

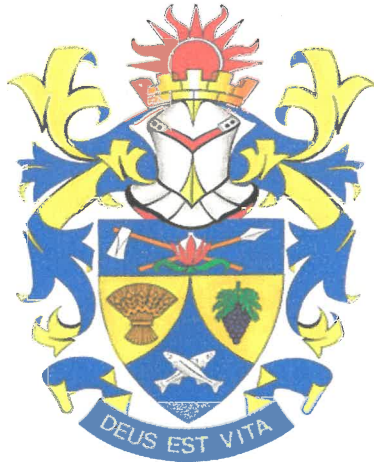
BERGRIVIER MUNISIPALITEIT / MUNICIPALITY

VISIE:

Bergrivier: 'n vooruitstrewende gemeenskap waar almal wil leef, werk, leer en speel op 'n menswaardige manier.

VISION:

Bergrivier: a prosperous community where all want to live, work, learn and play in



KERN WAARDES / CORE VALUES

We are all part of Bergrivier Municipality.
We render good services to ensure dignified living to all.
We are unashamedly pro-poor.
We believe in close innovative partnerships.
We believe in social and economic development of our area.
We care about our work and our colleagues.
We are disciplined.
We believe in good relationships.
We serve with pride.

MINUTES OF THE MUNICIPAL PLANNING TRIBUNAL HELD ON FRIDAY, 1 JULY 2022 AT 11:00 IN COUNCIL CHAMBERS, 13 CHURCH STREET, PIKETBERG

PRESENT

MEMBERS

Municipal Manager (Adv. H Linde: Chairperson)
Manager Civil Engineering Services (Mr JJ Breunissen)
External Member (Ms D Kotze)
External Member (Mr J de Jongh)

OFFICIALS

Manager: Town Planning & Environmental Management (W Wagener)
Town & Regional Planner (West) (H Vermeulen)
Compliance Officer (A van Rossum)

INTERESTED PARTIES

Mr Jody Francis (FJC Consulting) (from 11:13 – 11:26)

ACTION

PTN001/07/2022

OPENING AND WELCOME

The Chairperson opened and welcomed everyone to the meeting. She confirmed that there was a quorum and the tribunal approved leave of absence for the two members who posed apologies.

PTN002/07/2022

REQUEST FOR LEAVE OF ABSENCE

3/3/1/4

Director Corporate Services (Mr JWA Kotzee: Acting Chairperson) - annual leave
Director Community Services (Mr D Josephus) – annual leave

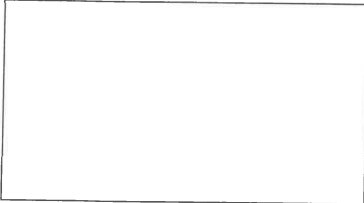


PTN003/07/2022

DECLARATION OF INTEREST IN ACCORDANCE WITH SCHEDULE 1: CODE OF CONDUCT FOR MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

3/3/1/6

All members of the Municipal Planning Tribunal present had the opportunity to declare any personal interest with regards to the items on the agenda in terms of Schedule 1 of the Code of Conduct of Tribunal Members. All municipal officials declared a collective interest in items 006 & 008 with regards to municipal land.



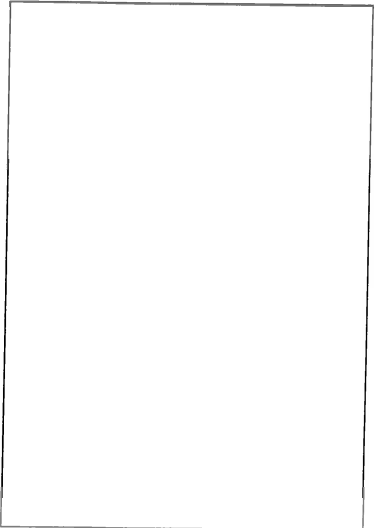
PTN004/07/2022

COMMUNICATION BY THE CHAIRPERSON

3/3/1/6

1. A request for verbal representation on Erf 136, 137 & 154 was received by Mr Jody Francis. It was approved by the Chairperson under the following conditions:
 - 1.1. That he joins the meeting on the MS Teams platform.
 - 1.2. That for fairness sake he is granted 30 minutes to make his representation.
 There would be no discussion, only the verbal representation.

