OVERSTRAND MUNISIPALITEIT ERWE 2467 & 2474, BERGGANSSTRAAT 25, GANSBAAI, OVERSTRAND MUNISIPALE AREA: AANSOEK OM ONDERVERDELING, HERSONERING, KONSOLIDASIE, GEDEELTELIKE SLUITING VAN 'N OPENBARE PLEK, SKRAPPING VAN 'N VOORWAARDE VAN GOEDKEURING EN BEPALING VAN N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD- EN STREEKSBEPLANNERS NAMENS MEV EL ALDRICH & OVERSTRAND MUNISIPALITEIT

Kennis word hiermee gee kragtens Artikel 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) vir die volgende aansoeke van toepassing op bogenoemde erwe, naamlik;

1. onderverdeling van Erf 2467, Gansbaai in terme van Artikel 16(2)(d) van die Verordening in twee gedeeltes, naamlik 'n restant en ongeregistreerde Erf 6219, Gansbaai (±135m²);

2. hersonering van die onderverdeelde gedeelte in terme van Artikel 16(2)(a) van die Verordening van Oopruimte Sone 2 (OS2) na Residensiële Sone 1 (RS1);

3. sluiting van 'n gedeelte van 'n openbare plek in terme van Artikel 16(2)(n) en die wysiging van Algemene Plan 1802/1998;

4. konsolidasie in terme van Artikel 16(2)(e) van Erf 2474 en 'n gedeelte van Erf 2467, Gansbaai;

5. skrapping van 'n voorwaarde in terme van Artikel 16(2)(h) ten opsigte van 'n bestaande goedkeuring; en

6. bepaling van 'n administratiewe boete in terme van Artikel 16(2)(p).

Volle besonderhede rakende die voorstel hierbo is beskikbaar vir inspeksie gedurende weeksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus. Enige kommentare moet skriftelik wees, u naam, adres, en kontakbesonderhede bevat, sowel as u belang in die aansoek en die redes vir kommentaar, welke kommentaar die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) moet bereik voor of op **26 November 2021**. Telefoniese navrae kan gerig word aan die **Senior Stadsbeplanner, Mnr SW van der Merwe** by 028 313 8900.

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

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

Munisipale Kennisgewing Nr.152/2021

OVERSTRAND MUNICIPALITY ERVEN 2467 & 2474, 25 BERGGANS STREET, GANSBAAI: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION, PARTIAL CLOSURE OF A PUBLIC PLACE, DELETION OF A CONDITION OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF MRS EL ALDRICH & OVERSTRAND MUNICIPALITY

Notice is hereby given in terms of Sections 47 and 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) of the following applications applicable to the above-mentioned erven, namely:

1. subdivision of Erf 2467, Gansbaai in terms of Section 16(2)(d) of the By-Law in two portions, namely a remainder and unregistered Erf 6219, Gansbaai (±135m²);

2. rezoning of the subdivided portion in terms of Section 16(2)(a) of the By-Law from Open Space Zone 2 (OS2) to Residential Zone 1 (SR1);

3. closure of a portion of a public place in terms of Section 16(2)(n) and the amendment of General Plan 1802/1998;

4. consolidation in terms of Section 16(2)(e) of Erf 2474 and a portion of Erf 2467, Gansbaai;

5. deletion of a condition in terms of Section 16(2)(h) in respect of an existing approval; and

6. determination of an administrative penalty in terms of Section 16(2)(p).

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, 16 Paterson Street, Hermanus and Gansbaai Library, Main Road, Gansbaai. Any comment must be in writing, quoting your name, address and contact details, as well as your interest in the application and the reasons for comment, which comment must reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) on or before **26 November 2021**. Telephonic enquiries can be made to the **Senior Town Planner, Mr SW van der Merwe** at 0283138900.

