



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

MINUTES

**DATE:
VENUE:
TIME:**

**26 NOVEMBER 2020
VIRTUAL
10:00**

OVERSTRAND
MUNICIPAL PLANNING TRIBUNAL
MINUTES OF A MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL,
HELD VIRTUALLY ON
THURSDAY, 26 NOVEMBER 2020, AT 10:00

PRESENT:

MEMBERS:

Mr S Müller, Director : Infrastructure & Planning
Ms D Arrison, Director : Management Services
Mr R Williams, Director : Community Services
Ms F Lloyd, Acting Director : Economic
Development & Tourism
Ms H Janser, Directorate Development
Management

OFFICIALS:

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

ALSO PRESENT

Me D Myburgh, Guest
Mr S Levetan, Guest

MUNICIPALITY



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**MUNICIPAL PLANNING TRIBUNAL
ATTENDANCE REGISTER**

Date: 26 NOVEMBER 2020

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
S MÜLLER	MPT CHAIRPERSON OVERSTRAND MUNICIPALITY	
R WILLIAMS	MPT VICE-CHAIRPERSON OVERSTRAND MUNICIPALITY	Joined via Teams
S MADIKANE	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology F Lloyd Acting
D ARRISON	MPT MEMBER OVERSTRAND MUNICIPALITY	Joined via Teams
H JANSER	MPT MEMBER DIR: DEV MANAGEMENT	Joined via Teams
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 OLMIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	
Danny Myburgh	Guest	Joined via Teams
Stephen Levetan	Guest	Joined via Teams

1. OPENING

The Chairperson, Mr S Müller, opened the meeting and welcomed those present. He welcomed Ms D Myburgh and Mr S Levetan who joined as guests.

In order to accommodate the guests to the meeting, Item 4.5 was first dealt with, but the minutes will however be dealt with in chronological order.

2. APPLICATIONS FOR LEAVE OF ABSENCE

Mr S Madikane (Represented by Ms F Lloyd)

RESOLVED:

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

3. CONFIRMATION OF MINUTES**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 29 October 2020****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **29 October 2020, be confirmed.**

4. ITEMS FOR CONSIDERATION

4.1

ERF 1292, 34 KLEINE STREET, STANFORD: APPLICATION FOR DEPARTURE: MESSRS ATLAS TOWER (PTY) LTD ON BEHALF OF ADENCO CONSTRUCTION (PTY) LTD

1292 SSS (4145)

P Roux

14 September 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application for departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law), applicable to Erf 1292, Stanford which was originally received on 20 June 2019 from Messrs BJB Project Services CC, and delegated to Messrs Atlas Tower (Pty) Ltd on 09 July 2020, on behalf of Adenco Construction (Pty) Ltd in order to accommodate a proposed transmission tower on the property. The application entails the following:

- ❖ to relax the street building line from 5m to 0m;
- ❖ to relax the lateral building line from 2m to 0m;
- ❖ to exceed the applicable 12m height restriction to accommodate a proposed 21m monopole mast, and
- ❖ to exceed the applicable 2,1m height restriction to accommodate a 2,4m high fence.

RESOLVED:

1. that the comments be noted;
2. that the applications submitted in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure to accommodate a proposed transmission tower, which entails the following:
 - ❖ to the relax the street building line from 5m to 0m;
 - ❖ to relax the lateral building line from 2m to 0m;
 - ❖ to exceed the applicable 12m height restriction to accommodate a proposed 21m monopole mast, and
 - ❖ to exceed the applicable 2,1m height restriction to accommodate a 2,4m high fence.

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

3. that the applicant and persons who commented be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 with regard to the above decision.

REASONS FOR RESOLUTION:

- ❖ The applicant failed to provide substantive evidence pertaining to the need to depart from the height restriction in order to develop the proposed telecommunication apparatus.
- ❖ The applicant alleges that there is insufficient network coverage in Stanford, whilst the network coverage maps on the websites of the various service providers indicate the contrary.
- ❖ The R43 is scenic links which joins Stanford to other tourist destinations, on which residents and tourist travel each day and the proposed 25m high telecommunication tower/mast disguised as a tree will have a visual impact on this routes. The proposed location of the said infrastructure is thus not acceptable.
- ❖ There are alternative locations which will provide better visual screening and integration with the urban fabric. The proposed location will cause the structure to be freestanding on a site which directly fronts the R43. The proposed site also does not provide and inherent visual screening.
- ❖ The applicant failed to provide alternative sites or to substantiate the reason why the current location is ideal and optimal versus other lessor visual sites in Stanford industrial.

