

8. Punt 7.2.1 en 7.2.2 is nodig om wettige mynbou te laat plaasvind, maar is geen rede om huidige onwettige praktyke te kondoneer en te laat voortgaan nie. Die voldoening aan wetsvereistes is die privaatondernemer se plig, en nie die munisipaliteit sin nie. Die tydsduur van die mynbou aktiwiteite wat skynbaar ongestoord met minimum vereistes voortgaan behoort komer te wek by die grondeienaar, en 'n deeglike ondersoek behoort te volg na die voorwaardes van mynbou in die area, toegestane tydsduur en volumes.
9. Punt 7.3.1 haal aan dat daar reeds mynbou in die area plaasvind, maar die feit dat iets reeds plaasvind of plaasgevind het, maak dit nie wettig of noodwendig kondoneerbaar nie.
10. Punt 7.4.1 verwys na die vasstelling van 'n administratiewe boete: Die bekendmaking van die boete sal in openbare belang wees om ook te toon dat daar gevolge is vir onwettige grondgebruik, ongeag die doelstelling. Sou die munisipaliteit die inligting weerhou kan dit die indruk skep dat daar nie gevolge vir onwettige grondgebruik is nie, en 'n presedent skep vir ander privaat ondernemers om dieselfde te doen.
11. Punt 7.4.2 verwys na 'n vergoedingsooreenkoms tussen die munisipaliteit en Sizisa Ukhanyo Trading 410 CC. Vir hoeveel van die 40 tot 50 jaar is dit geldig? hoeveel is reeds betaal? en waarvoor is die fondse aangewend? Was daar ook 'n vergoedings ooreenkoms met vorige onwettige mynoperateurs? en is daar nog gelde wat aan die munisipaliteite verskuldig is? Watter stappe word geneem word om dit in te vorder?
12. Punt 10.1 verwys na werkskepping en die verskaffing van bousand aan die plaaslike omgewing. Daar is en was ander sandmyne in die omgewing wat nie die voordeel van 'n onbekende vergoedings ooreenkoms met die munisipaliteit het of gehad het nie, plus onwettige oorskrydings sonder gevolge nie. Inteendeel, die munisipaliteit het duidelik 'n ander stel reëls vir ander wettige of voormalige wettige sand myne in die Gansbaai area, wat ook daarop kan/kon aanspraak maak dat hulle bousand verskaf en werk skep. Werkskepping is baie belangrik, maar dit kan nooit 'n verskoning wees vir wetteloosheid en ondeursigtige of onbevoegde adminstrasie van openbare eiendom nie.

U deeglike oorweging en spoedige kommentaar word by voorbaat waardeer.

CR & FJ Hulme



26 OCT 2021

TP n/hoof
(S. van der Merwe)

Annexure E16



Project Office

Town Planning & Project Management

Our Reference: 21/39
Your reference: REM 210 GGB

21 October 2021

The Municipal Manager
Overstrand Municipality
P O Box 20
HERMANUS
7200

Attention: Mr S van der Merwe

Sir

FILE NO:	EF 210 Gansbaai
SCAN NO:	03
COLLABORATOR NO:	1595497

THE REMAINDER OF ERF 210, GANSBAAI: RESPONSE TO OBJECTIONS: APPLICATION FOR REZONING, SUBDIVISION, CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Due to the implementation of the provisions the Protection of Personal Information Act, 4 of 2013 (POPIA) by the Overstrand Municipality, it is impossible to verify if the objections comply with the requirements set out in Section 52 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 as amended.

Regardless thereof, one (1) objection was received and will be addressed to ensure comprehensiveness.

Although the comment was received in Afrikaans, the application was submitted in English and the response will therefore also be in English.

[Type here]
Wright Approach Investments
136 CC
(Reg No. 2002/060745/23)

Unit 5, Standard House
Cnr Dirkie Uys & Royal Street
P O Box 1247
Hermanus, 7200

Tel: +27 (0)28 313 1411

Email:
admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

20 OCT 2021

TP



Response to the comments received to the Rezoning, Subdivision, Consent Use and Determination of an Administrative Penalty.

