



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

MINUTES

DATE:	28 NOVEMBER 2024
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	10:00

OVERSTRAND

MUNICIPAL PLANNING TRIBUNAL

MINUTES OF A MEETING OF THE MUNICIPAL PLANNING TRIBUNAL, HELD IN THE TOWN PLANNING COMMITTEE ROOM ON 28 NOVEMBER 2024 AT 10:00

PRESENT:

MEMBERS:

Ms H Janser, Directorate Development
Management

Mr S Müller, Chief Engineer : Infrastructure Services

Mr H Blignaut, Principal Engineer : Civil
Infrastructure Planning

Ms R Louw, Divisional Manager : Strategic Support
Services

OFFICIALS:

Mr R Kuchar, Divisional Manager : Town & Spatial
Planning

Ms H van der Stoep, Senior Town Planner

Mr S van der Merwe, Senior Town Planner

Mr H Olivier, Town Planner

Ms S Swart, Council Support Services

APOLOGIES:

None



**MUNICIPAL PLANNING TRIBUNAL
ATTENDANCE REGISTER**

Date: 28 NOVEMBER 2024

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	
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	
R LOUW	MPT MEMBER OVERSTRAND MUNICIPALITY	
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	
S VAN DER MERWE	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
H VAN DER STOEP	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
P ROUX	TOWN PLANNER OVERSTRAND MUNICIPALITY	
H OLMIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
B MINNAAR	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	

1. OPENING

The Chairperson opened the meeting and welcomed those present.

2. APPLICATIONS FOR LEAVE OF ABSENCE

None

3. CONFIRMATION OF MINUTES

3.1 Minutes of a Municipal Planning Tribunal Meeting held on 31 October 2024

RESOLVED:

that the Minutes of the Municipal Planning Tribunal Meeting held on **31 October 2024, be approved.**

4. ITEMS FOR CONSIDERATION

4.1

PORTION 74 OF THE FARM BAARDSKEERDERBOS NO. 213, BREDASDORP DIVISION: APPLICATION FOR CONSENT USE, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS INTERACTIVE TOWN AND REGIONAL PLANNING ON BEHALF OF S MEINTJIES

Ptn 74/213 GRBRE (4387/2023)

SW van der Merwe

(028) 313 8900

Hermanus Administration

31 Oktober 2024

EXECUTIVE SUMMARY

An application, in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) was received on 29 May 2023 from Messrs Interactive Town and Regional Planning on behalf of S Meintjies for the following:

- ❖ **consent use** in terms of Section 16(2)(o) of the Overstrand Municipality Municipal Land Use Planning Amendment By-Law, 2020 for place of instruction and tourism accommodation;
- ❖ **departure** in terms of Section 16(2)(b) of the By-Law to relax the western lateral building line from 30m to 22m and the southern lateral building line from 30m to 4m to accommodate existing storage buildings (two sheds) and animal shelter, and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law to legalise the existing storage buildings (two sheds) and animal shelter.

RESOLVED:

1. that the comment **be noted**;
2. that the application for consent use in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) on Portion 74 of the Farm Baardskeerderbos No. 213, Division Bredasdorp to accommodate a place of instruction and three accommodation pods, **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 western lateral building line from 30m to 22m and the southern lateral building line from 30m to 4m to accommodate existing storage buildings (two sheds) and an animal shelter, **be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the approvals in paragraphs 2. and 3. above be subject to the following conditions:
 - (a) that this approval is only for the development as indicated on the site development plan 101 dated 19/10/2021 as submitted with the application;
 - (b) that the consent use is not transferable;
 - (c) that building plans be submitted to the Building Department for approval and that all conditions of the Building and the Fire Departments at that stage, be complied with;
 - (d) that all the conditions imposed by Eskom, Telkom (OpenServe), and Health be complied with;
 - (e) that the conditions in the Services Report be complied with;
 - (f) that applicable rates and service tariffs, as determined by the annual budget be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
 - (g) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
 - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
5. that of an administrative penalty in terms of Section 90(4) of the By-Law to legalise the existing storage buildings (two sheds) and stables be imposed, and that the administrative penalty fee of R13 569,51 be payable within 60 (sixty) days of this decision; and
6. 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:

- ❖ The application has followed due procedure.
- ❖ No additional access roads are required.
- ❖ No removal of indigenous vegetation is necessary.
- ❖ The proposal will contribute to tourism and rural economic development.
- ❖ The proposal will not adversely impact vested rights or the character of the rural landscape or natural environment.