RESPONSIBLE OFFICIAL :**P ROUX**

4.2

ERF 12221, 5 KWAAIWATER ROAD, EASTCLIFF, HERMANUS: APPLICATION FOR DEPARTURE: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF THE OGWINI TRUST

12221 HEC (3284/2019)

P Roux

19 October 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 20 August 2019 from Messrs Plan Active Town and Regional Planners on behalf of the Ogwini Trust applicable to Erf 12221, Hermanus (Eastcliff) for a departure in terms of Section 16(2)(b) to exceed the height restriction from 8m to 8,76m to accommodate part of the existing roof structure of the dwelling on the property.

RESOLVED:

1. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) to exceed the height restriction from 8m to 8,76m to accommodate part of the existing roof structure of the dwelling on Erf 12221, Hermanus (Eastcliff), **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that the approval is only for the departure as indicated on Plan No. *LAD_600* as submitted on *11 February 2020*;
 - (b) that revised "as built" building plans be submitted indicating the updated base level while retaining the original building plan measurements;
 - (c) that the conditions in the Services Report be complied with;
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
2. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:

- ❖ The structure was developed in line with the character of the area.

- ❖ The proposed departure does not exceed the height of the original dwelling which was demolished.
- ❖ The footprint of the portion of the roof has minimal impact on views from adjacent property owners.
- ❖ The objection which were received from the adjacent property owner was addressed by the applicant.
- ❖ No restrictive condition is contained in the Title Deed which prohibits the proposed departure.
- ❖ The use of the dwelling will remain for residential purposes and will not impact on the character of the area.
- ❖ No additional services will be required.

RESPONSIBLE OFFICIAL :

P ROUX

4.3

ERF 4846, 15 ELEVENTH AVENUE, KLEINMOND, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING AND SUBDIVISION: MESSRS PLAN ACTIVE ON BEHALF OF MG HILTTL

4846 KM (3333/2019)

H van der Stoep

12 October 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 12 September 2019 from Messrs Plan Active Town and Regional Planners on behalf of MG Hiltl on Erf 4846, Kleinmond for the following:

- ❖ Subdivision in terms of Section 16(2)(d) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 in order to subdivide Erf 4846, Kleinmond into five (5) portions and a Remainder, measuring as follows:
 - Portion A – ±84m² in extent
 - Portion B – ±1016m² in extent
 - Portion C – ±1016m² in extent
 - Portion D – ±1016m² in extent
 - Portion E – ±312m² in extent
 - Remainder Erf 4846 – ±1016m² in extent
- ❖ Rezoning in terms of Section 16(2)(a) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 in order to subsequently rezone Portions A and E from Residential Zone 1 to Transport Zone 2.

RESOLVED:

1. that the application in terms of Section 16(2)(d) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) in order to subdivide Erf 4846, Kleinmond into five (5) portions and a Remainder, measuring as follows:
 - Portion A – ±84m² in extent
 - Portion B – ±1016m² in extent
 - Portion C – ±1016m² in extent
 - Portion D – ±1016m² in extent
 - Portion E – ±312m² in extent
 - Remainder Erf 4846 – ±1016m² in extent

be approved in terms of the provisions of Section 61;

2. that the application in terms of Section 16(2)(a) of the By-Law in order to subsequently rezone Portions A and E from Residential Zone 1 to Transport Zone 2, **be approved** in terms of the provisions of Section 61,
3. that the approvals in Points 1. and 2. be subject to the following conditions:
 - (a) that subdivision be in line with Drawing No. 4846.drw dated September 2019 submitted with this application;
 - (b) that the proposed subdivided Portions A and E be rezoned from Residential 1 to Transport Zone 2 as per Drawing No. 4846.drw dated September 2019;
 - (c) that the proposed subdivided and rezoned Portions A and E [as per Condition (b) above] be transferred by the property owner to the local authority with the registration of the first erf;
 - (d) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (e) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
 - (f) that all the conditions in the Services Report be complied with.
4. that the applicant and objector 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 decision.

