



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

MINUTES

DATE:	13 OCTOBER 2022
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	14:00

OVERSTRAND
MUNICIPAL PLANNING TRIBUNAL
MINUTES OF A MEETING OF THE
MUNICIPAL PLANNING TRIBUNAL,
HELD IN THE
TOWN PLANNING COMMITTEE ROOM ON
13 OCTOBER 2022 AT 14:00

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
Ms R Louw

OFFICIALS:

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

APOLOGIES:

None



**MUNICIPAL PLANNING TRIBUNAL
ATTENDANCE REGISTER**

Date: **13 OCTOBER 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	
R KUCHAR	AUTHORISED OFFICIAL OVERSTRAND MUNICIPALITY	
S VAN DER MERWE	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
H VAN DER STOEP	SENIOR TOWN PLANNER OVERSTRAND MUNICIPALITY	
P ROUX	TOWN PLANNER OVERSTRAND MUNICIPALITY	
H OLIVIER	TOWN PLANNER OVERSTRAND MUNICIPALITY	
S SWART	COUNCIL SUPPORT OVERSTRAND MUNICIPALITY	

1. OPENING

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

2. APPLICATIONS FOR LEAVE OF ABSENCE

None

3. CONFIRMATION OF MINUTES**3.1 Minutes of a Municipal Planning Tribunal Meeting held on 1 September 2022****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **1 September 2022, be approved.**

4. ITEMS FOR CONSIDERATION

4.1

ERF 4156, 5 VILLAGE LANE, HEMEL & AARDE VILLAGE, ONRUSTRIVIER, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE: MESSRS INTERACTIVE TOWN & REGIONAL PLANNING ON BEHALF OF HERMANUS MICROBREWERY (PTY) LTD

4156 HON (330/2021)

H van der Stoep

(028) 313 8900

Hermanus Administration

15 August 2022

EXECUTIVE SUMMARY

An application was received on 29 October 2021 from Messrs Interactive Town & Regional Planning on behalf of Hermanus Microbrewery (Pty) Ltd, applicable to Erf 4156, Onrustrivier for the following:

- temporary departure in terms of Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) to allow for live music on the property (“place of entertainment”).

DIR S MADIKANE MADE A COUNTER PROPOSAL TO THE EFFECT THAT THE ITEM BE REFERRED BACK TO TRY AND MITIGATE THE IMPACT OF SUCH A DEPARTURE. WHEN PUT TO THE VOTE, ONE MEMBER VOTED AGAINST THE ORIGINAL RECOMMENDATION AND 4 MEMBERS VOTED IN FAVOUR OF THE ORIGINAL RECOMMENDATION. THE ORIGINAL RECOMMENDATION WAS THUS CARRIED.

RESOLVED:

1. that the application for departure in terms of Section 16(2)(c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law), applicable to Erf 4156, Onrustrivier (“The Brewery”) to utilize the property for live music (“place of entertainment”), **not be approved** in terms of Section 61 of the By-Law; and
2. that the applicant and the commenters be notified of their respective appeal rights in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 regarding the above decision.

REASONS FOR THE RESOLUTION:

- ❖ The Noise Impact Assessment (NIA) indicates that the maximum allowable noise levels during night-time will be exceeded.

- ❖ In terms of paragraph 5.1.1 of the approved Design Manual of Hemel & Aarde Village, noise activities are not permitted on any erven. A positive decision can therefore not be made against the contents of the Design Manual since it is a formally approved document that has legal status.
- ❖ In terms of the approved Scheme Regulations for the Village (paragraph 5.b), all land uses must be referred to the Homeowners' Association (HOA) for its approval. The HOA does not support the application.
- ❖ The internal road is too narrow to accommodate the traffic for the existing developments it serves.
- ❖ The place of entertainment would attract even more motorists to the venue that will exacerbate the current problems experienced by the landowners, as motorists will be forced to park on adjacent properties and on the narrow road reserve.
- ❖ The vacant property adjacent to the subject property (Erf 4155) has recently been sold and the new owner has indicated that to the property will be developed to its full extent, which will intensify the current problems experienced with the road.
- ❖ The application for departure to allow for live and amplified music is regarded as undesirable from a town planning perspective.
- ❖ Numerous comments/objections were received from surrounding landowners.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

