

**AGENDA OF A SPECIAL MAYORAL COMMITTEE MEETING 24 JANUARY 2022**

**7. CURRENT COMPOSITION OF THE MUNICIPAL PLANNING TRIBUNAL**

15/3/3/1

R Kuchar

Senior Manager : Town & Spatial Planning

22 January 2021

(028) 3138087

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**1. Executive Summary**

- To inform the Municipal Council regarding the appointment of current serving members of the Municipal Planning Tribunal.
- To inform Council on the structure of the Municipal Planning Tribunal.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town and Spatial Planning

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable, and ethical governance  
Creation and maintenance of a safe and healthy environment  
The encouragement of structured community participation in the matters of the Municipality  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)
- Regulations in terms of the Spatial Planning and Land Use Management (Act 16 of 2013)
- Amendment By-Law on Municipal Land Use Planning 2020

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

In terms of the Overstrand Amendment Bylaw on Municipal Land Use Planning 2020, Section 72 determines the following:

***“72. Composition of Municipal Planning Tribunal for municipal area***

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(1) *A Municipal Planning Tribunal established under Section 71(1)(e) must consist of the following members:*

- (a) *A minimum of 4 employees in the full-time service of the Municipality appointed by the Municipality; and*
- (b) *a minimum of 1 person who is not a municipal employee or councillor and who have knowledge and experience of spatial planning, land use management or the By-Law related thereto, appointed by the Municipality.”*

The Overstrand Municipal Council at its meeting held on 28 October 2020 took the following resolution to appoint Members to the Municipal Planning Tribunal. (Resolution and full Item that served before Council is attached per Annexure A)

**“RESOLVED (SUPPORTED BY 23 COUNCILLORS):**

1. *that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure & Planning (Mr S Müller), Director: Economic Development & Tourism (Mr S Madikane), Deputy Director: Engineering Services (Mr H Blignaut) and Senior Manager: Strategic Services (Ms R Louw);*
2. *that Ms H Janser from the Provincial Department of Environmental affairs and Development Planning be appointed as the external member to the Municipal Planning Tribunal and Ms Dalene Carstens as second;*
3. *that the members of the MPT mentioned in 1. and 2. Above be appointed for a five-year period starting from 8 February 2021;*
4. *that the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT; and*
5. *that Ms H Janser from the Provincial Department of Environmental Affairs be appointed as Chairperson of the MPT and the Director: Infrastructure & Planning (Mr S Müller) as Deputy Chairperson of the MPT.”*

In order to fulfil resolution 4 of the above Council Resolution an item serve before Council on 24 February 2021.

The following Council Resolution were taken on 24 February 2020 (Resolution and full Item that served before Council is attached as per Annexure B)

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***“RESOLVED (SUPPORTED BY 25 COUNCILLORS):***

1. that a notice be published inviting external nominations to serve on the Municipal Planning Tribunal,
2. that external nominations member must comply with the following criteria:
  - (a) has at least 7 years’ experience in either spatial planning, land use management, land development and law related,
  - (b) be a permanent resident in the Overstrand area (must reside here permanently),
  - (c) not be active in his profession within Overstrand area.
3. That the external MPT member be remunerated according prescribed in regulation (2)(e) – in the case of a person referred to in Regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on”;
4. that the Municipal Manager and Authorised Official be appointed as members of the panel to evaluate the nominees received in (1) above and to submit a report to Council requesting the appointment of the external member of the Municipal Planning Tribunal, and
5. that the Authorised Official be mandated to effect the process for appointment of external member together with all necessary administration thereto”.

An advertisement was placed calling for nominations for an individual from the public to serve on the Municipal Planning Tribunal.

Only one nomination was received. However, the nomination was not completed correctly and did not comply with the conditions for nomination.

It was agreed by the Executive Mayor and Municipal Manager to recommend to Council not to proceed with the external member of public as no qualifying nominations were received after the first advertisement.

This item has not served before previous Council to amend the previous resolution taken in October 2020.

Thus, the current Council if it resolves to proceed with the previous decision to call for nominations for a member of public to serve on the Municipal Planning Tribunal, nominations can again be called for.

**Discussion**

**Members of Tribunal**

➤ Internal Member

“The Amendment by-law on Municipal Land Use Planning 2020 Section 72(1) (a) determine that a minimum of 4 employees in full

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time service of the Municipality be appointed to the Planning Tribunal.”

Currently the 4 internal members of the Tribunal according to Council resolution is:

1. Director Infrastructure and Planning (Mr S. Muller);
2. Director Economic Development and Tourism (Mr S. Madikane);
3. Deputy Director Engineering Services (Mr H. Blignaut) and
4. Senior Manager Strategic Services (Ms R Louw).

### ➤ External Member

According to Council’s 28 October 2020 resolution, 2 external members to serve on the Planning Tribunal, being:

1. Ms H. Jansen from the Provincial Department of Environmental affairs and Development Planning and
2. Call Nominee (Did not realize on first advertisement).

Council must thus decide if new nominations must be called for to fill the second external member position.

### Chairperson and Vice chair

The current chairperson is Me H Janser and vice chair is Director: Infrastructure and Planning (Mr S. Muller).

### Time frame of appointment:

The above appointment became active from 8 February 2021 and is valid for a period of 5 years.

