

**OVERSTRAND MUNISIPALITEIT**  
**ERF 559, RIDGEWEG 49 & 'N GEDEELTE VAN RESTANT ERF 1916, PEARLY BEACH: AANSOEK OM ONDERVERDELING, SLUITING VAN 'N GEDEELTE PUBLIEKE PAD, HERSONERING, KONSOLIDASIE, SKRAPPING VAN GOEDKEURINGSVOORWAARDES TEN OPSIGTE VAN 'N BESTAANDE GOEDKEURING EN BEPALING VAN 'N ADMINISTRATIEWE BOETE: MNRE PLAN ACTIVE STAD- EN STREEKSBEPLANNERS NAMENS M SWANEPOEL & OVERSTRAND MUNISIPALITEIT**

Kennis word hiermee gee ingevolge Artikels 47 en 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) vir die volgende aansoeke van toepassing op Erf 559, Pearly Beach en 'n Gedeelte van Restant Erf 1916, Pearly Beach naamlik:

**Onderverdeling**  
 Aansoek ingevolge Artikel 16(2)(d) van die Verordening vir die onderverdeling van 'n gedeelte van Erf 1916, Pearly Beach, in (2) twee gedeeltes naamlik, 'n Restant en Gedeelte A ongeveer 206m<sup>2</sup> groot.

**Sluiting van 'n gedeelte publieke pad**  
 Aansoek ingevolge Artikel 16(2)(n) van die Verordening vir die sluiting van 'n gedeelte van 'n publieke pad (Gedeelte A).

**Hersonering**  
 Aansoek ingevolge Artikel 16(2)(a) van die Verordening, om Gedeelte A te hersoneer vanaf Vervoersone 2: Publieke Pad (TR2) na Residensiële Sone 1: Enkel Residensiële (SR1).

**Konsolidasie**  
 Aansoek ingevolge Artikel 16(2)(e) van die Verordening, vir die konsolidasie van Gedeelte A met Erf 559, Pearly Beach, om een gekonsolideerde erf ongeveer 1118m<sup>2</sup> groot te skep.

**Skrapping van goedkeuringsvoorwaardes ten opsigte van 'n bestaande goedkeuring**  
 Aansoek ingevolge Artikel 16(2)(h) van die Verordening, ten einde voorwaardes 2.(a) en (f) van 'n bestaande goedkeuring te skrap.

**Bepaling van 'n administratiewe boete**  
 Aansoek ingevolge Artikel 16(2)(q) van die Verordening vir die bepaling van 'n administratiewe boete om die bestaande strukture wat op Gedeelte A voorkom te akkommodeer.

Volle besonderhede rakende die voorstel hierbo is beskikbaar vir inspeksie gedurende weksdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en Gansbaai Biblioteek, Hoofweg, Gansbaai. 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](mailto:alida@overstrand.gov.za)) moet bereik voor of op **Vrydag, 4 Oktober 2024** 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.

**DGI O'Neill**  
**MUNISIPALE BESTUURDER**  
 Overstrand Munisipaliteit  
 Posbus 20, HERMANUS, 7200

Munisipale Kennisgewing Nr.127/2024

**OVERSTRAND MUNICIPALITY**  
**ERF 559, 49 RIDGE WAY & A PORTION OF REMAINDER ERF 1916, PEARLY BEACH: APPLICATION FOR SUBDIVISION, CLOSURE OF A PORTION OF A PUBLIC ROAD, REZONING, CONSOLIDATION, DELETION OF CONDITIONS IN RESPECT OF AN EXISTING APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF M SWANEPOEL & 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 Erf 559, Pearly Beach and a Remainder of Erf 1916, Pearly Beach, namely:

**Subdivision**  
 Application in terms of Section 16(2)(d) of the By-Law for the subdivision of a portion of the Remainder Erf 1916, Pearly Beach, into (2) two portions, namely, a Remainder and Portion A approximately 206m<sup>2</sup> in extent.

**Closure of a portion of public road**  
 Application in terms of Section 16(2)(n) of the By-Law for the closure of a portion of public road (Portion A).

**Rezoning**  
 Application in terms of Section 16(2)(a) of the By-Law to rezone Portion A from Transport Zone 2: Public Road (TR2) to Residential Zone 1: Single Residential (SR1).

**Consolidation**  
 Application in terms of Section 16(2)(e) of the By-Law for the consolidation of Portion A with Erf 559, Pearly Beach, to create a consolidated erf approximately 1118m<sup>2</sup> in extent.

**Deletion of conditions in respect of an existing approval**  
 Application in terms of Section 16(2)(h) of the By-Law in order to delete conditions 2.(a) & (f) of an existing approval.

**Determination of an administrative penalty**  
 Application in terms of Section 16(2)(q) of the By-Law, for determination of an administrative penalty to accommodate the existing structures situated on Portion A.

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](mailto:alida@overstrand.gov.za)) on or before **Friday, 4 October 2024** 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.

**DGI O'Neill**  
**MUNICIPAL MANAGER**  
 Overstrand Municipality  
 P O Box 20, HERMANUS, 7200

Municipal Notice No. 127/2024

**UMASIPALA WASEOVERSTRAND**  
**ERF 559, 49 RIDGE WAY & A PORTION OF REMAINDER ERF 1916, PEARLY BEACH: ISICELO SOKWAHLULAHLULA, UKUVALA INXALENYE YENDELELA KAWONKEWONKE, UKUCANDA KWAKHONA, UYONDELELWANISO, UKUCIMA IIMEKO EZIMAYELA NEZIPHUMEZO NEZIVUMO ESELE ZIKHONA NENGIKELELO YOMDLIWO WOBHALISO: NGABAMNU BAKWAPLAN ACTIVE TOWN & REGIONAL PLANNERS EGAMENI LIKAF M SWANEPOEL NOMASIPALA WASEOVERSTRAND**

Inothi emayela nemiba yeSolotya lama47 nelama-48 kaMasipala wase-Overstrand ngoMthethwana OsiSihlomelo NgeziCwangciso zokuSetyenziswa koMhlaba kaMasipala ku2020 (Umthethwana), ongezizicelo zisebenziseka kwiSiza esinguErf 559, Pearly Beach neNtsalela yeSiza esinguErf 1916, Pearly Beach, ezaziwa:

**Ukwahlulahlula**  
 Esi sicelo seSolotya le16(2)(d) loMthethwana lokwahlulahlula wokwahlulahlula lenxalenye yeNtsalela Isiza esinguErf 1916, Pearly Beach, ibe zinxalenye (2) zibe mbini, ebizwa ngokuba, yiNtsalela yeNxalenye A emayela nama206m<sup>2</sup> ubungakanani.