4.2

PORTION 203 OF THE FARM NO 559, PRINGLE BAY: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS AND CONSENT USE: MESSR IC@PLAN ON BEHALF OF C-VIEW AT PRINGLE (PTY) LIMITED

203/559 KHANG

H van der Stoep

31 August 2022

(028) 313 8900

Hermanus Administration

EXECUTIVE SUMMARY

An application was received on 26 November 2019 from Messrs IC@Plan on behalf of C-View at Pringle (Pty) Limited on Portion 203 of the Farm 559 in terms of the Overstrand Municipal By-Law on Municipal Land Use Planning, 2015 (By-Law) for the following:

- Removal of Restrictive Title Deed Conditions in terms of Section 16(2)(f) for the removal of restrictive title deed conditions C.(b), C.(d), C.(e), C.(n) and C.(o) as contained in Title Deed T17666//2014 to permit the proposed application.

The restrictive title deed conditions read as follows:

- *“C.(b): No wood and iron buildings or works of any description shall be erected nor shall corrugated iron be used for roofing purposes.*
- *C.(d): All buildings and other constructional works, including all fences and garden or other gates shall be of good and sound construction and plans thereof must be approved by the Seller before construction is commenced. In the event of breach of this Clause the Seller shall have the right to require the Purchaser to demolish such unauthorised building or works or works and/or shall have the option to re-purchase the land upon payment of the cost price thereof without compensation for improvements.*
- *C.(e): No signs, advertisements, advertisement boardings or other lettering shall be erected on the land hereby sold and purchased nor shall any advertisements, signs or lettering be painted on any building, walls or fences erected on the said land save and except with the written approval of the Seller.*
- *C.(n): The land shall be used only for agricultural purposes and the breeding of keeping of domestic animals, poultry and/or bees provided that no goats or pigs may be kept.*
- *C.(o): Only buildings and structures to be used as dwellings and farm buildings shall be erected on the land.”*

Amendment of Restrictive conditions as follows

- The amendment of condition C.(r) on page 7 of Deed of Transfer T17666/2014 - No boarding houses, flats, maisonettes, hotel, shops, public garage, filling station, business premises, canteen, restaurant, bioscope, factory, industrial buildings shall

be erected on the land nor shall such business or entertainment be conducted on the land be erected by the removal of the following words namely:

“Shops, business premises, canteen, restaurant”

The amendment of condition D.(i) on page 7 of Deed of Transfer T17666/2014 by the removal of the following restrictions, which read as follow:

Conditions relating to (a) buildings, (b) restriction against the erection of signs, advertisements, etc., (c) restriction against trade, (d) prohibition against making bricks, tiles and pipes, (e) prohibition against the deposit of debris, scrap, etc. (f)... (g) camping (h) access (i) sewerage j) ... (k) subdivision and (l) use of land ...

Removal of the following words:

(b) restriction against erection of signs, advertisements, etc.;

(c) restriction against trade;

- The amendment of condition D.(ii) on page 7 of Deed of Transfer T17666/2014 by the removal of the following restrictions which reads as follow: (A) not entitled to conditions referred to in certain endorsements and (B) subject to conditions relating to (a), (b), (c) and (d) buildings and design (e) advertising (i) trade (g) and (h) building materials and scrap (i) ... (j) camping (k) access to roads (sewerage (m) ... (n) subdivision (o), (p), (q), (r) (s) use of land and buildings.

