

**15.  
RULES AND PROCEDURES FOR THE MUNICIPAL PLANNING TRIBUNAL AND  
THE APPEAL AUTHORITY**

15/3/3/1

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**1. Executive Summary**

The purpose of this report is to establish the rules and procedures for the Municipal Planning Tribunal and Appeal Authority as stipulated in the Spatial Land Use Management Act, 2013 (Act 16 of 2013), Land Use Management Act, 2015 (Act of 2015) and the Overstrand Municipality By-law on Municipal Land Use Planning, 2016.

**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
- Land Use Management Act, 2014 (Act 3 of 2014)
- Overstrand Municipality By-law on Municipal Land Use Planning, 2016

## **6. Background/Discussion/Conclusion**

### **Background**

The new suite of planning legislation namely, the Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA), and the regulations in terms of SPLUMA came into force on 1 July 2015. The Land Use Planning Act was adopted on 7 April 2014 and enforced by the Western Cape Province as and when the respective land use planning by-laws were adopted by the municipalities of the Western Cape. The Overstrand Municipality By-Law on Municipal Planning became operational in the Overstrand Municipality on 1 February 2016.

Each of the aforementioned legislation stipulates the establishment of operational procedures which a Municipal Planning Tribunal and Appeal Authority have to follow when considering and making a decision. In terms of the regulations of Spatial Land Use Management Act (SPLUMA), 2013 the Municipality must establish and approve operational procedures for the Municipal Planning Tribunal.

The Spatial Land Use Management Act (SPLUMA) Regulations also state that that the Municipality must determine appeal procedures for the lodging and hearing of appeals.

Considering the aforementioned, this report will set out the rules and procedures as developed for the Municipal Planning Tribunal and the Appeal Authority.

### **Discussion**

#### Rules and Procedures of the Municipal Planning Tribunal

Chapter 2, Part B, 3(1)(k) of the Spatial Land Use Management Act (SPLUMA) Regulations states that the Municipality must develop and approve operational procedures for the Municipal Planning Tribunal. Cognisance must be taken that the membership, code of conduct and the establishment of the Municipal Planning Tribunal was confirmed by Council on 28 October 2015.

The draft rules and procedures for the Municipal Planning Tribunal is attached as Annexure A and titled: "Overstrand Municipality: Rules and Procedures for Meetings held by the Municipal Planning Tribunal". The draft rules and procedures for the Municipal Planning Tribunal sets forth the manner in which

land development and land use applications will be considered by the Municipal Planning Tribunal.

Chapter 2, Part F, 12 of the Spatial Land Use Management Act (SPLUMA) Regulations state that the operational procedures contemplated in regulation 3(1)(k) must also determine if and how to allow for oral representations by parties to an application. Oral representations during meetings are also contemplated in the Act and in Land Use Planning Act (LUPA). However it should be noted that the Municipality By-Law on Municipal Land Use Planning allows the Municipality to decide to allow for oral representation. The rules and procedures do not make provision for oral representation at this stage and allows for the planning tribunal to consider a matter before them only on written representations.

#### Rules and Procedures of the Appeal Authority

As determined by the Spatial Land Use Management Act (SPLUMA) the Executive Mayor is the Appeal Authority. In terms of Chapter 4, 20 of the Spatial Land Use Management Act (SPLUMA) Regulations, where an Executive Mayor is the Appeal Authority, the Municipality must determine appeal procedures.

The draft rules and procedures for the Appeal Authority determine the appeal procedures for the lodging and consideration of appeals as contemplated in section 51 of the Spatial Land Use Management Act (SPLUMA) and is titled: "Overstrand Municipality: Rules of Procedure for the Meetings of the Appeal Authority". The draft rules and procedures for the Appeal Authority is attached as Annexure B.

Chapter 4, 21 of the Spatial Land Use Management Act (SPLUMA) Regulations state that manner in which appeals are received must be determined in the rules and procedures. The Municipality By-Law on Municipal Land Use Planning does allow the Municipality to decide when to allow for oral representation. It should be noted that the Municipality's By-Law on Municipal Land Use Planning allows the Municipality to decide to allow for oral representation. The rules and procedures do not make provision for oral representation at this stage and allows for the appeal authority to consider a matter before it only on written representations.

#### Revisions to the Rules and Procedures

Any revisions to the rules and procedures for the Municipal Planning Tribunal may be determined by the members of the Municipal Planning Tribunal and submitted to Council for approval. Likewise the Appeal Authority may make

revisions to the rules and procedures at any time where after it must be approved be Council.

**7. Financial Implications**

None

**8. Staff Implications**

None

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

None

**10. Annexures**

Annexure A: Overstrand Municipality: Rules and Procedures for Meetings held by the Municipal Planning Tribunal

Annexure B: Overstrand Municipality: Rules of Procedure for the Meetings of the Appeal Authority

**RECOMMENDATION TO COUNCIL:**

that the draft Rules and Procedures for the Municipal Planning Tribunal and Appeal Authority **be adopted**.

**RESPONSIBLE OFFICIAL :****R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****10 AUGUST 2016**

**OVERSTRAND MUNICIPALITY**  
**RULES AND PROCEDURES FOR MEETINGS HELD**  
**BY THE MUNICIPAL PLANNING TRIBUNAL**



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## **1. APPLICATION OF THE RULES**

- 1.1 The rules of procedure apply to all the meetings of the Municipal Planning Tribunal and its panels.