**Ukuvalwa kwenxalenye yendlela kawonkewonke**  
 Esi sicelo sisebenziseka neSolotya le16(2)(n) loMthethwana wokuvala inxalenye yendlela kawonkewonke (Inxalenye A).

**Ukucanda kwakhona**  
 Esi sicelo sisebenziseka kweSolotya le16(2)(a) loMthethwana ukucanda kwakhona inxalenye A ukusuka KwiZowuni YezoThutho 2: Indlela kaWonkewonke (TR2) ibe yiZowuni Yokuhlala Abantu 1: Izindlu Zokuhlala Ndawonye (SR1).

**Uyondelelaniso**  
 Esi sicelo sisebenziseka ngokwemiba yeSolotya 16(2)(e) soMthethwana woyondelelaniso neNxalenye A yesiza esinguErf 559, Pearly Beach, ukuyondelelanisa isiza esingumlinganiselo emayela ne1118m<sup>2</sup> ngobukanani.

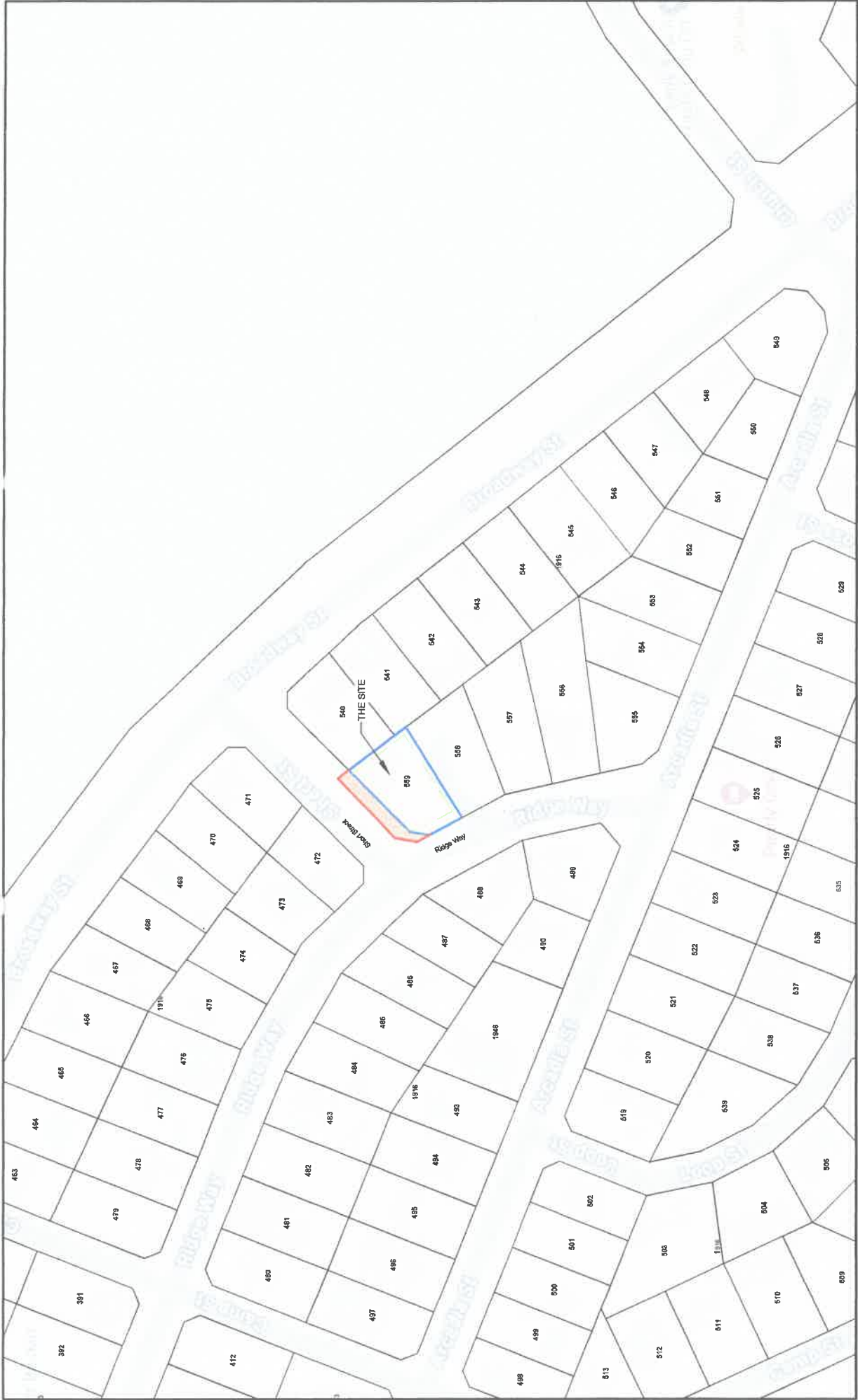
**Ukucima iimeko ezimelene nesivumo nesivumo esele sikhona**  
 Esi sicelo sisebenziseka nemiba yeSolotya le16(2)(h) loMthethwana ukuze kucinywe iimeko 2(a) & (f) ngesivumo nesiphumezo esele sikhona

**Ingiikelelo yomdlivo wobhaliso**  
 Isicelo esi sisebenziseka nemiba emayela nale miba kwiSolotya 16(2)(q) loMthethwana, ukulungiselela ingiikelelo yobhaliso ukulungiselela izazkhiwo esele zikhona nehambelene yeNxalenye A.

linkkukacha ezipheleleyo mayela nesi siphakamiso ziyafumaneka kwiintsuku zaphakathi evekini ziyafumaneka phakathi kwentsimbi ye08:00 neye16:30 kwiSebe: Lezicwangciso zeDolophu, 16 Paterson Street, Hermanus naseGansbaai Library, Main Road, Gansbaai. Naziphi na izimvo mazibhalwe, uchaze igama lakho, idilesi neenkukacha, kwakunye nomdla wakho kwesi sicelo nezithu zakho zokuhloma, izimvo lwakho mazifike kwaMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / (e) [alida@overstrand.gov.za](mailto:alida@overstrand.gov.za)) ngaphambi okanye ngaphambi koLwesihlanu, 4 EyeDwarha 2024 Imibuzo ingabuzwa kuMchwangcisi ngeDolophu, Mnu SW van der Merwe kwa-0283138900. UMasipala angala ukwamkela izimvo ezifike emva komhla wokuvala. Nabani na ongakwazi ukufunda nokubhala angaya kuMasipala obhalwe ngentla kwiSebe apho igosa likaMasipala liza kumnceda ukufaka izimvo zakhe.