Comments from the public participation process	Response to comment
<p>Municipal Steps & Occupation</p> <p>"1. Daar word in punt 7.4.2 van bogenoemde kennisgewing vermeld dat die munisipaliteit reeds vir die laaste 40 tot 50 jaar bewus is/was van die bedrywighede in die genoemde area:</p> <p>Watter stappe het die munisipaliteit in die genoemde tydperk geneem om te verseker dat</p> <ol style="list-style-type: none"> 1) die area aangewend word tot voordeel van die hele gemeenskap? 2) geen onwettige aktiwiteite daar bedryf word nie? 3) daar voldoen word aan alle nasionale, provinsiale en plaaslike wetgewing m.b.t die aanwending van grond in openbare besit? <p>Dit veral in die lig van die streng vereistes van die Departement van Minerale Hulpbronne m.b.t. mynbou aktiwiteite, maar ook munisipale regulasies m.b.t. oop en deursigtige tenders vir bedrywye op grond in openbare besit."</p> <p>"3. Wat sou die redes vir die privaat ondernemer se oorskryding van Erf 335 na Erf 210 wees? En waarom is die munisipaliteit nie daarvan verwittig nie? Indien wel, waarom het die munisipaliteit nie onmiddellik stappe geneem om die oorskryding te stuit nie?"</p> <p>"7. Kan die munisipaliteit dit as 'n feit sêl watter tipe toestemming Siza Ukhanyo Trading 410 CC het? aangesien daar groot verskille tussen myn permlite, lisensies en regte is. Genoemde maatskappy sou ook toestemming van die grondeienaar moes kry. Het die munisipaliteit dit verleen? was dit regmatig? en op watter terme is dit verleen? T.o.v. beide areas."</p>	<p>• Siza Ukhanyo Trading 410 CC (Sizisa) has a compensation agreement with the Overstrand Municipality. Sizisa has a valid mining right, approved by the Department of Mineral Resources for their mining activities which was issued subject to the provisions of an approved Environmental Management Plan (EMP) to ensure that the mine is operated and controlled by the guidelines set out within.</p> <p>The most important fact is that the applicant is attempting to legalise the <u>land use</u> aspect of the mining activity on the subject property.</p> <p>The objector's comment with regards to Erf 335 is not relevant to this application and is therefore not addressed.</p>

<p>Historical Application</p> <p>"2. Ons is bewus van verskeie voorleggings, klagtes en besware deur wyle Gerda Wessels en die Gansbaai Belastingbetalers Vereniging m.b.f die Gansbaai Meent en voortgesette mynbou aktiwiteite daar: is hierdie skriftelike besware volledig aangespreek, afgehandel en in ag geneem voor die publikasie van kennisgewing 124/2021?"</p> <p>Penalties and fines</p> <p>"3. Bogenoemde kennisgewing verwys na 'voorgenome' administratiewe boetes, maar dit is voorheen voorgehou dat die privaat ondernemer reeds boetes betaal het, asook 'n onbekende bedrag per kubieke meter sand en/of ander materiale wat daar verwyder is/word. Sou dit nie in openbare belang wees om aan te dui watter bedrag reeds deur die privaat ondernemer betaal is? en of dit boetes insluit nie? asook watter redelike stappe die munisipaliteit geneem het om te verseker dat die korrekte kubieke meters aan hulle gerapporteer word?"</p> <p>"10. Punt 7.4.1 verwys na die vasstelling van 'n administratiewe boete: Die bekendmaking van die boete sal in openbare belang wees om ook te toon dat daar gevolge is vir onwettige grondgebruik, ongeag die doelstelling. Sou die munisipaliteit die inligting weerhou kan dit die indruk skep dat daar nie gevolge vir onwettige grondgebruik is nie, en 'n presedent skep vir ander privaat ondernemers om dieselfde te doen."</p>	<p>The submission of the land use application is one of the steps to address the complaints and objections previously submitted.</p> <p>The application was also advertised for public comment which afforded the public, including the Gansbaai Ratepayers Association to submit their comments, who however did not submit any comment on the application.</p> <p>Distinction must be made between fines, payment for the sand per cubic meters and the determination of an administrative penalty in terms of the Overstrand Municipality By-Law on Municipal Planning, 2015.</p> <p>As indicated in the land use application, it is required for the applicant to apply for the determination an administrative penalty for the land use contraventions on the subject property.</p> <p>Mining related activities is not a primary right in terms of the current zoning of the subject property. In Section 7.4 of the land use application document submitted, it was motivated why the administrative penalty can be waived. Only after the Maccsand judgement the land use on the subject property became illegal.</p> <p>Any previous penalties or previous- and existing agreements are confidential information and the objector can approach the Municipality to gain access to the information in terms of the Promotion of Access to Information Act, 2000.</p> <p>The Municipality will consider such application in terms of their policy and guidelines and decide if the information can be made available to the public.</p>
--	--

