



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

**MINUTES**

<b>DATE:</b>	<b>29 JUNE 2023</b>
<b>VENUE:</b>	<b>TOWN PLANNING COMMITTEE ROOM</b>
<b>TIME:</b>	<b>10:00</b>

**OVERSTRAND**  
**MUNICIPAL PLANNING TRIBUNAL**  
**MINUTES OF A MEETING OF THE**  
**MUNICIPAL PLANNING TRIBUNAL,**  
**HELD IN THE**  
**TOWN PLANNING COMMITTEE ROOM ON**  
**29 JUNE 2023 AT 10:00**

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**PRESENT:**

**MEMBERS:**

Ms H Janser, Directorate Development  
Management  
Mr S Müller, Director : Infrastructure & Planning  
Mr S Madikane, Director : LED  
Mr H Blignaut, Deputy Director : Engineering  
Services

**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 B Minnaar, Town Planner  
Ms S Swart, Council Support Services

**APOLOGIES:**




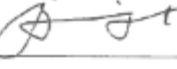
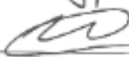

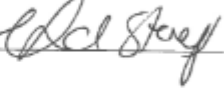
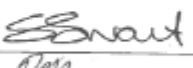

Ms R Louw, Senior Manager : Strategic Planning

**MUNICIPAL PLANNING TRIBUNAL  
ATTENDANCE REGISTER**

Date: **29 JUNE 2022**

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	
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology
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 OLIVER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	
B Minnaar	Town Planner Overstrand Municipality	

**1. OPENING**

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

**2. APPLICATIONS FOR LEAVE OF ABSENCE**

**Ms R Louw**

**RESOLVED:**

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

**3. CONFIRMATION OF MINUTES****3.1 Minutes of a Municipal Planning Tribunal Meeting held on 4 May 2023****RESOLVED:**

that the approval of the Minutes of the Municipal Planning Tribunal Meeting held on **4 May 2023, be approved**.

#### 4. ITEMS FOR CONSIDERATION

##### 4.1

**ERF 7182, 39 MARINE DRIVE, HERMANUS, WESTCLIFF, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING AND DEPARTURE: MESSRS WRAP PROJECT OFFICE ON BEHALF OF SUNNY SEAS PROPERTIES PTY (LTD)**

**7182 HWC**

**4119/2022**

**(H Boshoff)**

**H van der Stoep**

**12 June 2023**

**(028) 313 8900**

**Hermanus Administration**

#### EXECUTIVE SUMMARY

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), has been received on 19 April 2022 from Messrs WRAP Project Office on behalf of Sunny Seas Properties Pty (Ltd), the owner of Erf 7182, Hermanus for the following:

- ❖ **rezoning** of the property in terms of Section 16(2)(a) of the By-Law from General Residential Zone 1: Town Housing to General Residential Zone 3: Flats (Bulk Zone 1) to accommodate a four (4) story flat development consisting of a total of twenty-one (21) luxury apartments with amenities, and
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to:
  - ❖ relax the minimum required erf size for densification from 3000m<sup>2</sup> to 1677m<sup>2</sup>;
  - ❖ relax the eastern lateral building line from 4.5m to 2m to accommodate the proposed apartment block;
  - ❖ relax the eastern lateral building line from 4.5m to 0m, as well as the rear building line from 3m to 0m accommodate a refuse room; and to
  - ❖ relax the size restriction applicable to refuse rooms within building lines in terms of Chapter 16.1.1(a)(x) and 17.4.4 of the Overstrand Municipality Land Use Scheme, 2020, from 5m<sup>2</sup> to 17.5m<sup>2</sup>.

#### RESOLVED:

1. that the comments received, be noted;
2. that the application in terms of Section 16(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the rezoning of Erf 7182, Hermanus from General Residential Zone 1: Town Housing to General Residential Zone 3: Flats (Bulk Zone 1) to accommodate a four (4) story flat