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

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

Municipal Notice No. 152/2021

UMASIPALA WASOVERSTRAND IZIZA EZINGUERVEN 2467 & 2474, 25 BERGGANS STREET, GANSBAAI: ISICELO SOKWAHLULAHLULA, UKUCANDA KWAKHONA, UKUYONDELELANISA, UKUVALWA INXALENYE YENDAWO YOLUNTU, UKUBHALISWA KWENDAWO YOKUNQUMLA NOKUHAMBA ABANTU ABANIKEZELA NGEENKONZO, UKUCINYWA KWEEMEKO ZOKUVUMELA NOKUQIKELELA IPENALTHI/UMDLIWO WOBHALISO: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS EGAMENI LIKANKSKZ EL ALDRICH & NOMASIPALA WASEOVERSTRAND

Kukhuthswe isaziso esimayela nemiba yeSolotya lama-47 nelama-48 Omthethwana Osisihlomelo SoMthetho kaMasipala waseOverstrand Ongezicwangciso Zokuseteynziswa koMhlaba kaMasipala ku2020 uMthethwana) wesicelo eislandelayo nezichazwe ngasentla nezibizwa ngokuba:

1. ukwahlulwa kweSiza esinguErf 2467, Gansbaai ngokwemiba yeSolotya le16(2)(d) loMthethwana ube zinxalenye ezimbini, ezibizwa intsalela nesiza esingabhaliswanga uErf 6219, Gansbaai (±135m²);

2. ukucandwa kwakhona kwenxalenye eyahluliweyo ngokweSolotya le16(2)(a) yoMthethwana Okwindawo Evulelekileyo eyaziwa ngokuba iOpen Space Zone 2 (OS2) ukuya kwiZoni eyindawo Yokuhlala eyaziwa ngeResidential Zone L (SR1);

3. Ukuvalwa kwenxalenye yendawo kawonkewonke ngokweSolotya le16(2)(n) nokuhlonyelwa kweSicwangciso Gabalala esaziwa ngeGeneral Plan 1802/1998;

4. ukuyondelelanisa nokulungelelanisa ngokwemiba yeSolotya le16(2)(e) neSiza esinguErf 2474 nenxalenye yeSiza esinguErf 2467, Gansbaai;

5. ukususwa/ukucinywa kwemiba yeSolotya le16(2)(h) esimayela nokuvumela okusebenzayo;

6. nengqikelelo yepenalthi/yomdliwo ngokwemiba yeSolotya le16(2)(p).

Iinkcukacha ezipheleleyo mayela nesi siphakamiso ziyafumana kwiintsuku zaphakathi evekini ukususela phakathi kwentsimbi ye08:00 neye 16:30 kwiSebe: Lezicwangciso zeDolophu, 16 Paterson Street, Hermanus neGansbaai Library, Main Road, Gansbaai. Zonke izimvo mazibhalwe phantsi, uchaze igama lakho, idilesi neenkcukacha ofumaneka kuzo, kunye nomdla wakho kwesi sicelo nezizathu zakho zokuhlomla kufuneka zifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) alida@overstrand.gov.za) ngomhla okanye ngaphambi komhla wama **26 uNovemba 2021**. Imibuzo ngefowuni ingabuzwa **kuMcwacngisi weDolphu OyiNtloko, uMnu SW van der Merwe kwa** 0283138900.

Umasipala anagala ukwamkela izimvo ezifike emva kwexesha okuvala. Nabani na ongakwazi ukubhala nokufunda angaya kwiSebe likaMasipala apho igosa likaMasipala liza kumnceda ukuhlomla nokufaka isicelo sakhe ngokusemthethweni.

UMlawuli kaMasipala, Overstrand Municipality, P.O. Box 20, **HERMANUS**, 7200

Inothisi kaMasipala Nomb. 152/2021

PlAn Active Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey.	Property Description: ERVEN 2474 & 2467 GANSBAAI / PERLEMOENBAAI	Plan Description: LOCALITY MAP	Scale: NTS	
	COPY RIGHT RESERVED			Drawing Nr: GANS2474L.drw	
				Date: 08/2021	

PROPOSED SUBDIVISION, REZONING, CONSOLIDATION, PARTIAL CLOSURE OF A PUBLIC PLACE, REGISTRATION OF A SERVITUDE AREA, DELETION OF A CONDITION OF APPROVAL AND THE DETERMINATION OF AN ADMINISTRATIVE PENALTY:

ERVEN 2467 & 2474 GANSBAAI

DIVISION: CALEDON

OVERSTRAND MUNICIPALITY

MOTIVATION REPORT

1. BACKGROUND

Mrs. E.L. Aldrich, the owner of Erf 2474 Gansbaai has instructed the company Plan Active Town and Regional Planners to apply for:

- the subdivision of Erf 2467 Gansbaai;
- the rezoning of a portion of Erf 2467 Gansbaai (a portion of a public open space);
- the closure of a portion of a public place and the amendment of General Plan 1802/1998;
- the consolidation of a portion of Erf 2467 Gansbaai with Erf 2474 Gansbaai;
- ~~the registration of a servitude area on a portion of the newly consolidated erf (a portion of Erf 2467 Gansbaai~~);
- the deletion of a condition of an existing approval;
- the determination of an administrative penalty.

Mrs. E.L. Aldrich purchased Erf 2474 Gansbaai in 2018 from Mr. B.T. du Toit whom did not disclose to her that he had incorporated a portion of a public open space with the said erf at the time. A boundary wall was constructed that incorporated a portion of a public open space, Erf 2467 Gansbaai, located between erven 2473 & 2474 Gansbaai. Mr. du Toit applied to have the building line encroachments legalise that was approved on 28 September 2018. The letter of approval also addresses the encroachment onto the public open space and it was made a condition that the public open space be rehabilitated and that the boundary wall be removed.

When Mrs. Aldrich, the new owner was informed that her property does not include the portion of public open space, as it was sold to her, she brought it under the attention of the transferring attorney. They have agreed that the matter be addressed by means of an application to purchase the portion of public open space in question, that subsequently was successful.

The Mayoral Committee resolved at their meeting dated 25 November 2020 that a portion of Erf 2467 Gansbaai (±125m²) be sold to Mrs. Aldrich, the owner of Erf 2474 Gansbaai and that the said portion be subdivided, rezoned and consolidated with Erf 2474 Gansbaai. It is also required that a servitude area be registered over the mentioned portion of Erf 2467 Gansbaai to be consolidated with Erf 2474 Gansbaai as per the sales agreement between Mrs. Aldrich and the Overstrand Municipality. Please refer to the copy of the municipal letter of approval of the sale dated 25 November 2020 (Annexure A). In addition to the last mentioned application it would also be required that we apply for the deletion of a condition of approval of a former application that was approved dated 5 October 2018, the closure of a portion of a public space and the determination of an administrative penalty.

Erf 2467 Gansbaai is 6991m² in extent and is held by Title Deed No. T11348/1999.
Erf 2474 Gansbaai is 500m² in extent and held by Title Deed No. T46117/2018.

2. APPLICATION DETAILS

Application is made in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 2467 Gansbaai;
- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the rezoning of a portion of Erf 2467 Gansbaai, that is 135m² in extent, from Open Space Zone 2 to Residential Zone 1;
- Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the closure of a portion of a public place and the amendment of General Plan 1802/1998;
- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the consolidation of Erf 2474 Gansbaai with a portion of Erf 2467 Gansbaai;
- ~~Chapter 4, Section 26(1)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the registration of a servitude area that is exempted in terms of the last-mentioned section on the newly consolidated portion that is 135m² in extent~~;
- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the deletion of a condition in respect of an existing approval;
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

3. GENERAL APPLICATION INFORMATION

3.1 PROPERTY DESCRIPTION

Erf 2474 Gansbaai is situated at 25, Berggans Street, Gansbaai. Erf 2474 Gansbaai & Erf 2467 Gansbaai are 500m² and 6991m² in extent respectively and are situated in a predominantly single residential environment. Please refer to the enclosed locality map and aerial photograph below:

3.2 ZONING

Erf 2474 Gansbaai is zoned Residential Zone I: Single Residential and it is utilized as such. Erf 2467 Gansbaai is zoned Open Space Zone 2. Please refer below to the abstract of the zoning map for easy reference;

Surrounding properties are zoned for single residential purposes, public roads, and public open space.