<p>Application Fees & Money</p> <p>"1. Die munisipaliteit bring die voorgename aansoek, maar wie is verantwoordelik vir die koste daarvan? Sou dit redelik wees om aan te neem dat dit die grondeienaar (munisipaliteit) sal wees?"</p> <p>"2. Is dit in openbare belang om betastingbetalers fondse te gebruik om onwettige aktiwiteite van 'n privaot ondernemer te wettig? dit, tenwyl aktiwiteite voortgaan?"</p> <p>"11. Punt 7.4.2 verwys na 'n vergoedingsooreenkoms tussen die munisipaliteit en Siza Ukhangyo Trading 410 CC. Vir hoeveel van die 40 tot 50 jaar is dit geldig? hoeveel is reeds betaal? En waarvoor is die fondse aangewend? Was daar ook 'n vergoedings ooreenkoms met vorige onwettige mynoperateurs? en is daar nog geide wat aan die munisipaliteit verskuldig is? Watter stappe word geneem, word om dit in te vorder?"</p>	<p>The property is owned by Overstrand Municipality and a power of attorney was provided to WRAP to compile and submit the application.</p> <p>Siza Ukhangyo Trading 410 CC as mining right holder and who has a compensation agreement with the Municipality and who is receiving the benefit from the subject property, is responsible for all costs pertaining to the submitted application and not the Overstrand Municipality. No municipal funds are therefore used in any aspect of this application.</p> <p>As already mentioned, the information with regards to the compensation agreement is confidential, but the objector can apply to the Municipality to access the information in terms of the legislation mentioned above.</p>
<p>Stopping of activities & legalising the mining activities</p> <p>"4. Sou dit nie redelik wees om te verwag dat onwettige bedrywighede onmiddellike gestaak word ten spyte van die administratiewe boetes wat nog steeds betaalbaar is nie? Administratiewe boetes opsigself kan tog nie 'n onwettige bedryf wettig, of 'n presedent skep waar openbare grond eers beset (en verbruik) word, en daarna deur die munisipaliteit gewettig word ten behoewe van 'n oortreder nie?"</p> <p>"8. Punt 7.2.1 en 7.2.2 is nodig om wettige mynbou te laat plaasvind, maar is geen rede om huidige onwettige praktyke te kondoneer en te laat voortgaan nie. Die voldoening aan wetsvereistes is die privaatondernemer se plig, en nie die munisipaliteit sin nie. Die tydskur van die mynbou aktiwiteite wat skynbaar ongestoord met minimum vereistes voortgaan behoorl komer te wêk by die grondeienaar, en 'n deeglike ondersoek behoort te volg na die voorwaardes van mynbou in die area, toegestane tydsduur en volumes."</p>	<p>The issue with regards to the determination of an administrative penalty was already explained and addressed.</p> <p>The same applies to the compensation agreement with the Overstrand Municipality.</p> <p>The application serves as motivation to rectify the land use contraventions on the subject property. Due to the uncertainties after Macassand judgement, several options were considered on the steps required to rectify the situation and the submitted application was determined as the appropriate approach to legalise the mining activities.</p>

<p>"9. Punt 7.3.1 haal aan dat daar reeds mynbou in die area plaasvind, maar die feit dat iets reeds plaasvind of plaasgevind het, maak dit nie wetlik of noodwendig kondoneerbaar nie."</p> <p>"12. Punt 10.1 verwy's na werkskepping en die verskaffing van bousand aan die plaaslike omgewing. Daar is en was ander sandmyne in die omgewing wat nie die voordeel van 'n onbekende vergoedings ooreenkoms met die munisipaliteit het of gehad het nie, plus onwettige oorskrydings sonder gevolge nie. Inteendeel, die munisipaliteit het duidelik 'n ander stel reëls vir ander wettige of voormalige wettige sand myne in die Gansbaai area wat ook daarop kan/kon aanspraak maak dat hulle bousand verskat en werk skep. Werkskepping is baie belangrik, maar dit kan nooit 'n verskoning wees vir wetteloosheid en ondeursigtige of onbevoegde administrasie van openbare eiendom nie."</p>	
<p>Economic Activity</p> <p>"5. Punt 7.1.1 verwy's na die bevordering van ekonomies ontwikkeling in area waar daar tans geen ander bedrywe is nie. Wie het dit bepaal in die afwesigheid van 'n openbare deelname proses? saamgelees met 'n onwettige oorskryding wat reeds aangegaan is ten behoewe van 'n onderneming in privaatsbesit?"</p>	<p>Economic activities are definitely being created as a workforce for the mining activities are employed and the Municipality is also receiving compensation for the extraction of the sand on the subject property.</p> <p>The comment regarding the public participation required to promote economic development is not clear and can therefore not be commented on.</p>
<p>Environmental Impact</p> <p>"6. Punt 7.1.3 bevestig dat die grond in openbare besit sal bly, maar sou dit die geval wees het die munisipaliteit 'n plig om onwettige bedrywighede te stop totdat alle regsproesse afgehandel is, insluitende 'n behoorlike ondersoek na skade aan die omgewing en beoordeling van praktyke wat reeds daar plaasgevind het, en of dit voldoen aan die voorskrifte vir wettige mynbou ondernemings."</p>	<p>The mining right holder needs to follow the provisions of the Environmental Management Plan approved by the Department of Mineral Affairs that ensures that strict measures are taken to protect the environment.</p> <p>The Environmental Management Plan was attached as an Annexure to the submitted application.</p>

**Conclusion**

The objector is mostly concerned with the history of the mining activities on the subject property and how the Municipality addressed compliance issues, which is not completely relevant to the application.

Our comment reiterated the land use uncertainty after the Maccsand judgement and the rationale for the submission of this application.

The mining right holder has a compensation agreement with the Overstrand Municipality who is compensated for each cubic meter of sand removed from the subject property.

This application serves the purpose of ensuring that the subject property has the correct land use for the mining right holder to continue their business on the subject property.

The mine is currently operated within the provisions of the Environmental Management Plan approved by the Department of Mineral Resources.

Considering that this response has adequately addressed all the comments raised by the objector, it is recommended that the planning application is approved as submitted.

Yours faithfully

A handwritten signature in black ink, appearing to read 'T. Jansen', is written in a cursive style.

