



# **MEETING OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)**

## **MINUTES**

**DATE:** 3 FEBRUARY 2022  
(JANUARY 2022 CYCLE)

**VENUE:** ELECTRICAL CONFERENCE ROOM,  
ONRUS

**TIME:** 10:00

# OVERSTRAND

## MUNICIPAL PLANNING TRIBUNAL

### MINUTES OF A MEETING OF THE MUNICIPAL PLANNING TRIBUNAL, HELD AT THE ELECTRICAL CONFERENCE ROOM, ONRUS ON 3 FEBRUARY 2022 AT 14:00

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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  
Mr R Kuchar, Senior Manager : Town & Spatial  
Planning

**OFFICIALS:**

Ms H van der Stoep, Senior Town Planner  
M S van der Merwe, Senior Town Planner  
Mr P Roux, Town Planner








**APOLOGIES:**

Mr S Madikane, Director : LED  
Ms R Louw, Senior Manager : Strategic Services  
Ms S Swart, Council Support Services

ATTENDANCE REGISTER

DATE: 3 Feb 2022

MEETING: MPT

<u>NAME</u>	<u>EMAIL ADDRESS</u>	<u>COMPANY</u>	<u>SIGNATURE</u>
Petrus Roux	petrusroux@oversend.gov.za	OM	
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HANRÉ BIGNANT	hbignant@oversend.gov.za	"	
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Helene Jansen	helenejansen@gmail.com		
Rochelle Lowm			Apology
S. Madikane			Apology

**1. OPENING**

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

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

Mr S Madikane  
Mr S van der Merwe

**RESOLVED:**

that the above-mentioned applications for leave of absence, **be granted.**

**3. CONFIRMATION OF MINUTES****3.1 Minutes of a Municipal Planning Tribunal Meeting held on 15 December 2021****RESOLVED:**

that the approval of the Minutes of the Municipal Planning Tribunal Meeting held on **15 December 2021**, stand over.

#### 4. ITEMS FOR CONSIDERATION

##### 4.1

**ERF 1067, 20 VICTORIA STREET, STANFORD, OVERSTRAND MUNICIPAL AREA: FOR REZONING AND CONSENT USE: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF ZELKAR INVESTMENTS 173 CC**

**20 STAN(1067)**

**P Roux**

**(028) 313 8900**

**Hermanus Administration**

**12 January 2022**

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#### **EXECUTIVE SUMMARY**

To consider and application received on 17 March 2021 from Messrs PlanActive Town and Regional Planning on behalf of Zelkar Investments applicable to Erf 1067, Stanford, for the following:

- ❖ application in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the rezoning of the property from Residential Zone 2 (GR2) to Business Zone 3: Local Business (B3), and
- ❖ application in terms of Section 16(2)(o) of the By-Law in order to accommodate the dwelling units on the ground floor.

#### **RESOLVED:**

1. that the comments received be noted;
2. that the applications in terms of Section 16(2)(a) and 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) to rezone Erf 1067, Stanford from General Residential Zone 2 (GR2) to Business Zone 3: Local Business (B3) and consent use in order to accommodate ten (10) dwelling units on the ground floor, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
  - (a) that this approval only pertains to the proposed Site Development Plan, as submitted with the application, *Drawing No stan1067c.drw* dated 02/2021 as submitted with the application;
  - (b) that proper management is undertaken to ensure that the proposed use will not be detrimental to the peacefulness and amenity of the surrounding area;
  - (c) that building plans be submitted to the Building Department for approval, and that any conditions by the Fire and Building Departments be complied with at that stage;

- (d) that the conditions in the Services Report be adhered to;
  - (e) that all conditions from Heritage Western Cape be adhered to;
  - (f) that the selling or serving of liquor on the property will be subject to the owner obtaining the necessary Liquor Licence;
  - (g) that the applicable rates and service tariffs, as determined by the annual budget is applicable, which tariffs are automatically adjusted in terms of the annual budget;
  - (h) that the land uses comply with Health and Safety Legislation and that this approval will be subject to regular inspections by the Fire Control Co-ordinator and the Health Inspector;
  - (i) that only signage that complies with the Municipal By-Law on Signage may be displayed on the premises;
  - (j) that on-site parking be provided to the satisfaction of the Senior Manager: Town and Spatial Planning and the Operational Services Department;
  - (k) that this approval does not absolve the landowner from compliance with any other relevant legislation, and
  - (l) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with.
3. that the applicant and persons who commented, within the prescribed timeframe, be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above conditional approval.

