



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

**MINUTES**

<b>DATE:</b>	<b>28 SEPTEMBER 2023</b>
<b>VENUE:</b>	<b>TOWN PLANNING COMMITTEE ROOM</b>
<b>TIME:</b>	<b>10:00</b>

# OVERSTRAND

## MUNICIPAL PLANNING TRIBUNAL

### MINUTES OF A MEETING OF THE MUNICIPAL PLANNING TRIBUNAL, HELD IN THE TOWN PLANNING COMMITTEE ROOM ON 28 SEPTEMBER 2023 AT 10:00

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#### PRESENT:

##### MEMBERS:

Ms H Janser, Directorate Development  
Management  
Mr S Müller, Director : Infrastructure & Planning  
Ms R Louw, Senior Manager : Strategic Services

##### OFFICIALS:

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

##### APOLOGIES:

Mr S Madikane, Director : LED  
Mr H Blignaut, Deputy Director : Engineering  
Services



**MUNICIPAL PLANNING TRIBUNAL  
ATTENDANCE REGISTER**

Date: 28 SEPTEMBER 2023

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	Apology
H BLIGNAUT	MPT MEMBER OVERSTRAND MUNICIPALITY	Apology
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	
B MINNAAR	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**

Dir S Madikane  
Mr H Blignaut

**RESOLVED:**

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

**3. CONFIRMATION OF MINUTES****3.1 Minutes of a Municipal Planning Tribunal Meeting held on 31 August 2023****RESOLVED:**

that the Minutes of the Municipal Planning Tribunal Meeting held on **31 August 2023, be approved**.

**4.1**

**ERF 2674, 199 PORTER DRIVE, BETTY'S BAY, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CONSENT USE: VW SMIT ON BEHALF OF AFRICA PROCURE CC**

**2674 KBB (4128/2022)**

**BC Minnaar**

**(028) 313 8900**

**Hermanus Administration**

**14 September 2023**

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**EXECUTIVE SUMMARY**

An application was received on 28 April 2022 from VW Smit on behalf of Africa Procure CC on Erf 2674, Betty's Bay for a consent use in terms of Section 16(2)(o) of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 for a place of entertainment to accommodate five (5) limited payout machines on the property.

**RESOLVED:**

1. that the comments/objections **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 on Erf 2674, Betty's Bay for a consent use for a place of entertainment to accommodate five (5) Limited Payout Machines on the property, **be approved** in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:
  - (a) that the place of entertainment be restricted to the installation of five (5) Limited Payout Machines only and be valid for a period of five (5) years from the date of the final approval letter;
  - (b) that should the utilisation of the primary right (restaurant & bar) cease to exist or that the current restaurant and bar business change ownership, this approval shall subsequently lapse with immediate effect;
  - (c) that a revised parking layout plan be submitted to this office at a ratio as prescribed by the Overstrand Municipality Land Use Scheme 2020 and to the satisfaction of the municipality within 30 days of the final approval;
  - (d) that the owner and his successors in title prevent the occurrence of any public nuisance, which through an act or omission materially interferes with the comfort, peace and quiet of the surrounding area, and should the owner or his successor in title fail to comply with such condition, they will make themselves liable to further legal action;
  - (e) that all the conditions in the Services Report be complied with;

- (f) that a valid business licence in terms of the Business Act (Act 71 of 1991) be obtained prior to the operation of the place of entertainment (five Limited Payout Machines);
  - (g) that written approval of the Western Cape Gambling and Racing Board be obtained and submitted to the Municipality prior to the commencement of the place of entertainment (five Limited Payout Machines);
  - (h) that, if a gambling prohibition exists on the liquor licence issued by the Western Cape Liquor Board, it should be removed prior to the commencement of the place of entertainment;
  - (i) that the applicant strictly adheres to the requirements of the Western Cape Gambling and Racing Board pertaining to the behaviour of the patrons (in and outside the premises);
  - (j) that the municipality reserves the right to impose additional conditions with reference to town planning principles pertaining to the conduct on the premises;
  - (k) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with; and
  - (l) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
3. 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 Municipal Land Use Planning, 2020 with regard to the above decision.

**REASONS FOR THE RESOLUTION:**

- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ None of the municipal services will be impacted upon.
- ❖ It is in line with policy documents.
- ❖ The development of the erf will be beneficial for optimisation of the erf and infrastructure.
- ❖ The character of the area will not be adversely impacted upon.