### **Evaluation**

Section 73 of the Amended Bylaw and Municipal Land Use Planning 2020 determines the following:

### **“73: Term of office and conditions of service of members of Municipal Planning Tribunal for municipal area**

- (1) *A member of the Municipal Planning Tribunal contemplated in Section 73 of Spatial Planning and Land Use Management Act is appointed for a term of 5 years, which is renewable once.*
- (2) *The office of a member becomes vacant if-*
  - (a) *the member is absent from 2 consecutive meetings of the Municipal Planning Tribunal without the leave of the chairperson of the Municipal Planning Tribunal;*

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- (b) *the member tenders his or her resignation in writing to the chairperson of the Municipal Planning Tribunal or, if the member who resigns is the chairperson of the Municipal Planning Tribunal, to the Council;*
- (c) *the member is removed from the Municipal Planning Tribunal under Subsection (3); or*
- (d) *the member dies.*
- (3) *The Council may remove a member of the Municipal Planning Tribunal if-*
  - (a) *sufficient reasons exist for his or her removal;*
  - (b) *a member contravenes the code of conduct referred to in Section 75;*
  - (c) *a member becomes subject to a disqualification as contemplated in Section 38 of the Spatial Planning and Land Use Management Act, and*
  - (d) *after giving the member an opportunity to be heard.*
- (4) *A vacancy of the Municipal Planning Tribunal must be filled by the Council in terms of Section 72(2), in terms of members contemplated in Section 72(1)(a) and Section 72(1)(b).*
- (5) *A member who is appointed by virtue of Subsection (4) holds office for the unexpired portion of the period for which the member he or she replaces was appointed.*
- (6) *Members of the Municipal Planning Tribunal referred to in Section 72(1)(b) must be appointed on the terms and conditions and must be paid the remuneration and allowances and be reimbursed for expenses, as determined by the Council.*
- (7) *An official of the Municipality appointed in terms of Section 72(1)(a) as a member of the Municipal Planning Tribunal-*
  - (a) *May only serve as a member of the Municipality Planning Tribunal for as long as he or she is in the full – employee of the Municipality;*
  - (b) *Is bound by the conditions of service determined in his or her contract of employment and is not entitled to additional remuneration, allowances, leave or sick leave or any other employee benefit as a result of her membership on the Municipal Planning Tribunal.”*

Thus, all members previously appointed by Council was appointed to serve a period of 5 years, coming into effect 8 February 2021.

These members hold their position until such time that Section 73(2) and (3) becomes applicable or the above terms comes to an end.

Currently none of Section 73(2) and (3) are applicable. However, Council can decide to appoint additional members, either internal or external members to the Tribunal as the by-law only determines the minimum number of people to serve on the Tribunal. Should Council appoint additional members, their time to serve on the Tribunal, will terminate at the time of the current member’s serving time.

**Conclusion**

The Overstrand Municipal Planning Tribunal consist of 4 internal Municipal officials with 2 external members of which 1 position is filled.

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The second external member's post is vacant as no suitable nomination was received. Council can thus decide if a second call for nomination be proceeded with. Alternatively, Council can rescind resolution 4 of the Council decision, taken on 28 October 2020 that read as follows:

"4. That the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT".

### **7. Financial Implications**

The SPLUMA Regulations Schedule 1 stipulated the following:

*"(2)(e) - in the case of a person referred to in regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on"*

It is estimated that the cost of one additional external member will be approximately R50 000 per year. If Council decide not to proceed with the second external member, this will be a saving on the budget.

### **8. Staff Implications**

None

### **9. Comments from other Departments, Divisions and Administrations**

#### Legal Department

In addition to the exposition of the Senior Manager: Town and Spatial Planning [R Kuchar] the following opinion is proffered:

It would appear that one of the issues under discussion is whether the Overstrand Municipal Council (the Council) is vested with the legal authority to effect changes to the Municipal Planning Tribunal (MPT) "as they see fit" (quoting the opinion of the Municipal Manager in his response / communication to the Senior Manager: Town and Spatial Planning, Mr R Kuchar [Kuchar] dated 13 January 2022), and as I understand the opinion it alludes to the possible removal of current members in order to appoint new members.

Before I embark on my opinion, I think it is important to keep in mind that the MPT is not a "normal" committee of Council, but a Tribunal established in terms of the Spatial Planning and Land Use Management Act, i.e. National legislation and that the municipality and its by-laws are subject to its provisions – please refer to Section 156(3) of the SA Constitution.

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In terms of Section 37(1) of SPLUMA the Council is vested with the authority to appoint the members of the MPT for a period of 5 years or such shorter period as the Council may determine provided that a Member may not serve as a Member for a continuous period of 10 years.

Section 38(1) read with Section 38(2) and Section 38(5)(b) of SPLUMA sets out the circumstances under which a sitting/serving Member must vacate his/her office of his/her own accord. As I understand Section 38(1) and because the Council is vested with the authority to appoint members of the MPT, should a serving Member not vacate his/her office voluntarily as required by Section 38(2) of SPLUMA the Council will then be vested with the authority to terminate that Member's continued membership. From said section it follows that the Council is therefore not vested with the authority to remove any member "... as it sees fit", in other words, Section 38(1) does not afford any discretion to the Council to remove a sitting member for a reason or reasons not made provision for in Section 38(1) of SPLUMA.