REASONS FOR RESOLUTION:

- ❖ The application is in line with forward planning documents.
- ❖ The creation of four (4) residential erven is in line with the surrounding erf extents and will not be to the detriment of the character of the area.
- ❖ The objection regarding dust and speeding is not the responsibility of the applicant and thus cannot be held responsible.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.4

ERF 7073, 2 ASTER STREET, MOUNT PLEASANT, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: SO YUSAF

7073 HMP (3476/2019)

H van der Stoep
15 October 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application for departure was received on 29 October 2019 from SO Yusaf in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Erf 7073, Hermanus (Mount Pleasant) in order to:

- a) relax the northern street building line from 2m to 0m and the eastern lateral building line from 1m to 0m to accommodate a structure consisting of two (2) store rooms; and to
- b) relax the western street building line from 4m to 2,135m and the southern lateral building line from 1m to 0,4m to accommodate a garage.

RESOLUTION:

1. that the application for departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) applicable to Erf 7073, Hermanus (Mount Pleasant) in order to:
 - a) relax the northern street building line from 2m to 0m and the eastern lateral building line from 1m to 0m to accommodate a structure consisting of two (2) store rooms; and to
 - b) relax the western street building line from 4m to 2,135m and the southern lateral building line from 1m to 0,4m to accommodate a garage

not be approved in terms of the provisions of Section 61 of the By-Law; and
2. that the applicant be notified of his/her right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

REASON FOR RESOLUTION:

- ❖ The application documentation provided by the applicant and its architectural draughtsman relating to the application is grossly false, incorrect and therefore they consciously mislead the Municipality, which is an offense in terms of the provisions of Section 84 of the By-Law.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

4.5

ERF 10347, 17 LONG STREET, NORTHCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE: MESSRS PLAN ACTIVE ON BEHALF OF ER SCHIMMER AND BU RIEDELSHEIMER

10347 HNC (3536/2019)

H van der Stoep

29 September 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 9 December 2019 from Messrs Plan Active Town and Regional Planners on behalf of ER Schimmer and BU Riedelsheimer on Erf 10347, Hermanus for a consent use in order to establish a live entertainment venue consisting of a night club and outdoor venue to be utilised for occasional live entertainment on the above-mentioned property.

The motivation report indicated an application to establish an informal trading area on occasion.

RESOLVED:

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 10347, Hermanus for a consent use in order to establish a live entertainment venue consisting of a night club and outdoor venue to be utilised for occasional live entertainment on the above-mentioned property, **not be approved**; and
2. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:

- ❖ The night club has been operating illegally.
- ❖ The establishment has held live concerts illegally.
- ❖ The applicant ignored the request for compliance with the Zoning Scheme and shown total disregard for the issues raised by the complainants.
- ❖ The Noise Impact Assessment (NIA) clearly indicates excessive noise pollution from the establishment.
- ❖ The proposed mitigating measures will not ensure the elimination of noise pollution of the surrounding area.
- ❖ The ripple effect of the use of the establishment for a nightclub and or live entertainment will severely impact the surrounding area as indicated by the NIA.
- ❖ The management of the recommendations as per the NIA by the applicant is not indicated. Therefore, it is unclear what measures will be put in place and the

responsible person to ensure compliance with the recommendations and monitoring of the situation.

- ❖ Informal trading is a consent use on Business Zone I erven in terms of the Overstrand Zoning Scheme, 2013. An application was not submitted for the informal trading area.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

4.6

**ERF 5580, 2 CORAL ROAD, BETTYS BAY, OVERSTRAND MUNICIPAL AREA:
PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND
CONSENT USE: MESSRS PLAN ACTIVE TOWN & REGIONAL PLANNERS ON
BEHALF OF THE BOUWER TRUST**

5580 KBB (2901/2018)

H van der Stoep

(028) 313 8900

Hermanus Administration

13 October 2020

EXECUTIVE SUMMARY

An application was received on 13 December 2018 from Messrs Plan Active Town and Regional Planners on behalf of the Bouwer Trust on Erf 5580, Betty's Bay for the following:

- ❖ Removal of restrictive title condition in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 on Erf 5580, Betty's Bay for the amendment of the restrictive conditions on Page 3, Clause No. I.D.A.(a), Page 5, Clause No. II,D.A.(a) and Page 8, Clause No. III,D.(I)(a) in Title Deed T10710/2018.