2. It was noted that this meeting was originally scheduled for 23 June 2022 but due to other engagements there wasn't a quorum and the meeting had to be postponed. Furthermore, because of the size of the agenda (1468 pages) an extra week for preparation was appreciated.

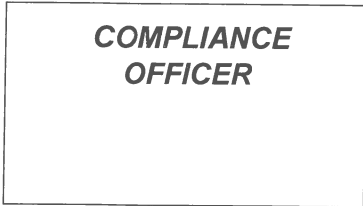


PTN005/07/2022

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING: THURSDAY 19 MAY 2022

3/3/2/2

That the minutes of the Municipal Planning Tribunal meeting held on Thursday, 19 May 2022 be confirmed with corrections to **PTN002/05/2022** where "other municipal engagements" is replaced with "DCF" and **PTN003/05/2022** where "declared that they have no" is replaced with "had the opportunity to declare any".



Mr Jody Francis of FJC Consulting joined the meeting via MS Teams at 11:13. The Chairperson introduced all present to him after which he made a verbal representation.

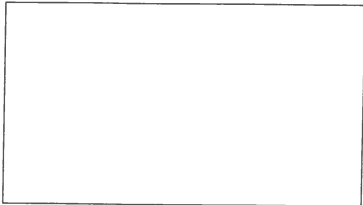
Mr Jody Francis left the meeting at 11:26 before item PTN006 is discussed.

PTN006/07/2022

APPLICATION FOR SUBDIVISION, CONSOLIDATION, REZONING, DEPARTURE AND CLOSURE OF PUBLIC PLACE: ERVEN 136, 137 AND 154, DWARSKERSBOS

D. 136,137,154

The issue of ownership of erf 154, Dwarskersbos and power of attorney was discussed at length.





RESOLUTION: REFERRED BACK

Members of the Municipal Planning Tribunal requested that:

1. The application be referred back to the Town & Regional Planner (West) in order to provide the applicant the opportunity to comment on the representation of Mr J Francis; and
2. A revised report including the applicant's response be presented to the panel at a future Municipal Planning Tribunal.

PTN007/07/2022

**APPLICATION FOR CONSOLIDATION, REZONING AND DEPARTURE:
ERVEN 151, 152 & 153, DWARSKERSBOS**

D. 151-153

The Manager: Town Planning & Environmental Management gave a brief summary to the item under discussion.

RESOLUTION: CONDITIONALLY APPROVED

1. That the application for consolidation of Erven 151, 152, and 153, Dwarskersbos, together with rezoning of the consolidation of Erven 151, 152 and 153, Dwarskersbos from Business Zone 1 to Business Zone 6, **BE APPROVED**, in terms of section 60 of the Bergrivier Municipality: By-Law on Municipal Land Use Planning, subject to the following conditions:

- a) Access routes to and from the service station from the Main Road 535 and up to the cadastral boundary between Erven 137 and 138, Dwarskersbos must be provided with hard surfacing and speed control humps, preferably tarmac or grey interlocking pavers up, at the applicant's cost and to the satisfaction of the Municipality's Technical Services Department and Traffic Services Department, in reasonable accordance with the road connection plan referenced 10028/004. A service level agreement must be entered into between the developer and the Municipality's Directorate Technical Services to address services and infrastructure requirements;
- b) The development on the consolidated property be reasonably in accordance with the site development plan referenced 10028/001, limited to three fuel pump islands, office space and forecourt attendant break area, male and female bathrooms and parking;
- c) No trucks with a loaded weight of more than 10 tons may be allowed at the proposed service station, other than for delivering fuel, and appropriate signage in this regard must be put in place by the developer;
- d) Trading hours of the service station are restricted to the time between 06:00am to 22:00 pm;
- e) The proposed development must comply with the SANS 10400 - T and W, 2011 as well as SANS 10089-1, 2 & 3, 2008 and SANS 101;
- f) The developer must apply for a flammable liquid certificate annually from the West Coast District Municipality;
- g) Signage and advertising must comply with the Bergrivier Municipality: Advertising & Signage By-law;
- h) No lighting must be directed at residential properties, including

**TOWN PLANNER
(EAST)**

**TOWN PLANNER
(WEST)**



- lighting from signage;
- i) This approval does not exempt the owner(s)/applicant from complying with the requirements of any other legislations e.g. environmental, heritage, petroleum, etc.;
 - j) All relevant written authorizations, approvals or licences must be submitted to the Municipality together with the submission of buildings plans; and
 - k) No overnighting or accommodation may be provided or allowed on the property.
2. That the application for departure from the 5m street building line applicable to service stations to 0m, **BE APPROVED**, in terms of Section 60 Bergvrievier Municipality: By-Law on Municipal Land Use Planning.