In addition to the above Section 38(5)(a) of SPLUMA affords the Council with the authority to remove a member "if there are reasonable grounds justifying the removal" which means that the grounds/reasons for a removal of a Member must be objectively justifiable. If the reason or reasons is or are not reasonable the removal will be arbitrary and may also constitute "ultra vires" conduct by the Council which will be a violation of the constitutional principle of "legality" being an incidence of the Rule of Law.

In the matter:

*Affordable Medicines and Others v Minister of Health and Another 2005 (6) BCLR (Constitutional Court)*

It was said that

"The exercise of public power must therefore comply with the Constitution which is the supreme law and the doctrine of legality which is a part of that law. The doctrine of legality which is an incidence of the rule of law is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the legislature and the executive are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law". In this sense the Constitution entrenches the principle of legality and provides the foundation for the control of power"

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*In the South African Rugby Football Union case - 2000 (1) SA 1 (Constitutional Court)*

It was said:

‘the exercise of public power is only legitimate where lawful’

The above principles are entrenched in Section 151(3) of the Constitution of South Africa which determines that:

“A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation as provided for in the Constitution”

despite the provisions of Sections 156(5) and 160(1) of the Constitution.

From the exposition of Kuchar it would appear that the conduct and abilities of the current serving members of the MPT are beyond reproach which means that the removal of all or any one of them in the absence of the circumstances listed in Section 38(1) read with Section 38(5)(b) or in violation of Section 38(5)(a) will be unlawful.

**10. Annexures**

Annexure A: Resolution and full item that served before Council on 28 October 2020

Annexure B: Resolution and full item that served before Council on 24 February 2021

**RECOMMENDATION TO THE COUNCIL:**

1. that Council take note of the current members of the Municipal Planning Tribunal and their term of office being 5 years from 8 February 2021;
2. that Council decide to call for nominations for a second external member, subject to the Council resolution and conditions dated 24 February 2021; and
3. that, if Council resolve not to call for nominations for a second external member of public, point 4 of Council resolution taken on 28 October 2020 be rescinded.

**RESPONSIBLE OFFICIAL :**

**R KUCHAR**

**TARGET DATE FOR IMPLEMENTATION :**

**14 FEBRUARY 2022**

**MINUTES : ORDINARY MEETING OF THE COUNCIL 28 OCTOBER 2020****5.3****APPOINTMENT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL****(ITEM 8, PAGE 149 : INFRASTRUCTURE & PLANNING PORTFOLIO -  
MAYORAL COMMITTEE MEETING : 28 OCTOBER 2020)****THE AFRICAN NATIONAL CONGRESS REQUESTED A CAUCUS AT 15:25****THE MEETING RESUMED AT 15:45****RESOLVED (SUPPORTED BY 23 COUNCILLORS):**

1. that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure and Planning (Mr S Müller), Director: Economic Development & Tourism (Mr S Madikane), Deputy Director : Engineering Services (Mr H Bignaut) and Senior Manager : Strategic Services (Ms R Louw);
2. that Ms H Janser from the Provincial Department of Environmental Affairs and Development Planning be appointed as the external member to the Municipal Planning Tribunal and Ms Dalene Carstens as secondi (as per Annexure C to the item);
3. that the members of the MPT mentioned in 1 and 2 above be appointed for a five-year period starting from 8 February 2021;
4. that the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT; and
5. that the Ms H Janser from the Provincial Department of Environmental Affairs be appointed as Chairperson of the MPT and the Director: Infrastructure & Planning (Mr S Müller) as Deputy Chairperson of the MPT.

**RESPONSIBLE OFFICIAL :****R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****11 NOVEMBER 2020**

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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**APPOINTMENT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL**

15/3/3/1  
R Kuchar (028) 313 8087 Corporate Head Office  
1 September 2020

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**1. Executive Summary**

The purpose of this report is for Council to consider the re-appointment of the members of the Overstrand Municipal Planning Tribunal (MPT).

Council at its meeting held on 28 October 2015 resolved to appoint members of the MPT for a period of five (5) years from date of commencement of the legislation.

The date of commencement was gazetted as 1 February 2016.

The current appointment of the MPT members' five year period will thus lapse on 31 January 2021. This item serves to submit to Council to consider the re-appointment of the current members of the MPT for a further five (5) years as allowed for in terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2015) Section 37.(1) that reads as follows:

*"37.(1) The term of office of members of a Municipal Planning Tribunal is five years or such shorter period as the Municipal Council may determine, provided that a member may not serve as a member for a continuous period of ten years."*

It is however in line with Section 73(1) of the Municipal By-Law.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town- and Spatial Planning

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable and ethical governance  
Creation and maintenance of a safe and healthy environment  
The encouragement of structured community participation in the matters of the Municipality  
Promotion of tourism, economic and social development

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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**4. Delegated Authority**

None

**5. Legal Requirements**

- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)
- Regulations in terms of the Spatial Planning and Land Use Management Act 16 of 2013
- Overstrand Municipality By-Law on Municipal Land Use Planning

**6. Background/Discussion/Conclusion**

**Background**

The Executive Mayor resolved on 30 September 2020 (item 10) as follows:

*"That the item be referred back in order for the Administration to gather information regarding:*

- a) the desirability to appoint a new Tribunal for a period of 18 months in terms of Section 37 of the SPLUMA Act; and*
- (b) the composition of the new Tribunal in terms of the SPLUMA Act of 2013 legislation, Section 36*

*and be resubmitted during the next cycle of Council."*

The additional information requested is attached as Annexure E to the item.