3.3. LAND USE

Erf 2474 Gansbaai is used for residential purposes. A dwelling and an associated outbuilding are established on the subject property that consist of:

- Garage;
- 4 Bedrooms;
- 2 Bathrooms;
- Kitchen and scullery;
- Living area;
- Indoor and outdoor braai areas.

Access to Erf 2474 Gansbaai is currently obtained from Berggans Street. Erf 2467 Gansbaai is a public open space that is undeveloped.

Surrounding land uses also consist predominantly of developed single residential erven.

3.4. PROPOSED DEVELOPMENT

Application is made in terms of:

- Chapter 4, Section 16(2)(d) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the subdivision of Erf 2467 Gansbaai;
- Chapter 4, Section 16(2)(a) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the rezoning of a portion of Erf 2467 Gansbaai that is 135m² in extent from Open Space Zone 2 to Residential Zone 1;
- Chapter 4, Section 16(2)(n) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the closure of a portion of a public place and the amendment of General Plan 1802/1998;
- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the consolidation of Erf 2474 Gansbaai with a portion of Erf 2467 Gansbaai;

- ~~Chapter 4, Section 26(1)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the registration of a servitude area that is exempted in terms of the last mentioned section on the newly consolidated portion that is 135m² in extent~~;
- Chapter 4, Section 16(2)(h) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the deletion of a condition in respect of an existing approval;
- Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the determination of an administrative penalty.

The owner of Erf 2474 Gansbaai applied to purchase a portion of a public open space erf that has been incorporated with the subject erf by the former owner without obtaining the required approval from the Overstrand Municipality. Erf 2467 Gansbaai is 6991m² in extent and as per the Mayoral Committee approval and the sales agreement a portion of ±125m² of this erf will be subdivided, rezoned and consolidated with Erf 2474 Gansbaai. (Please take note that after surveying the portion of Erf 2467 Gansbaai to be consolidated with Erf 2474 Gansbaai can it be confirmed that the portion of land in questions is actually 135m².) In order fulfil the conditions of the approval for the sale of unregistered Eff 2467 Gansbaai and the sales agreement It is now required that an application be lodged for:

- the subdivision of Erf 2467 Gansbaai in order to create a portion that is 135m² in extent, as surveyed;
- the rezoning of a portion of Erf 2467 Gansbaai (a portion of a public open space) that is 135m² in extent;
- the closure of a portion of a public place and the amendment of General Plan 1802/1998;
- the consolidation of a portion of Erf 2467 Gansbaai that is 135m² in extent with Erf 2474 Gansbaai;
- ~~and the registration of a servitude area on the newly consolidated portion of Erf 2467 Gansbaai that is 135m² in extent~~;
- the deletion of a condition of an existing approval;
- the determination of an administrative penalty.

The detail of the subject properties are as follows:

Erf	Size	Zoning	Current Land Use
Erf 2467 Gansbaai	6991m²	Open Space Zone 2	Open Space
Erf 2474 Gansbaai	500m²	Res. Zone 1	Residential

As mentioned above, Erf 2467 Gansbaai is a public open space adjacent to Erf 2474 Gansbaai. The portion of Erf 2467 Gansbaai that is being purchased by the owner of Erf 2474 Gansbaai is 135m² in extent. This portion of public open space has been incorporated with Erf 2474 Gansbaai by the previous owner and has been utilised as a portion of the private garden. Erf 2474 Gansbaai was sold to Mrs. Aldrich including the portion of public open space (Erf 2467) without her knowledge, as previously stated. The portion of Erf 2467 Gansbaai that is 135m² in extent has been an underutilised portion of public open space.

In order to consolidate a portion of Erf 2467 Gansbaai that is 135m² in extent with Erf 2474 Gansbaai, it is required that the 135m² portion of Erf 2467 Gansbaai be subdivided and rezoned from **Open Space Zone 2** to **Residential Zone I**, the same zoning as Erf 2474 Gansbaai. The closure of a portion of public place is also required and applied for. The consolidated property will be 635m² in extent.