RESPONSIBLE OFFICIAL :**S VAN DER MERWE**

4.2

**ERF 726, 72 BUFFELS ROAD, PRINGLE BAY, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR SUBDIVISION AND REZONING: PLAN ACTIVE TOWN & REGIONAL
PLANNERS ON BEHALF OF ENTK FAMILY TRUST**

726 KPRB (4602/2024)

H van der Stoep

13 November 2024

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application has been received on 6 March 2024 from Plan Active Town & Regional Planners on behalf of ENTK Family Trust on Erf 726, Pringle Bay for the following:

- ❖ **subdivision** in terms of Section 16.(2)(d) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to subdivide Erf 726, Pringle Bay into 4 portions, namely Portion A ($\pm 1240\text{m}^2$), Portion B ($\pm 1262\text{m}^2$), Portion C ($\pm 1050\text{m}^2$), and Portion D ($\pm 1285\text{m}^2$), and
- ❖ **rezoning** in terms of Section 16.(2)(a) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to rezone the newly created Portion D ($\pm 1285\text{m}^2$) from Residential Zone 1: Single Residential (SR1) to Open Space Zone 1: Nature Reserve (OS1).

RESOLVED:

1. that the comment **be noted**;
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 726, Pringle Bay into four (4) portions, namely Portion A ($\pm 1240\text{m}^2$), Portion B ($\pm 1262\text{m}^2$), Portion C ($\pm 1050\text{m}^2$), and Portion D ($\pm 1285\text{m}^2$), **be approved** in terms 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 the newly created Portion D ($\pm 1285\text{m}^2$) from Residential Zone 1: Single Residential (SR1) to Open Space Zone 1: Nature Reserve (OS1), **be approved** in terms of Section 61 of the By-Law;
4. that the approval of Points 2. & 3. 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. pring726s5.drw dated November 2021 as submitted with the application;
 - (b) that the rezoned portion D be ceded to the Municipality with the transfer of the first registered erf or within 12-months of the approval;

- (c) that, with the submission of the building plan, a letter from the Western Cape Government: Environmental Affairs and Development Planning (Environmental) confirming whether any listed activities are applicable be submitted with such building plan;
 - (d) that a letter from BOCMA indicating whether a water license approval is required be submitted before building plan approval;
 - (e) that only one dwelling with associated outbuildings be allowed;
 - (f) that the conditions in the Services Report be complied with;
 - (g) that all conditions imposed by the municipal Environmental Section be complied with;
 - (h) that the recommendations of the Specialist Biodiversity Assessment be adhered to;
 - (i) that building plans be submitted for all new buildings to the Building Control Department for approval, and that all conditions of the Building Control and Fire Departments be complied with at that stage;
 - (j) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
 - (k) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with.
5. 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:

- ❖ The property has the possibility to be subdivided as per a historical agreement with the Pringle Bay Ratepayers, dated 2003. The subdivided portions must be a minimum of 1000m², of which this proposal complies
- ❖ Due diligence of environmental impact has been considered.
- ❖ The ecological corridor will be formally established.
- ❖ The proposal constitutes low density development to the benefit of the area.
- ❖ The Biodiversity Report conducted for the erf indicates a positive result for the proposed subdivision of the erf with mitigating measures.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.3

ERF 7182, 39 MARINE DRIVE, WESTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE (TOURIST ACCOMMODATION): MESSRS WRAP PROJECT OFFICE ON BEHALF OF SUNNY SEAS PROPERTIES (PTY) LTD

7182 HSB (4603/2024)

H van der Stoep

15 November 2024

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application, applicable to Erf 7182, Hermanus was received on 7 March 2024 from Messrs WRAP Project Office on behalf of Sunny Seas Properties (Pty) Ltd for a **consent use** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 (By-Law) for “tourist accommodation” to allow the future owners of the approved twenty one (21) flat units to be developed on the property, to also utilise their individual flat units as self-catering units for transient tourists.