What follows hereunder is a repeat of the item which served before the Executive Mayor during the meeting referred to above.

At Council's meeting held on 28 October 2015 the Council appointed the following members to the Municipal Planning Tribunal:

- Municipal Manager
- Director: Infrastructure and Planning
- Director: Community Services, and
- Director: Economic Development

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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- External Member - H Janser (an official in service of the Department Environment Affairs and Development Planning)

The Municipal Manager was appointed as Chairperson and the Director: Infrastructure and Planning as Deputy Chairperson.

However, in order for the Municipal Manager (Accounting Officer) to lodge appeals against resolutions of the Municipal Planning Tribunal (MPT) and the Authorised Official, the Municipal Manager's membership of the MPT was terminated at the Council meeting held on 29 November 2017.

Council resolved on 29 November 2017 that the Director: Infrastructure and Planning be appointed as Chairperson and the Director: Community Services as Deputy Chairperson.

The Director: Management Services was appointed as the fifth member of the MPT – see Council's resolution of 29 November 2017 (attached as Annexure D) as a replacement for the Municipal Manager.

The members who were appointed and currently the members of the MPT are the Director: Infrastructure and Planning (Mr S Müller), Director: Community Services (Mr R Williams), Director: Economic Development (Mr S Madikane) and Director: Management Services (Ms D Arrison), all officials in service of the Overstrand Municipality.

As external member Ms H Janser was appointed. Ms H Janser is an official in service of the Department Environment Affairs and Development Planning.

The above members formed the Planning Tribunal which commenced from the date of 1 February 2016 as gazetted.

In terms of their appointment the members were appointed for a period of five (5) years which expires on 31 January 2021.

In terms of the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) Section 37.(1) "*The term of office of members of a Municipal Planning Tribunal is five years or such shorter period as the Municipal Council may determine, provided that a member may not serve as a member for a continuous period of ten years.*"

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Portfolio Committee : Infrastructure and Planning  
20 October 2020  
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In terms of Overstrand Municipal Land Use Planning By-Law Section 73.(1) "A member of the Municipal Planning Tribunal for contemplated in Section 37 of the Spatial Planning and Land Use Management Act is appointed for a term of 5 years which is renewable once."

**Discussion**

Thus in terms of Council's By-Law, Council can appoint the current serving members for a further five (5) year period whereafter Council needs to appoint new members or request an exemption from the relevant ministry.

The current members of the MPT exercised their duties diligently and competently. No reason exists not to continue with any one of the members on the MPT.

Overstrand Municipality is a relatively small Municipality which limits the numbers of members eligible with the relevant knowledge and expertise to fulfil their membership of a MPT member.

It would thus be to the Municipality's advantage to continue with the existing internal members of the MPT for a further five (5) year.

The external member of the MPT was Ms H Janser who is an official employed in the Department Environment Affairs and Development Planning.

Having had a member of the provincial authorities as a member of the MPT was very beneficial to the MPT and in consideration of matters before it.

Firstly, in terms of financial costs, there was no financial cost to Overstrand Municipality as Ms Janser was employed by the Department and all cost related to her attending and being a member of Overstrand MPT was covered by her employer, the Provincial Government.

Secondly, the experience, inside knowledge and information that Ms Janser brought to the Overstrand MPT, was very beneficial to the MPT. Her knowledge of policy and direction from a Provincial and National Authority experience proved very useful to the MPT at deciding applications.

For the above reasons it is proposed that Ms Janser's appointment as a member of Overstrand MPT be extended for a further five (5) year period.

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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The Head of the Department, Mr P van Zyl, in a letter attached as Annexure B, confirmed his support for the continuation of Ms H Janser's services to serve as member of the Overstrand Municipal MPT.

**Conclusion**

Term of office for members of the MPT

Section 37 of SPLUMA provides that the term of office of members of the MPT is five (5) years or such shorter period as the Municipal Council may determine, provided that a member may not serve as a member for a continuous period of ten (10) years. This constitutes a minimum requirement. Therefore a shorter period of appointment than five (5) years may be set.

For the aforesaid reason it is recommended that Council appoint the following members as members of Overstrand MPT:

Mr S Müller (Director: Infrastructure and Planning - Chairperson)  
Mr R Williams (Director: Community Services - Deputy Chairperson)  
Ms D Arrison (Director: Management Services)  
Mr S Madikane (Director: Economic Development)  
Ms H Janser – (External Member)  
Ms Dalene Carstens (nominated as a substitute in the place of Mr J Benjamin and Ms Y Mabantsela as secundi as they are no longer employed by the Department of Environmental Affairs and Development Planning - see Annexure C)

That this appointment is for a five (5) year period commencing 1 February 2021.

It is recommended that the Council determine the term of office for both authorised officials and members who are not authorised officials to be five (5) years from 1 February 2021.

Designation of Chairperson and Deputy Chairperson

Regulation 3(1)(h) requires the Municipal Council to designate a member of the MPT a Chairperson and another member as Deputy Chairperson to act as chairperson when the chairperson is absent or unable to perform his or her duties. It is recommended that the Director: Infrastructure and Planning be designated as the Chairperson and the Director: Community Services as Deputy Chairperson.