The letter of approval for the purchase of a portion of Erf 2467 Gansbaai stipulates that no buildings or structures may be constructed on the 135m² portion of Erf 2467 Gansbaai after consolidation has taken place, except for boundary walls or fences. Subsequently the actual use of the 135m² portion of Erf 2467 Gansbaai that is open space will remain open space as it has been incorporated as a garden. The 135m² portion of Erf 2467 Gansbaai being rezoned and consolidated with Erf 2474 Gansbaai will take the burden from the municipality for the continuous upkeep of this portion of Erf 2467 Gansbaai, a portion of a public open space.

According to a status report obtained from the Surveyor-General (attached as Annexure B), Erf 2467 Gansbaai, has the status of a public place as shown on General Plan No.1802/1998 and therefore an application in terms of ***Chapter 4, Section***

16(2)(n) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020*, for the closure of a public open space* is required. The consolidated property will be ±635m² in extent. The detail of the rezoning of a portion of Erf 2467 Gansbaai and the consolidation of erven 2474 and 2467 Gansbaai are as follows:

Erf	Components	Zoning	Proposed extent of property
Erf 2467 Gansbaai	A portion of Erf 2467 Gansbaai	Proposed rezoning to Residential. Zone 1	**±135m²**
Erf 2474 Gansbaai	A portion of Erf 2467 Gansbaai and Erf 2474 Gansbaai	Res. Zone 1	135m² + 500m² = **±635m²**

The proposal will not have any impact on the surrounding properties. The proposal will not have any impact on the existing character and property values of the surrounding properties.

Registration of a servitude area

When Mrs. Aldrich applied to purchase a portion of Erf 2467 Gansbaai, the Mayoral Committee resolved at their meeting dated 25 November 2020 that no structures of any kind (excluding a boundary wall or fence) may be erected on the 135m², as surveyed, a portion of Erf 2467 Gansbaai which condition must be registered against the Title Deed of the consolidated property. This condition has also been included in the sales agreement between the Overstrand Municipality and the purchaser under section 16.2.

~~It is therefore necessary to create a servitude area on a portion of the newly consolidated erf over a portion of Erf 2467 Gansbaai that is 135m² in extent. The owner will register a servitude area over the last mentioned area to remain open space as it would be incorporated as a garden. The proposed servitude area can be seen in the picture below~~:

Deletion of a previous condition of approval

As mentioned earlier in this report, an application was previously submitted and approved for the relaxation of building lines of Erf 2474 Gansbaai. The approval contains a number of conditions of approval of which we will have to address a specific condition, being condition 3.1.(d) that read as follows:

"that the applicant within thirty (30) days from the decision notice remove the boundary wall that was constructed on Erf 2467 and rehabilitate the area to the satisfaction of the Municipality in accorance with the site plan submitted with the application;"

The current owner succesfully applied for the purchase of the portion being encroached upon. We are now applying to formally include the 135m² portion of Erf 2467 Gansbaai with Erf 2474 Gansbaai by means of a rezoning, subdivision, consolidation, partial closure of a public place and the determination of an administrative penalty. Should this applaiction be successful the above mentioned condition of approval would prohibit the inclution of the 135m² portion of Erf 2467 Gansbaai. It is therefore required, as part of this application that the condition of approval be removed.

3.5 DETERMINATION OF AN ADMINISTRATIVE PENALTY

As mentioned earlier in this report, Mrs. E.L. Aldrich purchased Erf 2474 Gansbaai in 2018 from Mr. B.T. du Toit, he did not at the time disclose that he had incorporated a portion of a public open space that is 135m² in extent, with the said erf at the time. A boundary wall was constructed that incorporated the portion of the public open space, Erf 2467 Gansbaai, located between erven 2473 & 2474 Gansbaai. Mr. du Toit applied to have the building line encroachment legalise that was approved on 28 September 2018. The letter of approval also addresses the encroachment onto the public open space and it was made a condition that the public open space be rehabilitated and that the boundary wall be removed.

