

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 WEDNESDAY 21 NOVEMBER 2018 AT 10:00 IN THE COUNCIL CHAMBERS, MUNICIPAL OFFICES, PIKETBERG

PRESENT

MEMBERS

Municipal Manager (Acting) (JWA Kotzee: *Chairperson*)
Director Financial Services (G Goliath)
Director Technical Services (H Kröhn)
External Member (Ms. D Kotze)
External Member (Ms. S van der Merwe)

OFFICIALS

Manager: Planning and Environmental Management (W Wagener)
Head: Secretariat & Records Management (NJ Scheepers)
Senior Typist (CC Cloete)
Personal Assistant: Director Corporate Services (A van Rossum)

ACTION

PTN011/11/2018

OPENING AND WELCOME

The Head: Secretariat and Records Management (NJ Scheepers) did the opening prayer, whereafter the Chairperson welcomed everyone to the meeting.

PTN012/11/2018

REQUEST FOR LEAVE OF ABSENCE

3/3/14

Municipal Manager – sick leave

PTN013/11/2018

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

3/3/16

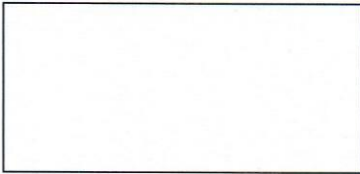
All members of the Municipal Planning Tribunal present declared that they have no personal interest with regards to any items on the agenda.



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PTN014/11/2018
COMMUNICATION BY THE CHAIRPERSON
3/3/16

The Chairperson informed the Committee that a meeting with the Auditor General will take place at 11:00 in the Council Chambers.



NOTED

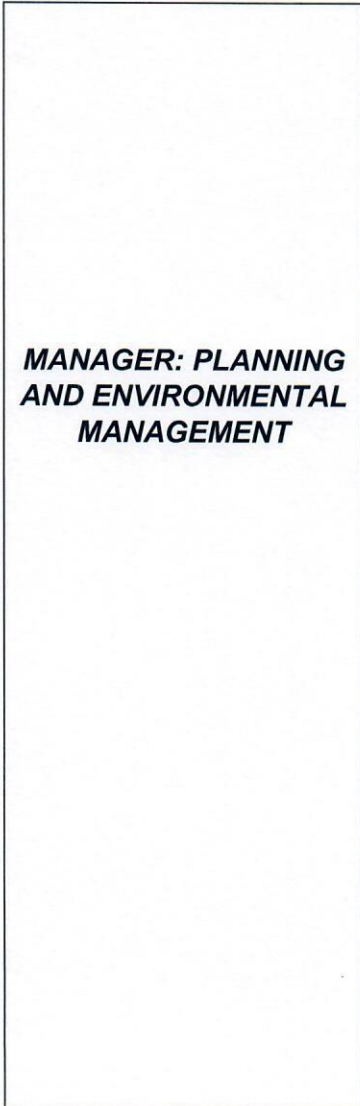
PTN015/11/2018
CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING: WEDNESDAY 07 NOVEMBER 2018
3/3/22

That the minutes of the Municipal Planning Tribunal meeting held on Wednesday 03 October 2018 be confirmed.

SENIOR TYPIST

PTN016/11/2018
APPLICATION FOR TEMPORARY DEPARTURE AND REMOVAL OF RESTRICTIONS: ERF 815, PIKETBERG
15/3/2,15/3/8

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



**MANAGER: PLANNING
AND ENVIRONMENTAL
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RESOLUTIONS

1. That the application for temporary departure (five years) in order to allow the operation of a house shop from an existing garage/outbuilding and removal of restrictive condition 6 (b) applicable to Deed of Transfer No. T52997/2004 in order to accommodate the house shop on Erf 815, Piketberg, **be approved** in terms of section 60 of Bergrivier Municipal By-Law relating to Land Use Planning, subject to the following conditions:
 - 1.1 All certification be obtained i.e. business license, certificate of acceptability from environmental health practitioner and fire safety prior to operation of the house shop and must be displayed in the utilised area;
 - 1.2. Compliance with the conditions of Bergrivier Municipality House Shop Policy;
 - 1.3. That the applicant at whose instance this restrictive title deed conditions are removed/amended must, after the publication of a notice contemplated in terms of section 33 (6) of Bergrivier Municipal Bylaw relating to Land Use Planning, in the Provincial Gazette, apply to the Registrar of Deeds to make the appropriate entries in, and endorsements on, any relevant register or title deed to reflect the removal/amendment of the restrictive conditions prior to any building plan approval; and

