

MINUTES: STELLENBOSCH MUNICIPAL PLANNING TRIBUNAL 29 SEPTEMBER 2023

MINUTES OF THE STELLENBOSCH MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON FRIDAY, 29th OF SEPTEMBER 2023 AT THE EDEN CLUBHOUSE IN PARADYSKLOOF

Ref. no. 3/4/5/2/40

2023-09-29

Chairperson

Mrs Hedwig Crooijmans-Lemmer

Deputy Chairperson

Mr Piet van Zyl

External Members

Mrs Christine Havenga

Mr Dane Leo

Mr Stephen Boshoff

Internal Members

Mr A Barnes: Director - Planning and Economic Development

Mr A van der Merwe: Senior Manager: Community Services

Mr M Williams: Senior Legal Advisor

Mrs M Francis: Senior Manager - Infrastructure Planning, Development, and Implementation

Technical Advisor

Mr K Munro: Director - Development Management, Department Environmental Affairs and Development Planning

Officials

Mr S Carstens: Senior Manager – Development Management

Mrs C Kriel: Manager: Land Use Management

Ms B Zondo: Senior Town Planner

Mr P April: Senior Town Planner

Mr R Fooy: Senior Town Planner

Ms O Sims: Administrative Officer: MPT

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ITEM	SUBJECT
SMPT 01/09/23	OPENING AND WELCOME
	Chairperson Crooijmans-Lemmer welcomed all present.

SMPT 02/09/23	LEAVE OF ABSENCE
	Mr C Alexander Ms L Davids

SMPT 03/09/23	DISCLOSURE OF INTERESTS
	None received

SMPT 04/09/23	MINUTES OF THE PREVIOUS MEETING DATED 28 August 2023
	The minutes of the previous meeting was approved.

	MATTERS FOR CONSIDERATION
SMPT 05/09/23	<p style="text-align: center;">LAND USE AND LAND DEVELOPMENT APPLICATION: APPLICATION FOR REZONING AND SUBDIVISION ON FARM 716/27 KLAPMUTS</p> <p>Discussion:</p> <ol style="list-style-type: none"> a. The Chairperson handed it over to Ms. Zondo to give a brief introduction to the application that served before the Tribunal. b. Ms Zondo confirmed that the application was not changed; clarity was provided by the Infrastructure Department that the road should be a public road as per normal need for new developments within the urban edge. c. Concerns raised about the "no man's land" that will be created by the public road will be addressed in the conditions for the site development plan to provide for landscaping along the boundary of the development. d. The way implementation of the Inclusionary Zoning Policy is to be included as a condition of approval was debated, and agreement

was reached that the best way forward will be for the developer to ensure compliance with the approved Council policy.

UNANIMOUSLY RESOLVED

1. That the application in terms of Section 15 (2) of the Stellenbosch Municipality Land Use Planning By-law, promulgated by notice number 354/2015, dated October 2015, on Farm 716/27 Klapmuts for the following:

1.1 **Rezoning** of Farm 716/27 in terms of Section 15 (2) (a) of the said by-law from Agriculture and Rural Zone to Subdivisional Area Zone in order to facilitate the proposed development to allow for the following uses:

- a) 40 Multi-Unit Residential Zone erven (Group housing) erven (±9115 m²)
- b) 3 Private Open Space Zone erven (private open space) erven (±2021 m²) & (Private Road) (±3476 m²)
- c) 1 Utility Services Zone erf (Substation) (±15 m²)
- d) 1 Public Roads & Parking Zone erf (Public Road) (±2504 m²)

1.2 **Subdivision** of the rezoned land unit in terms of Section 15 (2) (d) of the said by-law in accordance with Subdivisional Plan No: APS/KLAP/SUB1E drawn by Pierre Jordan (Active Planning Solutions) dated July 2023 attached as **Annexure C**.

BE APPROVED in terms of Section 60 of the said bylaw, subject to conditions in terms of Section 66 of the said Bylaw.

2. The approval is subject to the following conditions imposed in terms of Section 66 of the said Bylaw:

2.1 The approval applies only to the proposed development under consideration and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council or other legislation or Bylaws or Regulations that may be applicable.

2.2 The development be undertaken in accordance with the Subdivisional Plan No: APS/KLAP/SUB1E drawn by Pierre Jordan (Active Planning Solutions) dated July 2023 attached as **Annexure C**.