**DGI O'Neill**  
**MUNICIPAL MANAGER**  
 Overstrand Municipality  
 P O Box 20, HERMANUS, 7200

Inombolo yesaziso No. 127/2024



Scale: NTS

Drawing Nr: A4 Plan Active.DRW  
Date: 11/2023

Plan Description: LOCALITY MAP

Property Description: ERVEN 559 & 1916 PEARLY BEACH

All distances approximate and subject to survey.

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**PLAn** Stads- en Streeksbeplanners  
Town & Regional Planners

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

**ERVEN 1916 & 559 PEARLY BEACH**

**OVERSTRAND MUNICIPALITY**

**MOTIVATION REPORT**

**1. BACKGROUND**

Mrs. Melanie Swanepoel, the owner of Erf 559 Pearly Beach has instructed the company Plan Active Town and Regional Planners to apply for:

- the subdivision of the Remainder Erf 1916 Pearly Beach, a portion of a public road reserve;
- the closure of a portion of a public road;
- the rezoning of a portion of the Remainder Erf 1916 Pearly Beach (a portion of a public road reserve);
- the consolidation of a portion of Erf 1916 Pearly Beach with Erf 559 Pearly Beach;
- the registration of a servitude area on a portion of the newly consolidated erf (the portion of Erf 1916 Pearly Beach);
- the deletion of a condition of an existing approval;
- the determination of an administrative penalty.

In 2021, Mrs. Swanepoel bought Erf 559 in Pearly Beach from Mr. and Mrs. van Rensburg, who failed to disclose that a part of the property offered for sale included a portion of the road reserve on Short Street. The estate agent informed Mr. and Mrs. Swanepoel that the boundary was marked by the existing boundary fences located on both Short Street and Ridge Street. Please refer to the aerial photograph below:



Upon learning that her property did not encompass the public space, a portion of road reserve, Mrs. Swanepoel, the new owner, engaged an attorney for assistance. Subsequently, an application was submitted by the attorney to the Overstrand Municipality's Property Administration Department to acquire a portion of Remainder Erf 1916 in Pearly Beach, a portion of road reserve. This portion of road reserve was to be subdivided, rezoned and consolidated with Erf 559 Pearly Beach.

During their meeting on November 29, 2023, the Mayoral Committee resolved to sell approximately 250m<sup>2</sup> of Remainder of Erf 1916 Pearly Beach to Mrs. Swanepoel, the owner of Erf 559 Pearly Beach. **(Please note that with reference to our calculation and subdivision plan, the portion of Remainder Erf 1916 Pearly Beach is 206m<sup>2</sup> in extent and will deal with as such in this application)** This portion of the road reserve is to be subdivided, rezoned, and consolidated with Erf 559 Pearly Beach. Additionally, a servitude area must be established over the allocated portion of the Remainder of Erf 1916 Pearly Beach, as stipulated in the sales agreement between Mrs. Swanepoel and the Overstrand Municipality, and in accordance with Condition 5 of the approval letter dated December 4, 2023. Please refer to **Annexure A** for a copy of the municipal approval letter for the sale.

An oversight was identified regarding the open braai area situated within the road reserve of Short Street. The attorney handling the application for the purchase of a portion of the road reserve inadvertently omitted the inclusion of an open braai area situated northwest of the dwelling within the said reserve. Consequently, the Overstrand Municipality imposed a condition stipulating that no structures of any kind (with the exception of a boundary wall or fence) may be erected on the specified portion of Remainder Erf 1916 Pearly Beach.

We have formally requested that the open braai area in question be retained and that the relevant condition be revised. Mrs. Anja Le Roux from the Property Administration Department is currently handling the matter, and it is expected to be presented to the Council in August 2024.

The braai area consists of a rounded retaining wall, infill and a built open braai. The rounded retaining wall and infill creates a platform situated approximately 2.00 meters from the existing fence. The highest part of the rounded retaining wall and platform is ±0.900 meters above natural ground level. Since this height is below 1.00 meter, the platform does not require an application for a building line relaxation. Additionally, the nearest point of the physical braai, which exceeds 1 meter above ground level, is approximately 5.8 meters from the existing fence, ensuring it is not within the 4-meter street building line. Please refer to the explanatory photograph below:



Furthermore, it is necessary to apply for the removal of a condition of approval from a prior application approved on October 25, 2016, regarding building line encroachments to make provision for a portion of the existing dwelling, rear deck and stoep.

Remainder Erf 1916 Pearly Beach is 10,284m<sup>2</sup> in extent and is held by Title Deed No. T.49769/2006. Erf 559 Pearly Beach covers an area of 912m<sup>2</sup> and is held by Title Deed No. T61347/2021.

## **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 Remainder Erf 1916 Pearly Beach;
- 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 road;
- 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 Remainder Erf 1916 Pearly Beach, that is ±206m<sup>2</sup> in extent, from Transport Zone 2 to Residential Zone 1;

- Chapter 4, Section 16(2)(e) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, for the consolidation of a portion of Remainder Erf 1916 Pearly Beach with Erf 559 Pearly Beach;
- 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  $\pm 206\text{m}^2$  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**