2. The objections not be upheld for the reasons provided in the reasons for recommendation.



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REASONS FOR RESOLUTION

The Spatial Planning and Land Use Management Act (SPLUMA), Act 13 of 2013 provides specific development principles for spatial planning, namely: the principle of (a) spatial justice, (b) spatial sustainability, (c) efficiency, (d) spatial resilience, and (e) good administration.

The business is proposed on the basis of supply and demand. The proposed house shop (take away food shop) will provide retail facilities within close walking proximity to the surrounding property owners to purchase daily take away food and small scale grocery items where no major supermarket exists. The application take into account low/medium income housing areas by bringing retail services at residential scale closer to this community, saving them time and money to travel to shops further in Piketberg. The proposal will contribute to address past spatial imbalances on account of aforesaid. The proposed house shop do not require additional municipal services, as indicated by the applicant, and therefore has no financial burden on the municipality.

Chapter 2, Section 7 of the Spatial Planning and Land Use Management Act, 2013, prescribe the development principles for land use planning application that must be considered among other Spatial Justice, whereby a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of an application. It is also submitted that the zoning of the property remains the same and the operation of a house shop from an existing approved outbuilding on a temporary basis for five years. The dominant use of the dwelling house will remain residential compatible with the surrounding neighbourhood.

The proposed application is consistent with the relevant development principles of The Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) taking into account the aforementioned.

Section 65.(d) and (e) of Bergrivier Municipal By-Law on Municipal Land Use Planning, requires the consideration of comments/objections obtained during the public participation process and responses thereon.

The owner of Erf 815, Piketberg who submitted the application, do occupy the dwelling house permanently and did submit the title deed with the application as proof of ownership. Someone else, operating the house shop by means of lease/manager, is allowed as it comply with the definition of owner provided in the zoning scheme by-law.

The house shop policy, spatial documents and zoning scheme by-law of the municipality were considered in establishing the proposals future sustainability, these documents are also regarded sufficient to address other aspects of the objections received. Conditions are imposed to address the problem aspects foreseen. The application was also circulated to SAPS Piketberg for written input in the application, but no response was received in the required timeframe, it is therefore deemed that they have no comment on the application.

Section 65 (h) of Bergrivier Municipal By-law relating to Municipal Land Use Planning requires consideration of the impact of the proposed land development on municipal engineering services.

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The proposed house shop do not require additional municipal services as indicated by the applicant, and therefore has no financial burden on the municipality.

Section 65 (i) of Bergrivier Municipal By-law relating to Municipal Land Use Planning requires consideration of the integrated development plan, including the municipal spatial development framework

Bergrivier Municipality Spatial Development Framework (MSDF) classify Watsonia Street as an activity streets of Piketberg, and the following spatial directive is given

“ Activity routes (Spatial Integration):

- *Support development of mixed and commercial uses along identified activity streets as per map.”*

The development of sustainable business development along activity routes has been identified above and is standard practice within land use planning, the proposal is consistent with the goals of the MSDF.

Section 65 of Bergrivier Municipality By-law on Bergrivier Municipal Land Use Planning requires the consideration of the applicable policies of the Municipality that guide decision making;

The proposed house shop is not in conflict with the distance requirements from where house shops are allowed from one another in the same street and radius provided in section 5(3) of the house shop policy. The house shop policy also gives guidance to the community on the location/placement of new house shop. The house shop policy also prescribe the groceries/items that must be sold from a premises in section 5 (20) of the house shop policy. A certificate of acceptance must be obtained from West Coast District Municipality Environmental Health Practitioner. Conditions are furthermore imposed to address aforesaid requirements.

Section 65 (s) of the Bergrivier Municipal By-law on Municipal Land Use Planning requires consideration of the provisions of the applicable zoning scheme.

The size of the proposed house shop is 38.06m² (existing garage), the size of the residential use of the existing dwelling house is, ±178.2m². The size of the house shop's percentage of floor space in relation to the dwelling house is thus 21.35%. The proposed house shop's floor space do comply with the land use description of house shop as provided in Bergrivier Municipality Integrated Zoning Scheme By-law. Sufficient space is also available on the property for 2 parking bays, one for the house shop and dwelling unit respectively, which is compliant with the parking requirement provided in the zoning scheme by-law.



