



**MEETING OF A  
SPECIAL  
MUNICIPAL PLANNING TRIBUNAL  
(MPT)**

**MINUTES**

**DATE:**  
**VENUE:**  
**TIME:**

**24 AUGUST 2023**  
**TOWN PLANNING COMMITTEE**  
**ROOM**  
**12:00**

**OVERSTRAND**  
**MUNICIPAL PLANNING TRIBUNAL**  
**MINUTES OF A SPECIAL MEETING OF THE**  
**MUNICIPAL PLANNING TRIBUNAL,**  
**HELD IN THE**  
**TOWN PLANNING COMMITTEE ROOM ON**  
**24 AUGUST 2023 AT 12:00**

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**PRESENT:**

**MEMBERS:**

Ms H Janser, Directorate Development  
Management  
Mr S Müller, Director : Infrastructure & Planning  
Mr H Blignaut, Deputy Director : Engineering  
Services  
Ms R Louw, Senior Manager : Strategic Planning

**OFFICIALS:**

Mr R Kuchar, Senior Manager : Town & Spatial  
Planning  
Ms H van der Stoep, Senior Town Planner  
Mr S van der Merwe, Senior Town Planner  
Mr P Roux, Town Planner  
Ms S Swart, Council Support Services

**APOLOGIES:**

Mr S Madikane, Director : LED

MUNICIPALITY



MUNISIPALITEIT

**SPECIAL  
MUNICIPAL PLANNING TRIBUNAL  
ATTENDANCE REGISTER**

Date: **24 AUGUST 2023**

I, the undersigned, hereby declare:

- that I will make known details of any personal or other interest in respect of matters on the agenda and whether I have been approached by any party prior to the meeting
- that I have read all the information on the agenda

NAME	DEPARTMENT / SECTION MUNICIPALITY	SIGNATURE
H JANSER	CHAIRPERSON DIR: DEV MANAGEMENT	
S MÜLLER	VICE-CHAIRPERSON OVERSTRAND MUNICIPALITY	
S MADIKANE	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	
S VAN DER MERWE	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
H VAN DER STOEP	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
P ROUX	TOWN PLANNER OVERSTRAND MUNICIPALITY	
H OLIVIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
B MINNAAR	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	

**1. OPENING**

The Chairperson, Ms H Janser, opened the meeting and welcomed those present.

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

Mr S Madikane, Director : LED

**RESOLVED:**

that the above-mentioned application for leave of absence **be approved.**

### 3. ITEMS FOR CONSIDERATION

#### 3.1

**REFERRAL: ERF 5473, 13 17TH AVENUE, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITION, REZONING, CONSENT USE AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF DE BROEDER INVESTMENTS (PTY) LTD**

**5473 HVK**

**File Ref: 4088/2022**

**P Roux**

**(028) 313 8900**

**Hermanus Administration**

**17 July 2023**

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### EXECUTIVE SUMMARY

An application has been received on 14 March 2021 from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus, for the following:

- ❖ **removal of restrictive title deed condition** in terms of Section 16.(2)(f) of the By-Law in order to remove restrictive Condition III.D.(c) contained in Title Deed T9341/2014;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

The proposal was considered by the Municipal Planning Tribunal (MPT) on 27 February 2023, and it was resolved as follows:

- “1. *that the comments/objections received be noted;*
2. *that the application in terms of Section 16.(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) applicable to Erf 5473, Hermanus for removal of Condition III.D(c) of Title Deed T9341/2014, to accommodate offices and a professional practice, **not be approved**, in terms of the provisions of Section 61 of the By-Law;*
3. *that the applications in terms of the By-Law applicable to Erf 5473, Hermanus, for the following*

- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law in order to rezone the property from Residential Zone 1: Single Residential to Business Zone 3: Local Business to allow business related uses on the property (offices);
- ❖ **consent use** in terms of Section 16.(2)(o) to accommodate a flatlet on the ground floor of a business premises, and
- ❖ **departure** in terms of Section 16.(2)(b) to relax the western building line from 3m to 2,68m to accommodate the proposed offices and the southern building line from 3m to 2,48m to accommodate the proposed flat.

**not be approved** in terms of the provisions of Section 61 of the By-Law;

4. *that the applicant and persons who commented be notified of their 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 conditions of approval.”*

**Reasons for the above decision are as follows:**

- The proposed use is in stark contrast to the residential character of the area.
- The Overstrand Growth Management Strategy, 2010 clearly indicated an area in Voëlklip which is earmarked for Economic Opportunity (local). This area is central in Voëlklip and ideally located for commercial/business activities to cluster. Therefore, the Municipality's view is to centralise and cluster business activities together and not allow for the dispersion of business activities throughout the residential suburb or along the R43 (Seventh Street). A precedent will be created of ad hoc commercial erven which will lead to the fragmentation of the residential suburb and line development along the R43 (Seventh Street).
- The motivation does not address the deviation of the Overstrand Municipal Spatial Development Framework, 2020 or of the Overstrand Growth Management Strategy, 2010.
- The objections received are noted and the concern that the proposed use will change the character of the area is agreed with. It should be noted that the land use application is not clear whether it is specifically a rezoning for a doctor's office and it seems like the rezoning is to allow for any type of professional. Thus, the fact that the property was used as a physiotherapy centre in the past is not relevant as attorneys, vets, or architects can utilise the property for their use and in different ways. Each type of professional practice has its own operational methods which could negatively impact the surrounding area.