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

Annexure A: Council resolution of 28 October 2015

Annexure B: Letters of appointment of Ms H Jansen dd 22 February 2016 to serve on Overstrand Municipal Planning Tribunal for five (5) years

Annexure C: Confirmation of the Department Environmental Affairs and Development Planning for the continuation of Ms H Jansen as their primary representative on Overstrand MPT dd 14 August 2020

Annexure D: Council resolution dd 29 November 2017

Annexure E: Additional information requested by the Executive Mayor on 30 September 2020.

**RECOMMENDATION TO THE COUNCIL:**

1. that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure and Planning (Mr S Müller), Director: Community Services (Mr R Williams), Director: Management Services (Ms D Arrison) and Director: Economic Development (Mr S Madikane);
2. that Ms H Jansen be re-appointed as the external member to the Municipal Planning Tribunal (MPT) and Ms Dalene Carstens as substitute of the two (2) secondi, J Benjamin and Ms Y Mabantsela, as set out in the letter of the Department Environmental Affairs and Development Planning (attached as Annexure C);
3. that the members of the MPT be re-appointed for a further five (5) year period from 1 February 2021; and

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
20 October 2020  
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

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4. that the Director: Infrastructure and Planning (Mr S Müller) be appointed as Chairperson and the Director: Community Services (Mr R Williams) as Deputy Chairperson of the MPT.

**RESPONSIBLE OFFICIAL :** R KUCHAR

**TARGET DATE FOR IMPLEMENTATION :** 11 NOVEMBER 2020

## ANNEXURE A

MINUTES : ORDINARY MEETING OF THE COUNCIL                      28 OCTOBER 2015

5.5  
APPOINTMENT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

(ITEM 2, PAGE 29 : INFRASTRUCTURE AND PLANNING PORTFOLIO  
- MAYORAL COMMITTEE MEETING : 28 OCTOBER 2015)

RESOLVED (UNANIMOUSLY):

1. that Ms H Jansen be appointed as the external member to the Municipal Planning Tribunal (MPT) and Mr J Benjamin and Ms Y Mabantsele as *secundi* alternatively;
2. that the members of the MPT be appointed for a five (5) year period from the date that the legislation is enacted; and
3. that the Municipal Manager be appointed as Chairperson and the Director: Infrastructure and Planning as Deputy Chairperson of the MPT.

RESPONSIBLE OFFICIAL :                      R KUCHAR

TARGET DATE FOR IMPLEMENTATION :      11 NOVEMBER 2015

16/15



Number: **MP Notice 00018**  
 Date: **22 February 2015**

Environmental Affairs and Development Planning  
 Private Bag X9086  
 CAPE TOWN  
 8000

Head of the Department  
 Environmental Affairs and Development Planning  
 Private Bag X9086  
 CAPE TOWN  
 8000

(Attention: H Jansen)

**REGISTERED MAIL**

Dear Madam

**APPOINTMENT OF MEMBER OF THE OVERSTRAND MUNICIPAL TRIBUNAL**

Your nomination regarding the above refer.

On 28 October 2015 Council resolved in terms of Section 72 of the Overstrand Municipality Land Use Planning By-law (2015), that you be appointed as a member of the Overstrand Municipal Tribunal. The terms of the office of all MPT members shall be five (5) years.

You are requested to confirm your appointment in writing. The Tribunal will commence its operation only after receipt of the confirmation of all members. You will be notified in due course regarding the relevant commencement date.

Letters have also been sent to Mr J Benjamin and Ms Y Mabentsela to confirm their appointments as secunda.

We are looking forward to receive your written confirmations at your earliest convenience.

Yours sincerely,

**D ARRISON**  
 ACTING MUNICIPAL MANAGER

For copy and info:  
 Tel: 029 261 8100  
 Fax: 029 261 8101

Private Bag  
 X9086  
 Cape Town  
 8000

## ANNEXURE C



Department of Environmental Affairs and Development Planning  
**Pieter van Zyl**  
 Head of Department  
[Pieter.vanZyl@westerncape.gov.za](mailto:Pieter.vanZyl@westerncape.gov.za) | Tel: 021 483 8315

Mr Stephen Müller  
 Director: Infrastructure and Planning  
 Overstrand Municipality  
 PO Box 20  
 Hermanus  
 7200

(Via e-mail: [smuller@overstrand.gov.za](mailto:smuller@overstrand.gov.za))

Dear Colleague

**OVERSTRAND MUNICIPAL PLANNING TRIBUNAL: PROVINCIAL REPRESENTATION**

Your letter dated 23 July 2020, refers.

It is encouraging to get your feedback that our representatives have been adding value to the functioning of your Municipal Planning Tribunal. It is equally important that our officials are exposed to the challenges and issues that municipal colleagues experience, for us to deliver on our own Provincial mandate to support and capacitate municipalities in the exercise of their municipal planning function.

I hereby confirm approval for the continuation of Ms Helene Jansen as our primary representative on your MPT. I, however, wish to replace the two previous *secundis* as they are no longer employed in our Development Management Directorates, from which this function is co-ordinated and nominate Ms Dalene Coertzen as being nominated as a substitute in their places. Ms Coertzen recently joined the Directorate: Development Management in the Cape Town Office. Ms Coertzen has many years' experience, having been in our George Regional Office where she also served on the Joint Eden District MPT. We trust that she will bring a wealth of experience and knowledge to your MPT's functioning.

I trust that this will be in order. Should you have any questions, please contact Kobus Munro at [Kobus.munro@westerncape.gov.za](mailto:Kobus.munro@westerncape.gov.za) or mobile 0837011890, in his capacity as the Director: Development Management.