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Calendula Street), **be refused** in terms of section 60 of Bergrivier Municipal By-Law relating to Land Use Planning, for the reasons provided in the reasons for recommendation.

REASONS FOR RESOLUTION

Section 65 of Bergrivier Municipality By-law on Bergrivier Municipal Land Use Planning requires the consideration of the applicable policies of the Municipality that guide decision making;

The application do not comply with requirements in section 5. (3) and (14) of Bergrivier Municipality Policy relating to House Shops and factual information available proof aforesaid. The requirements reads as follow:

“ 3. A house shop will only be allowed every 500m of street and not within a 200m radius from another house shop.

14. No advertising sign may be displayed other than a single, un-illuminated sign or notice not projecting over a public street in accordance with the Municipality’s outdoor advertising and signage By-law, and the sign may not exceed 1,5m x 0,8m.”

PTN019/11/2018

**APPLICATION FOR CONSENT USE: ERF 2775, PIKETBERG
15/3/5**

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

RESOLUTION

That the application for consent use in order to allow the operation of a house shop from an existing structure on Erf 2775, Piketberg (50 Portland Street), **be refused** in terms of section 60 of Bergrivier Municipal By-Law relating to Land Use Planning, for the reasons provided in the reasons for recommendation.

REASONS FOR RESOLUTION

Section 65 (i) of Bergrivier Municipal By-law relating to Municipal Land Use Planning requires consideration of the integrated development plan, including the municipal spatial development framework

The property is earmarked for residential use and located in a residential neighbourhood, allowing the application will result in dominant business use on the property that is inconsistent with the MSDF.

Section 65 of Bergrivier Municipality By-law on Bergrivier Municipal Land Use Planning requires the consideration of the applicable policies of the Municipality that guide decision making;

The application do not comply with requirements in section 5. (3) and (14) of Bergrivier Municipality Policy relating to House Shops and factual information available proof aforesaid. The requirements reads as follow:

“ 3. A house shop will only be allowed every 500m of street and not within a 200m radius from another house shop.

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14. *No advertising sign may be displayed other than a single, un-illuminated sign or notice not projecting over a public street in accordance with the Municipality's outdoor advertising and signage By-law, and the sign may not exceed 1,5m x 0,8m."*

Section 65 (s) of the Bergrivier Municipal By-law on Municipal Land Use Planning requires consideration of the provisions of the applicable zoning scheme.

The size of the house shop's percentage of floor space in relation to the dwelling house is $\pm 110\%$. The proposed house shop's floor space do not comply with the land use description of house shop as provided in Bergrivier Municipality Integrated Zoning Scheme By-law, from which no departure may be granted.

PTN020/11/2018

**APPLICATION FOR CONSENT USE & DEPARTURE: ERF 3043, PIKETBERG
15/3/5, 15/3/8**

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

RESOLUTIONS

1. That the application for consent use in order to allow the operation of a house shop from an existing structure (wendy house) on Erf 3043, Piketberg (73 Petunia Street), **be refused** in terms of section 60 of Bergrivier Municipal By-Law relating to Land Use Planning, for the reasons provided in the reasons for recommendation; and
2. That the application for departure of the street building line from 1m to 0.6m in order to allow the existing structure on the premises in accordance with the site plan submitted with the application, **be approved** in terms of section 60 of Bergrivier Municipal By-Law relating to Land Use Planning; subject to the following condition:
 - 2.1. The structures encroaching the street building line must be used solely in accordance with the zoning of the property.

REASONS FOR RESOLUTION

Section 65 (i) of Bergrivier Municipal By-law relating to Municipal Land Use Planning requires consideration of the integrated development plan, including the municipal spatial development framework

The property is earmarked for residential use and located in a residential neighbourhood, allowing the application will result in dominant business use on the property that is inconsistent with the MSDF.

Section 65 of Bergrivier Municipality By-law on Bergrivier Municipal Land Use Planning requires the consideration of the applicable policies of the Municipality that guide decision making;

The application do not comply with requirements in section 5. (3) and (14) of Bergrivier Municipality Policy relating to House Shops and factual information available proof aforesaid. The requirements reads as follow:

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“ 3. A house shop will only be allowed every 500m of street and not within a 200m radius from another house shop.