The restrictive conditions read as follows:

Page 3, Clause I No. D.A.(a) :

"D. SUBJECT FURTHER to the following special condition contained in Deed of Transfer No. T2078/1947, namely:

A. As being in favour of the registered owner of any erf in Betty's Bay Township Extension No. 1 and subject to the change and amendment by the Administrator in terms of the provisions of Section 18(3) of Ordinance No. 33 of 1934:

(a) That only one building for the use as shops, business premises (which shall not include a licensed hotel, off sales liquor license, bottle store, garage or cinema), a dwelling house, residential building, place of public workshop and/or a building combining two or more of such uses, together with such outbuildings as are ordinarily required to be used therewith be erected on this erf.

Page 5, Clause II No. D.A.(a) :

"D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer No. T14143/1949, namely:

A. *As being in favour of the registered owner of any erf in Betty's Bay Township Extension No. 1 and subject to the change and amendment by the Administrator in terms of the provisions of Section 18(3) of Ordinance No. 33 of 1934:*

(a) That only one building for the use as shops, business premises (which shall not include a licensed hotel, off sales liquor license, bottle store, garage or cinema), a dwelling house, residential building, place of public workshop and/or a building combining two or more of such uses, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.

Page 8, Clause III No. D.(l).(a) :

"D. SUBJECT FURTHER to the following special conditions contained in Deed of Transfer No. T14144/1949, namely:

I. As synde ten gunste van die geregistreerde eienaar van enige erf in die Dorp Bettysbaai en onderhewig aan wysigings of veranderings deur die Administrateur kragtens die bepalings van Artikel 18(3) van Ordonnansie Nr. 33 van 1934:

(a) That only one building for the use as shops, business premises, which shall not include a licensed hotel, off sales liquor license, bottle store, garage or cinema), a dwelling house, residential building, place of public workshop and/or a building combining two or more of such uses, together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf.

❖ Consent Use in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 in order to utilise a portion of the existing building on the property concerned for a Tops Liquor Shop.

RESOLVED:

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) on Erf 5580, Betty's Bay for the amendment of the restrictive conditions Page 3, Clause No. I.D.A.(a), Page 5, Clause No. II,D.A.(a) and Page 8, Clause No. III,D.(l)(a) in Title Deed T10710/2018, **be approved** to read as follows:

❖ *"That the erf may only be used for uses as shops, business premises and bottle store (which shall not include a licensed hotel), garage and/or buildings combining two or more of such uses together with such outbuildings as are ordinarily required to be used therewith, be erected on this erf."*

2. that the application in terms of Section 16(2)(o) of the By-Law for a consent use in order to utilise a portion of the existing building on the property concerned for a bottle store, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the approvals in Points 1 and 2 above be subject to the following conditions:
 - (a) the bottle store be developed and operated in conjunction with the grocery shop;
 - (b) 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;
 - (c) that the facility complies with Health and Safety Legislation and Fire Regulations and that applications be made for the relevant Health and Safety and Fire Certificates;
 - (d) that adequate provision be made to manage the behaviour of patrons to ensure the peacefulness and amenity of the area;
 - (e) that a single non-illuminated sign, that complies with the Municipal By-Law on Signage, may be displayed on the premises;
 - (f) that the trading hours of business be in accordance with Overstrand Liquor By-Law;
 - (g) that the Overstrand Municipality retains the right to enforce any relevant legislation, as well as law and order on the premises, on the landowner/s;
 - (h) that the site provide for the provision of refuse storage in terms of Part U of SANS 10400 of the National Building Regulations;
 - (i) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (j) that all the conditions in the Services Report be complied with; and
 - (k) that all the conditions imposed by the Western Cape Government : Transport & Public Works be complied with.
4. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:

- ❖ The application has followed due procedure.
- ❖ A total of two hundred and fifty three (253) registered letters were send of which only nine (9) was within a radius of 500m. The direct surrounding owners did not object to the application.
- ❖ The property is located in an existing business node.
- ❖ It is located on the fringe of a residential area with the R44 Provincial Road as the northern boundary.
- ❖ Many of the objections are assumptions, whilst similar businesses are being conducted successfully in the surrounding towns.
- ❖ The character of an undeveloped sleepy town of Betty's Bay has changed substantially the past 77 years, permanent residents and a younger demographic is evident, which creates an economic market to cater for the different needs.
- ❖ No new municipal services will be required.
- ❖ The application is in line with the aims of the Overstrand Municipality Spatial Development Framework and Growth Management Strategy to promote economic development within the existing business nodes.
- ❖ The objections received question the desirability of the application in relation to the impact on the character of the area. The area is however identified as a business node.
- ❖ The objectors question the desirability of the application in relation to the impact on surrounding property owners. The surrounding owners did not object to the application.
- ❖ The approval of the application would create job opportunities and also benefit the economy of the area with residents' spending money in the area.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.7