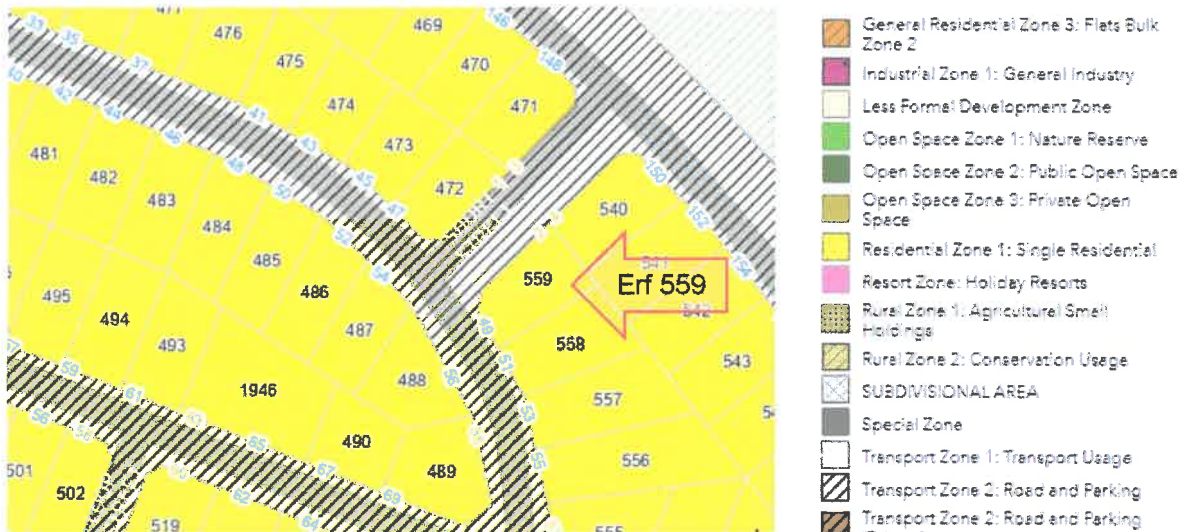
#### **3.1 PROPERTY DESCRIPTION**

Erf 559 Pearly Beach is situated at 49, Ridge Street, Pearly Beach. Erf 559 Pearly Beach & Remainder Erf 1916 Pearly Beach are  $912\text{m}^2$  and  $10\,284\text{m}^2$  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 559 Pearly Beach is zoned Residential Zone 1: Single Residential and it is utilized as such. Remainder Erf 1916 Pearly Beach is zoned Transport Zone 2. Please to the abstract below from the zoning map for easy reference;



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

### 3.3. LAND USE

Erf 559 Pearly Beach is designated for residential use. The property features a main dwelling and an associated outbuilding with the following amenities:

- 3 Bedrooms
- 2 Bathrooms
- Kitchen
- Living area
- North-east facing wooden deck
- South-west facing open stoep



- Garage

Vehicular access to Erf 559 Pearly Beach is provided via Ridge Street. Adjacent to this, Remainder Erf 1916 Pearly Beach serves as a public road reserve, developed with a tarred road surface and sidewalks, facilitating smooth vehicular and pedestrian movement.

The surrounding area is primarily composed of developed single residential erven, maintaining a consistent residential character in the neighbourhood.

### **3.4. PROPOSED DEVELOPMENT**

As already mentioned, the reasons for the application can be summarised as follow:

- Mrs. Swanepoel purchased Erf 559 in Pearly Beach from Mr. and Mrs. van Rensburg.
- The sellers did not disclose that a part of the property included a section of the road reserve on Short Street.
- The estate agent informed Mr. and Mrs. Swanepoel that the property boundaries were marked by the existing boundary fence on Short Street and Ridge Street, which included a portion of the road reserve.
- Mrs. Swanepoel later discovered that her property did not include the area in question, specifically the portion of the road reserve.
- Seeking resolution, Mrs. Swanepoel engaged legal assistance.
- The attorneys applied to the Overstrand Municipality's Property Administration Department.
- The application aimed to acquire a portion of Remainder Erf 1916 in Pearly Beach, which included the road reserve.
- The goal was to subdivide, rezone, and consolidate this portion with Erf 559 to resolve the boundary discrepancy and align the property's legal boundaries with its physical boundaries.

Motivation report

- On November 29, 2023, the Mayoral Committee resolved to sell approximately 250m<sup>2</sup> of Remainder Erf 1916 to Mrs. Swanepoel.
- This portion will be subdivided, rezoned, and consolidated with Erf 559 to ensure correct property boundaries.
- A servitude area must be created over the allocated portion of Remainder Erf 1916.
- This requirement is specified in the sales agreement and in accordance with Condition 5 of the approval letter dated December 4, 2023.

To fulfil the conditions of the approval for the sale of a portion of the Remainder Erf 1916 Pearly Beach and the sales agreement, it is now required that an application be lodged for the following:

- the subdivision of a portion of the Remainder Erf 1916 Pearly Beach in order to create a portion that is ±250m<sup>2</sup> in extent (that is actually ±206m<sup>2</sup> in extent);
- the closure of a portion of a public road;
- the rezoning of a portion of Remainder Erf 1916 Pearly Beach (a portion of the public road reserve) that is 206m<sup>2</sup> in extent;
- the consolidation of a portion of Remainder Erf 1916 Pearly Beach that is ±2060m<sup>2</sup> in extent with Erf 559 Pearly Beach;
- and the registration of a servitude area on the newly consolidated portion of Remainder Erf 1916 Pearly Beach that is ±206m<sup>2</sup> in extent;
- the determination of an administrative penalty.

By completing these steps, Mrs. Swanepoel will ensure that her property boundaries are legally and accurately defined, resolving any discrepancies arising from the initial purchase.

The detail of the subject properties are as follows:

Erf	Size	Zoning	Current Land Use
Erf 1916 Pearly Beach	10284m <sup>2</sup>	Transport Zone 2	Public Road
Erf 559 Pearly Beach	912m <sup>2</sup>	Res. Zone 1	Residential

## Motivation report

As mentioned above, Remainder Erf 1916 Pearly Beach is a public road reserve adjacent to Erf 559 Pearly Beach. The portion of Remainder Erf 1916 Pearly Beach that is being purchased by the owner of Erf 559 Pearly Beach is  $\pm 206\text{m}^2$  in extent. This portion of public road reserve has been incorporated with Erf 559 Pearly Beach by the previous owner and has been utilised as a portion of the private garden and an open braai area is situated on the area as depicted in the photographs below:



In order to consolidate a portion of Remainder Erf 1916 Pearly Beach that is  $\pm 206\text{m}^2$  in extent with Erf 559 Pearly Beach, it is required that the  $\pm 206\text{m}^2$  portion of Remainder Erf 1916 Pearly Beach be subdivided and rezoned from **Transport Zone 2** to **Residential Zone I**, the same zoning as Erf 559 Pearly Beach. The closure of a portion of public road is also required and applied for. The consolidated property will be  $\pm 1118\text{m}^2$  in extent.