14. No advertising sign may be displayed other than a single, un-illuminated sign or notice not projecting over a public street in accordance with the Municipality's outdoor advertising and signage By-law, and the sign may not exceed 1,5m x 0,8m.”

Section 65 (s) of the Bergrivier Municipal By-law on Municipal Land Use Planning requires consideration of the provisions of the applicable zoning scheme.

The size of the house shop's percentage of floor space in relation to the dwelling house is $\pm 64\%$. The proposed house shop's floor space do not comply with the land use description of house shop as provided in Bergrivier Municipality Integrated Zoning Scheme By-law, from which no departure may be granted.

The property currently has a street building line of the 1m, relaxation the street building line in accordance with the site plan submitted with the application for structures used for residential purposes is regarded acceptable as no objections were received from the surrounding owners, public or traffic department.

PTN021/11/2018

**APPLICATION FOR CONSENT USE & DEPARTURE: ERF 3043, PIKETBERG
15/3/5, 15/3/8**

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

After thorough discussions the following resolutions was taken:

RESOLUTION

That the application for rezoning of Erven 119 and 124, Velddrif from Business Zone 1 to General Residential Zone 3, subdivision of the property into 9 portions ranging from $\pm 164m^2$ to $\pm 219m^2$ in extent for the development of a town house complex consisting of nine town houses, and departure from the 5m street building lines and the 3m side and rear building lines to 1m, **be approved**, in terms of section 60 of the Bergrivier Municipal By-Law relating to Land Use Planning subject to:

- a) Bulk Service Contributions, as predetermined in the Municipal Budget, be paid for each additional erf created by subdivision OR each additional unit created. In addition to this the developer will be responsible for 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. Internal access road or servitude must be provided and maintained by the Home Owners Association;
- b) A Home Owners Association must be established for the development, and the constitution of the home owners association must be approved by the municipality before registration of transfer of the first land unit;

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- c) A 1.5m side building line applies along the Western boundary of the development and no windows or doors may be positioned within walls located 1.5m from the Western boundary of the development;
- d) A right of way servitude of at least 5m in width must be provided for access to each property from Hibiscus Avenue; and
- e) That an amended subdivision plan be submitted for endorsement.

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. The proposed development would be similar than the town house development to the West thereof, and the impact on property values as a result of the proposed development is unsubstantiated.

Section 42(c) (IV) of the Spatial Planning and Land Use Management Act, 2013 requires that the impact on existing rights and obligations on the land owner, adjacent land owners and any interested/affected party be taken into account when considering applications. The existing rights of the surrounding land owners should take precedence over the additional rights being applied for. The town houses of the objectors have windows and doors facing the common boundary 1m away and receive morning sunlight from the East where the subject properties are located. The subject properties and the objector's properties are separated by an existing wall of approximately 1.8m in height that would help mitigate disturbance to the adjacent property and help prevent an impact on privacy to some extent. It is conceivable that having the proposed town houses 1m from the common boundary could affect exposure to sunlight and ventilation and potentially result in disturbance of residents. It should however have been foreseeable by the objectors that the property East of their property would be developed at some time, and therefore the applicant's right to develop the property should not be prejudiced by the position of structures on the adjacent properties.

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. Erven 119 and 124, Velddrif are currently zoned as Business Zone 1, since the previous approval for rezoning and subdivision to allow for a townhouse development has lapsed. The current zoning, Business Zone 1, allows more land use rights and more relaxed development parameters than what the proposed zoning of General Residential Zone 3 allows for. The proposed zoning of General Residential Zone 3 would allow for a development similar to the town house development of the objector, and would be less intrusive and have potentially lower negative impact on surrounding residents than what the existing Business Zone 1 zoning allows for.

Section 65 (s) of Bergrivier Municipal By-law relating to Municipal Land Use Planning requires consideration of the applicable provisions of the zoning scheme. According to the subdivision plan submitted with the application, access into the proposed development will be via a right of way servitude of 4m in width. In terms of the Bergrivier Municipality: Integrated Zoning Scheme By-Law a panhandle may not be less than 4m in width, however, the minimum width for a combined entrance and exit way may is 5m. Considering that the

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access and exit route will be used by more than one town house at a time, provision should be made for vehicles entering and exiting at the same time. It is recommended that a combined entrance and exit way of at least 5m be provided.