Removal of the following words:

(e) advertising;

(i) trade;

- The amendment of condition D.(iii) on page 7 of Deed of Transfer T17666/2014 by the removal of the following restrictions which reads as follow: (A) not entitled to conditions referred to in certain endorsements and (B) subject to conditions relating to (a), (b), (c) and (d) buildings and design (e) advertising (i) trade (g) and (h) building materials and scrap (i) ... (j) camping (k) access to roads (sewerage (m) ... (n) subdivision (o), (p), (q), (r) and (s) use of land and buildings

Removal of the following words:

(e) advertising;

(f) trade;

- The amendment of condition D.(iv) on page 7 of Deed of Transfer T17666/2014 by the removal of the following restrictions which reads as follow: (A) not entitled to conditions referred to in certain endorsements and (B) subject to conditions relating to (a), (b), (c) and (d) buildings and design, (e) advertising, (i) trade, (g) and (h)

building materials and scrap, (i) ..., (j) camping, (k) access to roads (sewerage), (m) ..., (n) subdivision (o), (p), (q), (r) and (s) use of land and buildings

Removal of the following words:

- (e) advertising;
- (f) trade;

The amendment of condition D.(v) on page 7 of Deed of Transfer T17666/2014 by the removal of the following restrictions which reads as follow: “Conditions relating to (a) buildings completed in a reasonable time, (b) restriction against wood and iron buildings, (c) restrictions against erection of buildings within certain road boundary, (d) buildings be of good design and sound construction, (e) prohibition against signs, advertisements, etc., (f) prohibition against noxious trade, (g) restrictions against brickmaking, etc., (h) debris on land, (i) , (j) camping, (k) access to public roads, (l) sewage, (m)...., (n) restriction against subdivision, (o) land for agricultural purposes only, (p) dwelling and farm buildings, (q) each dwelling for a single family, (r) outbuildings, (s) restriction against creation of boarding houses, flats, etc.

Removal of the following words:

- (b) restriction against wood and iron buildings.
- (e) prohibition against signs, advertisements.

And

- Consent use in terms of Section 16.2(o) for the conversion of the ground floor of the existing dwelling for a tourist facility (i.e., coffee shop and gift shop).

RESOLVED:

1. that the application in terms of Section 16(2)(f) of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law) for the removal of restrictive title deed conditions C.(b), C.(d), C.(n) and C.(o) as contained in Title Deed T17666/2014 and the amendment of title deed conditions C.(r), D.(i), D.(ii), D.(iii), D.(iv) and D.(v) as contained in Title Deed T17666/2014 to permit the proposed application, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that Condition C.(e) be amended to replace “seller” with “local authority”;
3. that the application in terms of Section 16(2)(o) of the By-Law for the conversion of the ground floor of the existing dwelling for a tourist facility (i.e., coffee shop and gift shop), **be approved** in terms of the provisions of Section 61 of the By-Law;

4. that the approvals in paragraphs 1, 2 and 3 be subject to the following conditions:
- (a) that the area to be used as a tourist facility be restricted to 149m² on the ground floor as indicated in Drawing No. *CV 2015/06/26-01 rev 11a* and *CV 2015/06/26-02 rev 11a* dated 26 January 2021;
 - (b) that building plans be submitted to the Building Department for approval, and that any conditions by the Fire and Building Departments be complied with at that stage
 - (c) that the parking layout as per the Site Development Plan submitted to the town planning department be implemented;
 - (d) that all the conditions imposed by the Department of Transport and Public Works be adhered to;
 - (e) that all the conditions in the Services Report be complied with;
 - (f) that the 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 a Certificate of Acceptability from the Health Department of the Overberg District Council and Fire Prevention Certificate be obtained from the Municipal Fire Department;
 - (h) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation; and
 - (i) that all other development parameters as prescribed in the relevant Zoning Scheme 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 THE RESOLUTION:

- The application for the consent use is in line with the planning documents.
- The property is ideally located for a tourism facility. The use will be less detrimental than agricultural activities and buildings.
- The use will be located within an approved building and no additional footprint will be created.
- The tourist facility will contribute and stimulate the rural economy.
- The original township establisher, Hangklip Beach Estates Limited, has given its consent to the application.