- development consisting of a total of twenty-one (21) apartments with amenities, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law, to relax the requirement for the minimum erf size for densification from 3 000m<sup>2</sup> to 16 77m<sup>2</sup> to accommodate the development on the property in 2 above, **be approved** in terms of the provisions of Section 61 of the By-Law;
  4. that the application for departure in terms of Section 16(2)(b) of the By-Law to relax the eastern lateral building line of the property from 4.5m to 2m to accommodate the development in 2 above, **be approved** in terms of the provisions of Section 61 of the By-Law;
  5. that the approvals in 2., 3., and 4. above, be subject to the following conditions:
    - (a) the development, parking layout, and refuse room must be in accordance with the applicable layout plans that were submitted with the application;
    - (b) the development be restricted to a total of 21 units with amenities;
    - (c) that the refuse room must comply with the requirements of Chapter 17.4.3 of the applicable Zoning Scheme and the refuse bins must be put on the sidewalk on refuse collection days. The refuse bins must be removed from the sidewalk immediately after the refuse has been collected by the Municipality;
    - (d) that building plans must be submitted to the Building Department for consideration and approval, and any requirements by the Building and Fire Departments at that stage, must be complied with;
    - (e) that the relevant conditions of Telkom, Department of Environmental Affairs and Development Planning Directorate: Development Management, Region 1, Department of Environmental Affairs and Development Planning: Biodiversity and Coastal Management, Engineering Services and the GLS Report, must be complied with;
    - (f) that this approval does not absolve the landowners from compliance with any other relevant legislation; and
    - (g) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with.
  6. that the applicant and objectors be notified of their appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above conditional approvals.

**REASONS FOR THE RESOLUTION:**

- ❖ The application has followed due procedure.
- ❖ The development will not detract from the character of the immediate surrounding area or the coastal scenery and is in keeping with the surroundings.
- ❖ The coastal view lines of surrounding property owners will be minimally obscured.
- ❖ The development will enhance the ambiance of the immediate area as it will fill the gap in Marine Drive, resulting in all the properties in that section of Marine Drive being developed.
- ❖ The building line encroachment will not have a negative impact on the immediate and surrounding developed environment.
- ❖ The proposal is an upmarket development.
- ❖ Densification is in line with policy documents.
- ❖ The proposal not regarded as being undesirable from a town planning point of view.

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

## 4.2

**ERF 5328, 19 ROBIN AVENUE, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS & DEPARTURE: WRAP PROJECT OFFICE ON BEHALF OF L. ERASMUS**

**5328 HNC (4145/2022)**

**H van der Stoep**

**17 May 2023**

**(028) 313 8900**

**Hermanus Administration**

### EXECUTIVE SUMMARY

An application has been received on 11 May 2022 from WRAP Project Office on behalf of L Erasmus on Erf 5328, Hermanus for the following:

- ❖ **Removal of Restrictive Title Deed conditions** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 with reference to Clause B.(b) and B.(d) of Title Deed T85601/1999 applicable to Erf 5328, Northcliff, Hermanus to accommodate the proposed second dwelling and garage.

The restrictive title deed conditions read as follows:

- B. SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T11039/1969 imposed by the Administrator when approving of the establishment of Hermanus Township, Extension No. 4, namely: -

*“That words and expressions used in these conditions shall have the meanings assigned to them in the Regulations published under Provincial No. 401 dated 17<sup>th</sup> October 1935.”*

*AS being in favour of the registered owner of any Erf in the Township and subject to amendment or alteration by the Administrator under the provisions of Section 18(3) of Ordinance No. 33 of 1934:*

- (b) That only one dwelling together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.*
- (d) That no building or structure or any portion thereof except boundary walls and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf. No such building or structure shall be situated within 2,36 metres of the lateral boundary common to any adjoining erf.”*

- ❖ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to relax the southern lateral building line from 2m to 0m to accommodate the proposed garage.



**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 on Erf 5328, Hermanus for the removal of restrictive title deed conditions B.(b) and B.(d) of Title Deed T85601/1999 to accommodate the proposed second dwelling and garage, **be approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
  - (a) that the amended title deed be submitted for record purposes to the Municipality;
  - (b) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
  - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
  - (d) that all the conditions in the Services Report be complied with.
2. that the application in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 5328, Hermanus for a departure to relax the southern lateral building line from 2m to 0m to accommodate the proposed garage, **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 decision.

**REASONS FOR THE RESOLUTION****POINT 1: APPROVAL**

- ❖ The application has followed due procedure.
- ❖ Densification is in line with the objective of the Overstrand Spatial Development Framework.
- ❖ The removal of the restrictive conditions to align with the parameters in the Land Use Scheme is supported.
- ❖ A second dwelling is a primary right in terms of the Land Use Scheme.