**REASONS FOR THE RESOLUTION:**

- Only the internal use of the main building will change. The outward façade will remain the same.
- The main building was historically used as a dining area, conference room, reception and bar area and the proposed changes are therefore in line with the historical economic land uses permitted on the property.
- The rezoning of the subject property to allow for business rights, which is in line with the existing uses in Queen Victoria Street and the character of the area, will be maintained.
- The retention of the dwelling units will ensure that the character of Church Street remains intact.
- The dwelling units create a buffer between the proposed commercial activities and the residential component in Church Street.

- The application has followed due procedure.
- The proposal is in line with policy documents.

**RESPONSIBLE OFFICIAL :**

**P ROUX**

## 4.2

**ERF 844, 14 ROSS STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR CONSENT USE: MESSRS INTERACTIVE TOWN AND  
REGIONAL PLANNERS ON BEHALF OF G & JJ POTGIETER**

844 GFK

SW van der Merwe  
11 January 2022

(028) 313 8900

Hermanus Administration

**EXECUTIVE SUMMARY**

To consider an application received on 1 March 2021 from Messrs Interactive Town and Regional Planners on behalf of G and JJ Potgieter applicable to Erf 844, Franskraal in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ removal of restrictive title deed conditions C.5(b) and C.5(d) contained in Title Deed T63560/2017 in terms of Section 16(2)(f) of the By-law of, and
- ❖ consent use to accommodate a proposed dwelling unit (ground floor) in terms of Section 16(2)(o) of the By-law.

**RESOLVED:**

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-law) applicable to Erf 844, Franskraal for removal of restrictive title deed conditions C.5(b) and C.5(d) contained in Title Deed T63560/2017, **not be approved** in terms of the provisions of Section 61 of the By-Law;
2. 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 844, Franskraal for consent use to accommodate a dwelling unit on the ground floor, **not be approved** in terms of the provisions of Section 61 of the By-Law; and
3. 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 Land Use Planning, 2020 with regard to the above conditions of approval.

**REASONS FOR THE RESOLUTION:**Reasons for non-approval

- ❖ The proposal does not comprise a mixed-use development and is not consistent with the applicable forward planning and policy documents (SDF and OMGMS).



- ❖ The business node will be compromised through the introduction of a purely single residential use (dwelling unit), which is not desirable.
- ❖ The introduction of a purely single residential land use (dwelling unit) will prevent or sterilise the use of the application property for future business purposes.
- ❖ The introduction of a single residential use (dwelling unit) will negatively impact the future development and use of adjoining business erven and will not aid to strengthen the role of the business node as envisaged in the SDF.
- ❖ The property owner failed to conduct due diligence regarding the zoning status prior to acquiring the property.
- ❖ As the recommendation in relation to the consent use was not supported, the application for the removal of restrictive conditions in order to permit a dwelling unit on the property is no longer relevant and cannot be supported.

**RESPONSIBLE OFFICIAL :**

**S VAN DER MERWE**

## 4.3

**ERF 2740, 19 ARGON ROAD, SANDBAAI (INDUSTRIAL AREA – HERMANUS BUSINESS PARK): APPLICATION FOR CONSENT USE (NOXIOUS TRADE) PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF BLUE HORIZONS PROPERTIES CC**

**2740 HSB (3651)**

**(H Boshoff)**

**H van der Stoep**

**6 December 2021**

**(028) 313 8900**

**Hermanus Administration**

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### **EXECUTIVE SUMMARY**

To consider an application received on 12 May 2021 from Messrs Plan Active Town and Regional Planners on behalf of Blue Horizons Properties CC, the owners of Erf 2740, Sandbaai (the property), for the following:

- ❖ application in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for consent use for a “noxious trade” to accommodate a bulk storage tank of 45m<sup>3</sup> (45 000L) for the storage of LPG (“Liquid Petroleum Gas”) on the property for the filling of 9kg to 48kg gas cylinders after which the filled gas cylinders are stored on a portion of the property with a storage capacity of 20m<sup>3</sup> (20 000L) from where it will be dispersed to gas agencies in the greater Hermanus area.

### **RESOLVED:**

1. that the comments and the applicant’s response thereto be noted;
2. 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) for a consent use for a “noxious trade” applicable to Erf 2740, Sandbaai to accommodate a bulk storage tank of 45m<sup>3</sup> (45 000L) for the storage of LPG (“Liquid Petroleum Gas”) on the property for the filling of 9kg to 48kg gas cylinders after which the filled gas cylinders are stored on a portion of the property with a storage capacity of 20m<sup>3</sup> (20 000L) from where it will be dispersed to the gas cylinder agencies in the greater Hermanus area, **not be approved** in terms of the provisions of Section 61 of the By-Law; and
3. that the applicant be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the decision in 2 above.