When it came to light that the property does not include the portion of public open space, as it was sold, Mrs. Aldrich, the new owner, brought it to the attention of the transferring attorney whom agreed that the matter must be resolved. An application was submitted at the Overstrand Municipality and approval was granted for the purchase of a portion of Erf 2467 Gansbaai.

The intention of the new owner is to rectify the encroachment and to finalise the matter by means of this application as prescribed in the sales agreement between Mrs. Aldrich and the Overstrand Municipality. The subject portion of Erf 2467 Gansbaai to be consolidated with Erf 2474 Gansbaai was surveyed and is 135m² in extent.

In terms of **Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020** an application is made for the determination of an administrative penalty for unauthorised land use. In terms of Chapter 9, Section 90(1), "A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned".

In terms of **Chapter 9, Section 90(3)**, of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020 the applicant must, to the satisfaction of the municipality, provide the following:

3.5.1. CRITERIA FOR DETERMINATION OF AN ADMINISTRATIVE PENALTY

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

As mentioned above, Mrs. Aldrich purchased the walled property in its current state and it included a portion of Erf 2467 Gansbaai that is 135m² in extent. This was not pointed out to her at the time of the sale and she was under the impression that it was part of her property. Once she was informed that her property actually excludes the 135m² of public place she immediately brought it to the attention of the transferring attorney and it was addressed with a request to the Overstrand Municipality with an application to purchase the portion of Erf 2467 Gansbaai. As Mrs. Aldrich purchased the property in its current state it is unclear for how long the former owner utilised the 135m² portion as being part of his garden.

The new owner of the subject property intends to provide her full co-operation to the Overstrand Municipality to rectify the encroachment.

The 135m² portion of the public place, Erf 2467 Gansbaai, has been incorporated with Erf 2474 Gansbaai by the former owner and it has been used as an extension of the garden. The purchase of the subject portion of Erf 2467 Gansbaai has already gone successfully through one of the municipal processes and no objections were received from the neighbouring land owners. The portion of Erf 2467 Gansbaai that is 135m² in extent will continue to be used as a portion of the garden and a servitude area will be registered over this portion as per the sales agreement. Therefore no structure will be allowed to be built on this specific portion except for a boundary wall / fence.

b) The conduct of the person involved in the contravention

The new owner was made aware of the illegality of the encroachment and immediately addressed the matter.

c) **Whether the unlawful conduct was stopped**

The owner purchased the property in its current state. The portion of open space that is 135m² in extent is still being used as a portion of the garden of Erf 2474 Gansbaai.

d) **A report by a quantity surveyor in matters of unauthorised building/construction**

If the Overstrand Municipality finds it necessary that an administrative penalty fee needs to be enforced for the unauthorised encroachment, we will submit a report from a quantity surveyor with reference to the unauthorised building work. It should be kept in mind that the owner purchased the property in its current state that included the 135m² portion of public open space. The portion of public open space was incorporated by the former owner and is not the doing of Mrs. Aldrich. Mrs. Aldrich immediately addressed the matter when she was made aware of the fact that her property excludes the 135m² portion of public open space. The reason being that if there is a chance that no penalty fee is imposed the report from a quantity surveyor will be unnecessary at this stage.

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

The current owner has been made aware of the illegality of the encroachment that she inherited from a former owner. Mrs. Aldrich has not been involved in any other contraventions of the By-Law or a previous planning law.

We appeal to the Overstrand Municipality to take into consideration the low impact the encroachment has on the surrounding area. With the proposed application the owner intends to rectify the encroachment soonest. We therefore respectfully request that a penalty fee **not** be imposed on the property owner for the reasons given above.

3.5. CHARACTER OF THE ENVIRONMENT

The proposal will not change the primary land use of the subject property as this application constitutes the inclusion of an underutilised public open space that is ±135m² in extent that will continue to be used as an extension of the garden of Erf 2474 Gansbaai. The impact on the character of the area will therefore be minimal. The proposed rezoning of a portion of Erf 2467 Gansbaai and the consolidation thereof with Erf 2474 will not have a negative impact on the neighbouring property or residential character of the area.