2.3 An electronic copy (shp, dwg, dxf) of the approved General Plan be submitted to the Directorate Planning and Economic Development

	<p>for record purposes, which plan must indicate the following information:</p> <ul style="list-style-type: none">a) Newly allocated erf numbersb) Co-ordinatesc) Survey dimensionsd) Street names and numbering <p>2.4 An owner's association for the subject development be established in terms of section 29(1) of the subject Bylaw.</p> <p>2.5 All common property, inclusive of private road/s and open space/s and land required for services by the owners' association, be transferred at their cost by the applicant to the owners' association, prior to or simultaneously with the transfer or registration of the first land unit or prior to the first building plan approval, whichever occurs first.</p> <p>2.6 All land designated for the provision of municipal service infrastructure and amenities on the subdivision plan be transferred to the Municipality upon transfer of the first unit/erf in the subdivision, of which the cost for the surveying and transfer of such public land will be for the account of the applicant/developer.</p> <p>2.7 A detailed site development plan as contemplated in terms of Section 16 of the Zoning Scheme Bylaw, 2019 be submitted to the Municipality for approval prior to the submission of any building plans, which site development plan satisfactorily addresses, but are not necessarily limited to, all the conditions of this approval, compliance with relevant development parameters of the said Bylaw, any relevant matters relating to Section 16(4) of the said Bylaw, and specifically the following matters:</p> <ul style="list-style-type: none">a) A landscaping plan andb) Architectural guidelines. <p>2.8 Provision for inclusionary housing in pursuance of settlement restructuring be provided in accordance with the Inclusionary Zoning Policy 2023, approved by Council.</p> <p>2.9 A service agreement regarding the responsibilities for the provision of engineering services be entered into with the Municipality prior to the construction of any engineering services or infrastructure in terms of Section 66(3) and Section 82(4) of the said Bylaw, which service agreement must include and comply with the letter by the</p>
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Directorate Infrastructure Services with reference 2147 CIVIL LU and dated 05 July 2023 and attached as **Annexure H**.

2.10 Development contributions are payable in accordance with the prevailing and applicable Council Tariffs at the time of payment, prior to the transfer of the first property or submission of any building plans, whichever occurs first, or as may be agreed on in writing with the Director Infrastructure Services.

2.11 Should the full extent of permissible development rights, as approved herein-above, not be implemented initially or development is phased, a pro rata Development Charges will be levied in accordance with the extent to which the development rights will be implemented, provided that the remaining development contributions will be levied for the remaining permissible development rights when implemented in future. Remaining Development Charges will be levied in accordance with the prevailing and applicable Council Tariffs at the time of payment prior to the transfer of the first property or submission of any building plans, whichever occurs first, or as may be agreed on in writing with the Director Infrastructure Services.

2.12 The conditions imposed by the Community Services Department as contained in their memo dated 18 March 2021, attached as **Annexure I**, be complied with.

3. Matters to be noted:

3.1 The permanent departure application is not required as the restriction in terms of Act 21 of 1940 is not indicated on the subject property's title deed.

3.2 The approval granted shall not exempt the applicant from complying with any other legal prescriptions or requirements that might have a bearing on the proposed use.

3.3 All engineering services and infrastructure as required in terms of the conditions and services agreement be complied with to the satisfaction of the Municipality and/ or the relevant authority prior to the issuing of a Section 28 Certification.

3.4 Building plans be submitted and approved by the Municipality prior to the commencing of any building works, including the preparation

	<p>of land, which will only be approved when all relevant (or qualified) conditions of approval have been complied with.</p> <p>3.5 The approval for the naming and numbering of streets as per the proposed subdivision plan, be obtained from the delegated functionary as a separate decision.</p> <p>3.6 The conditions imposed by the Western Cape Regional office: Water & Sanitation as contained in their letter dated 23 July 2021, attached as Annexure L, be complied with.</p> <p>3.7 Necessary legal steps be taken by the Municipality to enforce the deconstruction of the buildings/structures on the road reserve of Heaford Street.</p> <p>4. The reasons for the above decision are as follows:</p> <p>4.1 The scale and nature of the proposed development will not compromise the existing character of the surrounding landscape considering that it will in fact offer residential opportunities in the area.</p> <p>4.2 The proposed development constitutes infill development and is in line with the principles of the MSDF.</p> <p>4.3 Additional traffic can be accommodated on the local road network and there is capacity in infrastructure and services to accommodate the development.</p>
<p>6/09/23</p>	<p>APPLICATION FOR REZONING: ERF 294, RAITHBY</p> <p>Discussion:</p> <ol style="list-style-type: none"> a. The Chairperson handed it over to Mr. April to give a brief introduction to the application that served before the Tribunal. b. It was questioned whether there is a specific need/requirement for this type of development to be located outside of the urban area. It was noted that similar uses are found in urban and rural areas. c. Historically institutions have been located in rural areas and an opinion was raised that agricultural areas are impoverished by recent thinking of accommodating everything in urban areas. The MSDF calls for a balanced development. d. It was noted that the proposal does not negate the principle and vision of the MSDF and it does not thwart its objective. The

Planning Tribunal members are not in agreement with the report that the proposal is inconsistent with the MSDF.