**POINT 2: NON-APPROVAL**

- ❖ The height of the garage is excessive, the need for which was not properly motivated.

- ❖ The garage will have a negative impact on the liveability of the adjacent erf (objector).
- ❖ There is sufficient space on the property to relocate the garage to a position that would have a reduced impact on the adjacent erf.

**RESPONSIBLE OFFICIAL:****H VAN DER STOEP**

## 4.3

**ERVEN 8959 & 9079, ZWELIHLE, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, CLOSURE OF A PUBLIC PLACE, REZONING, CONSOLIDATION & CONSENT USE: OVERSTRAND MUNICIPALITY****8959 & 9079 HZW (4242/2022)****B Minnaar****(028) 313 8900****Hermanus Administration****30 May 2023**

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**EXECUTIVE SUMMARY**

An application has been received on 21 June 2022 on behalf of Overstrand Municipality for Erven 8959 & 9079, Zwelihle, Hermanus in terms of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) for the following:

- ❖ **subdivision** in terms of Section 16.(2)(d) of the By-Law to subdivide the Erf 9079, Zwelihle (11 751m<sup>2</sup>) into two (2) portions namely: Portion A (±2 353m<sup>2</sup>) and the Remainder (±9 398m<sup>2</sup>);
- ❖ **closure of a public place** in terms of Section 16.(2)(n) of the By-Law for the closure of Portion A;
- ❖ **rezoning** in terms of Section 16.(2)(a) of the By-Law of Portion A from Open Space Zone 2: Public Open Space to Business Zone 3: Local Business;
- ❖ **consolidation** in terms of Section 16.(2)(e) of the By-Law of Portion A (±2 353m<sup>2</sup>) with Erf 8959, Zwelihle (2 707m<sup>2</sup>) to create a Newly Consolidated Erf, Zwelihle (±5060m<sup>2</sup>);
- ❖ **consent use** in terms of Section 16.(2)(o) of the By-Law for a Place of Instruction/ Institution to accommodate a public library on the first floor of the proposed development on the Newly Consolidated Erf, Zwelihle (±5 060m<sup>2</sup>); and
- ❖ **consent use** in terms of Section 16.(2)(o) of the By-Law for the purpose of recreational and associated community facilities, as seen fit by the Overstrand Municipality on the Remainder Erf 9079, Zwelihle.

**RESOLVED:**

1. that the application in terms of Section 16.(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide the Erf 9079, Zwelihle (11 751m<sup>2</sup>) into two (2) portions namely: Portion A (±2 353m<sup>2</sup>) and the Remainder (±9 398m<sup>2</sup>); **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16.(2)(n) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the closure of a portion of public place (Portion A), **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16.(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to rezone Portion A from Open Space Zone 2: Public Open Space to Business Zone 3: Local Business, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application in terms of Section 16(2)(e) of the Overstrand Municipality Amended By-law on Municipal Land Use Planning, 2020 to consolidate Portion A (±2 353m<sup>2</sup>) with Erf 8959, Zwelihle (2 707m<sup>2</sup>) to create a consolidated erf (±5 060m<sup>2</sup>), **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amended By-law on Municipal Land Use Planning, 2020 for consent use for a Place of Instruction/Institution on the Newly Consolidated Erf, Zwelihle (±5 060m<sup>2</sup>) to accommodate a public library on the first floor, **be approved** in terms of the provisions of Section 61 of the By-Law;
6. that the application in terms of Section 16(2)(o) of the Overstrand Municipality Amended By-law on Municipal Land Use Planning, 2020 for consent use to develop recreational and associated community facilities, as seen fit by the Overstrand Municipality applicable to this zone, on the Remainder Erf 9079, Zwelihle (±9398m<sup>2</sup>) **be approved** in terms of the provisions of Section 61 of the By-Law;
7. that the approvals in Points 1 to 6 above be subject to the following conditions:
  - (a) that an amended Site Development Plan for the Newly Consolidated Erf (±5060m<sup>2</sup>), with a parking layout plan, be submitted to the Town Planning Department for approval;
  - (b) that the amended Site Development Plan design take into consideration and incorporate the planned traffic circle at the intersection of Schulphoek Boulevard & Mbeki Road;

- (c) that all the conditions of approval imposed by the Electrical Department be complied with;
  - (d) that all the conditions of approval imposed by the Engineering Services Department be complied with;
  - (e) that all the conditions of approval imposed by the Environmental Management Services be complied with;
  - (f) that the building plan be approved after consultation with the Local Heritage & Aesthetic Committee;
  - (g) that the conditions imposed by the horticulturalist be complied with; and
  - (h) that this approval does not absolve the applicant/owner from compliance with any other relevant legislation.
8. that the applicant be notified of its appeal right in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decisions.