The application is considered consistent with the development principles of LUPA and SPLUMA. The proposed application is furthermore aligned with the guidelines of Municipal Spatial Development Framework, and is considered desirable from a planning perspective taking into account the relevant factors of consideration as determined in terms of section 65 of Bergrivier Municipal By-Law relating to land Use Planning.

PTN022/11/2018

**APPLICATION FOR REZONING AND SUBDIVISION: ERF 2830 & 2831, LAAIPEK
15/3/3, 15/3/4**

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

After thorough discussions the following resolutions was taken:

RESOLUTIONS

1. That the application for rezoning of Erf 2830, Laaiplek from Undetermined Zone 1 to Sub-divisional Area and related subdivision of Phase B of the proposed development **be refused** for the reasons listed at the reasons for recommendation;
2. That the application for rezoning of Erf 2831, Laaiplek from Undetermined Zone 1 to Sub-divisional Area to allow for 49 General Residential Zone 3 erven, 1 Transport Zone 2 erf (public parking), and existing roads as well as subdivision of Erf 2831, Laaiplek in accordance with Phase A of layout plan titled ERVEN_2830_2831_LAAIPEK_S01_F02_FINAL_REV02 dated 27 February 2017 **be conditionally approved**, in terms of section 60 of the Bergrivier Municipal By-Law relating to Land Use Planning, subject to the following conditions:
 - (a) that Erf 2830, Laaiplek in its entirety be retained as erosion buffer for the development of Phase A located on Erf 2831, Laaiplek;
 - (b) the provision of an esthetically acceptable barrier, to the satisfaction of Bergrivier Municipality, preventing vehicle access onto Erf 2830, Laaiplek;
 - (c) rehabilitation of coastal vegetation on Erf 2830, Laaiplek;
 - (d) Implementation of erosion mitigation measures in accordance with the Record of Decision referenced *E12/2/1-AV3-Erven 2830 & 2831, Velddrif*, dated 14 January 2008;
 - (e) providing boardwalks over Erf 2830, Laaiplek in order to manage public access to the beach in an environmentally sensitive manner;
 - (f) the erosion mitigation and provision of general public coastal access measures set out in condition (a) to (e) relating to retaining Erf 2830, Laaiplek as erosion buffer must be completed to the satisfaction of Bergrivier Municipality's Environmental Management Officer prior to any approval of building plans in Phase A;
 - (g) Bulk Service Contributions, as predetermined in the Municipal Budget, be paid for each additional erf created by subdivision OR each

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additional unit created. In addition to this, the developer will be responsible for the provision and upgrading of all service infrastructure required as a result of the 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 new Services Level Agreement (SLA). The new SLA will be drawn up by a municipal appointed attorney for the account of the developer;

- (h) as built plans of all services must be submitted to the Municipality's Directorate: Technical Services prior to building plan approval;
- (i) the provision of the subdivided portions with separate water, electricity, conservancy tanks as well as access (electrical connections up to the erf boundaries must be done by an electrical contractor, for the cost of the owner);
- (j) that access through the development and to the proposed public parking area be unrestricted; and
- (k) a Home Owners Association must be established for the development, and the constitution of the home owners association must be approved by the municipality before registration of transfer of the first land unit;

REASONS FOR RESOLUTION

Section 65.(1)(f) of the Bergrivier Municipality: By-Law Relating to Municipal Land Use Planning requires that the Municipality must have regard to investigations carried out in terms of other laws that are relevant to the consideration of the application. Section 4(a) (vii) of the National Environmental Management Act (107 of 1998) requires "that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions" as a consideration for sustainable development. Section 59(2)(e) of the Land Use Planning Act (Act 3 of 2014) requires that "the safe utilisation of land should be ensured by taking into consideration factors such as sea-level rise, storm surges, flooding, fire hazards and geological formations." The environmental impact assessment and setback line determination for the proposed development was undertaken more than 10 years ago. The 30m buffer area inland of the high water mark, accepted as being adequate to accommodate ongoing long-term shoreline retreat with the Environmental Authorisation granted in 2008 was confirmed by the 2018 specialist report to be inadequate over without implementing coastal erosion defence strategies. The specialist report by WML Coast (2018) states that "over a 30 year period shoreline regression of a further 30m to 60m is to be expected if no mitigation measures are implemented", and that "The beach may retreat as far as Perlemoen Street in which case Erf 2830 would be almost entirely lost and Erf 2831 would be at high risk of storm damage and coastal flooding." Development on Erf 2831, Laaiplek would therefore be subject to implementing a viable solution to coastal erosion at Erf 2830, Laaiplek. In applying a risk-averse and cautious approach to sustainable development, no development on Erven 2830, Laaiplek should be allowed.