- e. Limited rights in perpetuity are proposed as per the conditions of approval in that if this development stops operating, the rezoning rights will lapse.
- f. It was noted that development in rural areas often ensures more vehicle movement and people that creates a sense of safety and contributes to security of rural communities staying in isolated rural areas.
- g. The extent of the rezoned area and the possibility to only include the buildings in the rezoned area. It was noted that the open area between the buildings (the "werf") forms an integral part of the proposed land use.

UNANIMOUSLY RESOLVED

1. That the following application in terms of Section 15(2) of the Stellenbosch Municipal Land Use Planning Bylaw, promulgated by notice number 354/2015, dated 20 October 2015 on Erf 294 Raithby, namely the **Rezoning** in terms of Section 15(2)(a) of the said by-law for ±2.56ha of Erf 294, Raithby from Agriculture and Rural Zone to Community Zone for the establishment of a welfare institution for a health care facility (in-patient rehabilitation centre), for sufferers of substances abuse and eating disorders in existing buildings and a new building as depicted in Zoning Plan (Project No. 2021 643, Figure ZP-1643-01 dated August 2023), attached as **APPENDIX 2**.

BE APPROVED in terms of Section 60 of the said Bylaw and subject to conditions of approval.

2. The approval is subject to the following conditions imposed in terms of Section 66 of the said Bylaw:

- 2.1. The approval only applies to the proposed rezoning and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council or other legislation or bylaws or regulations that may be applicable.
- 2.2. The rezoning approval will only be valid for the duration of the period that the subject proposed facility (Rehabilitation/Addiction Care facility) is in operation and should the subject facility cease to

operate for any period of time, the rezoning approval, together with any temporary building plan approval attached to the rezoning approval, will lapse and the subject spot zoning for Community Zone, in the associated buildings, will revert to Agricultural and Rural Zone and utilised only for agricultural related uses.

- 2.3. Building plans be submitted and approved by the Municipality for the change in land use from agricultural use to an addiction care/rehabilitation facility and prior to commencing of any building works, including the preparation of land, which building plan approval will only be approved as a temporary building plan approval for the duration of the approved facility when all relevant (or qualified) conditions of approval have been complied with.
- 2.4. Development charges are payable in accordance with the prevailing and applicable Council Tariffs at the time of submission of building plans or as may be agreed on in writing with the Directorate: Infrastructure Services.
- 2.5. The development must be undertaken generally in accordance with the Zoning Plan (Project No. 2021 643, Figure ZP-1643-01 dated August 2023) and site plan and building plans, as indicated on the referenced Project No 2021 643, dated April 2022 & August 2021 respectively and drawn by MLH Architects & Planners, attached as **APPENDIX 2**.
- 2.6. Vehicle access, related to the use and operation of the facility, including visitors be restricted to between 08h00 till 17h00 daily.
- 2.7. Only the main entrance to the property shall be used for access to the Rehabilitation/Addiction facility.
- 2.8. The maximum number of patients be restricted to 40 at a time and that no expansion of the facility, either in infrastructure or capacity, be permitted.
- 2.9. The centre submits copies of annual agreements/memoranda of understanding regarding donations or funding to "The Mudita Foundation" or any similar organisation working with the previous disadvantage communities in the field of substance and other abuse in and around the Stellenbosch Municipal area, to the satisfaction of the Municipality's Community Development Department.
- 2.10. No additional agricultural residential dwellings be constructed on the property and should the need arise, the existing dwellings revert back for agricultural purposes.
- 2.11. The submission of a diagram prepared by a registered land surveyor indicating coordinates of the area which was rezoned, in order to validate the approved split zone in relation to the zoning plan in **APPENDIX 2** before building plan approval.

2.12. The conditions listed in the letter dated 30 June 2022 from the Western Cape Government: Transport and Public Works attached as **APPENDIX 6** be complied with, prior to building plan approval.