**REASONS FOR THE RESOLUTION:**

- ❖ No objections were received from the public or Organs of State during the public participation process.
- ❖ The area is already earmarked for the proposed land uses in terms of the Overstrand Municipality Spatial Development Framework, 2020.
- ❖ This application will assist with the increase in opportunities and improvement in quality of life for the area of Zwelihle and the immediate surrounding area.
- ❖ The proposed development is in line with the SPLUMA and LUPA Planning Principles.

**RESPONSIBLE OFFICIAL:****B MINNAAR**

## 4.4

**ERF 271, 45 KUSWEG, GANSBAAI, OVERSTRAND MUNICIPAL AREA:  
APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS,  
DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY:  
MESSRS ME PLANNERS ON BEHALF OF M NEL**

**271 GFK (3727/2021)**

**SW van der Merwe**

**2 June 2023**

**(028) 313 8900**

**Hermanus Administration**

**EXECUTIVE SUMMARY**

An application has been received from Messrs ME Planners on behalf of M Nel in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) applicable to Erf 271, Gansbaai for the following:

- ❖ **removal of restrictive title condition** in terms of Section 16(2)(f) of the By-Law, namely condition C.1(c) contained in Title Deed T79622/2016, to accommodate the encroachment of the maximum permissible coverage from 50% to 60,95%;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law for the following encroachments:
  - relaxation of the 2m northern lateral building line varying between 1,1659m and 0m at ground floor to accommodate the existing garage and storeroom;
  - relaxation of the 2m northern lateral building line at first floor level varying between 1,568m to 0,255m and 1,475m to 1,167m to accommodate a balcony and a portion of the existing dwelling as well as a proposed planter;
  - relaxation of the 2m southern lateral building line varying between 1,994m and 1,294m at first floor to accommodate the existing dwelling;
  - relaxation of the street building line from 4m to 0m to accommodate the existing balcony, deck and planter;
  - encroachment of the maximum permitted coverage from 50% to 57,35% to accommodate the existing dwelling, and
  - to increase the coverage, from 57,35% to 60,95% to accommodate proposed additions;
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to accommodate the existing building.

**RESOLVED:**

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 (By-Law) for removal of restrictive title condition C.1(c) contained in Title Deed T79622/2016, to accommodate the encroachment of the maximum permissible coverage, **be approved** in terms of the provisions of Section 61 of the By-Law;

2. application for departure in terms of Section 16(2)(b) of the By-Law for the following encroachments:
  - departure of the 2m northern lateral building line varying between 1,1659m and 0m at ground floor to accommodate the existing garage and storeroom;
  - departure of the 2m northern lateral building line at first floor level varying between 1,568m to 0,255m and 1,475m to 1,167m to accommodate a balcony and a portion of the existing dwelling, as well as a proposed planter;
  - departure of the 2m southern lateral building line varying between 1,994m and 1,294m at first floor to accommodate the existing dwelling,

**be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application for departure in terms of Section 16(2)(b) of the By-Law to allow the encroachment of the maximum permitted coverage from 50% to 57,35% and 60,95% to accommodate the existing dwelling and proposed coverage encroachments **be partially approved** in terms of the provisions of Section 61 of the By-law to **51,29% only**;
4. that the application for departure in terms of Section 16(2)(b) of the By-Law for departure of the street building line from 4m to 0m to accommodate the existing balcony, deck and planter, **not be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(q) of the By-Law for determination of an administrative penalty **be exempted** from the payment of an administrative penalty in terms of the provision of Section 990(4) of the By-Law;
6. that the decision in paragraphs 1, 2. and 3. above be subject to the following conditions:
  - (a) that site coverage not exceed 51,29%;
  - (b) that the applicant, at his cost, demolish the balcony up to the 4m street building line to the satisfaction of the municipality within six (6) months after this decision;
  - (c) that the applicant, at his cost, demolish all encroachments of the existing building / structures beyond the property boundary and make good to the satisfaction of the municipality within six (6) months after this decision;
  - (d) that building plans be submitted to the Building Department for approval, and that all conditions of the Building- and the Fire Department, be complied with at that stage
  - (e) that all the conditions in the Services Report be complied with.