The letter of approval for the purchase of a portion of Remainder Erf 1916 Pearly Beach stipulates that no buildings or structures may be constructed on the  $250\text{m}^2$  portion of Erf 1916 Pearly Beach after consolidation has taken place, except for boundary walls or fences. Please note that we have requested that the existing built braai area also be included within the actual  $\pm 206\text{m}^2$  portion of road reserve being purchased as it was already built by the former owner and wrongfully indicated that it is situated within the property boundaries of Erf 559 Pearly Beach. The inclusion of the open braai area is being dealt with by the Property Administration Department and it is anticipated that the matter will be referred to Council for their decision in August 2024.

Subsequently the actual use of the  $\pm 206\text{m}^2$  portion of Remainder Erf 1916 Pearly Beach that is open space, and an open braai area will remain as is at the time of purchase of the property.

According to a status report obtained from the Surveyor-General dated 07/07/2024 (attached as **Annexure B**), Remainder Erf 1916 Pearly Beach, has the status of a public road 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 portion of a public road** is required. The detail of the rezoning of a portion of Remainder Erf 1916 Pearly Beach and the consolidation of Erf 559 and a portion of Remainder Erf 1916 Pearly Beach is as follows:

Erf	Components	Zoning	Proposed extent of property
Remainder Erf 1916 Pearly Beach	A portion of Remainder Erf 1916 Pearly Beach	Proposed rezoning to Residential. Zone 1	$\pm 206\text{m}^2$
Erf 559 Pearly Beach	A portion of the Remainder Erf 1916 Pearly Beach and Erf 559 Pearly Beach	Res. Zone 1	$\pm 206\text{m}^2 + 912\text{m}^2$ = $\pm 1118\text{m}^2$

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. Short street will also continue to function as a public street and there will be no impact on the traffic flow of the said street.

#### **Registration of a servitude area**

When the attorney applied to purchase a portion of a portion of Remainder Erf 1916 Pearly Beach, the Mayoral Committee resolved at their meeting dated 29 November 2023 that no structures of any kind (excluding a boundary wall or fence) may be erected on the  $\pm 250\text{m}^2$ , a portion of Remainder Erf 1916 Pearly Beach 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. We have however requested that provision be made to also include the existing open braai area as mentioned above.

It is therefore necessary to create a servitude area on the portion of the newly consolidated erf over a portion of Remainder Erf 1916 Pearly Beach that is  $\pm 206\text{m}^2$  in extent. The owner will register a servitude area over the last mentioned area to remain open space and the existing braai area as it would be incorporated as a garden and braai area. The proposed servitude area is indicated on the aerial photograph below:



### **Deletion of a previous condition of approval**

As previously detailed in this report, an application was submitted and approved for the relaxation of building lines applicable to Erf 559 Pearly Beach. The street building line as prescribed in the Title Deed was relaxed from 4.72m to 0.785m, and the street building line prescribed in the Zoning Scheme Regulations was reduced from 4m to 0.785m. These building line encroachments were approved to accommodate a portion of the existing dwelling, subject to specific conditions. The following conditions now require deletion:

- Condition 2(a): "This approval only refers to the relaxation of the building lines as indicated on Plan No. JJ71/15 dated 10 November 2015, as submitted with the application."
- Condition 2(f): "The ground floor stoep and first-floor balcony may not be enclosed."

Due to a successful application for the purchase of a portion of Erf 1916 Pearly Beach, approximately 206m<sup>2</sup> in extent, which is to be rezoned and consolidated with Erf 559 Pearly Beach, the existing dwelling, ground floor stoep, and first-floor balcony (wooden deck) will no longer encroach into the street building lines prescribed in both the Title Deed and the Zoning Scheme Regulations. The owner wishes to enclose the ground floor stoep and first-floor balcony in the future. Building plans will be submitted to the Overstrand Municipality prior to the commencement of construction work.

Therefore, we apply for the deletion of the aforementioned conditions of approval to enable the owner to submit new building plans for any future alterations or extensions to the dwelling. This request is justified by the fact that the property will now comply with the applicable land use restrictions, particularly the Short Street building lines, and the owner intends to enclose the ground floor stoep and first-floor balcony (wooden deck) in the future.

### **3.5 DETERMINATION OF AN ADMINISTRATIVE PENALTY**

As previously mentioned in this report, Mrs. Melanie Swanepoel purchased Erf 559 Pearly Beach in 2021 from Mr. and Mrs. van Rensburg. At the time of purchase, the estate agent identified the property boundaries as the existing fence lines to Mrs. Swanepoel. Neither the estate agent nor the sellers disclosed that the property actually included a portion of road reserve, specifically a section of Short Street. This road reserve section comprises an established garden and an open braai area, as described earlier in our motivation.

When it was discovered that the property she purchased did not include the road reserve portion, Mrs. Swanepoel sought legal assistance. Her attorneys applied for the purchase of the road reserve portion of approximately 250m<sup>2</sup>, a section of Short Street. This application was approved, as stated earlier in this report. According to our drawings, the size of the portion of Short Street is approximately 206m<sup>2</sup>, and this will be addressed accordingly in this application.

The new owner intends to rectify the encroachment issue and finalize the matter through this application, as stipulated in the sales agreement between Mrs. Melanie Swanepoel and the Overstrand Municipality. The subject portion of Remainder Erf

1916 Pearly Beach, to be consolidated with Erf 559 Pearly Beach, is approximately 206m<sup>2</sup> in extent.

In accordance with Chapter 4, Section 16(2)(q) of the Overstrand Municipality's Amended By-law on Municipal Land Use Planning, 2020, this application seeks the determination of an administrative penalty for unauthorized land use. Per 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 concerning 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, Mrs. Swanepoel purchased Erf 559 Pearly Beach, a fenced property, that included a portion of Remainder Erf 1916 Pearly Beach, which is approximately 206m<sup>2</sup> in extent. This wrongful situation was not disclosed to her at the time of purchase, and she was under the impression that it was part of her property. Upon discovering this, she took steps to address the issue, as detailed above. Since taking ownership in 2021, Mrs. Swanepoel has continued to use the property in its current state. It remains unclear how long the former owners utilized the ±206m<sup>2</sup> portion as part of their garden, which includes an established braai area.

The new owner intends to fully cooperate with the Overstrand Municipality to rectify the encroachment.