RESOLVED:

1. that the comments **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 “tourist accommodation” to allow the future owners of the approved twenty-one (21) sectional title flat units to be developed on Erf 7182, Hermanus to also utilise their units as self-catering units for transient tourists, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the above approval be subject to the following conditions:
 - (a) prior to the letting of any unit, it must comply with SANS 10400 A:2016, 10400-T:2020 and the By-law relating to community fire safety, and the necessary certificate of compliance must be obtained from the Fire Department of the municipality;
 - (b) that the accommodation establishments be conducted in such a manner that it is not found to be detrimental to the peacefulness and amenity of the surrounding area;
 - (c) that the applicable conditions of Engineering Services be complied with;
 - (d) that the house/conduct rules must be approved by the body corporate of the development before any short-term rentals may be done;

- (e) that no on-street parking be allowed whatsoever;
 - (f) that the body corporate be responsible to ensure that all individual self-catering units be properly managed by the owners thereof;
 - (g) that this approval does not absolve the landowner from compliance with any other relevant legislation;
 - (h) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and
 - (i) the consent use be limited to a 2-year period (starting from date of occupation), after which the applicant can apply for a permanent consent use.
4. 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 conditions in 2. above.

REASONS FOR THE RESOLUTION:

- ❖ The application has followed due procedure.
- ❖ The objection received from the Hermanus Ratepayers Association refers to the previous approval regarding the development of flats. The second objection point refers to whether the self-catering accommodation should be allowed. It is clear that there is a trend with tourist accommodation located along Marine Drive and the comment should, therefore, be disregarded.
- ❖ The proposal is in line with policy documents.
- ❖ The accommodation establishments will be beneficial for optimisation of the erf.
- ❖ The proposal will promote the tourism industry.
- ❖ The proposal is not regarded as being undesirable from a town planning point of view.
- ❖ The limitation of the consent use is to determine whether tandem parking is viable in high density developments with additional land use rights.

RESPONSIBLE OFFICIAL :**H VAN DER STOEP**

4.4

**ERF 338, 4 HOTEL CRESCENT, ROOIELS, OVERSTRAND MUNICIPAL AREA:
APPLICATION FOR REMOVAL OF A RESTRICTIVE TITLE DEED CONDITION,
DEPARTURES AND DETERMINATION OF ADMINISTRATIVE PENALTY: PLAN
ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF HMMM BELEGGINGS
TRUST**

338 KRE (3898/2021)

H van der Stoep

4 November 2024

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application has been received on 22 February 2021 from Plan Active Town & Regional Planners on behalf of HMMM Beleggings Trust for the following:

- ❖ **Departure** in terms of Section 16.(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 to exceed the maximum permissible boundary wall height from 2,1m to 2,30m; 3,571m and 3,95m respectively; and also to exceed the maximum permissible height of the existing infill of the open terrace from 1m to ±1,6m.
- ❖ **Determination of an administrative penalty** in terms of Section 16.(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the for unauthorised land use as mentioned above.

It was subsequently concluded that the previous application needs to be amended to include the removal of a restrictive title deed condition with reference to Title Deed building lines.

An **amended application** was therefore submitted on 26 June 2023 from Plan Active Town & Regional Planners on behalf of HMMM Beleggings Trust for the following

- ✚ **Removal of Restrictive Title Deed Condition** in terms of Section 16(2)(f) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 on Erf 338, Rooiels for the removal of restrictive title deed condition F.(4)(d) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property.

The restrictive title deed conditions read as follows:

- “F. **SUBJECT FURTHER** to the following conditions contained in Deed of Transfer No. T77/1956, imposed by the Administrator of the Province of the Cape of Good Hope when approving of the General Plan of the said Rooi Els Township under the provisions of Ordinance No. 33 of 1934, reading as follows: -

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 authorize the necessary suspension or relaxation subject to compliance with such conditions as he may impose;*

(d) No buildings or structure except boundary wall and fences shall be erected nearer than 4,72 metres to the street line which forms a boundary of this erf within 1,57 metres of any other boundary;"

✚ **Departure** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 in order to:

- Relax the western lateral building line from 2m to 0m to accommodate an existing planter and a suspended concrete slab; both are higher than 1,0m above ground level.
- exceed the maximum permissible height of 2,1m to accommodate the existing boundary wall which is also in contravention with the heritage protection overlay zone regulations.
- exceed the maximum permissible height of the existing infill of the open terrace from 1m to ±1,6m.
- exceed the maximum permissible height of 2,1m to accommodate three existing water tanks.