PORTION 229 OF FARM 575, BENGUELA COVE, OVERSTRAND MUNICIPAL AREA: AMENDMENT OF SITE DEVELOPMENT PLAN: MESSRS WRAP ON BEHALF OF BENGUELA COVE INVESTMENTS (PTY) LTD**HBENG 229/575 (2948/2019)****H Olivier****(028) 313 8900****Hermanus Administration****20 October 2020**

EXECUTIVE SUMMARY

An application was received on 2 February 2019 from Messrs WRAP on behalf of Benguela Cove Investments (Pty) Ltd on Portion 229 of Farm 575, Benguela Cove for the amendment of the Site Development Plan (SDP) in terms of Section 16(2)(l) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to accommodate the new water play park, large wooden decking and seating area.

RESOLVED:

1. that the application in terms of Section 16(2)(l) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) for amendment of the Site Development Plan applicable to Special Zone II site on Portion 229 of Farm 575 to accommodate a water play park and wooden deck, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that building plans for the structures be duly approved by the Benguela Cove Estate Home Owners Association (HOA) be submitted to the Municipality within three (3) months of the date of the approval letter;
 - (b) that a Landscape Plan be submitted to the Municipality, duly approved by the HOA, addressing specifically a noise control barrier and be submitted to the Municipality within three (3) months of the date of the approval letter;
 - (c) that any alterations or work required to comply with conditions (a) and (b) above, be complied with within six (6) months of the final approval date of this application;
 - (d) that in terms of the "Noise Control Regulations" promulgated under the Environmental Conservation Act, 1989 (Act 72 of 1989) the music volumes emanating from the premises at all times be controlled in such a manner that it adds less than 7dB(A) to ambient noise;

- (e) That, should it be necessary to provide any additional ablution facilities due to the additional people visiting the site, it be provided to the satisfaction of the Building Department;
 - (f) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
 - (g) that adequate provision be made to manage the behaviour of patrons;
 - (h) that a scaled Site Development Plan be provided to the Municipality, clearly showing parking required and parking provided, the size of the water play park and wooden decking to the satisfaction of the Senior Manager: Town and Spatial Planning;
 - (i) that all conditions in the Services Report be complied with;
 - (j) that all the conditions of the Western Cape Government : Transport & Public Works be complied with; and
 - (k) that all the conditions of Telkom be complied with.
2. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:

- ❖ With the specific conditions of the approval, the Benguela Cove Home Owners Association (HOA) will be provided the opportunity to consider building plans for the applications and also ensure that any service contracts and levies between the developer and HOA be duly addressed.
- ❖ The property has a potential to be used for tourism related businesses.
- ❖ Some of the objections were valid concerns, whilst the applicant also has some reasonable expectations to utilize the property for expanded tourist business uses. Mitigating conditions would create the balance to protect both parties' interests.
- ❖ All relevant municipal and state departments support the application.
- ❖ In terms of comments received from municipal and state departments, no concerns were raised regarding availability of services or traffic impact.
- ❖ The submission of a Landscape Plan indicating a noise barrier to immediate residents, would mitigate such concern and help protect the character of the surrounding low-density residential component.
- ❖ The applicant had to submit this planning application, whilst another planning application was being considered on the site, due to the illegal construction of some structures. This fact was however clearly indicated in this application, and considering that the previous application for place of entertainment and market

stalls was significantly scaled down in the approval thereof. The process followed and information provided was sufficient to consider this application.

- ❖ At this stage three hundred and five (305) parking bays are provided for in terms of the approved SDP, and only two hundred and fifty seven (257) parking bays are required at most. This provides for forty eight (48) additional parking bays, of which approximately only a maximum of seven (7) would be required for the water play park.
- ❖ The SDP submitted did not indicate a scale, but considering the fact that the structures exist, the 10m building line is clearly shown on the plan and the size of the market stall areas and place of entertainment areas were provided on the SDP. The SDP was sufficient to consider the application.
- ❖ The objectors did not provide substantial proof that it is a requirement that the HOA had to provide their consent for the application for the amendment of the SDP. All owners and the HOA also duly were provided the opportunity to partake in the public participation process and objections were duly considered.