T JANSEN

PROFESSIONAL TOWN PLANNER (A/2858/2019)



FILE NO: <u>GF 210</u> <u>Gansbaai</u>
SCAN NO: <u>19</u>
COLLABORATOR NO: <u>1580979</u>



Overstrand Municipality
alida@overstrand.gov.za

TP N. Theart
(S. Udink)

Date: 2021/09/07

Enquiries:
WayleavesWesternOU@eskom.co.za

WAYLEAVE APPLICATION: Application for Subdivision, Rezoning, Consent use and Determination of Administrative Penalty : Rem Erf 210, Gansbaai, Caledon Division - Gansbaai

YOUR REF: 210 GGB

ESKOM REF: 02916-21

THIS IS NOT AN APPROVAL TO START CONSTRUCTION

I hereby inform you that Eskom has no objection to the proposed work indicated on your drawing in principle. This approval is valid for **12 months** only, after which reapplication must be made if the work has not been completed.

1. Eskom services are affected by your proposed works and the following must be noted:

- Eskom has no objection to the proposed work and include a drawing indicating Eskom 11kV/LV underground services in close proximity.
- Please note that underground services indicated are only approximate and the onus is on the applicant to verify its location.
- There may be LV overhead services / connections not indicated on this drawing.
- The successful contractor must apply for the necessary agreement forms and additional cable information not indicated on included drawing, in order to start construction.

Application for Working Permit must be made to:

Customer Network Centre: Caledon
Dirk Swart / Francois Swart
028 214 5710 / 028 214 5713 / 083 502 2590
SwartDi@eskom.co.za

Include Eskom Wayleave as-built drawings and all documentation, when applying for Working Permit.

Should it be necessary to move, relocate or support any existing services for possible future needs, it will be at the developer's cost. Application for relocating services must be made to Customer Services on 08600 37566 or customerservices@eskom.co.za

Distribution Division - Western Region [Land Development]
Western Region
Eskom Road Brackenfell 7560 PO Box 222 Brackenfell 7561 SA
Tel +27 86 003 7566 www.eskom.co.za
Eskom Holdings SOC Limited Reg No 2002/015527/30

08 SEP 2021

TP

2. Underground Services

The following conditions to be adhered to at all times:

- a) Works will be carried out as indicated on plans.
- b) No mechanical plant to be used within 3.0m of Eskom underground cables.
- c) All services to be verified on site.
- d) Cross trenches to be dug by hand to locate all underground services before construction work commences.
- e) If Eskom underground services cannot be located or is grossly misplaced from where the wayleave plan indicates, then all work is to be stopped and Graham Hector from the Land Development Office to be contacted on 021 980 3551 / HectorG@eskom.co.za, to arrange the capturing of such services.
- f) In cases where proposed services run parallel with existing underground power cables the greatest separation as possible should be maintained with a minimum of 1000mm.
- g) Where proposed services cross underground power cables the separation should be a minimum of **300mm** with protection between services and power cables. (Preferably a concrete slab)
- h) No manholes; catch-pits or any structure to be built on top of existing underground services.
- i) Only walk-behind (2 ton Bomac type) compactors to be used when compacting on top of and 1 metre either side of underground cables.
- j) If underground services cannot be located then the Customer Network Centre (CNC) should be consulted before commencement of any work.
- k) **No work can take place within the servitude of a 66kV Cable or 13kV Cable if indicated.** Should you need to undertake any work within the proximity of our 66kV or 132kV Cables please contact Graham Hector on HectorG@eskom.co.za to arrange a site visit.

3. O.H. Line Services:

- a) The following building and tree restriction on either side of centre line of overhead power line must be observed:

Voltage	Building restriction either side of centre line
11 / 22kV	9.0 m
66kV	11.0 m
132kV	15.5 m

- b) No construction work may be executed closer than **6 (SIX) metres** from any Eskom structure or structure-supporting mechanism.
- c) No work or no machinery nearer than the following **distances from the conductors**:

Voltage	Not closer than:
11 / 22kV	3.0 m
66kV	3.2 m
132kV	3.8 m

- d) Natural ground level must be maintained within Eskom reserve areas and servitudes.
- e) That a **minimum ground clearance** of the overhead power line must be maintained to the following clearances:

Voltage	Safety clearance above road:
11 / 22kV	6.3 m
66kV	6.9 m
132kV	7.5 m

- f) That existing Eskom power lines and infrastructure are acknowledged as established infrastructure on the properties and any rerouting or relocation would be for the cost of the applicant/developer.
- g) That Eskom rights or servitudes, including agreements with any of the landowners, obtained for the operation and maintenance of these existing power lines and infrastructure be acknowledged and honoured throughout its lifecycle which include, but are not limited to:
- i. Having 24 hour access to its infrastructure according to the rights mentioned in (a) above,
 - ii. To perform maintenance (structural as well as servitude – vegetation management) on its infrastructure according to its maintenance programmes and schedules,
 - iii. To upgrade or refurbish its existing power lines and infrastructure as determined by Eskom,
 - iv. To perform any other activity not listed above to ensure the safe operation and maintenance of the Eskom power lines or infrastructure.
- h) Eskom must have at least a 10m obstruction free zone around all pylons (not just a 10m radius from the centre).
- i) Eskom shall not be liable for the death or injury of any person, or for loss of or damage to any property, whether as a result of the encroachment or use of the area where Eskom has its services, by the applicant, his/her agent, contractors, employees, successors in title and assignee.
- j) The applicant indemnifies Eskom against loss, claims or damages, including claims pertaining to interference with Eskom services, apparatus or otherwise.
- k) Eskom shall at all times have unobstructed access to and egress from its services.
- l) Any development which necessitates the relocation of Eskom's services will be to the account of the developer.
- m) Lungile Motsisi Motsisl@eskom.co.za, Eskom: Transmission must be contacted on 011 800 5734 to comment on behalf of the 400 kV OVERHEAD POWERLINES. NO WORK WITHIN THIS SERVITUDE OR UNDERNEATH POWERLINES IS ALLOWED until comment from Eskom Transmission has been obtained.

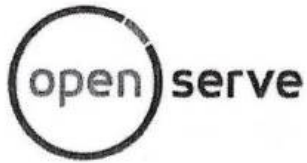
4. NOTE

Wayleaves, Indemnity form (working permit) and all as-built drawings issued by Eskom to be kept on site at all times during construction period.

Yours faithfully

LAND DEVELOPMENT (BRACKENFELL)

Amour H/14



Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

Stefan Geldenhuys

Tel: 021 414 5546

Email: StefanG@openserve.co.za

Our Ref.: WWIP_WGNB3249_21

Your Ref.: REM 2/0 GGB

17 September 2021

Attention : S Muller
Overstrand Municipality
Hermanus

Wayleave Application : Rezoning, Remainder Erf 210, Gansbaai

With reference to your application received 06 September 2021

Please notify this office immediately if you locate any Open Serve plant that was not indicated. Please contact our representative

Melt Van As / 021 852 1717 / 081 363 7873 / Meltva@openserve.co.za

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for **12 MONTHS ONLY**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per the drawing supplied, Open Serve infrastructure **will not be affected**. However, care should still be taken should it be evident that there is in fact Open Serve network present on the actual sites.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,
Private Bag X881, Pretoria, Gauteng, 0001