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

**MS H VAN DER STOEP AND MR B MINNAAR LEFT THE MEETING AT 10:10 WITH PERMISSION FROM THE CHAIRPERSON**

## 4.2

**REMAINDER OF PORTION 366 OF THE FARM ONRUST RIVER NO. 581,  
DIVISION CALEDON: APPLICATION FOR CONSENT USE, DEPARTURE AND  
DETERMINATION OF ADMINISTRATIVE PENALTY: MBPLAN ON BEHALF OF  
OVERBERG HONEY TRUST**

**RCAL 366/581 (4302/2022)**

**H Olivier**

**(028) 313 8900**

**Hermanus Administration**

**30 August 2023**

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**EXECUTIVE SUMMARY**

An application has been received on 2 December 2022 by MB Plan on behalf of Overberg Honey Trust on Remainder of Portion 366 of the farm Onrust River No 581, Division Caledon for the following:

- ❖ **Consent uses** in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
  - to accommodate the existing and proposed extension of the agricultural industry to accommodate a honey processing business.
  - to allow for an institution to accommodate a home for the indigent (children's home) in the existing second dwelling.
- ❖ **Departures** in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 for the following:
  - to relax the western lateral building line from 10m to 4,45m, to accommodate the existing chicken coop and encroachments of the existing barn and stables.
  - to accommodate the change of use of the existing second barn to allow for storage and production of agricultural processes.
- ❖ **Determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the unauthorised land use activities as stipulated above.

**RESOLVED:**

1. that the objection **be noted**;
2. that the application in terms of Section 16(2)(o) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on the Remainder of Portion 366 of the farm Onrust River No 581, Division Caledon for a consent use for an agricultural industry to legalise the existing honey processing plant and to allow an Institution to accommodate a home for the indigent (children's home) in the existing second dwelling, **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 Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on the Remainder of Portion 366 of the farm Onrust River No 581, Division Caledon for a departure to relax the western lateral building line from 10m to 4,45m, to accommodate the existing chicken coop and encroachments of the existing and proposed alterations of the barn and stables and the use change for the area of the honey processing plant, **be approved**, in terms of the provisions of Section 61 of the By-Law;
4. that the approvals in Points 2. to 3. above in terms of the provisions of Section 61 of the By-law, be subject to the following conditions:
  - (a) that the approval for the agricultural industry (honey processing) is limited to the footprint of the existing operation of 112,37m<sup>2</sup> as indicated on Plan No 581/366.1 to 6 dated 24 October 2022, and no further extension of such footprint is allowed;
  - (b) that only the area of the second dwelling as indicated on plan no, 581/366.7 dated 24 October 2022 may be utilised as an institution (children's care);
  - (c) that the institution be restricted to a maximum of 4 children at any given time;
  - (d) that the consent use approval of the agricultural industry (honey processing) is limited to a 5-year period, and it is not transferable;
  - (e) that the building line departures only be applicable to the building extensions/alterations as indicated on plan 581/366. 2 to 6 dated 24 October 2022;
  - (f) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
  - (g) that building plans be submitted to the Building Control Department of the Municipality in accordance with the amended Site Development Plan, and that any requirements by the Fire and Building Departments at that stage be complied with;
  - (h) that commercial rates and taxes, as determined by the annual budget, be made applicable, which tariffs are automatically adjusted in terms of the annual budget;
  - (i) that the site must have a dedicated waste storage area as per part of the National Building Regulations (SANS 10400), and all refuse must then be removed from the property to a registered waste disposal site;
  - (j) that there be compliance with all relevant Health and Fire Regulations;



- (k) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation;
  - (l) that all other development parameters as prescribed in the relevant Land Use Scheme be complied with;
  - (m) that all conditions in the Services Report be complied with;
  - (n) that all the conditions imposed by Eskom be complied with;
  - (o) that all the conditions by the BGCMA be complied with,
  - (p) that approval be obtained from the Department of Social Services (Hermanus Child & Family Services) to operate the institution (childcare facility).
5. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 applicable to Remainder of Portion 366 of the farm Onrust River No 581, Division Caledon for the unauthorised land use and structures which encroach the building lines, **be imposed**, and that an administrative penalty fee of **R12 402,16 (VAT included)** be payable within sixty (60) days of the 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 Municipal Land Use Planning, 2020 with regard to the above decisions.

### **REASONS FOR THE RESOLUTION:**

#### POINTS 2 & 3

- ❖ The application is supported by all relevant Institutions and Municipal and State Departments.
- ❖ The application will not have a negative impact on the character of the area, as the area has a mixed-use character, all activities will be within the existing buildings and have low noise impact, and the property is almost 90m away from residential properties.
- ❖ The proposal is for a consent use which is allowed under the Agricultural Zoning of the property, and therefore the application is not considered a deviation from the Overstrand Municipal Wide SDF, 2020 or the Overstrand Municipal Growth Management Strategy, 2010, which shows this area as earmarked for residential development.
- ❖ The objection does not prove the application to not be desirable and was duly addressed by the applicant.
- ❖ The application will have no heritage or environmental impact and is supported by Cape Nature and the Municipal Environmental Management Services Branch.