Notice of the decision was sent on 7 March 2023. One appeal was received against the decision of the Municipal Planning Tribunal (MPT). The appeal was received from Messrs WRAP Project Office on behalf of De Broeder Investments (PTY) Ltd. The appeal was submitted on 27 March 2023 and is therefore submitted within the prescribed 21 days from the date of notification of the decision and the relevant appeal fee was paid. The appeal is thus regarded valid.

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The Appeal was sent to the Appeal Authority on 21 June 2023. On 5 July 2023 the Appeal Authority referred the appeal back to the MPT. The reason for the referral is to request advice and reconsideration of the application, in that the MPT suggests restrictive conditions to the type of business to be accommodated on Erf 5473 which will have the least potential of negative impact on the ambiance of Voëlklip.

**RESOLVED:**

that the item **be referred** to the Municipal Planning Tribunal meeting of 31 August 2023.

**RESPONSIBLE OFFICIAL :****P ROUX**

**3.2**

**ERF 2820, CORNER OF MAIN ROAD & JIMMY SMITH STREET (SANDBAAI COMMUNITY HALL), SANDBAAI: OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WARREN PETERSON PLANNING ON BEHALF OF OVERSTRAND MUNICIPALITY**

**2820 HSB****3766/2021****(H Boshoff)****H van der Stoep****(028) 313 8900****Hermanus Administration****20 July 2023**

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**EXECUTIVE SUMMARY**

To consider an application received on 12 March 2021 (revised application 25 March 2022) from Messrs Warren Petterson Planning on behalf of the Overstrand Municipality, the owner of Erf 2820, Sandbaai (the property), for the following:

1. **application for consent use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) to accommodate a 10m high monopole transmission tower comprising of sector antennas and microwave dishes attached to the mast, as well as equipment container within an enclosed area of approximately 16m<sup>2</sup>, on the property; and an
2. **application for the determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the illegal usage of a portion of the property for transmission apparatus purposes.

**RESOLVED:**

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law), applicable to Erf 2820, Sandbaai, for consent use to accommodate transmission apparatus on the property, consisting of a 10m high monopole transmission tower with sector antennas and microwave dishes attached to the mast, as well as an equipment container within an enclosed area of approximately 16m<sup>2</sup>, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the illegal land use and an illegal structure measuring 5m<sup>2</sup> was considered and that **an administrative penalty be payable** in terms of the provisions of Section 90 of the By-Law, and that the penalty be set at 5 percent (5%) of the maximum allowable penalty, which amounts to R9,773.45 (VAT incl.);



3. that the decisions in paragraphs 1 and 2 above be subject to the following conditions:
- (a) that the administrative penalty in 2 above, must be paid within 30 days from the final decision of the application;
  - (b) that the transmission tower and associated infrastructure must be placed at the eastern rear side of the main building to avoid any possible intrusive visual impacts and that a Site Development Plan be submitted to the Senior Manager : Town and Spatial Planning before the construction of the tower and associated infrastructure;
  - (c) that the tower must be a monopole design and may not exceed a height of 10m or any other applicable development parameters;
  - (d) that the colour of the tower, screening and all fixtures must be of such a nature that it blends in with the surrounding environment;
  - (e) that co-location on the tower for other service providers must be provided;
  - (f) that building plans be submitted to the Building Department for consideration and approval and that any requirements by internal departments at the time must be adhered to;
  - (g) that no signage, banners, or flags may be affixed to the mast;
  - (h) that no floodlighting may be affixed to the mast - other light fittings if required may only be permitted below a 3m height;
  - (i) that the Senior Manager: Town and Spatial Planning must be notified prior to other operators being permitted on the transmission tower and be provided with the relevant details of the proposed installations;
  - (j) that all the relevant conditions of Engineering Services be complied with;
  - (k) that the EMF of the transmission tower must always be compliant with ICNIRP standards as endorsed by the South African Department of Health;
  - (l) that the Municipality be indemnified against any claim which may be lodged as a result of the above approval; and
  - (m) that this approval does not absolve the applicant from compliance with any other relevant legislation.

4. that the applicant and the commenters be notified of their 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 conditional approval.

**REASONS FOR THE RESOLUTION:**

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ Numerous such enterprises have been approved in similar nodes throughout the Overstrand Municipality's area of jurisdiction.
- ❖ The height of the transmission apparatus is not out of character with the surrounding area.
- ❖ The proposed transmission tower will contribute to economic development, promotion of tourism and will ensure improved access to telecommunication services and emergency services.