RESPONSIBLE OFFICIAL :

H OLIVIER

4.8

PORTION 3 (DE GANG) OF FARM 575, AFDAKSRIVIER, CALEDON DIVISION, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND CONSENT USE: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF AFDAKSRIVIER (PTY) LTD

Ptn 3 of Farm 575, RCAL (4103)

H Olivier

12 October 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application has been received on 13 July 2018 from Messrs Interactive Town and Regional Planning on behalf of Afdaksrivier (Pty) Ltd on Portion 3 (De Gang) of Farm 575, Afdaksrivier for the following:

- ❖ Departure in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 for the following:
 - to accommodate a gatehouse of 6m² in lieu of 5m²;
 - to relax the eastern lateral building lines from 30m to 10m to accommodate the dwelling units and staff quarters;
 - to relax the eastern lateral building lines from 30m to 4,5m to accommodate a gatehouse in excess of 5m² in extent;
 - to relax the western street building line from 30m to 0,9m to accommodate a gatehouse in excess of 5m² in extent;

- ❖ Consent Use in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to accommodate five (5) additional dwelling units.

RESOLUTION:

1. that the application in terms of Section 16(2)(o) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a consent use for five (5) additional dwelling units on Portion 3 (De Gang) of Farm 575 Afdaksrivier, Caledon District, **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)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure to accommodate a gatehouse larger than 5m² in extent, measuring 6m² in extent; also a departure to relax the 30m eastern lateral building line to 4,5m and 10m to accommodate a gatehouse and other farm buildings respectively, and to relax the 30m western street building line to 0,9m to accommodate the gatehouse, **be partially approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:

- (a) that the approval does not include the five (5) additional dwelling units;
 - (b) that the buildings be placed as indicated on Site Development Plans AA QS (4 plans) for the gatehouse and other buildings, excluding the additional dwellings;
 - (c) that the conditions in the Services Report be complied with;
 - (d) that the conditions by Telkom be complied with;
 - (e) that all the conditions by Eskom be complied with;
 - (f) that all Fire Regulations in terms of SANS 10400 T: 2011, be complied with;
 - (g) that building plans be submitted to the Municipal Building Branch for all buildings, for their consideration and approval;
 - (h) that this is not an approval in terms of any other relevant legislation; and
 - (i) that the labourers' cottages and farm manager's unit be limited to one (1) storey, as indicated in Council's Policy for Farm Buildings.
3. that the applicant and objectors 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 RESOLUTION:**Point 1:**

- ❖ The application is not supported by EA&DP: Planning Western Cape as the proposal is not in line with the Western Cape Rural Area Guidelines.
- ❖ The application is not supported by Department of Agriculture: Western Cape, who is the authority on value of agricultural land, as the additional dwelling units are proposed on cultivated agricultural land.
- ❖ The proposal for the additional dwelling units is not in line with Council's approved Policy for the establishment of Additional Dwelling Units, as the required consent of the Department of Agriculture was not obtained, who consider the land to be of such high potential that they do not support the application.
- ❖ The units are also not clustered together or on or near the farm werf, which could increase the impact on the potential of the agricultural land.

- ❖ The proposal is not in line with the Planning Principle of Spatial Sustainability, as it would impact on valuable agricultural land, and not be in line with Section 42 of SPLUMA.

Point 2:

- ❖ It is only partially approved as the additional dwelling units are not supported.
- ❖ The Department of Transport and the Engineering Department support the application, therefore it is not foreseen that the gatehouse would have a negative impact on the Karwyderskraal Road.
- ❖ The main farm dwelling, farm manager's dwelling and labourers' cottages are primary rights as long as they are used for bona fide agricultural activities.
- ❖ The placement of the above-mentioned buildings closer to the farm boundary ensures less valuable agricultural land will be impacted.
- ❖ The relaxation of the building line to accommodate the above-mentioned buildings would not have a negative effect on surrounding neighbours, as the buildings will still be 10m from the boundary line.
- ❖ These structures are considered bona fide farm buildings, not residential buildings, and the ODM's proposed 800m radius for "residential development" should not be considered relevant.
- ❖ The above-mentioned buildings will not have a negative impact on the character of the area, and is therefore desirable.