Yours sincerely

**PIETER VAN ZYL**  
 HEAD OF DEPARTMENT  
 ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING  
 DATE: 14 August 2020

CC: Riaan Kuchor, Senior Manager: Town and Spatial Planning ([riaan@overstrand.gov.za](mailto:riaan@overstrand.gov.za))



**Annexure E**

- (a) Section 37(1) of Spatial Planning and Land Use Management Act stipulated the following:

*'The term of office of members of a Municipal Planning Tribunal is five years or such shorter period as the Municipal Council may determine, provided that a member may not serve as a member for a continuous period of ten years.'*

This Council could, should it so wish, appoint members for a period of 5 years or less which means an appointment for 18 months could legally be made.

However, the appointment for a shorter period is not desirable especially for the continuity of the operation of the Municipal Planning Tribunal.

The reason is that it takes time for members to get accustomed with the processes, procedures and responsibilities of the working of the Municipal Planning Tribunal.

Further, the longer members serve on the MPT the better informed they become on the consequences of the decisions that they have taken. The knowledge then gain on understanding decision outcomes the better they direct or mitigate decisions in similar circumstances.

Also with the upcoming municipal election it will only afford ±6 months for the new Council to become informed of the legislation and process to be followed to appoint new members to the MPT.

The new Council will, if it wants to appoint a member from public, have to advertise for people to be nominated to become an external member on the MPT. This needs to be advertised for 30 days. Thereafter the nominations need to be evaluated and Council need to decide on the appointment. This could easily take longer than the 6 months afforded to them.

- (b) Council in terms of Section 36 – Composition of Municipal Planning Tribunals

36 (1) A Municipal Planning Tribunal must consist of –  
(a) officials in the full-time service of the municipality; and

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- (b) persons appointed by the Municipal Council who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto.*
- (2) Municipal councillors may not be appointed as members of a Municipal Planning Tribunal.*
- (3) A Municipal Planning Tribunal must consist of at least five members or more as the Municipal Council deems necessary.*
- (4) The Municipal Council must designate –*
- (a) a member of the Municipal Planning Tribunal as chairperson; and*
- (b) another member as deputy chairperson, to act as chairperson of the Municipal Planning Tribunal when the chairperson is absent or is unable to perform his or her duties."*

This Council can appoint officials to become members of the Municipal Planning Tribunal. Preference is officials that have got good exposure to the operation as a whole, good representation and knowledge of the different directorates to ensure well balanced consideration of application and departments.

Again for continuity it is better to continue with members of a Municipal Planning Tribunal for as long as legally possible.

Appointment of new members will impact negatively on the continuity of the decision making.

Further, it will also interrupt the understanding of outcome of decisions that are taken by the Municipal Planning Tribunal.

#### External Members

Currently the external member of the Municipal Planning Tribunal is a provincial official. Should Council wish to appoint an external member or member from the public or a private individual, Council will need to establish the processes and requirements for nomination. After this Council could begin calls for nomination. Council also need to establish a panel to evaluate the nominations and submit to Council for a decision.

Thus this process will take Council beyond 31 January 2021 of the current Municipal Planning Tribunal. Thus there would be a time where the Municipal Planning Tribunal cannot operate.

Secondly, should Council want to appoint an external member, Council need to budget for it. Depending on the number of external members each member will be eligible for remuneration in terms of treasury regulations. This could include travel and subsistence, time for preparation and time of attendance for a Municipal Planning Tribunal meeting.

Further, an external member could have vested interests in the outcome of decisions possibility to influence decisions to his/her advantage.

Thus in terms of Council's By-Law, Council can appoint the current serving members for a further five (5) year period whereafter Council needs to appoint new members or request an exemption from the relevant ministry to continue with the current members even longer than the 10 years.

The current members of the MPT exercised their duties diligently and competently. No reason exists not to continue with any one of the members on the MPT.

Overstrand Municipality is a relatively small Municipality which limits the numbers of members eligible with the relevant knowledge and expertise to fulfill their membership of a MPT member.

It would thus be to the Municipality's advantage to continue with the existing internal members of the MPT for a further five (5) year.

The external member of the MPT was Ms H Janser who is an official employed in the Department Environment Affairs and Development Planning.

Having had a member of the provincial authorities as a member of the MPT was very beneficial to the MPT and in consideration of matters before it.

Firstly, in terms of financial costs, there was no financial cost to Overstrand Municipality as Ms Janser was employed by the Department and all cost related to her attending and being a member of Overstrand MPT was covered by her employer, the Provincial Government.

Secondly, the experience, inside knowledge and information that Ms Janser brought to the Overstrand MPT, was very beneficial to the MPT. Her knowledge of policy and direction from a Provincial and National Authority experience proved very useful to the MPT at deciding applications.

For the above reasons it is proposed that Ms Janser's appointment as a member of Overstrand MPT be extended for a further five (5) year period.

The Head of the Department, Mr P van Zyl, in a letter attached as Annexure B, confirmed his support for the continuation of Ms H Janser's services to serve as member of the Overstrand Municipal MPT.