- (f) that all other development parameters as prescribed in the relevant Zoning Scheme, be complied with;
  - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
7. that the applicant 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 approval

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The Overstrand Land Use Scheme has sufficient control measures when it comes to land use, coverage and building line controls.
- ❖ The proposal will not negatively impact on the existing/vested rights of adjoining property owners or the character of the area.
- ❖ The property was acquired by the applicant from a deceased estate and was not responsible for any of the existing encroachments.
- ❖ The proposal will improve the aesthetic appearance of the property and character of the area as a whole.

Reasons for partial approval

- ❖ Rights vested with former building plan approval and the approved balcony, although adding coverage, cannot be refused.
- ❖ The applicant purchased the property unaware of the existing encroachments.

Reasons for non-approval

- ❖ The proposed coverage encroachments are excessive, to the detriment of the character of the area and will appear overly prominent in the streetscape.
- ❖ The coverage encroachments are not in line with the character and morphology of development in the area.
- ❖ The motivation and building plans do not clearly indicate and describe the proposed coverage encroachments.

**RESPONSIBLE OFFICIAL:****S VAN DER MERWE**



**MR S MADIKANE LEFT THE MEETING AT 11:10 WITH PERMISSION FROM THE CHAIRPERSON**

#### 4.5

**REMAINDER OF FARM KLIPFONTEYN 711, DIVISION CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR AMENDMENT OF A SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITION OF APPROVAL, CONSENT USE AND DEPARTURE: MESSRS PLAN ACITVE TOWN- AND REGIONAL PLANNERS ON BEHALF OF IRVIN AND JOHNSON LTD**

**Rem 711 GRCAL (3330/2019)**

**SW van der Merwe  
29 May 2023**

**(028) 313 8900**

**Hermanus Administration**

#### **EXECUTIVE SUMMARY**

An application was received from Plan Active on behalf of Irvin & Johnson Ltd (I&J) on Remainder of Farm Klipfontein No. 711, Division Caledon in terms of the Overstrand Municipal Land Use Planning By-Law, 2015 (By-Law) for the following:

- ❖ **amendment of a site development plan** in terms of Section 16(2)(l) of the By-Law to accommodate the existing abalone farm as well as proposed expansion;
- ❖ **amendment of condition 2(ii) of an existing approval** in terms of Section 16(2)(h) of the By-Law;
- ❖ **consent use** in terms of Section 16(2)(o) of the By-Law to accommodate agricultural industry (processing of abalone) and renewable energy infrastructure;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to exceed the maximum permitted floor space from 5 000m<sup>2</sup> to 21 294,50m<sup>2</sup>;
- ❖ **departure** in terms of Section 16(2)(b) from the parking provision to allow 236 on-site parking bays in lieu of 331 on-site parking bays; and
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law for building line relaxations as follows:
  - eastern lateral building line from 30m to 15m to accommodate a substation and security building;
  - southern lateral building line from 30m to 5,8m to accommodate a security building and filling higher than 1m, and
  - western lateral building line from 30m to 13m to accommodate a lapa.

#### **RESOLVED:**

1. that the objections/comment be noted;
2. that the application in terms of Section 16(2)(h) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Remainder of

Farm Klipfonteyn No. 711, Division Caledon for amendment of the Site Development Plan to accommodate the existing abalone farm and proposed expansion, **be approved** in terms of the provisions of Section 61 of the By-Law;