RESPONSIBLE OFFICIAL :**H OLIVIER**

4.9

ERF 4725, 21 BERGHOF DRIVE, ONRUSTRIVER: APPLICATION FOR DETERMINATION OF ZONING: MESSRS WRAP ON BEHALF OF PH DE CHATTON DE KOCK

4725 HON (3226/2019)

H Olivier

(028) 313 8900

Hermanus Administration

20 October 2020

EXECUTIVE SUMMARY

An application was received on 17 July 2019 from Messrs WRAP Consultancy on behalf of PH De Chatton De Kock on Erf 4725, Onrustriver in terms of Section 16(2)(m) of the Overstrand Municipality By-Law on Land Use Planning, 2015 for a determination of zoning motivating that the existing cottage be accommodated as a dwelling unit in terms of a consent use right and the upgrade and expansion of the cottage up to 625m² in size in extent be allowed under existing land use rights.

RESOLVED:

1. that the application in terms of Section 16(2)(m) of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 for a zoning determination accommodating the existing cottage on Erf 4725, Onrustriver as a dwelling unit in terms of a consent use right, which also allow the upgrade and expansion of the cottage up to 625m² in extent, **not be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the existing cottage be accommodated as a consent use as a tourist accommodation unit, limited to its existing footprint and height, and that a zoning certificate to such effect be provided to the property owner; and
3. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:

- ❖ The original planning approval in 2000, which led to the creation of Erf 4725 only indicated that the erf be zoned for Open Space Zone 3 (Nature Reserve) purposes, and included no application to accommodate a dwelling unit.
- ❖ The erstwhile Open Space Zone 3 (Nature Reserve) zoning in terms of Section 8 of erstwhile LUPO, 1985 did not provide for any dwelling unit right as a primary or consent use right in terms of such zoning, and only tourist accommodation.
- ❖ The Western Cape Government : Environmental Affairs and Development Planning support the viewpoint in the above two bullets, and is of the opinion the Municipality could therefore not have allocated a dwelling unit right on the property

as a consent use in 2013 when the new Overstrand Municipality Zoning Scheme Regulations (and map) was approved.

- ❖ The Open Space and Management Plan as submitted in 2001, which was submitted to comply with as a condition of approval, made reference to residential use as the use on site when the document was prepared. It later clearly in the development and management proposals refers to “restricting development to the 100m contour line”. It also refers to “upgrade of the cottage” and “retain cottage”, with no wording expressing the extension or enlargement of the cottage. No additional footprint extensions are also indicated on the plan proposals for Erf 4725. The opinion that the Open Space and Management Plan (2001) provide the land owner with rights for a dwelling unit and expansion rights to build up to 625m² in size, is not supported.
- ❖ The viewpoint of EA&DP that the existing cottage could possibly be accommodated as a tourist accommodation unit under the Open Space Zone I : Nature Reserve zoning in terms of the Zoning Scheme Regulations approved in 2013 can be supported, subject thereto that it only accommodates the existing cottage in its existing scale and footprint, and that for any possible future extension application be made for such additional rights by way of the submission of a site development plan and all necessary information to consider footprint, scale, height, visual impact and architectural style and impact on surrounding neighbours.
- ❖ Objections were received from three (3) surrounding neighbours and the Berghof HOA, with concerns relating to footprint, scale, height, visual impact, architectural style of the proposed extensions, the impact on their private road, the right-of-way over the open space being used, and also impact on their privacy. Their opinion that due to lack of information it is difficult to consider the impact, and therefore the desirability of the application, is valid concerns and supported.
- ❖ The applicant’s motivation that the land owner can only do the clearing of alien vegetation as recommended in the newly prepared Environmental Management Plan if he can upgrade and extend the cottage is not considered a valid motivation. The Open Space and Management Plan submitted in 2001 already indicated all alien vegetation was to be removed.
- ❖ The applicant’s opinion that Erf 4725 have an existing right for a dwelling unit that should have been accommodated as a consent use under the Overstrand Municipality Zoning Scheme in 2013, and that it is the property owners’ existing right to construct a dwelling unit of 625m² in extent, has not been proven in the motivation, and therefore the application for determination of zoning cannot be supported.

RESPONSIBLE OFFICIAL :

H OLIVIER

4.10

**ERF 1709, 7 HES SE GANG, VERMONT, OVERSTRAND MUNICIPAL AREA:
PROPOSED DEPARTURE: MESSRS PLAN ACTIVE ON BEHALF OF THE PIET
BRAND FAMILY TRUST**

1709 HVM (3245/2019)

H Olivier

6 March 2020

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 17 June 2019 from Messrs Plan Active on behalf of the Piet Brand Family Trust on Erf 1709, Vermont for an application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 to relax:

- The street building line from 5m to 4,66m to accommodate a portion of the existing dwelling;
- The south-western lateral building line from 1m to 0,687m and 0,257m to replace the concrete roof slab on top of the existing garage, and
- To depart from the Hes-se-Gang Design Manual.