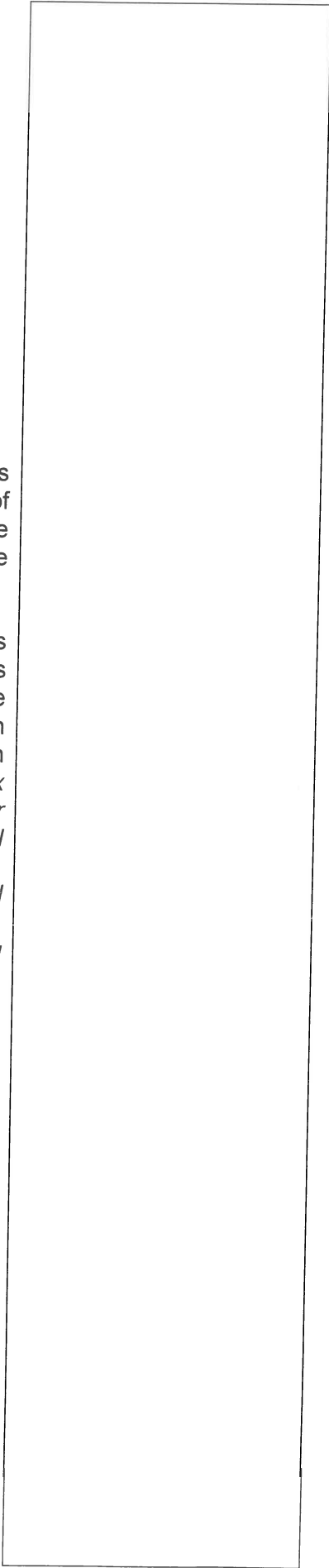
REASONS FOR RESOLUTION

Section 59 (1) (f) of the Land Use Planning Act, Act 3 of 2014 (LUPA), states that a competent authority may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property will be affected by the outcome of an application. This aspect can therefore not serve as a reason for refusal of an application.

Section 59 (1) (g) of the Land Use Planning Act, Act 3 of 2014 (LUPA), states that the right of owners to develop land in accordance with current use rights should be recognized. Section 42(c) (iv) of SPLUMA also requires that the impact of existing rights and obligations must be taken into account. Erven 151, 152 and 153, Dwarskersbos are currently zoned as Business Zone 1 with the primary right for a business premises, which includes: *a shop, big box retail, supermarket, restaurant, sale of alcoholic beverages, two electronic or mechanical playing devices, plant nursery, office, funeral parlour, financial institution and building for similar uses, place of assembly, institution, hotel, hospital, conference facility, rooftop base telecommunication station and multiple parking garage; and the following land uses above ground floor: flats, caretaker's quarters, backpackers lodge, youth hostel, as well as boarding houses.* A business premises does not include: *a place of entertainment, motor repair garage, industry, noxious trade, risk activity, adult entertainment, adult services or adult shop.*

The existing zoning of the property already allows for a variety of land uses as a primary right, some of which may have similar or more adverse impacts on the area than what is proposed by this application for a service station.

Section 42(1)(c)(i) of the Spatial Planning and Land Use Management Act (SPLUMA) states that the public interest must be taken into account when considering and deciding on an application. Section 42(c) (iv) of SPLUMA also requires that the impact on existing rights and obligations must be taken into account. The development proposed does not involve a truck stop, which would require a consent use application under Business Zone 6. Due to the small scale of the proposed service station ($\pm 55\text{m}^2$ building with three pumps, an office and toilets), with a coverage of less than 5% of the consolidated property, and it being set back approximately 65m from the nearest residential properties opposite the main road, the potential impact on the public interest would be marginal. In comparison, the existing development rights afforded to the subject properties could potentially have a much greater adverse impact on the public interest. The development of a service station could be beneficial to





residents, visitors to the town and tourist passing through Dwarskersbos, not having to travel to and from Velddrif/Laaipek for fuel. The proposed development will not be accommodating to large trucks due to the limited turning space available. No trucks with a loaded weight of more than 10 tons will be allowed at the proposed service station, other than for delivering fuel, and appropriate signage in this regard must be put in place by the developer. To ensure that delivery trucks at the adjacent businesses do not cause obstruction of traffic, a suitable road width, design and construction along these properties will be determined and addressed in the Service Level Agreement (SLA) between the developer and the Municipality.