3.6. POTENTIAL OF THE PROPERTY (DESIRABILITY OF THE PROPOSED UTILIZATION)

The portion of Erf 2467 Gansbaai is better utilised incorporated with Erf 2474 Gansbaai as an extension of the garden. Subsequently the land use being open space will remain the same. No additional buildings or erven are proposed that will put strain on municipal services. The municipality will instead be alleviated from the burden of upkeeping of this portion of a public open space. This application is to formalise the incorporated portion of Erf 2467 Gansbaai that is 135m² in extent with an adjoining residential erf, Erf 2474 Gansbaai, that will be used as an extension of the garden. A servitude area will be registered over the newly consolidated erf as mentioned earlier in this report.

3.7. IMPACT ON EXTERNAL ENGINEERING SERVICES

3.7.1. PROVISION OF SERVICES

All services on Erf 2474 Gansbaai already exist and the inclusion of a portion of Erf 2467 Gansbaai will not require any additional services. The impact on services would therefore remain the same as the developed residential erf, Erf 2474 Gansbaai.

3.7.2. TRAFFIC IMPACT AND ACCESS

Access to Erf 2474 Gansbaai is from 25 Berggans Street as can be seen on the locality plan. No new access points are proposed. Subsequently the access to Erf 2474

Gansbaai will remain unchanged and a portion of Erf 2467 Gansbaai will be used as an extension of the garden after consolidation has taken place.

The subject property will still be used for single residential purposes only, no additional erven are proposed and therefore the impact on the traffic flow in the area will remain unchanged.

3.8. OTHER RELEVANT LEGISLATION FOR CONSIDERATION OF THE APPLICATION

3.8.1. HERITAGE VALUE

Erf 2474 and Erf 2467 Gansbaai are not situated within the Heritage Overlay Zone as determined by the Overstrand Municipality Growth Management Strategy. Erf 2474 and Erf 2467 Gansbaai are not earmarked for heritage conservation purposes in terms of the Overstrand Heritage Survey Report (2009).

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

In the light of the above mentioned it is evident that the application will not hinder any future land use applications on the subject erven. The proposed application will not have a negative impact on the heritage value of the subject properties or the greater area of Gansbaai.

3.8.2. IMPACT ON THE BIOPHYSICAL ENVIRONMENT

The proposed application does not trigger any listed activities in terms of the National Environmental Management Act (NEMA), 1998 (Act no. 107 of 1998).

3.9. FORWARD PLANNING AND LAND USE DOCUMENTS

The ***Overstrand Spatial Development Framework (2020)*** earmarks the area where Erf 2474 and Erf 2467 Gansbaai are situated, for Urban development purposes. Even though it is proposed that a portion of Erf 2467 Gansbaai that is 135m² in extent be rezoned from Open Space Zone 2 to Residential Zone 1 and consolidated with Erf 2474 Gansbaai, the proposal is still in line with forward planning proposals for the area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) specifies that Erf 2474 and Erf 2467 Gansbaai form part of Planning Unit No.2. This planning unit consists of the area known as Perlemoenbaai. Incremental densification is proposed for this area by means of subdivision. This application does however not propose to create any additional portions, nor does it propose the construction of additional dwelling units on the subject property. The density will therefore remain unchanged.

From the above it is evident that the proposed application adheres to the spatial planning policies for the area and consequently falls within the existing planning for the Gansbaai area.

3.10. PLANNING PRINCIPLES

The planning principles of spatial justice and sustainability are not applicable to this application.

Spatial justice refers to the need to redress the past apartheid spatial development imbalances and aim for equity in the provision of access to opportunities, facilities, services and land. In the broadest sense, it seeks to promote the integration of communities and the creation of settlements that allow the poorest of the poor to access opportunities. In a spatially just settlement, opportunities and access are provided to those whose historical access and opportunities have been impeded by the practice of apartheid spatial planning. Land development procedures must include provisions that accommodate access to, and facilitation of, security of tenure and the

incremental upgrading of informal areas. The principle of spatial justice is not applicable to this application.