RESOLVED:

1. that the application in terms of Section 16(2)(b) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for a departure from the Hes-se-Gang Design Manual on Erf 1709, Vermont, **be partially approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
 - (a) that all alterations be approved except the new first storey extension on the existing deck area (above the existing garage) south of the main dwelling, and the deck may also not be raised; and
 - (b) that amended plans be submitted in line with Condition 1(a) for consideration and final approval by the Building Control Department.
2. that the application in terms of Section 16(2)(b) of the By-Law for a departure on Erf 1709, Vermont to relax the southern lateral building line from 1m to 0,687m and 0,257m respectively to raise the concrete slab on top of the existing garage (existing deck), **not be approved** in terms of the provisions of Section 61 of the By-Law; and

3. that the application in terms of Section 16(2)(b) of the By-Law for a departure on Erf 1709, Vermont to relax the street building line from 5m to 4,66m to accommodate a portion of the dwelling, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
4. that the approvals in 1 and 3 above be subject to the following conditions:
 - (a) that this approval is only for the relaxation of the building line as indicated on the plan submitted by the architect (Plan No. erf 1709-Brand/03-Rev 1 dated June 2018) excluding the building extension on top of the garage on the existing deck area;
 - (b) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (c) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
 - (d) that building plans be submitted to the Building Control Department for approval and that all conditions of the Building- and Fire Department be complied with;
 - (e) that all the conditions in the Service Report be complied with;
 - (f) that all the conditions by Telkom be complied with; and
 - (g) that all the conditions by Eskom be complied with.
5. that the applicant and objectors 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 decision.

REASONS FOR RESOLUTION:**Paragraph 1 – PARTIALLY APPROVED****SUPPORTED**

- ❖ Many departures have been allowed from the Hes-se-Gang Design Manual, and the proposed alteration to the main dwelling is in line with the character of surrounding units.
- ❖ The Municipal Building Control Department and Local Heritage and Aesthetics Committee support the departure from the Design Guidelines, and therefore it is the opinion that the aesthetical appearance of the proposed extensions will not be out of character with the surrounding area.

- ❖ The proposed changes to the main dwelling will not be too imposing on the yard and dwelling on Erf 1708, as the dwelling slants away from the common boundary, and also mainly faces (windows) the open front yard and driveway on Erf 1708. This would ensure less impact on privacy.
- ❖ It is speculative to say the extensions above the dwelling would devalue the neighbour's property, as the property value of Erf 1709 will rise, and property values are also calculated in relation to property values surrounding a property.
- ❖ The changes to the dimensions, roof, pitch and double storey element, deck railings, window types, double garaging and colour of garage door is considered in line with aesthetical appearance of the complex, as it was approved by the Municipal Building Control Branch and Local Heritage and Aesthetics Committee.

NOT SUPPORTED

- ❖ The proposed first storey area on the deck will impose on the view from Erf 1708, and as stipulated in Point 3.1 in the Hes-se-Gang Design Manual such addition should only be allowed should the affected neighbour consent thereto. The neighbour does not consent thereto and if it is approved will be in conflict with the neighbour's (Erf 1708) reasonable expectations.
- ❖ The proposed extension on the deck will only be just more than 1m from the common boundary with Erf 1708, and will be an imposing structure that would provide a blocked in feeling of the back yard, entertainment area and first storey deck of Erf 1708.

Paragraph 2 – NOT BE APPROVED

- ❖ The deck does not have to be raised as the first storey section above the garage is not supported, as indicated for the same reasons as the second non-support reason as mentioned in Paragraph 1 above.
- ❖ The area below the deck is used for garaging purposes and there is no reason that it has to be raised.
- ❖ The structural and dampness problems can be resolved by purely replacing the existing slab on the same height and replacing the railing.

Paragraph 3 – APPROVED

- ❖ The application has followed due process.
- ❖ The encroachment for the dwelling over the street building line is only 34cm, and considered a minor encroachment.
- ❖ The encroachment will not have a negative impact on neighbours or the character of the area.

RESPONSIBLE OFFICIAL :

H OLIVIER

The meeting adjourned at 12:16