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**MINUTES : ORDINARY MEETING OF THE COUNCIL 24 FEBRUARY 2021****5.3  
APPOINTMENT OF EXTERNAL MEMBER ON THE MUNICIPAL PLANNING  
TRIBUNAL****(ITEM 3, PAGE 672 : INFRASTRUCTURE & PLANNING PORTFOLIO -  
MAYORAL COMMITTEE MEETING : 24 FEBRUARY 2021)****RESOLVED (SUPPORTED BY 25 COUNCILLORS):**

1. that a notice be published inviting external nominations to serve on the Municipal Planning Tribunal (MPT);
2. that external nominations member must comply with the following criteria:
  - (a) has at least 7 years' experience in either spatial planning, land use management, land development and law related.
  - (b) be a permanent resident in the Overstrand area (must reside here permanently).
  - (c) not be active in his profession within Overstrand area.
3. that the external MPT member be remunerated according prescribed in regulation (2)(e) – *"in the case of a person referred to in regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on"*;
4. that the Municipal Manager and Authorised Official be appointed as members of the panel to evaluate the nominees received in 1. above and to submit a report to Council requesting the appointment of the external member of the Municipal Planning Tribunal; and
5. that the Authorised Official be mandated to effect the process for appointment of external member together with all necessary administration thereto.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R KUCHAR</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>10 MARCH 2021</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>N/A</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

**AGENDA of the**  
**Portfolio Committee : Infrastructure & Planning**  
**16 February 2021**  
**(Also the agenda for the Mayoral Committee Meeting : 24 February 2021)**

a/b

**APPOINTMENT OF EXTERNAL MEMBER ON THE MUNICIPAL PLANNING TRIBUNAL**

15/3/3/1

R Kuchar Senior Manager : Town &amp; Spatial Planning

22 January 2021

(028) 3138087

**1. Executive Summary**

Council at its meeting held on 28 October 2020 took the following decision:

***"RESOLVED (SUPPORTED BY 23 COUNCILLORS):***

1. *that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure & Planning (Mr S Müller), Director: Economic Development & Tourism (Mr S Madikane), Deputy Director: Engineering Services (Mr H Blignaut) and Senior Manager: Strategic Services (Ms R Louw);*
2. *that Ms H Janser from the Provincial Department of Environmental affairs and Development Planning be appointed as the external member to the Municipal Planning Tribunal and Ms Dalene Carstens as second;*
3. *that the members of the MPT mentioned in 1. and 2. Above be appointed for a five-year period starting from 8 February 2021;*
4. *that the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT; and*
5. *that Ms H Janser from the Provincial Department of Environmental Affairs be appointed as Chairperson of the MPT and the Director: Infrastructure & Planning (Mr S Müller) as Deputy Chairperson of the MPT."*

The item serves to proceed to fulfil condition 4 of the above resolution.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
 Town- and Spatial Planning

**3. Compliance with Strategic Priority/ies**

Provision of democratic, accountable and ethical governance  
 Creation and maintenance of a safe and healthy environment

**AGENDA of the  
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The encouragement of structured community participation in the matters of the Municipality  
Promotion of tourism, economic and social development

**4. Delegated Authority**

None

**5. Legal Requirements**

- Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013) (SPLUMA)
- Regulations in terms of the Spatial Planning and Land Use Management (Act 16 of 2013)
- Overstrand Municipality By-Law on Municipal Land Use Planning

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

Council at its meeting held on 28 October 2020 took the following resolution:

- "1. that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure & Planning (Mr S Müller), Director: Economic Development & Tourism (Mr S Madikane), Deputy Director: Engineering Services (Mr H Blignaut) and Senior Manager: Strategic Services (Ms R Louw);
2. that Ms H Janser from the Provincial Department of Environmental affairs and Development Planning be appointed as the external member to the Municipal Planning Tribunal and Ms Dalene Carstens as secondi (as per Annexure C to the item);
3. that the members of the MPT mentioned in 1. and 2. Above be appointed for a five-year period starting from 8 February 2021;
4. that the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT; and
5. that Ms H Janser from the Provincial Department of Environmental Affairs be appointed as Chairperson of the MPT and the Director: Infrastructure & Planning (Mr S Müller) as Deputy Chairperson of the MPT."

Council's resolution of 28 October 2020 is attached per Annexure A.

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In order to fulfil condition 4. Of the above resolution a prescribed legal procedure needs to be complied with in order to call for nominations of external members, evaluation of external members and a final proposal for the preferred external member needs to be submitted to Council for a final decision.

In terms of Section 36.(1) (b):

*"36.1(1)(b) persons appointed by the Municipal Council who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto."*

read together with Spatial Planning and Land Use Management Regulation: Land Use Management and General Matters, 2015 Regulations

sub regulation 3.(1)(g) *"convene an evaluation panel to evaluate the nominations received by the municipality and determine the terms of reference of that evaluation panel;"*

determining the following:

4. *A nomination submitted in response to an invitation must comply with all the requirements for a nomination submitted in response to a call for nomination referred to in subregulation (6).*
6. *The call for nominations must –*
  - (a) *request sufficient information for the municipality to evaluate the knowledge and experience of the nominee;*
  - (b) *permit self-nomination or provide for acceptance of the nomination by the nominee;*
  - (c) *include a confirmation by the nominee that he or she is not disqualified from serving as a member as contemplate in section 38 of the Act;*
  - (d) *include agreement by the nominee that the municipality may verify all the information provided by the nominee;*
  - (e) *include a statement that the nominee will be obliged to commit to and uphold a code of conduct; and*
  - (f) *provide for a closing date for nominations which date may be no less than 14 days from the date of publication and no nominations submitted after that date may be evaluated by the municipality.*
11. *The evaluation panel referred to in sub regulation (3)(g) must convene an evaluation panel to evaluate the nominations received by the municipality and determine the terms of reference of that evaluation panel -*

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- (a) consist of officials in the employ of the municipality; and
  - (b) evaluate all nominations that complied with the requirements of this regulation which were received by the municipality in response to the invitations and call for nominations and make recommendations on the appointment of members to the municipality.
12. The municipality may not appoint any person to the Municipal Planning Tribunal if that persons –
- (a) was not nominated in accordance with the provisions of this regulation;
  - (b) is disqualified from appointment as contemplated in section 38 of the Act; or
  - (c) if he or she does not possess the knowledge or experience required in terms of section 36(1)(b) of the Act or the additional criteria determined in terms of subregulation (1)(e)."