The ±206m<sup>2</sup> portion of road reserve (Remainder Erf 1916 Pearly Beach) has been wrongfully incorporated into Erf 559 Pearly Beach by the former owner and has been used as an extension of the property. An application for the purchase of this portion of Remainder Erf 1916 Pearly Beach has already been lodged and approved by the

Council. The portion of Remainder Erf 1916 Pearly Beach, which is approximately 206m<sup>2</sup> in extent, will continue to be used as part of the garden and open braai area, over which a servitude will be registered. We are awaiting the outcome of the Council's decision regarding our request to include the open braai area, with a decision expected in August 2024. If the request is successful, no other structures will be allowed on the ±206m<sup>2</sup> portion of Remainder Erf 1916 Pearly Beach, except for a boundary wall/fence and the existing open braai area.

**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 by means of obtaining legal assistance.

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

The owner purchased the property in its current state. The portion of road reserve that is ±206m<sup>2</sup> in extent is still being used as a portion of the garden and established braai area of Erf 559 Pearly Beach.

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

If the Overstrand Municipality deems it necessary to enforce an administrative penalty for the unauthorized encroachment, we will submit a report from a quantity surveyor regarding the unauthorized building work. It is important to note that the owner, Mrs. Swanepoel, purchased the property in its current state, which included the ±206m<sup>2</sup> portion of public open space. This portion was incorporated by the former owner, not by Mrs. Swanepoel. Upon learning that her property excluded the ±206m<sup>2</sup> portion of the road reserve, Mrs. Swanepoel promptly took action to address the matter.

Given the costs involved in legal fees, professional town planning, application fees, and the purchasing of a portion of Remainder Erf 1916 Pearly Beach it is crucial to



consider whether an administrative penalty is necessary. If there is a possibility that no penalty fee will be imposed, the report from a quantity surveyor may be unnecessary at this stage. This approach could help manage and potentially reduce the financial burden on the owner.

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

The current owner, Mrs. Swanepoel, became aware of the illegality of the encroachment she inherited from the former owners and took immediate action to address the issue by obtaining legal assistance. Her prompt response demonstrates her commitment to resolving the matter responsibly and in compliance with the law. It is important to highlight that Mrs. Swanepoel has not been involved in any other violations of the By-Law or previous planning regulations, maintaining a clean record in these matters.

We respectfully appeal to the Overstrand Municipality to consider the low impact that the encroachment has on the surrounding area. The proposed application shows Mrs. Swanepoel's intention to rectify the encroachment as soon as possible. Given these considerations, we request that a penalty fee not be imposed on the property owner. The reasons for this request include the inherited nature of the encroachment, Mrs. Swanepoel's unblemished record regarding other By-Law or planning law contraventions, and her proactive approach in seeking legal assistance and addressing the issue immediately upon discovery.

**3.5. CHARACTER OF THE ENVIRONMENT**

The proposal will not alter the primary land use of the subject property. This application involves the inclusion of a portion of the road reserve, ±206m<sup>2</sup> in size, which will continue to be utilized as an extension of the garden and braai area of Erf 559 Pearly Beach. Given that the land will maintain its current use, the impact on the character of the area will be minimal.

Furthermore, the proposed rezoning of a portion of Remainder Erf 1916 Pearly Beach and its consolidation with Erf 559 Pearly Beach will not negatively affect the neighbouring property or the residential character of the area. The integration of this land into the existing garden and braai area will blend seamlessly with the current landscape and usage patterns. This consolidation will not introduce any new or disruptive elements to the vicinity.

In summary, the proposed changes will preserve the existing use of the property, ensuring that the character and ambiance of the neighbourhood remain undisturbed. The low impact on the surrounding area and the absence of negative effects on neighbouring properties support the request for rezoning and consolidation without concern for adverse consequences.

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

The proposal to formalize the incorporation of a portion of Remainder Erf 1916 Pearly Beach,  $\pm 206\text{m}^2$  in extent, with Erf 559 Pearly Beach offers several advantages:

The portion of Remainder Erf 1916 has already been integrated with Erf 559 by the former owner to extend the garden and braai area. This current usage will be maintained, ensuring that there is no change in land use intensity or character. The area will remain a garden and braai area, which aligns with the residential nature of the property.

The proposal does not involve the construction of new buildings or the creation of additional erven, meaning there will be no increased demand on municipal services such as water, sewage, or electricity. The existing infrastructure will continue to suffice, and the municipality will not need to allocate additional resources to support this extension.

By formalizing the inclusion of this portion of the road reserve into the private property of Erf 559 Pearly Beach, the municipality will no longer be responsible for the upkeep

of this specific area. This alleviates the municipality from maintenance duties, which can lead to cost savings and better allocation of municipal resources.

The formalization and consolidation of this land will enhance the value and usability of Erf 559 Pearly Beach. The extended garden and braai area contribute positively to the residential experience without impacting the surrounding properties negatively.

The proposal is consistent with the residential character of the surrounding area. Since no major changes or developments are introduced, the aesthetic and functional harmony of the neighbourhood is preserved. The minimal impact on neighbouring properties ensures that the proposal aligns with community standards and expectations.

A servitude area will be registered over the newly consolidated erf, which ensures that any necessary access or rights are legally protected and formalized. This legal provision helps in managing land use rights and responsibilities effectively, safeguarding both private and public interests.

In summary, from a desirability and land use standpoint, the application to formalize the incorporation of the  $\pm 206\text{m}^2$  portion of Remainder Erf 1916 into Erf 559 Pearly Beach is beneficial. It maintains the current use without additional strain on municipal services, reduces the maintenance burden on the municipality, and supports the continuity of the residential character of the area. This strategic approach enhances the property's value and utility while ensuring compliance with land use regulations and community standards.

### **3.7. IMPACT ON EXTERNAL ENGINEERING SERVICES**

#### **3.7.1. PROVISION OF SERVICES**

All services on Erf 559 Pearly Beach already exist and the inclusion of a portion of Remainder Erf 1916 Pearly Beach will not require any additional services. The impact

on services would therefore remain the same as the developed residential erf, Erf 559 Pearly Beach.

### **3.7.2. TRAFFIC IMPACT AND ACCESS**

Access to Erf 559 Pearly Beach will continue to be from Ridge Way Street as can be seen on the proposed subdivision and consolidation plan. No new access points are proposed. Subsequently the access to Erf 559 Pearly Beach will remain unchanged and a portion of Remainder Erf 1916 Pearly Beach will be used as an extension of the garden and braai area after consolidation has taken place. The proposal will also not have an impact on the already tarred surface of Short Street.