2.13. The conditions listed in the memorandum dated 12 April 2022 from the Municipal Director: Infrastructure Services attached as **APPENDIX 7** be complied with.

3. The reasons for the above decision are as follows:

3.1. The MPT agreed that the application is consistent with the MSDF.

3.2. The aesthetic appearance of the structures will not be altered, the heritage worthiness of the existing buildings will be conserved, and the new structure will not impact negatively on the cultural landscape. Impacts on cultural significance, are therefore not anticipated.

3.3. The development and specifically the Community Zone split zoning does not impose real costs or risks to the Municipality delivering on its mandate and would not compromise the development strategy of the MSDF.

3.4. The proposed rezoning does not alienate unique or high value agricultural land or compromise existing farming activities.

4. Matters to be noted:

4.1. When the existing sewerage system is to be replaced and upgraded, comment from the Department of Environmental Affairs and Development Planning; Environmental Impact Management Services should be obtained.

4.2. The land use shall not create any undue noise or be a nuisance to the neighbourhood and precautionary measures should be taken by the property owner in order to avoid environmental noise pollution in terms of the Noise Control Regulations (PN627 dated 20 November 1998) made in terms of Section 25 of the Environmental Conservation Act, 1989 (Act No 73 of 1989).

4.3. During construction of the new building the owner, developer or any agent acting on his/her behalf must take all reasonable steps to prevent nuisance caused by dust in accordance with the National Dust Control Regulations.

4.4. Should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately, and Heritage Western Cape must be notified without delay.

4.5. All electrical requirements should be directed to Eskom.

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	<p>4.6. Should any revision of the proposed development constitute a listed activity(ies) in terms of the NEMA EIA Regulations, 2014 as defined in GN No. 327,325 and/or 324 an application must be submitted, and environmental authorisation obtained before such activity(ies) may commence.</p> <p>4.7. That all buildings comply, and activities are conducted satisfactory to the requirements of the Health and Fire Services authorities at all times.</p>
<p>SMPT 08/09/23</p>	<p>APPLICATION FOR REZONING: FARM NO 279, STELLENBOSCH</p> <p>Discussion:</p> <ul style="list-style-type: none">a. The Chairperson handed over to Mr April to give a brief introduction to the application that served before the Tribunal.b. The impact of the development on the Adam Tas Corridor is noted as this development sterilizes quite a large area of land. But it is also noted that the ATC is not envisaged as a continuous corridor but proposes several precincts. The impact of the development on Droëdyke is also noted as a concern.c. A general comment is made regarding the consideration of the possible development of the remainder of the property (south of Polkadraai Road) as municipal land for residential development to create a balanced growth opportunity to the south of Stellenbosch town in contrast to Kayamandi to the north.d. The visual impact of the facility at the entrance of the town is important. Therefore the mitigating landscaping measures should be implemented and the architectural design guidelines drafted should be adhered to for the design of all buildings and structures on the site and the Municipality should set a standard of best practice. <p>UNANIMOUSLY RESOLVED</p> <ul style="list-style-type: none">1. That the following application in terms of Section 15(2) of the Stellenbosch Municipal Land Use Planning Bylaw, promulgated by notice number 8768/2023, dated 09 June 2023, namely:<ul style="list-style-type: none">1.1 Rezoning in terms of Section 15(2)(a) of the said by-law to rezone ±14.8ha of Farm No. 279, Stellenbosch from Agriculture and Rural Zone to Utility Services Zone, to allow the operations of a Material Waste Recovery facility, an Organic Waste Transfer station and an oxidation dam for the Stellenbosch Waste Water Treatment Works (WWTW) as indicated on Zoning Plan Ref STB/12891/ZN dated December 2022 and drawn by C.K. Rumble and Partners.

BE APPROVED in terms of Section 60 of the said Bylaw and subject to conditions of approval.

2. The approval is subject to the following conditions imposed in terms of Section 66 of the said Bylaw:

2.1 The approval only applies to the proposed rezoning and shall not be construed as authority to depart from any other legal prescriptions or requirements from Council or other legislation or bylaws or regulations that may be applicable.

2.2 A detailed site development plan as contemplated in terms of Section 16 of the Zoning Scheme Bylaw, 2019 as required in terms of Section 160 of the said bylaw, which clearly shows the rezoned area, the landscaping proposals (with plant schedule) and all existing structures and features be submitted with the final building plans, which site development plan must satisfactorily address, but are not necessarily limited to, all the conditions of this approval, compliance with relevant development parameters of the said Bylaw and any relevant matters relating to Section 16(4) of the said Bylaw, and especially the strategic location thereof and the visual impact to the entrance to the town.