214

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

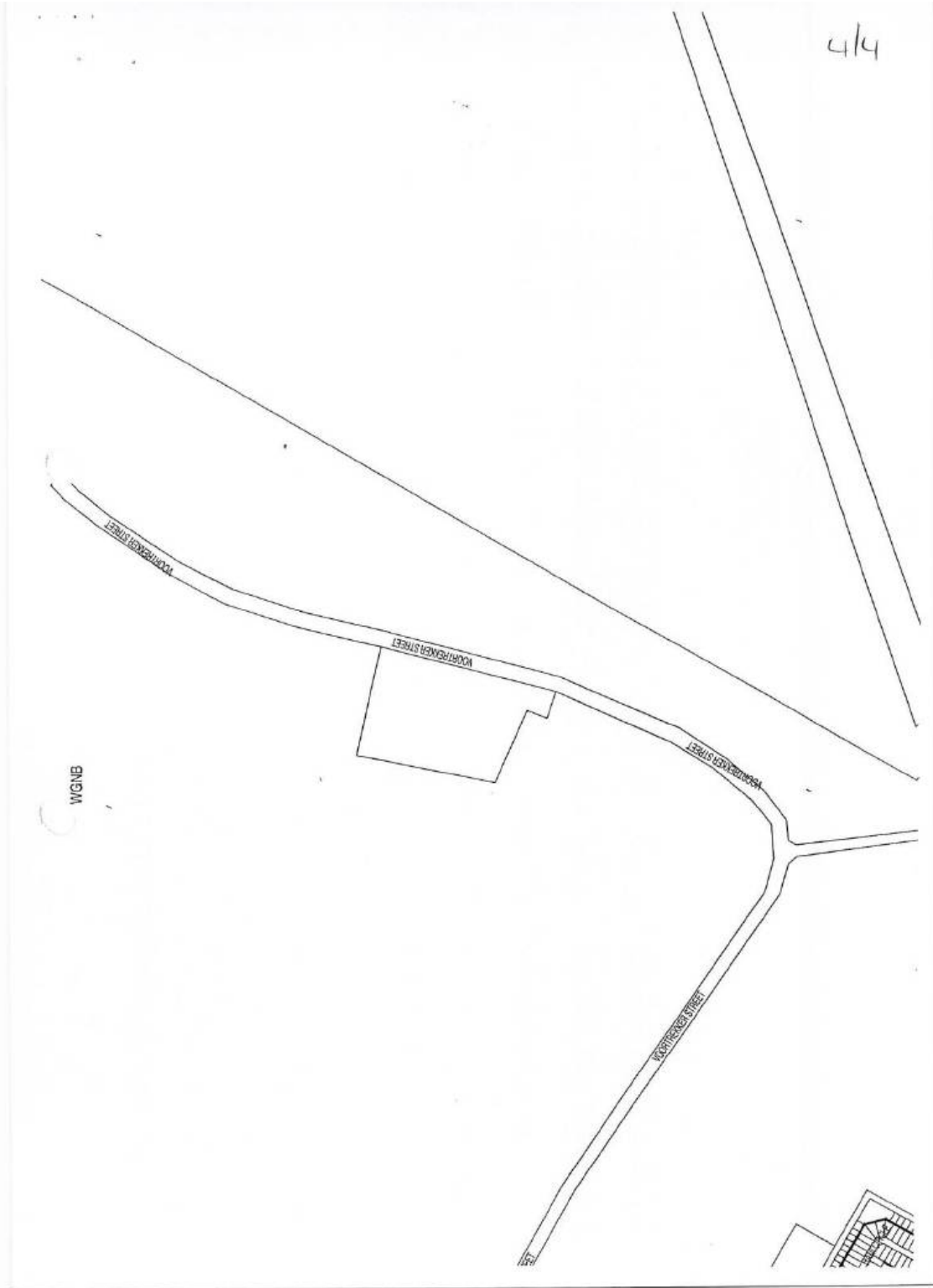
PLANT NOT AFFECTED

If any plant not indicated exists and information or supervision is required please contact this office at least 48 hours before any work commences.

Melt Van As / 021 852 1717 / 081 363 7873 / Meltva@openserve.co.za

<u>Reference number</u>	<u>Marked Up</u>	<u>Date</u>
WWIP_WGNB3249 21	S Geldenhuys	17-Sep-21







Annexure 1/1a
 TP: A. Theart
 (S.v.d. Merwe)



Western Cape
 Government

Department of Environmental Affairs and Development Planning
Ntanganedzeni Mabasa
 Development Management: Region 1
 Ntanganedzeni.Mabasa@westerncape.gov.za | Tel: 021 483 2803

REFERENCE: 16/3/3/6/6/E2/10/1303/21
INQUIRIES: Ntanganedzeni Mabasa
DATE: 6/10/2021

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

FILE NO: EL Ren 210 - GB ✓
SCAN NO: GB 210
COLLABORATOR NO: 1590772

Attention: Ms A Conradie

Tel.: (028) 313 8000
 Email: alida@overstrand.gov.za

Dear Madam

THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) WITH RESPECT TO THE SUBDIVISION, REZONING, CONSENT USE AND DETERMINATION OF AN ADMINISTRATION PENALTY ON REMAINDER OF ERF NO. 210, GANSBAAI.

1. The electronic copy of the abovementioned document dated 6 September 2021, as received by this Department on the same day, refers.
2. This letter serves as an acknowledgement of receipt of the correspondence by this Department.
3. According to the information contained in the correspondence, this Department notes the proposal entails the following:
 - 3.1 An application in terms of Section 16 of the Overstrand Municipality By-Law on Municipal Land Use Planning for:
 - 3.1.1 The subdivision of remainder of Erf No. 210, Gansbaai to create Portion A – a portion of the remainder of Erf No. 210 (approximately 7.4 ha) and the Remainder of Erf No. 210 (approximately 714.3ha).
 - 3.1.2 Rezoning of Portion A from Undetermined to Agricultural Zone 1 to allow a consent use to allow the land use of mining.
 - 3.1.3 Determination of an administrative penalty to a mine that is already operating and to ensure compliance.
 - 3.2 The existing gravel mine has been operational for several years dating back to 1973, which pre-dates the promulgation of the EIA Regulations.
 - 3.3 The site is zoned Undetermined Zone and is located outside the urban area of Gansbaai.

1

TP 7 OCT 2021

4. Your attention is therefore drawn to the listed activities in terms of the NEMA EIA Regulations, 2014 (as amended) as defined in Listing Notices ("LN") 1, 2 & 3 of 7 April 2017. Be advised that the proposed subdivision, rezoning, consent use and determination of an administration penalty to legalize the existing mine on an undetermined zoned erf that is located outside the urban area of Gansbaai will not trigger any listed activity(ies) as defined in terms of the EIA Regulations, 2014 (as amended). Environmental Authorisation is therefore not required prior to the subdivision, rezoning, consent use and determination of an administration penalty on Remainder of Erf No. 210, Gansbaai since the existing mining activities commenced prior to the EIA Regulations coming into effect.
5. Should any revision of the proposal on the said erf trigger any listed activity(ies) as defined terms of Listing Notice 1, 2 & 3, an application must be submitted and environmental authorisation obtained before such activity(ies) may commence
6. The applicant is reminded of his/her general duty of care and the remediation of environmental damage, Section 28(1) of NEMA specifically states that – "Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."
7. The Department reserves the right to revise its comments and request further information from you based on any new or revised information received.