3. that the application in terms of Section 16(2)(l) of the By-Law applicable to Remainder of Farm Klipfonteyn No. 711, Division Caledon for the amendment of condition 2(ii) of an approval issued by the Overberg District Municipality, dated 7 October 1991, **be approved** in terms of the provisions of Section 61 of the By-Law, to read as follows: “only skeleton staff be housed on site and that only 4 houses for management staff and four security huts/labourer’s cottages be permitted”.
4. that the application in terms of Section 16(2)(o) of the By-Law applicable to the Remainder of Farm Klipfonteyn No. 711, Division Caledon for consent use to accommodate agricultural industry (processing of abalone) and renewable energy infrastructure, **be approved** in terms of the provisions of Section 61 of the By-Law;
5. that the application in terms of Section 16(2)(b) of the By-Law applicable to Remainder of Farm Klipfonteyn No. 711, Division Caledon for departures to exceed the maximum permitted floor space from 5 000m<sup>2</sup> to 21 294,50m<sup>2</sup> and to provide 236 on-site parking bays in lieu of 331 on-site parking bays, **be approved** in terms of the provisions of Section 61 of the By-Law;
6. that the application in terms of Section 16(2)(b) of the By-Law applicable to Remainder of Farm Klipfonteyn No. 711, Division Caledon for departure to encroach the following building lines:
  - eastern lateral building line from 30m to 15m to accommodate a substation and security building;
  - southern lateral building line from 30m to 5,8m to accommodate a security building and filling higher than 1m, and
  - western lateral building line from 30m to 13m to accommodate a lapa;**be approved** in terms of the provisions of Section 61 of the By-Law;
7. that the approvals in paragraphs 2. to 6. above be subject to the following:
  - (a) that a detailed Site Development Plan (SDP) be submitted for municipal approval prior to commencement of the development to the satisfaction of the municipality (amongst others the SDP shall demonstrate compliance with the mitigation measures and the relevant setback’s as per the Environmental Authorisation);
  - (b) that the development be limited to the buildings, structures and uses indicated on the approved SDP as per paragraph (a) above;

- (c) that the remainder of the subject property be managed as a conservation area in accordance with the provisions of the Environmental Authorisation;
  - (d) that the development be implemented strictly in accordance with the provisions of the Environmental Authorisation;
  - (e) that the height of all buildings be restricted to 8,5m (eaves level) and 10,5m (top of the roof / gable) as measured from the base level to the top of the structure;
  - (f) that the height of the feed manufacture and storage building not exceed 8,5m as measured from the base level to the top of the structure;
  - (g) 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;
  - (h) that building and/or engineering plans be submitted to the Building Department for approval, and that all conditions of the Building and Fire Departments be complied with at that stage;
  - (i) that all the conditions of Department of Transport and Public Works, Telkom, Breede-Gouritz Catchment Management Agency, Heritage Western Cape, and Cape Nature be complied with;
  - (j) that all the conditions from Fire Services, Waste Management, District Health and Engineering Services be complied with;
  - (k) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
  - (l) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
8. that the applicant/persons who commented 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 conditions of approval.

**REASONS FOR THE RESOLUTION:**

- ❖ 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 remainder of the property will be managed as a Nature Reserve.
- ❖ 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 implementation of mitigation measures.
- ❖ The site layout was amended to ensure the development footprint avoids archaeological areas of significance.
- ❖ The development will generate renewable energy (with the possibility to feed excess power into the grid).

**RESPONSIBLE OFFICIAL:****S VAN DER MERWE**

## 4.6

**ERF 1828, 21 BOUNDARY ROAD, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND SUBDIVISION: DIESEL & MUNNS INC. ON BEHALF OF BC & C ANDERSON**

1828 KPRB (3717/2021)

H van der Stoep

(028) 313 8900

Hermanus Administration

1 June 2023

**EXECUTIVE SUMMARY**

The above application received on 21 June 2021 from Diesel & Munns Inc. on behalf of BC & C Anderson applicable to Erf 1828, Pringle Bay served before the Municipal Planning Tribunal (MPT) on 4 May 2023. It was resolved that the item be referred back following further legal clarity on the need for the removal of restrictions application.

As per the above Resolution, the item was referred to the Legal Services Department for further clarity. Comments were received from Mr Jacques Wilkinson (Legal Advisor).

The application received from Diesel & Munns Inc. on behalf of BC & C Anderson applicable to Erf 1828, Pringle Bay is as follows:

- ❖ **Removal of Restrictive Title Deed Conditions** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the removal of restrictive title deed conditions with reference to Clauses 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e), and 1.V.(4)(f). Of Title Deed T14369/2020.