RESPONSIBLE OFFICIAL :

H VAN DER STOEP

4.3**ERF 2099, MELKHOUT STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REZONING, AMENDMENT OF A CONDITION OF APPROVAL, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF PSP EIENDOMME CC****Erf 2099 GPB (3648/2021)****SW van der Merwe
20 September 2022****(028) 313 8900****Hermanus Administration**

EXECUTIVE SUMMARY

To consider an application received on 14 April 2021 from Messrs Plan Active Town and Regional Planners on behalf of PSP Eiendomme CC, the owner of Erf 2099 Pearly Beach, in terms of the provisions of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:

- ❖ rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone 1 in terms of Section 16(2)(a) of the By-Law in order to establish five resort zone portions (holiday accommodation) of 110m² each;
- ❖ amendment of a condition of approval and approved Site Development Plan in terms of Section 16(2)(h) and 16(2)(l) of the By-Law, and
- ❖ determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law to accommodate existing unauthorised additions.

RESOLVED:

1. that the objections and comment be noted;
2. that the application for rezoning of portions of Erf 2099 Pearly Beach from Open Space Zone 3 to Resort Zone in terms of Section 16(2)(a) of the By-Law in order to establish five resort zone portions (holiday accommodation) of 110m² each, **be approved** in terms of Section 61 of the By-Law;
3. that the application for the amendment of condition 2.1.4 of the approval of the Department of Environmental Affairs and Development Planning, dated 14 April 2005, in terms of Section 16(2)(h) of the By-Law in order to establish five resort zone portions (holiday accommodation) of 110m² each, **be approved** in terms of Section 61 of the By-Law;
4. that an administrative penalty in terms of Section 90(4) of the By-Law be imposed for 20% of the built cost in accordance with the municipal tariff list for the amount of R42 210,20 (VAT inclusive);

5. that the approvals in terms of paragraphs 2. to 4. above be subject to the following conditions:
- (a) that a detailed Site Development Plan, duly endorsed by the Pearly Beach Home Owners Association, be submitted for municipal approval indicating amongst others the total extent of the 110m² resort zone areas with coordinates, in accordance with municipal requirements;
 - (b) that chalets on the resort zone portions may only be utilised for holiday accommodation purposes in accordance with the Municipal Land Use Scheme;
 - (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 the development of Erf 2099, Pearly Beach be subject to compliance with the Pearly Beach Resort Architectural and Building Guidelines, except for the maximum permitted coverage as defined within the development rules, to restrict the maximum coverage of the chalets to 70% of each of the 110m² resort zone portions;
 - (e) that all the conditions in the Services Report be complied with;
 - (f) that the administrative penalty in paragraph 3 above be payable within 30 days of the decision date;
 - (g) that this approval does not absolve the 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.
6. 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 Amendment on Land Use Planning, 2020 with regard to the above conditions of approval.

REASONS FOR THE RESOLUTION:

- ❖ The application will not adversely impact upon vested rights of the Pearly Beach Resort Home Owners' Association or adjoining property owners.
- ❖ The development will not detract from the character of the area, comprising 300+ resort units (holiday housing).
- ❖ None of the internal departments have objected to the application.
- ❖ Objections could be mitigated with conditions of approval.

RESPONSIBLE OFFICIAL :**S VAN DER MERWE**

4.4

ERF 210 GANSBAAI, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING AND CONSENT USE (MINING) AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS WRAP PROJECT OFFICE ON BEHALF OF SIZISA UKHANYO TRADING 410 CC WITH POWER OF ATTORNEY BY OVERSTRAND MUNICIPALITY

210 GGB (3700/2021)

SW van der Merwe

(028) 313 8900

Hermanus Administration

21 September 2022

EXECUTIVE SUMMARY

An application was received from Messrs WRAP Project Office (WRAP) applicable to Erf 210, Gansbaai on behalf of Sizisa Ukhanyo Trading 410 CC, trading as Gansbaai Sand en Klip with Power of Attorney from Overstrand Municipality for the following:

- ✚ subdivision in terms of Section 16(2)(d) of the By-Law of the Remainder of Erf 210, Gansbaai into two portions, namely Portion A approximately 7.3801ha and Remainder approximately 714.3413ha in extent;
- ✚ rezoning of the subdivided Portion A in terms of Section 16(2)(a) of the By-Law from Undetermined Zone (U) to Agricultural Zone 1 (AGRI 1);
- ✚ consent use in terms of Section 16(2)(o) of the By-Law applicable to Portion A for mining; and
- ✚ determination of an administrative penalty in terms of Section 16(2)(p) of the Bylaw.