Yours faithfully

Digitally signed
by Andrea
Thomas
Date: 2021.10.06
12:10:11 +02'00'

PP **HEAD OF COMPONENT**
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Annexure J

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR SUBDIVISION, REZONING, CONSENT USE &
DETERMINATION OF AN ADMINISTRATIVE PENALTY: REMAINDER
ERF 210, GANSBAAI, CALEDON DIVISION**

Electricity : Eskom area
Stormwater : No services available
Water : No services available
Sewer : No services available
Roads and traffic : No services available

Conditions:

1. that the developer arrange with ESCOM for the provision of electricity and that he complies with all conditions as may be set by ESCOM;
2. that the developer is responsible to provide potable water to the development that complies with SANS0241 standards and that relevant proof be submitted to the Manager: Water Infrastructure & Quality, Overstrand Municipality (Tel 021 313 8972) ;
3. that the developer is responsible to provide potable water to the development that complies with SANS0241 standards and that relevant proof be submitted to the Senior Manager: Engineering Services, Overstrand Municipality;
4. that waste water disposal be done in a safe and healthy manner and that plans thereof be submitted to the Municipality and DWA for approval;
5. that, as no municipal refuse removal services are rendered in the area, the owner is responsible for removal of all refuse generated on the property, and disposal thereof at a registered municipal waste transfer station or –waste disposal facility;
6. that the developer complies to all the conditions set by Department Of Water Affairs & Bocma.

p.p. M. Cochen
**DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES**

07/10/2021
DATE

Annexure K

File reference:	REM 210 GGB
Date:	6 September 2021
	MM

Munisipaliteit • U-Mestrate • Municipality

OVERSTRAND**INTERNAL MEMORANDUM**

From	: Town Planning Department
Town Planner	: SW van der Merwe (Senior Town Planner)

TO:


<u>Area Manager</u>	<u>Building Control Department</u>	<u>District Health</u>	<u>Electrical Department</u>	<u>Environmental Officer</u>
<u>Fire Department</u>	<u>Infrastructure and Planning</u>	<u>Local Heritage Committee</u>	<u>Operational Services</u>	<u>Property Administration</u>
<u>Tourism</u>	<u>Traffic Department</u>	<u>Ward Councillor (R de Koning)</u>	<u>Waste Management</u>	

Applicant	MESSRS WRAP PROJECT OFFICE ON BEHALF OF OVERSTRAND MUNICIPALITY
Property Details	REMAINDER ERF 210, GANSBAAI, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA
Application Description	APPLICATION FOR SUBDIVISION, REZONING, CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF OVERSTRAND MUNICIPALITY

ATTACHMENTS :

1. Notice	Should the information be insufficient for you to make an informative comment, please list any additional documentation that you would require to make informed comments.
2. Locality Plan	
3. Motivation	
4. Site Development Plan	

YOUR DEPARTMENT'S COMMENTS:

Dust pollution to be kept under control; (EIA) mitigation should be stipulated in EMP.	
Signature: 	Date: 19/10/ 2021

Please provide your comments (with specific reference to any conditions of approval that should be imposed) in the space provided above or in a separate Memo **by not later than the date stipulated below**. If you require an extension of time for submission of comments, kindly request this in writing. Should no comments be received, it will be assumed that you have no objection to the proposal and where appropriate, the Mayoral Committee will be informed accordingly.

COMMENTS REQUIRED BY:	8 OCTOBER 2021
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R

Duplicate

Annexure U/a

TP n. / heart
(S. van der Merwe)
cc/ H. Blignaut



BREDE-GOURITZ
CATCHMENT MANAGEMENT AGENCY



Corner Mountain Mill & East Lake Roads, Worcester, 6850 | Private Bag X3055 Worcester 6850

Enquiries: F Smith Tel: 023 346 8000 Fax: 023 347 2012 E-mail: fsmith@bgcma.co.za

Our Reference no: 4/10/1/G40L/Erf 210 (Rem) Gansbaai, Caledon RD Date: 06 December 2021

Overstrand Municipality
P. O. Box 20
Hermanus
7200

For Attention: S. van der Merwe

Sir,

FILE NO:	210
	Gansbaai
SCAN NO:	2008
COLLABORATOR NO:	14589

REMAINDER ERF 210, GANSBAAI, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING, CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF OVERSTRAND MUNICIPALITY

With reference to your letter dated 03/09/2021, with file reference number: 210 GGB, as well as the Motivational Report by WRAP, dated JULY 2021, with file reference number: 21/39, herewith the following:

The BGCMA confirmed a General Authorisation in the name of the applicant, Sizisa Ukhanyo Trading 410 CC, for the taking of water on the neighbouring property, Erf 335. It is also noted that the mining activity on Erf 210 has been in existence since 1973, and by this process, the intention is to align the zoning with current legislation. The BGCMA therefore has no objection against the proposed subdivision, rezoning and consent use, but the following should be noted and adhered to:

1. Unfortunately, the BGCMA cannot provide comment on the determination of an administrative penalty.
2. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use should be adhered to.
3. Polluted storm water should be contained and managed in such a way that it does not pose an additional threat to surface- and groundwater resources.
4. Any future development should not have a detrimental impact on water resources, both surface- and groundwater resources.

Please be advised that the comment provided is in the interest of responsible water resource management. The BGCMA reserves the right to revise initial comments and request further information based on any additional information that might be received.

07 DEC 2021

www.bgcma.co.za

2/2

Please do not hesitate to contact this office if you have any further queries.

Please ensure to quote the above reference in doing so.