✚ **Determination of an Administrative Penalty** in terms of Section 16(2)(q) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the unauthorised building line encroachments as stipulated above.

RESOLVED:

1. that the objections **be noted**;
2. 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 338, Rooi Els for the removal of restrictive title deed condition F.(4)(d) as contained in Title Deed No. T73556/2014 of the property to accommodate the encroachments of the existing structures on the property, **be approved**, in terms of the provisions of Section 61 of the By-Law;
3. 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 338, Rooi Els for the following departures:

- Relaxation of the western lateral building line from 2m to 0m to accommodate an existing planter and a suspended concrete slab, both being higher than 1,0m above ground level;
- To exceed the maximum permissible height of the existing infill of the open terrace from 1m to $\pm 1,6$ m, on the rear boundary, and
- To exceed the maximum permissible height of 2,1m to accommodate the revised boundary wall, which is in contravention of the heritage protection overlay zone regulations.

be approved, in terms of the provisions of Section 61 of the By-Law.

4. 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 338, Rooi Els for a departure to exceed the maximum permissible height of 2,1m to accommodate the revised boundary wall, **be partially approved**, in terms of the provisions of Section 61 of the By-Law, subject to the following condition;
 - That the boundary wall be lowered to 1m above the suspended slab level of 44,73m.
5. 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 338, Rooi Els to exceed the maximum permissible height of 2,1m to accommodate three (3) existing water tanks, **not be approved**, in terms of the provisions of Section 61 of the By-Law.
6. that the above approvals in Points 2 to 4 be subject to the following conditions:
 - (a) that this approval is not an approval in terms of any other legislation;
 - (b) that a **revised** building plan be submitted showing the decisions in Points 1-5 above; indicating the removal of the vent pipe to the inside of the wall and the two water outlets from the water wise planter channelling the water be moved to the inside of the erf;
 - (c) that building plans be submitted to the Building Control Department for approval, and that all conditions of the Building Control and the Fire Departments be complied with at that stage;
 - (d) that the amended title deed be submitted to the Municipality for record purposes;
 - (e) that the Overstrand Municipality retains the right to enforce any relevant legislation and or By-Laws;

- (f) that this approval does not absolve the applicant from compliance with any other relevant legislation;
 - (g) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with; and
 - (h) that all the conditions in the Services Report be complied with.
7. that an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Erf 338, Rooi Els for the unauthorised building line encroachments as stipulated above, **be imposed**, and that an administrative penalty fee of **R76 799,38** be payable within ninety (90) days of this decision.
8. that the applicant and objectors 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:POINTS 2 - 4

- The application followed due process and was distributed to all property owners within Rooi Els.
- The development is in line with the built character of Rooi Els.
- The suspended concrete slab was a mitigating factor due to topography and storm water problems experienced by the low-lying properties.
- The suspended concrete slab attributes to the sustainability and resilience of the immediate area due to the mitigating storm water features implemented by the applicant.
- The cutting of the suspended concrete slab is not a viable option due to the unforeseen consequences such as height difference between the slab and the natural ground level and the fact that it could impact on the structural integrity of the slab.
- The lowering of boundary walls will mitigate the impact on neighbours.

POINT 5

- The water tanks have a negative visual impact on the adjacent property, erf 337. They can be lowered to 2,1m above natural ground level without impacting the dwelling and or rainwater harvesting.
- The motivation did not adequately address the necessity of the elevated water tanks.

POINT 7

- The professional team responsible for the development did not take the impact of the suspended concrete slab into consideration, which it should have done.
- The architect should have submitted a rider plan when changes were made during construction.
- Although the applicant's builder did submit the building cost per square meter, the calculation is based on 2017 building costs. The Tribunal must be consistent in evaluating administrative penalties, and determined the administrative penalty as follows:

Overstrand Municipal Budget 2024/2025

Formal structure - habitable (erven larger than 150m²) per m²: R20 235.00

Transgressions: 75,84m²

Total: R1 534 622,4

The penalty is determined at 5% = R76 799,38

The 5% penalty is applicable due to the immediate response from the applicant on notification that occupancy could not be issued due to transgressions.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

The meeting adjourned at 11:00