- ❖ The application is in line with the LUPA and SPLUMA general principles, as the proposals are an efficient way to maximise the potential of the property by using existing buildings for agricultural industry and would increase spatial resilience with this additional income from the property. The property is also within the urban edge.
- ❖ The institution (childcare facility) would address a social need for care of the indigent.
- ❖ The departure to relax building lines is mostly for building alterations to existing buildings, and the legalisation of a chicken coop constructed by the property owner. The impact of these encroachments is minimal as it is mostly internal and borders a property also zoned Agriculture Zone I.

### REASONS FOR RESTRICTING THE DEVELOPMENT

This area is earmarked for Residential Development in terms of the Overstrand Municipality SDF, 2020 and Overstrand Municipality Growth Management Strategy, 2010. Although these policies do not give rights or take rights away, the proposal must be considered in relation to the possible long term impact new land uses/development being applied for could have on this long-term planning. The proposal is already to increase the agricultural industry footprint area even further, which shows it would have a longer operation period for the honey processing plant. This could impact the potential of the area to be developed for residential purposes in future. Two conditions that would mitigate this concern are that only the existing honey processing plant of 112,37m<sup>2</sup> is supported and the consent use for the agricultural industry is only approved for a limited time of five (5) years.

### POINT 5

- The existing property owner made building alterations to the farm buildings and illegally started operating an agricultural industry from within such farm buildings.
- The existing property owner also illegally constructed a chicken coop over the building line, without any Town Planning approval or building plan approval.
- There are no mitigating factors for the property owner's actions, and therefore an administrative penalty fee was imposed.

**RESPONSIBLE OFFICIAL :**

**H OLIVIER**

**MR H OLIVIER LEFT THE MEETING AT 10:47 WITH PERMISSION FROM THE CHAIRPERSON**

## 4.3

**ERF 67, 58 NAUDE STREET, FRANSKRAAL, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR REMOVAL OF RESTRICTIVE TITLE CONDITIONS, DEPARTURE, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: MESSRS ATLAS TOWN PLANNING ON BEHALF OF J & LJ GAMBO**

**67 GFK (4320/2023)**

**SW van der Merwe**

**17 August 2023**

**(028) 313 8900**

**Hermanus Administration**

### **EXECUTIVE SUMMARY**

To consider an application received on 21 December 2022 from Messrs Atlas Town Planning on behalf of the owners of Erf 67, Franskraal in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ **removal of restrictive title condition** in terms of Section 16(2)(f) of the By-law to remove condition C.20(d) applicable to Title Deed T30094/2020 to accommodate the as built dwelling;
- ❖ **departure** in terms of Section 16(2)(b) of the By-law to relax the street building line from 3m to 0m and the western lateral building line from 3m to 1,5m to accommodate the as built dwelling;
- ❖ **amendment of conditions of an existing approval** in terms of Section 16(2)(h) of the By-law to accommodate the as built dwelling, and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-law in respect of the unauthorised building work.

### **RESOLVED:**

1. that the objections/comments received **be noted**;
2. that the application for removal of restrictive title condition in terms of Section 16(2)(f) of the By-law to remove condition C.20(d) applicable to Title Deed T30094/2020 to accommodate the as built dwelling on Erf 67, Franskraal, **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 street building line from 3m to 0m and the western lateral building line from 3m to 1,5m to accommodate the existing building, **be approved** in terms of the provisions of Section 61 of the By-Law;
4. that the amendment of condition 4.(a) of an existing approval dated 31 March 2022) to replace the wording "22 June 2021" with "February 2023", **be approved**;

5. that the application for the determination of an administrative penalty in terms of Section 16(2)(q) of the By-Law for the unauthorised building work as stipulated, was considered and that the applicant **not be exempted** from the payment of an administrative penalty;
6. that the above approvals be subject to the following conditions:
  - (a) that this approval is only for the development as indicated on the plan dated *February 2023*, as submitted with the application;
  - (b) that building plans be submitted to the Building Department for approval, and that all conditions of the Building and Fire Departments be complied with at that stage;
  - (c) that an administrative penalty for the unauthorised structure that encroach the building lines for the amount of R20 969,93 (VAT inclusive) **be payable** within sixty (60) days of the decision;
  - (d) that all the conditions of Engineering Services and Telkom be complied with;
  - (e) that this approval does not absolve the applicant from compliance with any other relevant legislation;
  - (f) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with;
  - (g) the conservancy tank in the road reserve should be relocated onto Erf 67 prior to occupation of the property;
  - (h) that prior to the submission of building plans, a contour plan be submitted by a professional land surveyor, determining the highest and lowest natural ground level point and base level in accordance with the Overstrand Land Use Scheme, 2020.
7. 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 Land Use Planning, 2020 with regard to the above conditions of approval.