Yours faithfully,



JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (ACTING)





TP-A Theart
(Suid merwe)

Annexure m/2



CONSERVATION INTERFERENCE

postal 16 17th Avenue, Voëlkop, Hermanus, 7200
 physical 16 17th Avenue, Voëlkop, Hermanus, 7200
 website www.capenature.co.za
 enquiries Rhett Smart
 telephone 087 087 866 8017
 email rsmart@capenature.co.za
 reference LS14/2/6/17/2/210_planning_mining_Gansbaai
 date 15 November 2021

Overstrand Municipality: Hermanus Administration
 P.O. Box 20
 Hermanus
 7200

Attention: Schalk van der Merwe
 By email: alida@overstrand.gov.za

Dear Mr van der Merwe

FILE NO:	Rem Erf 210-GB
SCAN NO:	19
COLLABORATOR NO:	1603966

Application for Subdivision, Rezoning and Consent Use an Existing Sand Mine on Remainder of Erf 210, Gansbaai (Overstrand Municipality ref: REM 210 GGB)

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

The application is for the subdivision of a portion of Remainder of Erf 210 where existing mining activities have been taking place and for rezoning and consent use for mining. The Overstrand Zoning Scheme does not have a separate zone for mining, but includes it as a consent use for selected zones. CapeNature supports the rezoning to Agriculture, as the site will revert to Agricultural zoning once mining is complete, as opposed to the only other zone with a mining consent use, which is Industrial, which we would not support. It is assumed that the proposed subdivision is the triangle outlined in red in the map provided by the Overstrand Municipality, as the maps provided by the planning consultant indicate the existing status quo.

The mining activities on site have been approved through several applications in terms of NEMA and the MPRDA in accordance with the progressive expansion of the mine. The most recent environmental authorisation (EA) was received on 23 February 2021. CapeNature commented on the application and the comments are relevant to the consent use application for mining.

We recommended that a groundwater study is required in order to determine if mining would take place below the water table and the impact associated with this. DEA&DP also raised this as a concern. We wish to note that concerns related to groundwater are not only with regards to water resources, but also the ecological impacts on groundwater-fed freshwater ecosystems. The EA accordingly indicated that no mining may occur below the water table and that a piezometer must be installed to ensure this is adhered to. CapeNature is therefore satisfied that the concern raised in the NEMA/MPRDA process will be addressed if this condition in the EA is adhered to.

The Western Cape Nature Conservation Board trading as CapeNature

Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Mineeveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Reddinghuis, Mr Paul Slack

12 NOV 2021

TP

The proposed end use of the mine is a combination of agriculture and natural vegetation. As mentioned in our comments on the NEMA/MPRDA application, the rehabilitation must also take into account the existing wetlands on site and the potential additional wetlands which may result post-mining. Appropriate wetland rehabilitation would need to take place in both of these instances.

Alien clearing is a key mitigation measure which was included in the application and in the EA as a condition. The geographical extent of the alien clearing was however not defined and CapeNature recommended that it must include a buffer of 50 m around all mining activities. The subdivision however provides for a clearly defined cadastre within which the mining activities take place and the alien clearing plan should therefore be for the entire new cadastre, with the remainder of Erf 210 remaining the responsibility of the Overstrand Municipality.

In conclusion, CapeNature does not object to the application, provided that the conditions from the EA are adhered to and that additional conditions related to rehabilitation and alien clearing are included in the municipal approval.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely



Rhett Smart
For: Manager (Landscape Conservation Intelligence)



agriculture, land reform & rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

Private Bag X120, Pretoria (Tshwane), 0001
Delpen Building, C/o Annie Botha & Union Street, Riviera, 0084

From: Directorate Land and Soil Management
Tel: 012-319-7634 Fax: 012-329-5938 E-mail: constancen@dldr.gov.za
Enquiries: Helpdesk Ref: 2021_10_0041

Wrap
P.O. Box 1247
HERMANUS
7200

Attention: S Kotzé

**CONFIRMATION OF APPLICABILITY OF THE SUBDIVISION OF AGRICULTURAL LAND ACT,
ACT 70 OF 1970: APPLICATION FOR REZONING AND SUBDIVISION OF THE REMAINDER
OF ERF 210, GANSBAY, WESTERN CAPE PROVINCE**

Your e-mail dated 22 February 2022 refers.

The above-mentioned property has been excluded from the provisions of the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970) in terms of Proclamation 118/1992, Government Gazette No.4780 of 18 December 1992.

Registrations of transactions on the above property will therefore no longer require a letter from this Department.

Yours faithfully

DR B.M. MODISANE
**ACTING DEPUTY DIRECTOR-GENERAL: AGRICULTURAL PRODUCTION, HEALTH AND
FOOD SAFETY, NATURAL RESOURCES AND DISASTER MANAGEMENT**

DATE: 16/03/22



Anneke O

TP. N. (heerik)
(S. J. d. M. d. v. d. W.)

FILE NO.	Sf 210
	Gansbaai
SCAN NO.	57
COLLABORATOR NO.	1657264

18 MAR 2022

MB/DALRRD/2022/EH 210