The proposed development will provide job opportunities in Dwarskersbos and this in turn will contribute to the social well-being of those employed and their families. Even if the job opportunities are not taken up by local residence, it is not uncommon for employees to travel long distances to reach employment opportunities.

The Bergrivier Municipality Spatial Development Framework (BMSDF) 2019-2024 identifies the area in which the subject properties are located as a Central Business District and commercial/retail node. The subject properties are earmarked for mixed use community node / retail precinct in terms of the BMSDF.

With regards to the potential noise generated by the proposed facility, the noise generated by a service station and vehicles refuelling will be marginal, particularly considering that the proposed service station would be approximately 65m from the nearest residential property, and being opposite Main Road 535 where existing traffic could potentially generate more noise than the proposed service station. The development parameters (e.g. coverage, height etc.) applicable to Business Zone 6 are more restrictive than the development parameters applicable to Business Zone 1. The development proposed is for three fuel pumps, office space and toilets, within a structure of ±55m² representing a coverage of less than 5% on the consolidated property. The proposed development would therefore be of a small scale and appropriate for the rural character of the receiving environment.

The Petroleum Products Act (Act 120 of 1977) does not entitle objectors (or the applicants for that matter) to trade free from competition. This is also confirmed in the context of NEMA and the Constitution in the matter of *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others 2007 (6) SA 4 (CC)* in which the Constitutional Court was at pains to point out that "... the Constitution and NEMA do not protect the existing developments at the expense of future developments".

PTN008/07/2022

APPLICATION FOR SUBDIVISION AND REZONING: PORTION 2 OF FARM DE PLAAT NO. 113, DIVISION PIKETBERG

Farm 113/2

The Manager: Town Planning & Environmental Management gave a brief summary to the item under discussion.



RESOLUTION: CONDITIONALLY APPROVED

That the application for subdivision of Portion 2 of Farm No. 113, Piketberg Division into two portions namely Portion A (± 25 ha in extent) and Remainder (± 290.8835 ha in extent), Rezoning of Portion A from Agricultural Zone 1 to Agricultural Zone 2, Subdivision of Portion A into seven smallholdings, namely Portion 1 (± 2.3 ha), Portion 2 (± 3.3 ha), Portion 3 (± 3 ha), Portion 4 (± 4 ha), Portion 5 (± 4.9 ha), Portion 6 (± 4.2 ha) and Portion 7 (± 4 ha) in accordance with the subdivision plan referenced PIK/9973/AC dated January 2021, **BE APPROVED**, in terms of section 60 of the Bergvriervier Municipality: By-Law on Municipal Land Use Planning, subject to the following conditions:

1. That a conservation servitude be registered in the title deeds of Portions 1, 2, 3, 4, in accordance with the subdivision plan Ref: PIK/9973/AC dated January 2021.
2. No development may take place without obtaining environmental authorisation or exemption from the Department of Environmental Affairs and Development Planning;
3. Renovation or demolition of historic structures are subject to authorisation from Heritage Western Cape;
4. That an owners association be established with architectural guidelines, and that an application in this regard be submitted to Bergvriervier Municipality for consideration, prior to registration of any smallholding.
5. The developer will be responsible for the provision and installation of an upgraded electricity transformer in addition to the provision and upgrading of all service infrastructure required as a result of additional burden created by the development, as negotiated and agreed upon between the developer and the Municipality's Directorate: Technical Services by means of a Services Level Agreement (SLA). The SLA will be drawn up by a municipal appointed attorney for the account of the developer.
6. That the right of way servitude of Portion 4 and 6 of 8m wide be positioned at least 2m from the boundaries shared with Portion 35 of Farm No. 113.

REASONS FOR RESOLUTION

Section 22 of the Spatial Planning and Land Use Management Act requires that development applications must be consistent with the municipal spatial development framework and may only be departed from in site specific circumstances. The subject farm portion is located just within the urban edge of Velddrif in terms of the BMSDF. Similar subdivisions into smallholdings have already been done in the surrounding area, and the proposed development is considered a logical development directly next to the urban area of the Velddrif. A conservation corridor has also been incorporated into the subdivision plan, which may not be developed or cultivated without approval from the competent authority.