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**

From a heritage perspective, the proposed application for Erf 559 Pearly Beach and Remainder Erf 1916 Pearly Beach is straightforward and unencumbered by significant heritage considerations:

Erf 559 Pearly Beach and Remainder Erf 1916 Pearly Beach are not located within the Heritage Overlay Zone as defined by the Overstrand Municipality Growth Management Strategy. This means that these properties are not subject to the additional restrictions and considerations that apply to areas designated for heritage protection.

According to the Overstrand Heritage Survey Report (2009), neither Erf 559 nor Remainder Erf 1916 is earmarked for heritage conservation. This lack of designation

indicates that these properties do not possess recognized heritage value warranting special preservation efforts.

The subject properties are not linked to any historically significant persons, groups, events, or activities. They do not have a documented connection to notable historical narratives or cultural heritage that would necessitate preservation or special consideration in the context of heritage conservation.

Given that the properties are not within a heritage zone and lack heritage conservation status, the current application will not impede future land use applications. The absence of heritage constraints ensures flexibility for future developments or modifications, providing assurance that current actions will not limit potential uses of the properties.

The proposed application will not negatively impact the heritage value of the subject properties or the broader Pearly Beach area. Since the properties do not possess identified heritage significance, the changes proposed will not detract from the cultural or historical landscape of the region. The application focuses on formalizing existing uses, which further supports the minimal impact on any potential heritage considerations.

In conclusion, the proposed application for Erf 559 Pearly Beach and Remainder Erf 1916 Pearly Beach is consistent with the area's current and future land use strategies. The lack of heritage designation and historical significance ensures that the application will not negatively impact the heritage value of the properties or the greater Pearly Beach area. This alignment with the Overstrand Municipality's guidelines supports the viability and appropriateness of the proposed changes.

### **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) designates the area where Erf 559 and Remainder Erf 1916 Pearly Beach are located for urban development purposes. This overarching plan aims to guide growth and development in a sustainable and structured manner. The proposal to rezone a portion of Remainder Erf 1916 Pearly Beach,  $\pm 206\text{m}^2$  in extent, from Transport Zone 2 to Residential Zone 1 and consolidate it with Erf 559 Pearly Beach, is consistent with these urban development objectives. By integrating this portion into the residential framework, the proposal aligns with the forward planning initiatives intended for the area.

The Overstrand Municipal Growth Management Strategy (OMGMS, 2010) includes Erf 559 Pearly Beach and Remainder Erf 1916 Pearly Beach within Planning Unit No. 3, which encompasses the built-up area of Pearly Beach. The strategy promotes incremental densification through subdivision to accommodate additional dwelling units, thereby optimizing land use within the urban framework.

Despite the OMGMS's encouragement of densification, this application does not propose creating additional portions or constructing new dwelling units on the subject properties. Therefore, the existing density of the area will remain unchanged. The focus of the application is merely to formalize the inclusion of the  $\pm 206\text{ m}^2$  portion of Remainder Erf 1916 Pearly Beach into Erf 559 Pearly Beach for continued use as a garden and braai area, which does not alter the current residential density or usage patterns.

From the above, it is clear that the proposed application adheres to the spatial planning policies for the area. The Overstrand Spatial Development Framework (2020) and the Overstrand Municipal Growth Management Strategy (2010) both support urban development and controlled densification within Pearly Beach. The rezoning and consolidation proposed in this application are in harmony with these plans, ensuring that the development remains within the bounds of existing planning strategies for the Pearly Beach area.

The proposed rezoning and consolidation of a portion of Remainder Erf 1916 with Erf 559 Pearly Beach align well with the forward planning and strategic development policies of the Overstrand Municipality. The application supports the urban development goals outlined in the Overstrand Spatial Development Framework (2020) and complies with the densification principles of the Overstrand Municipal Growth Management Strategy (2010) without increasing the area's density. Thus, the application not only adheres to but also reinforces the established planning and growth strategies for Pearly Beach, ensuring sustainable and appropriate land use.

### **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:** Remainder Erf 1916 Pearly Beach comprises road reserves totalling 10 284m<sup>2</sup> in area. Within this large road reserve, a portion of ±206m<sup>2</sup> in extent has

been utilized by the former owners of Erf 559 Pearly Beach as an extension of their garden and braai area.

By formalizing the incorporation of this  $\pm 206\text{m}^2$  portion into Erf 559 Pearly Beach, the Overstrand Municipality will no longer be responsible for maintaining this specific part of the road reserve. This reduces the municipality's maintenance burden, allowing resources to be allocated more efficiently to other areas that require upkeep. Maintenance of municipal road reserves typically includes activities such as landscaping, cleaning, and general upkeep, which can be resource-intensive.

The Overstrand Municipality stands to gain financially from this transaction. The  $\pm 206\text{m}^2$  portion of Remainder Erf 1916 Pearly Beach will be purchased from the municipality at market value. This transaction provides the municipality with a direct financial benefit, converting a non-revenue-generating asset (a portion of road reserve) into a revenue source. The funds obtained from this sale can be reinvested into community projects, infrastructure improvements, or other municipal needs, contributing to the overall development and sustainability of the municipality.

The proposal to rezone and consolidate the  $\pm 206\text{m}^2$  portion of Remainder Erf 1916 Pearly Beach with Erf 559 Pearly Beach is beneficial for both the property owner and the Overstrand Municipality. The municipality not only reduces its maintenance obligations but also gains financially from the sale of this land at market value. This transaction aligns with municipal interests, promoting efficient use of resources and contributing to the municipality's financial health.