**REASONS FOR THE RESOLUTION:**

- ❖ The application followed due process.
- ❖ The proposal will not detract from the character and amenity of the area.
- ❖ The proposal will not negatively impact on existing/vested rights of adjoining property owners.

- ❖ The proposal is consistent with the planning principles in terms of LUPA and SPLUMA.

**RESPONSIBLE OFFICIAL :**

**S VAN DER MERWE**

## 4.4

**ERF 146, 2 MARK STREET, GANSBAAI: APPLICATION FOR CONSENT USE, DEPARTURE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: J STEENKAMP ON BEHALF OF J & MM STEENKAMP**

**146 GGB (3745/2021)**

**SW van der Merwe**

**19 September 2023**

**(028) 313 8900**

**Hermanus Administration**

**EXECUTIVE SUMMARY**

An application has been received on 02 September 2021 from J Steenkamp on behalf of J & MM Steenkamp in terms of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 for the following:

- ❖ **consent use** in terms of Section 16(2)(o) of the By-law, to accommodate a place of entertainment (five Limited Payout Machines );
- ❖ **departure** in terms of Section 16(2)(b) of the By-law from 3m to 0m to accommodate the existing caretaker's dwelling and storeroom 1 and 2, and
- ❖ **determination of an administrative penalty** in terms of Section 16(2)(q) of the By-law, to accommodate the existing caretaker's dwelling and storeroom 1 and 2.

**RESOLVED:**

1. that the application for consent use (place of entertainment) in terms of Section 16(2)(o) of the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020 applicable to Erf 146, Gansbaai to accommodate five limited payout machines, **not be approved** in terms of the provisions of Section 61 of the By-law;
2. that the application for a building line departure in terms of Section 16(2)(b) of the By-law to accommodate the caretakers dwelling, **not be approved** in terms of the provisions of Section 61 of the By-law;
3. that the application for a building line departure in terms of Section 16(2)(b) of the By-law to accommodate the conversion of the flats into an outbuilding (stores 1 and 2), **be approved** in terms of the provisions of Section 61 of the By-law;
4. that the applicant **be exempted** from the payment of an administrative penalty in terms of Section 90(4) of the By-law;
5. that the decision in paragraph 3. above be subject to the following conditions:
  - (a) that this approval is only for the conversion of the flats into a storeroom as indicated on Drawing no. *KS/0/02* dated *2018/10/18*;

- (b) that building plans be submitted to the Building Department to accommodate the proposed store room within 30 days of the final approval and that all conditions of the Building and Fire Departments be complied with at that stage;
  - (c) that the property owner, within 30 days from the decision date, submit an application to address the unauthorised development on the property namely, but not limited to an application for departure, amendment of conditions of approval and administrative penalty in accordance with the provisions of the By-law;
  - (d) that the conversion of the two flats into storerooms 1 and 2 be completed within 90 days of decision date;
  - (e) that the shower and toilet facilities within storerooms 1 and 2 be omitted and that the area may only be utilised for storage purposes;
  - (f) that this approval does not absolve the applicant from compliance with any other relevant legislation; and
  - (g) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with.
6. 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 conditions of approval.

### **REASONS FOR THE RESOLUTION:**

#### Reasons for departure approval

- ❖ The proposed stores 1 and 2 are situated within an approved structure (double garage).
- ❖ The current unauthorised flat will be converted to store 1 and 2 (i.e. an outbuilding).
- ❖ The converted building will not impact upon the character of the area, the HPOZ or vested rights of adjoining properties.

#### Reasons for non-approval

- ❖ The applicant's motivation for the place of entertainment is based on generalisations and did not properly assess the need and desirability and impact of the proposal.
- ❖ The use of the property is limited to a restaurant only. The application did not address the amendment of the condition to accommodate the proposed place of entertainment and caretaker's dwelling in accordance with the provisions of Section 16(2)(h) of the By-law.

- ❖ There is insufficient on-site parking provision.
- ❖ The parking layout submitted is misleading and is not a true reflection of the site-specific constraints resulting in substandard manoeuvring space.
- ❖ The parking layout plan lacks critical dimensions to enable the full evaluation thereof and is likely to give rise to on-street parking.
- ❖ The application did not address the shortfall of on-site parking by means of the relevant applications (i.e. departure for offsite parking or an application to buy out parking in lieu of on-site provision).
- ❖ The primary rights do not permit a caretaker's dwelling.

**RESPONSIBLE OFFICIAL :**

**S VAN DER MERWE**

**The meeting adjourned at 11:20**