**REASONS FOR THE RESOLUTION:**

- ❖ The proposal will negatively impact on the vested rights of the owners of the adjacent residential properties.
- ❖ Although the applicant states that the industrial area was developed before the adjacent residential complex was developed, the applicant should also have considered the fact that its application was submitted well after the adjacent residential development was approved and nearly developed to its full capacity already.
- ❖ A Fire Protection Plan accompanied the application, but not an Emergency Evacuation Plan should the residents and landowners have to evacuate the area in the event of a major incident at the facility. As the property is situated in a cul-de-sac, an incident may will leave people isolated. People may be injured or even killed, and damage could occur to the direct surrounding-built environment. Fire Services' positive comment on the application was purely based on the Fire Safety Plan that is site specific and not on any form of a proposed Emergency Evacuation Plan.
- ❖ Although the applicant submitted an amended risk assessment together with an alternative installation proposal at a late stage of the application process, the opinion is still held that there are risks of low to severe incidents occurring on the site and it is therefore still regarded as undesirable. In this regard it is of utmost importance that cognisance be taken of the contents of the amended risk assessment on pages 38 – 49 thereof, which address the various types of possible incidents that can happen on the site with a mounded bulk vessel. It is evident from the amended risk assessment that the majority of possible incidents will have low to severe impacts beyond the boundaries of the property.
- ❖ The Hermanus Business Park is a unique and well-planned industrial hub with a harmonious architectural style abutting residential developments. It was further developed with the idea to serve as a soft industrial development hub that does not affect or impact on the safety of surrounding industrial property owners or residential property owners. Since the Business Park has almost been developed to its full capacity over the years, it has drawn more vehicle and pedestrian traffic from surrounding communities to the area daily, thus making the bulk filling site's location undesirable.
- ❖ The applicant did not demonstrate that alternatives sites in the broader Hermanus area that are more desirable for such a plant have been investigated.
- ❖ Due to the size of the property, it is the opinion that a separate access point and a separate exit point for the tanker truck cannot be provided.
- ❖ The applicant states that gas cylinders will only be filled after working hours and that the bulk tank will only be filled weekly, but such a schedule cannot be guaranteed by the applicant which increases the risk factor. Further, the filling of gas cylinders after hours will lead to a nuisance and risk to the adjacent residents.
- ❖ The statement by the applicant that the property is situated in a cul-de-sac that does not carry much traffic is not agreed with. It carries both vehicle and pedestrian traffic from surrounding communities that can be observed daily. The

Senior Manager: Fire and Emergency Services, Disaster Management & Security Services confirmed that the road is quite busy during seasonal and festival times during which increases the population in Hermanus significantly. It further confirmed that the current resources of the Fire Brigade are of concern as it does not yet comply with the minimum requirements as prescribed by the SANS 10090: Community Protection Against Fires. The Fire Brigade does not have the minimum staff, nor the specialised vehicles required to cope with a Major Hazard Installation in the event of a major incident occurring.

- ❖ There is no proof that the pressure and flow of water in the mains of the water hydrant points for the Fire Brigade would be sufficient in case of a major incident occurring at the plant.
- ❖ It is argued that the Municipality cannot risk the lives of surrounding property owners or the community at large as the chances of a BLEVE occurring still exists regardless of how low the possibility may be. The risk assessment indicates that plant would be of low impact, whilst it cannot guarantee that there are no risks at all.
- ❖ The applicant states that a service station can be operated from the site as a primary use, but it is doubtful whether the Planning Department would not require a similar consent use application since, in terms of the risk assessment, both LPG and fuel falls within the same hazardous category and a service station will therefore also have risk impacts for the surrounding landowners in the area.
- ❖ The Management Committee currently comprises two members, which is in breach of its approved Constitution, which requires a minimum of three members. There is no constitutionally established Management Committee for the Association for all practical purposes. In terms of a legal opinion from Legal Services, the Municipality may not ignore the Constitution of an Owners' Association and take a decision without its inputs since it would be an unlawful administrative act by the Municipality that may trigger the Promotion of Administrative Justice Act (PAJA). An Owner's Association can apply to the court to set aside a decision taken by a Municipality without such an Association's inputs, which could lead to unauthorised, high financial risks for the Municipality.
- ❖ Various objections and concerns were received from surrounding landowners.
- ❖ Being located adjacent to a residential development, as well as for the above reasons, the proposal is totally undesirable from a town planning perspective.

**RESPONSIBLE OFFICIAL :**

**H VAN DER STOEP**

**The meeting adjourned at 15:20**