Section 66 (8) of the Bergrivier Municipality: By-Law Relating to Municipal Land Use Planning states that the Municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required. Section 66 (10) of the Bergrivier Municipality: By-Law Relating to Municipal Land Use Planning also prevents the Municipality from imposing conditions that rely on a third party for fulfilment. Bergrivier Municipality is not

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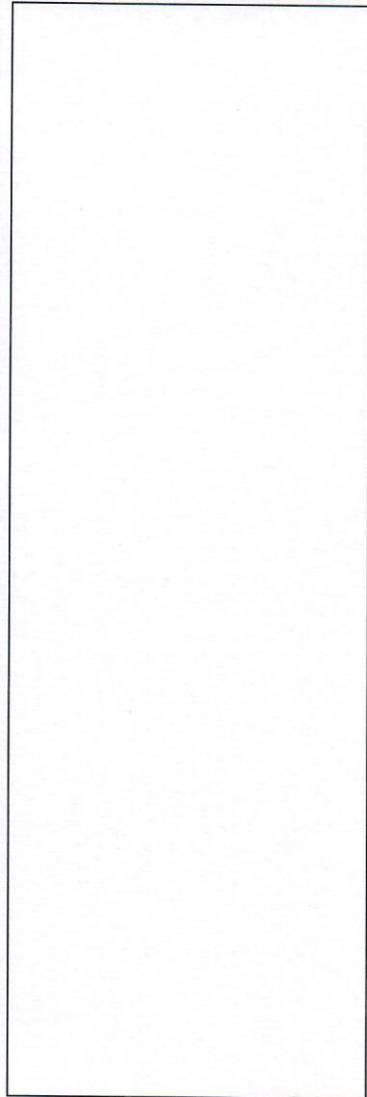


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the competent authority for approving applications relating to and interventions on Coastal Public Property and can therefore not impose conditions relating to erosion mitigation measures on such property.

In terms of Section 18(9) of the National Environmental Management: Integrated Coastal Management Amendment Act, 2014 (Act 36 of 2014) each municipality approving the rezoning, subdivision or development of a land unit within or abutting on coastal public property must ensure that adequate provision is made in the conditions of approval to secure public access to that coastal public property. Section 42(c) (l) of the Spatial Planning and Land Use Management Act, 2013 also requires that public interest be taken into account when considering applications. According to the application information, the proposed development does not assure provision for coastal public access over Erf 2830, Laaiplek and therefore it is imposed as a condition of approval.

Section 15 (1) of the National Environmental Management: Integrated Coastal Management Amendment Act, 2014 (Act 36 of 2014) states that: "No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person." Development on Erf 2830, Laaiplek may exacerbate the impact of erosion as such development will prohibit the natural functioning of the dune to protect inland properties from coastal processes. Approval of development that may be susceptible to coastal erosion could be considered as an omission by the Municipality and could require the Municipality to implement measures to rectify or prevent such effects. It is considered unjustifiable for the Municipality to place the financial burden associated with the proposed erosion mitigations on its ratepayers for the benefit of the developer, and therefore the developer is to be held accountable for these costs.



PTN023/11/2018
DATE OF NEXT MEETING

The next Municipal Planning Tribunal meeting will be held on **Tuesday 15 January 2018** at **11:00** in the Council Chambers, Municipal Offices, Church Street, Piketberg.

**HEAD: SECRETARIAT
AND RECORDS
MANAGEMENT**

NOTED

**THE MEETING ADJOURNED AT 10:45
CONFIRMED AS A TRUE VERSION OF THE PROCEEDINGS**

30/11/18

CHAIRPERSON

30/11/2018

DATE