Spatial sustainability essentially refers to a sustainable form of development. A part of this means promoting less resource consuming development typologies that promote compaction, pedestrianisation and mixed-use urban environments which allow for the development of a functional public transport system and space economy. A spatially sustainable settlement will be one which has an equitable land market, while ensuring the protection of valuable agricultural land, environmentally sensitive and biodiversity rich areas, as well as scenic and cultural landscapes and ultimately limits urban sprawl. The principle of spatial sustainability is not applicable to this application.

Efficiency: Erf 2467 Gansbaai is a public open space that is 6991m² in extent. The portion of the last mentioned open space that is 135m² in extent can be utilised much better by the neighbouring landowner by incorporating it with her property as it is the case. Subsequently the Overstrand Municipality will not have the burden to upkeep this portion of Erf 2467 Gansbaai. The Overstrand Municipality also gains from a financial point of view due to the fact that a portion of Erf 2467 Gansbaai that is 135m² in extent is purchased from the Overstrand Municipality at market value.

Spatial resilience in the context of land use planning refers to the need to promote the development of sustainable livelihoods for the poor (i.e. communities that are most likely to suffer the impacts of economic and environmental shocks). Spatial resilience also refers to the requirement for flexibility in spatial plans, policies and land use management systems to ensure sustainable livelihoods in communities most likely to suffer the impacts of economic and environmental shocks. The spatial plans, policies and land use management systems should enable the communities to be able to resist, absorb and accommodate these shocks and to recover from these shocks in a timely and efficient manner, which includes the preservation and restoration of essential basic infrastructure and functions, but also adaptation in order to ensure increased resilience in terms of future shocks (United Nations Office for Disaster Risk Reduction, 2009). The principle of spatial resilience is not applicable to this application.

Good administration: Our Company is committed to the principle of good administration and will cooperate with the Overstrand Municipality to ensure a time efficient, uncomplicated land use planning process. The land use application will follow due process as stipulated in the relevant municipality's bylaw and related provincial

and national land use planning legislation. All measures will be taken to ensure an efficient and streamlined process within the applicable timeframes as stipulated by the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020.

4. RECOMMENDATION

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

- All services already exist. Additional services will not be required;
- Access to Erf 2474 Gansbaai will remain unchanged and the impact on the traffic will also remain unchanged;
- The proposed application is compatible with the existing built character of the area;
- The proposed application will not have a negative impact on the current character and land values of the surrounding erven;
- The Overstrand Municipality gains capital due to the fact that a portion of Erf 2467 Gansbaai that is 135m² in extent is purchased from the municipality at market value.
- The municipality will be alleviated from the burden of the upkeeping of a portion of Erf 2467 Gansbaai that can be better utilised by the neighbouring landowner by incorporating it with Erf 2474 Gansbaai as a garden;
- This application is merely to formalise the portion of Erf 2467 Gansbaai that has been incorporated with Erf 2474 Gansbaai by the former owner;
- The proposed application is in line with Spatial Planning Land Use Management Act, 2013 (SPLUMA) and the Land Use Planning Act, 2014 (LUPA).

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would approve the following for Erf 2474 and a portion of Erf 2467 Gansbaai:

- the subdivision of Erf 2467 Gansbaai in order to create a portion that is 135m² in extent, as surveyed;
- the rezoning of a portion of Erf 2467 Gansbaai (a portion of a public open space) that is 135m² in extent;

NOTES:

- Existing Erf Boundaries
- Proposed Subdivision Line
- Portion of Erf 2467 Gansbaai that is 135m² in extent to be consolidated with Erf 2474 Gansbaai.
- Erf 2474 Gansbaai

TOTAL AREA of Erf 2474 Gansbaai after consolidation = 635m²

PlAn Active Stads- en Streeksbeplanners Town & Regional Planners	All distances approximate and subject to survey.	Property Description: ERVEN 2474 & 2467 GANSBAAI	Plan Description: SUBDIVISION & CONSOLIDATION	Scale: 1:750	
	COPY RIGHT RESERVED			Drawing Nr: gans2474s.drw	
				Date: 08/2021	