RESOLVED:

1. that the application in terms of Section 16(2)(d) of the By-Law for subdivision of the Remainder of Erf 210, Gansbaai into two portions, namely: Portion A approximately 7.3801ha and Remainder approximately 714.3413ha, **be approved** in terms of the provisions of Section 61 of the By-Law;
2. that the application in terms of Section 16(2)(a) of the By-Law for rezoning of Portion A from Undetermined Zone to Agricultural Zone 1, **be approved** in terms of the provisions of Section 61 of the By-Law;
3. that the application in terms of Section 16(2)(o) of the By-Law for consent use (mining) applicable to Portion A, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-law for the unauthorised land use activities stipulated above, **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-Law;

5. that the recommendations in paragraphs 1. to 3. above be subject to the following conditions:
- (a) that mining on the subject property be subject to a valid Mining Right;
 - (b) that the provisions of the Environmental Management Plan (EMP) at all times be complied with;
 - (c) 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;
 - (d) that mining be restricted to the area of 7.3801ha and to the coordinates as indicated on the Surveyor's Mining Plan dated February 2015 as submitted with the application;
 - (e) that rehabilitation of the mining area be conducted in accordance with the EMP to the satisfaction of the Overstrand Municipality;
 - (f) that all the conditions in the Services Report and District Health be complied with;
 - (g) that all the conditions imposed by Eskom, Open Serve, Department of Environmental Affairs and Development Planning, *Component: Environmental*, Breede-Gouritz Catchment Management Agency, CapeNature, Heritage Western Cape and Department of Agriculture, Land Reform and Rural Development be complied with;
 - (h) that the registration of the subdivision be for the account of Sizisa Ukhanyo Trading 410 CC;
 - (i) that this approval does not absolve the applicant from compliance with any other applicable legislation; and
 - (j) that all other applicable development parameters as prescribed in the relevant Zoning Scheme be complied with; and
6. that the applicant and objectors 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 above decision.

REASONS FOR THE RESOLUTION FOR (1) TO (3):

- ❖ The application followed due process.
- ❖ The proposal is consistent with the SDF.

- ❖ The proposal is consistent with the Planning Principles in terms of LUPA and SPLUMA.
- ❖ The proposal is supported by relevant government departments.
- ❖ The associated impacts of the proposed mining activity could sufficiently be mitigated in terms of the Environmental Management Plan, as incorporated in the approval conditions.

REASONS FOR THE RESOLUTION FOR (4):

- ❖ Mining has occurred on the commonage for the past 40 to 50 years with municipal knowledge.
- ❖ The land was not zoned in accordance with the utilisation thereon (mining) with the commencement of LUPO on 1 July 1986.
- ❖ The same applied with the coming into operation of the Gansbaai Zoning Scheme during 2003.
- ❖ Prior to the Maccsand judgement, the general perception was that the holder of a Mining Right was not required to obtain further approvals in terms of any other law (i.e. in terms of Planning or Environmental Legislation).
- ❖ With the drafting of the Integrated Zoning Scheme, promulgated in 2013, the implications of the Maccsand judgement were still unclear, with mining area with approved Mining Permits/Rights being treated as non-conforming uses.
- ❖ To control and limit the non-conforming use to the Mining Right Area, the land use of the mining area needs to be rectified.

RESPONSIBLE OFFICIAL :**S VAN DER MERWE****The meeting adjourned at 15:55**