The restrictive title conditions read as follows:

*“V. SUBJECT to the conditions contained in Deed of Transfer T11452/1957, imposed by the Administrator when approving of the subdivision of a portion of the township in terms of the terms of Ordinance 33 of 1934:*

4. *This erf shall be subject to the following further conditions, provided especially that where in the opinion of the Administrator after consultation with the Townships Board and the local authority, it is expedient that the restriction in any such condition should at any time be suspended or relaxed, he may authorise the necessary suspension or relaxation, subject to compliance with such conditions as he may impose:*

*(a) It shall not be subdivided*

*(b) It shall be used for residential purposes only*

- (c) *Only one dwelling together with such outbuildings are ordinarily required to be used therewith shall be erected thereon.*
- (d) *Not more than half the area thereof shall be built upon.*
- (e) *No building or structure or any portion thereof, except boundary walls and fences, shall be erected nearer than 4,72 metres of the street line which forms a boundary of this erf, nor within 3,15 metres of the rear or 1,57 metres of the lateral boundary common to any adjoining erf, provided that, with the consent of the Local Authority, an outbuilding exceeding 3,05 metres in height measured from the floor.*
- (f) *Pending the establishment of a local authority for this township, the sewage of this erf shall not be disposed of otherwise than by means of properly constructed septic tank, otherwise to a properly constructed vacuum tank serving one or more erven. If any such tank is situated on this erf the owner shall without compensation remove the septic or vacuum tank after three month's written notice served upon him by such local authority.*

- ❖ **Subdivision** in terms of Section 16(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 1828, Pringle Bay into 2 portions, namely Portion A ( $\pm 2369\text{m}^2$ ) and Remainder ( $\pm 2336\text{m}^2$ ).

#### 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 on Erf 1828, Pringle Bay for the removal of restrictive Title Deed conditions 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e) and 1.V.(4)(f) of Title Deed T14369/2020, **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)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 1828, Pringle Bay into two (2) portions, namely Portion A ( $\pm 2\ 369\text{m}^2$ ) and a Remainder ( $\pm 2\ 336\text{m}^2$ ) with a 16m wide servitude (registered in favour of Remainder Erf 1828 to allow for access), **be approved** in terms of Section 61 of the By-Law;

that the approval of Point 2 above in terms of Section 61 of the By-Law be subject to the following conditions:

- (a) that the approval is only for the subdivision as indicated on the Subdivisional Plan No. C6129/Sub2 dated June 2021 as submitted with the application;

- (b) that a land surveyor be appointed to provide evidence that the driveway does not transgress onto Erf 540, and submit said evidence to the Municipality before the SG diagram be approved;
  - (c) that subject to the outcome of Point (b) above, the driveway of Remainder Erf 1828 be relocated if necessary to not traverse the newly created Portion 1 boundary;
  - (d) that any future development of Portion 1 be subject to compliance with the Environmental Authorisation;
  - (e) that no building or structure may be utilised on Portion 1 for any purpose until such time as the property has been registered at the Deeds Office, a Building Plan has been approved and structures built according to plan;
  - (f) that the conditions in the Services Report be complied with;
  - (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
  - (h) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
3. that the applicant and objectors be notified of its right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2020 with regard to the above decision.

**REASONS FOR THE RESOLUTION:****POINT 1**

- ❖ The application for a blanket approval is not justified.
- ❖ The proposed application is only for the subdivision of the property into two (2) portions and does not propose any building and or structure on the proposed new additional residential erf.
- ❖ The Title Deed conditions that were applicable to erven 538 and 539 were not transferred to the consolidated erf 1828. The removal of condition 1.V(4)(a) is therefore not required for the proposed subdivision.
- ❖ The applicant does not propose anything that would warrant the need for the removal of conditions 1.V.(4)(a), 1.V.(4)(b), 1.V.(4)(c), 1.V.(4)(d), 1.V.(4)(e) and 1.V.(4)(f).

**POINT 2**

- ❖ The application has followed due procedure.
- ❖ None of the relevant departments have any objection.
- ❖ The proposal will not negatively impact on the existing/vested rights of adjoining property owners.
- ❖ The proposed subdivision fits in with the character of the surrounding area and is desirable.
- ❖ The proposed subdivision will revert back to the original density approved in Pringle Bay Extension 3, with no additional erven being created.
- ❖ Although the subdivision configuration is different, no densification takes place, and the proposal is aligned with the original extent of erven in the area.

**RESPONSIBLE OFFICIAL:****H VAN DER STOEP****The meeting adjourned at 11:40**