**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.

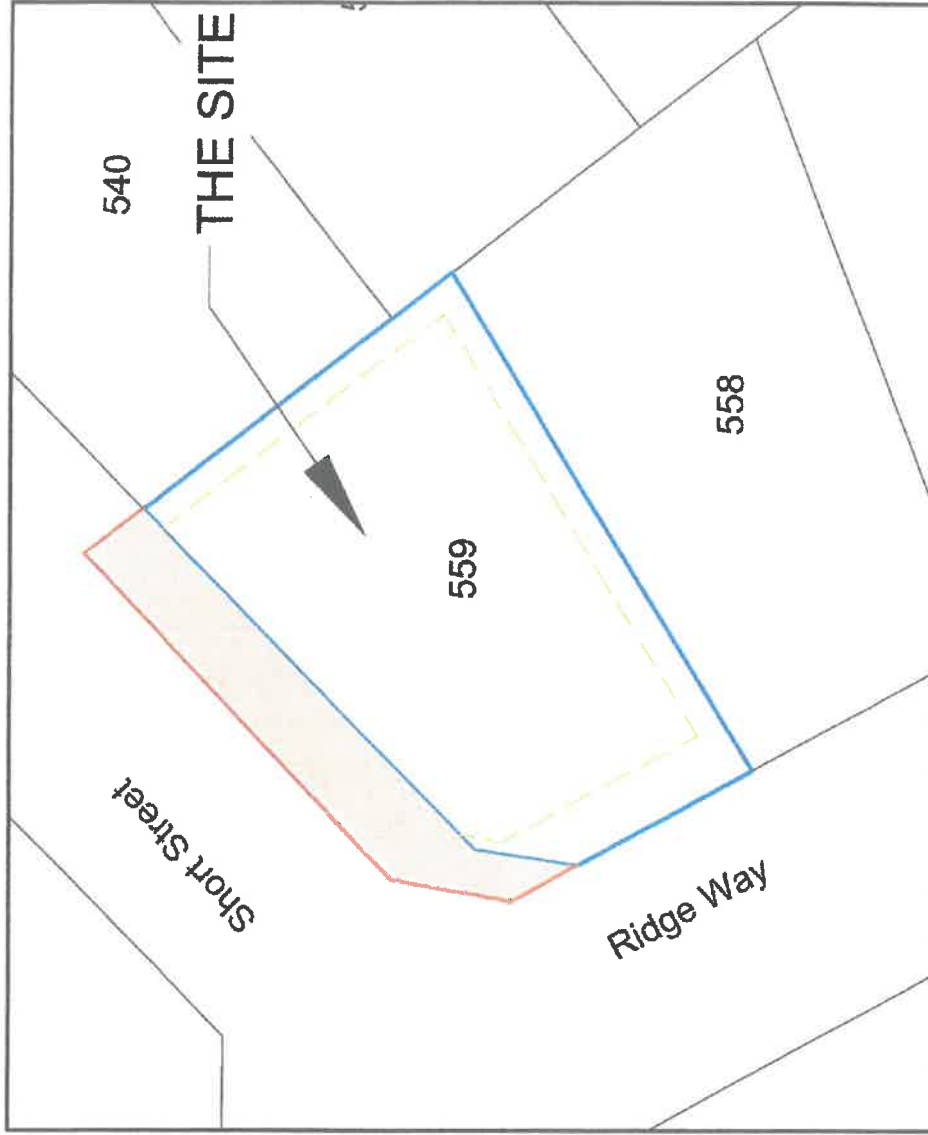
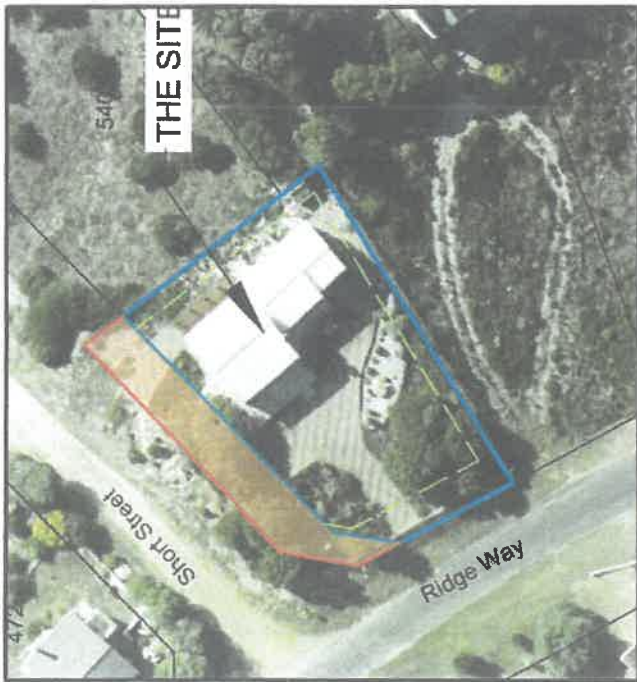
#### **4. RECOMMENDATION**

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 559 Pearly Beach will remain unchanged and the impact on the traffic will also remain unchanged;
- The application will have no additional impact on Short Street and has no impact on the actual tarred road surface.
- 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 Remainder Erf 1916 Pearly Beach that is  $\pm 206\text{m}^2$  in extent is purchased from the municipality at market value.
- The municipality will be alleviated from the burden of the upkeep of a portion of Remainder Erf 1916 Pearly Beach;
- This application is to formalise the portion of Remainder Erf 1916 Pearly Beach that has been incorporated with Erf 559 Pearly Beach by the former owners and used as garden and braai area;

With regards to the above mentioned it would be appreciated if the Overstrand Municipality would approve the following for Erf 559 Pearly Beach and a portion of Remainder Erf 1916 Pearly Beach:

- the subdivision of a portion of the Remainder Erf 1916 Pearly Beach in order to create a portion that is  $\pm 250\text{m}^2$  in extent that is in fact  $\pm 206\text{m}^2$  in extent;
- the closure of a portion of a public road;
- the rezoning of a portion of Remainder Erf 1916 Pearly Beach (a portion of the public road reserve) that is  $206\text{m}^2$  in extent;
- the consolidation of a portion of Remainder Erf 1916 Pearly Beach that is  $\pm 206\text{m}^2$  in extent with Erf 559 Pearly Beach;
- and the registration of a servitude area on the newly consolidated portion of Remainder Erf 1916 Pearly Beach that is  $\pm 206\text{m}^2$  in extent;
- the determination of an administrative penalty.



- Existing Erf Boundaries
  - Proposed Subdivision Lines
  - Portion A to be consolidated with Erf 559 Pearly Beach ( $\pm 206\text{m}^2$ )
  - - - New Building Lines
- Total Area of Erf 559 Pearly Beach after consolidation:  $912\text{m}^2 + 206\text{m}^2 \pm 1118\text{m}^2$

All distances approximate and subject to survey.

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Property Description:  
**ERVEN 559 & 1916 PEARLY BEACH**

Plan Description:  
**SUBDIVISION & CONSOLIDATION**

Scale: **1:500**  
Drawing Nr: **A4 Plan Active.DRW**  
Date: **2008/08/08**