**RESPONSIBLE OFFICIAL :****H BOSHOFF**

**3.3****PORTION 23 OF THE FARM UYLENKRAAL NO. 695 (STRANDSKLOOF), DIVISION BREDASDORP: APPLICATION FOR REZONING, CONSENT USE, AMENDMENT OF A SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS ATLAS TOWN PLANNING ON BEHALF OF LH & IH FOURIE****Farm 695/23(3966/2022)****SW van der Merwe****15 Auguts 2023****(028) 313 8900****Hermanus Administration****EXECUTIVE SUMMARY**

An application was received in terms of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 (By-law) from Messrs Atlas Town Planning on behalf of LH & IH Fourie applicable to Portion 23 of the Farm Uylenkraal No. 695 (Strandskloof), Division Bredasdorp for the following:

- ❖ **rezoning** in terms of Section 16(2)(a) of the By-law of a portion (14ha) of the property from Agriculture Zone 1 to Resort Zone to accommodate the expansion of the resort;
- ❖ **amendment of a Site Development Plan (SDP) / condition of an existing approval** in terms of Section 16(2)(h) of the By-law to accommodate expansion of the resort;
- ❖ **consent use** in terms of Section 16(2)(h) of the By-law to accommodate 10 holiday housing units; and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-law to accommodate the unauthorised expansion of the resort.

**RESOLVED:**

1. that the objection be noted;
2. that the application in terms of Section 16(2)(a) of the By-law for rezoning of a portion (14ha) of the subject property from Agriculture Zone 1 to Resort Zone to accommodate the expansion of the resort, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(h) of the By-law for amendment of a site development plan / condition of an existing approval to accommodate the expansion of the resort, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16(2)(o) of the By-Law for a consent use to accommodate 10 holiday housing units, **not be approved** in terms of the provisions of Section 61 of the By-Law;

5. 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 and building work as stipulated was considered, and that **an administrative penalty be payable** in terms of Section 90(4) of the By-law;
6. that the decisions in paragraphs 2, 3 and 5 above be subject to the following:
  - (a) that a detailed Site Development Plan be submitted for municipal approval within 30 days of the final approval, indicating the area, coordinates and extent of all existing and proposed land uses, buildings and structures and on-site parking provision in accordance with the Overstrand Land Use Scheme;
  - (b) that condition 2.(a) of the resolution of the Mayoral Committee dated 26 November 2008 be amended to read as follows:

*that the resort be limited to the buildings, structures and land uses indicated on the Site Development Plan referred to in paragraph (a) above;*
  - (c) that building plans be submitted to the Building Control Department for approval, within 90 days of the final decision and that all conditions of the Building and Fire Departments be complied with at that stage;
  - (d) that in accordance with Section 90(4) of the By-law an administrative penalty of R129 027.42 (VAT incl.) be payable within ninety (90) days of the decision;
  - (e) that the development be implemented strictly in accordance with the provisions of the Environmental Authorisation, dated 2022.10.25;
  - (f) that the screening between caravan/camping stands be restricted to natural hedges only;
  - (g) that the caravan/camping stands shall not be provided with any permanent/impermeable surfaces (such as concrete or pavers);
  - (h) that a soak-away sewage system not be permitted;
  - (i) that commercial rates and service tariffs as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
  - (j) that all the conditions of Eskom, Department of Transport and Public Works, Breede-Gouritz Catchment Management Agency, Heritage Western Cape, and CapeNature be complied with;

- (k) that all the conditions of Fire Services, Engineering Services and District Health be complied with;
  - (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
  - (m) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
  - (n) that the use of the chalets indicated on the approved Site Development Plan, including chalets P15 to P24, be restricted to Holiday Accommodation in accordance with the Overstrand Land Use Scheme, 2020.
7. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 with regards to the above conditions of approval.

#### **REASONS FOR THE RESOLUTION:**

##### Reasons for approval

- ❖ Environmental Authorisation was granted.
- ❖ The proposed development complies with the applicable policy and forward planning documents.
- ❖ The proposed development is consistent with the planning principles in terms of LUPA and SPLUMA.
- ❖ The proposed development contributes to sustainable development and investment in the area whilst also providing additional employment opportunities.
- ❖ The development promotes tourism and economic development.
- ❖ The development via the implementation of mitigation measures will not unacceptably detract from the rural character of the area, heritage resources or the natural environment.
- ❖ The development will not adversely impact on the vested rights of adjoining property owners, subject to the implementation of mitigation measures.
- ❖ The site layout was amended to ensure the development footprint avoids archaeological areas of significance.

##### Reasons for non-approval

- ❖ Alienation by means of sectional title division and fragmentation of ownership is not desirable due to the location of the property outside the urban edge and the proposal is, therefore, not consistent with the SDF.
- ❖ The subdivision and alienation of land outside of the urban edge is not consistent with the Western Cape Rural Land Use Guidelines, 2019.

**RESPONSIBLE OFFICIAL :**

**S VAN DER MERWE**

**The meeting adjourned at 12:55**