2.3 The final Site Development Plan to be submitted, be informed by Site Development Plan (Project No. 1001682, Revision A dated 05/05/2023) drawn by Zutari Impact Engineered and building plans 4653-JGA-CL-DAP-099/902/904 dated June 2022 and drawn by JG Afrika, building plan Project No. 22.06.04 Drawing M002 and M003, dated 14/03/2023 and drawn by MSmith Architectural Group and Zoning Plan Ref STB/12891/ZN dated December 2022 and drawn by C.K. Rumble and Partners, attached as **APPENDIX 2**.

2.4 Building plans be submitted generally in accordance with the plans submitted as **APPENDIX 2** as well as the architectural guidelines submitted as **APPENDIX 3** for the approval of the municipality.

2.5 The conditions listed in the letter dated 16 August 2023 from the Western Cape Government: Transport and Public Works attached as **APPENDIX 6** be complied with.

2.6 The conditions listed in the memorandum dated 22 June 2023 from the Cape Winelands District Municipality Health Department attached as **APPENDIX 6** be complied with.

2.7 The conditions listed in the memorandum dated 18 July 2023 from the Municipal Director: Infrastructure Services attached as **APPENDIX 7** be complied with.

3 The reasons for the above decision are as follows:

3.1 The proposed land use, within the Stellenbosch Urban Edge, does not impact negatively on the safety, health and wellbeing of the surrounding environment and sufficient municipal services are provided.

3.2 The visual impact of the facility can sufficiently be mitigated with architectural design guidelines and landscaping proposals.

3.3 The facility will ensure the effective and efficient utilisation of resources, minimise the consumption of natural resources, stimulate job creation within the waste economy and increase waste management through reuse, recovery and recycling.

4 Matters to be noted:

4.1 A Water Use Authorization be obtained from the Department of Water and Sanitation if deemed necessary and all requirements of the National water Act, 1998 (Act 36 of 1998) regarding water use and pollution prevention must be adhered to at all times.

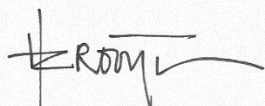
4.2 If any amendments to the approved development is required, then the holder must apply for amendment of the Environmental Authorization to the competent authority where any detail with respect to the Environmental Authorization must be amended, added, submitted, corrected, removed or updated. If a new holder is proposed an application for amendment in terms of Part 1 of the EIA Regulations, 2014 (as amended) must be submitted.

4.3 The land use shall not create any undue noise or be a nuisance to the neighbourhood and that precautionary measures be taken in order to avoid environmental noise pollution in terms of the Noise Control Regulations (PN627 dated 20 November 1998) made in terms of Section 25 of the Environmental Conservation Act, 1989 (Act No 73 of 1989).

4.4 During construction the owner, developer or any agent acting on his/her behalf must take all reasonable steps to prevent nuisance caused by dust in accordance with the National Dust Control Regulations.

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	<p>4.5 Should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately, and Heritage Western Cape must be notified without delay.</p>
SMPT 07/09/23	OTHER MATTERS
7.1	PLANNING POLICIES (REVIEWED OR APPROVED BY COUNCIL) <p>a) The Municipality will arrange a presentation via MS Teams on the Inclusionary Zoning Policy.</p> <p>b) Members request an opportunity to provide input on the drafting of policies and the zoning scheme bylaw.</p>
7.2	APPEALS RECEIVED AGAINST MPT DECISIONS <p>a) Members request to be informed as appeals are received or when appeal decisions or court judgements are issued. The aspect of relevant considerations in accordance with PAJA are generally the first argument made by attorneys and provide valuable lessons and guidance to decision makers.</p>
7.3	GENERAL <p>a) The graphic quality of the documents and especially the plans are poor, due to copy and scanning and it is difficult to see the detail. The Municipality was requested to address this matter to include in the email, a clear map in pdf format or even a Google Maps or Cape Farm Mapper link to the location.</p> <p>b) The quality and thoroughness of the content of the reports are noted.</p>



Mrs H Crooijmans-Lemmer

CHAIRPERSON: MUNICIPAL PLANNING TRIBUNAL



Mr P van Zyl

DEPUTY CHAIRPERSON: MUNICIPAL PLANNING TRIBUNAL