**Discussion**

In order for Council to invite nominations for an external member to be represented on the Municipal Planning Tribunal Council need to decide the following:

➤ Call for nomination

The call for nomination must indicate the period to which must be called for.

The period will be the same as per Council's resolution of 28 October 2020 stating from date of the Council's resolution on appointment of external member.

➤ Qualification of Nominees

Further Section 36(1)(b) determine the broad criteria of experience needed to qualify to be considered:

*"36.1(1)(b) persons appointed by the Municipal Council who are not municipal officials and who have knowledge and experience of spatial planning, land use management and land development or the law related thereto."*

Council however can in addition to the above make further requirements.

It is recommended that the following requirements be added:

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1. that the nominees have at least 7 years' experience in either spatial planning, land use management, land development and law related.
2. that the nominee be a permanent resident in the Overstrand area (must reside here permanently).
3. that the nominee not be active in his profession within Overstrand area.

The above is to make sure that the nominees has the relevant expertise and experience, that they are informed about the situation and happenings in Overstrand area and to ensure that they do not unduly influence the outcome of the decision to benefit his or her practise.

➤ Code of Conduct

Code of conduct is as prescribed and included under Schedule 3 of the Spatial Planning and Land Use Regulation (attached per Annexure A), which be applicable..

➤ Evaluation Panel

In terms of sub regulation 3.(1)(g) "*convene an evaluation panel to evaluate the nominations received by the municipality and determine the terms of reference of that evaluation panel;*" it is recommended that the Municipal Manager and the Authorised Official be delegated the task of evaluating the nominees and to submit a recommendation to Council for final consideration and approval.

**7. Financial Implications**

The SPLUMA Regulations Schedule 1 stipulated the following:

*"(2)(e) - in the case of a person referred to in regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on"*

It is estimated that the cost of one additional external member will be approximately R50 000 per year.

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

None

**10. Annexures**

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Annexure A: Resolution of Council's meeting held on 28 October 2020.

**RECOMMENDATION :**

1. that a notice be published inviting external nominations to serve on the Municipal Planning Tribunal (MPT);
2. that external nominations member must comply with the following criteria:
  - (a) has at least 7 years' experience in either spatial planning, land use management, land development and law related.
  - (b) be a permanent resident in the Overstrand area (must reside here permanently).
  - (c) not be active in his profession within Overstrand area.
3. that the external MPT member be remunerated according prescribed in regulation (2)(e) – *"in the case of a person referred to in regulation 3(2)(b), is entitled to a seating and travel allowance for each meeting of the Municipal Planning Tribunal that he or she sits on"*.
4. that the Municipal Manager and Authorised Official be appointed as members of the panel to evaluate the nominees received in 1. above and to submit a report to Council requesting the appointment of the external member of the Municipal Planning Tribunal, and
5. that the Authorised Official be mandated to effect the process for appointment of external member together with all necessary administration thereto.

<b>RESPONSIBLE OFFICIAL :</b>	<b>R KUCHAR</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>10 MARCH 2021</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>N/A</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

## ANNEXURE A

5

**MINUTES : ORDINARY MEETING OF THE COUNCIL 28 OCTOBER 2020**

5.3

**APPOINTMENT OF MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL****(ITEM 8, PAGE 149 : INFRASTRUCTURE & PLANNING PORTFOLIO -  
MAYORAL COMMITTEE MEETING : 28 OCTOBER 2020)****THE AFRICAN NATIONAL CONGRESS REQUESTED A CAUCUS AT 15:25****THE MEETING RESUMED AT 15:45****RESOLVED (SUPPORTED BY 23 COUNCILLORS):**

1. that the municipal officials that will serve on the Municipal Planning Tribunal are the Director: Infrastructure and Planning (Mr S Müller), Director: Economic Development & Tourism (Mr S Madikane), Deputy Director : Engineering Services (Mr H Blignaut) and Senior Manager: Strategic Services (Ms R Louw);
2. that Ms H Janser from the Provincial Department of Environmental Affairs and Development Planning be appointed as the external member to the Municipal Planning Tribunal and Ms Dalene Carstens as secondi (as per Annexure C to the item);
3. that the members of the MPT mentioned in 1 and 2 above be appointed for a five-year period starting from 8 February 2021;
4. that the legally prescribed process be followed to include an additional, external, publicly nominated member of the MPT; and
5. that the Ms H Janser from the Provincial Department of Environmental Affairs be appointed as Chairperson of the MPT and the Director: Infrastructure & Planning (Mr S Müller) as Deputy Chairperson of the MPT.

**RESPONSIBLE OFFICIAL :****R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****11 NOVEMBER 2020**