Section 59(3)(a) of the Land Use Planning Act requires that land development should optimise the use of existing resources, infrastructure, agriculture, land minerals and facilities. The structures located on the farm are for the most part in need of renovation and repair. The gravel road passing through the farm also cuts the farm portion into two sections. The subject farm portion, due to environmental constraints is not highly productive from an agricultural

**TOWN PLANNER
(WEST)**



perspective. The proposal is therefore to rather create smallholdings to allow for a more rural lifestyle orientated and small scale farming development. This application is considered an application to formalise existing structures on the farm on individual small holdings, and allow for more efficient use of farm. Environmental Authorisation or exemption would be required from the competent authority prior to any development taking place on the proposed smallholdings.

In terms of Section 42(c)(iv) of the Spatial Planning and Land Use Management Act (SPLUMA), consideration of land use planning applications must take into account the impact on existing rights and obligations. A 10m building line applies to smallholdings (Agriculture Zone 2) in terms of the Bergrivier Municipality Integrated Zoning Scheme By-Law. The proposed 8m wide right of way servitude was amended by moving the servitude from the common boundary inwards up to the 10m building lines of the proposed smallholdings. Therefore a 2m buffer would be provided between the proposed right of way servitude and the common boundary of Portion 35 of farm No. 113, Division Piketberg. The proposed development would retain an agricultural land use, albeit on a smaller and more intensive scale, however similar to the smallholdings adjacent thereto. The proposed development is compatible with the surrounding land uses (i.e. smallholdings). The right of way servitude is intended to provide access to two smallholdings, namely Portion 6 and Portion 7. Dust and noise generated from the servitude road would be similar if not less than what could be caused by vehicles travelling on MR553 (MR 7773).

The application is consistent with the development principles of LUPA and SPLUMA and is desirable from a planning perspective taking into account the relevant factors of consideration as determined in terms of section 65 of Bergrivier Municipality: By-Law on Municipal Land Use Planning.

PTN009/07/2022

APPLICATION FOR CLOSURE OF PUBLIC STREET, SUBDIVISION, REZONING, CONSOLIDATION AND CONSENT USE: REMAINDER ERVEN 382 AND 864, REDELINGHUIS RDH 382 & 864

The Manager: Town Planning & Environmental Management gave a brief summary to the item under discussion.

RESOLUTION: CONDITIONALLY APPROVED

That the application made in terms of section 15 of Bergrivier Municipality By-Law on Municipal Land Use Planning for:

- a) Closure of a portion of the unnamed street (road reserve) (± 2230m² in size) located on a portion of Remainder Erf 382, Redelinghuis between Oeloff Bergh Street and School Street, and rezoning of the closed street (road reserve) portion from Transport Zone 2 (Public street) to Open Space Zone 2 (Private Open Space), and consolidation of the closed street (road reserve) portion with Erven 359, 361, and 362, Redelinghuis;
- b) the rezoning of a portion (± 1.76ha in extent) of Remainder Erf 864,

**TOWN PLANNER
(WEST)**



Redelinghuis from Agricultural Zone 2 (Smallholding) to Open Space Zone 1 (Public Open Space) and consent use for a cemetery; and

- c) the registration of a right of way servitude (±13m in width) over Remainder Erf 382, Redelinghuis in favour of Erf 402, Redelinghuis,

BE APPROVED, in terms of section 60 of Bergrivier Municipality By-Law on Municipal Land Use Planning, subject to:

- i. A contract, which will guarantee transfer of the properties to Bergrivier Municipality, be entered into between the Dutch Reformed Cutch Redelinghuis and Bergrivier Municipality (in addition to the power of attorney documents signed) before surveying starts;
- ii. Upgrading of historical infrastructure will be subject to the availability of funding being made available.

REASONS FOR RESOLUTION

The proposed application promotes good administration that is consistent with the development principles of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) in terms of the aforesaid.

PTN010/07/2022

DATE OF NEXT MEETING

The next Municipal Planning Tribunal meeting will be held on **Thursday, 21 July 2022 at 11:00** on an Electronic Platform.

COMPLIANCE OFFICER

NOTED

**THE MEETING ADJOURNED AT 13:24
CONFIRMED AS A TRUE VERSION OF THE PROCEEDINGS**

CHAIRPERSON

07 JUL 2022

DATE