## **2. DEFINITIONS AND INTERPRETATION OF RULES**

- 2.1 In these Rules, unless inconsistent with the context:

"Administrator" means a person appointed by the Municipal Manager as contemplated in section 76 of the By-law and whose function is to provide administrative secretarial support to the Municipal Planning Tribunal;

"By-law" means the Overstrand Municipality By-Law on Municipal Land Use Planning 2015 published in the Provincial Gazette 7540 dated 04 December 2015;

"Chairperson" means the Chairperson designated in terms of section 72 (3) of the Bylaw and includes the deputy chairperson and/or presiding officer as the case may be;

"Tribunal" means the Municipal Planning Tribunal established in terms of Section 71 of the By-law;

"Council " means Municipal Council of the Overstrand Municipality;

"member " means a member of the Municipal Planning Tribunal;

"applicant" means a person contemplated in section 16 (2) of the By-law;

"councillor" means a member of the Municipal Council; and

"place of business" means the main building of the Overstrand Municipality which houses the Municipal Manager.

"quorum" means the majority of the Municipal Tribunal, with at least three of the appointed members to be present;

- 2.2 The ruling of the Chairperson in regard to the application of these Rules and any other procedural matters not dealt with herein is final and binding on the meeting at which such a ruling is given, and shall be recorded in the minutes.

## **3. NOTICE OF MEETINGS**

- 3.1 The Chairperson must determine the dates and times of meetings of the Tribunal or panels of the Tribunal.
- 3.2 The Administrator must give notice of the meetings as per the agenda schedule.

- 3.3 Notwithstanding rule 3.2, in the case of an urgent meeting, the notice period must be at least 24 hours or such lesser period as the Chairperson may direct and the Chairperson determines whether the need for a meeting is urgent or not.
- 3.4 If a member has not received notice of a meeting in accordance with these Rules, this will not invalidate any proceedings of the meeting.
- 3.5 External members of the Tribunal must, in writing, specify an electronic mail address and/or a physical address. Officials who are Tribunal members will receive such notification via their Municipal e-mail address and at their place of work. Electronic notice of a meeting or any other official correspondence to this address will constitute proper notice of a meeting. Hard copies of an agenda and all official correspondence will be delivered to a member on his/her request, provided the Chairperson determines if it is practical and/or economical to do so in the circumstances.

#### **4. MEETINGS OPEN TO THE PUBLIC**

- 4.1 Meetings of the Tribunal must be open to the public; except in so far as the Tribunal may in special cases otherwise direct that the meeting is closed where matters are of such a nature that its confidential treatment is considered reasonable and justifiable. The decision to close a meeting is the right of the Chairperson.

#### **5. QUORUM**

- 5.1 If there is no quorum and the Chairperson is present, he/she must adjourn the meeting for 15 minutes and, if at the end of that period there is still no quorum, the meeting must again be adjourned for a period determined by the Chairperson at his/her discretion or he/she may adjourn the meeting to another time and date at the same venue or to another time, date and venue.
- 5.2 In the absence of the Chairperson and where no quorum exists, the Administrator shall adjourn the meeting for 15 minutes after the commencement time. If at the expiry of the 15 minutes, after the appointed time for the commencement of the meeting, the required quorum is not present, the meeting shall be cancelled.

#### **6. AGENDA**

- 6.1 The agenda must be published on the Municipality's webpage by the Administrator, generally 5 days before the meeting for public information, provided that the agenda for an urgent meeting will be published on the webpage as soon as notice of such meeting has been given.
- 6.2 In the event of the Chairperson ruling an item as urgent in terms of rule 3.3, the ward councillor shall be informed.

- 6.3 Before considering the first application on the agenda, the Chairperson must request members to declare any personal or other interest in respect to the agenda before them and indicate whether they have been approached by any party prior to the meeting. Members shall attest to this in writing at every meeting.
- 6.4 The Chairperson must ensure that all members present at a meeting of the Tribunal sign a declaration to the effect that they have read all the information on the agenda. If any member is of the view that they are implicated in a matter before the committee, s/he may be recused from the meeting.
- 6.5 Meetings should be conducted according to the order in which the matters appear on the agenda and only matters which are on the agenda and are in writing may be debated. Notwithstanding this, the Chairperson may change the order of matters appearing on the agenda, or withdraw an item or refer it back to the administration.

## **7. CONDUCT AT MEETINGS**

- 7.1 The Chairperson must:
- 7.1.1 maintain order during the meeting;
- 7.1.2 refer any alleged contravention of the code of conduct by members at meetings to the Council;
- 7.1.3 ensure that meetings are conducted in accordance with these Rules of Procedure; and
- 7.1.4 ensure that any person refusing to comply with his/her ruling leaves the meeting place immediately and in the case of members, report these instances to the Council.
- 7.2 The Chairperson may determine the time available for debate on any matter, taking into account the matters still to be discussed and the time available for the meeting.
- 7.3 The Chairperson may curtail the debate by a member if, in his/her opinion, that member is no longer debating the matter on the agenda; is repeating himself/herself; is indulging in filibustering or is obstructing the meeting.

## **8. DECISIONS AND VOTING**

- 8.1 All decisions must be taken by a supporting vote of the majority of members present at any meetings.
- 8.2 If the Chairperson asks members if they are in agreement with a recommendation(s) on a matter before it, then the members must indicate by a show of hands who is in favour. A hand not shown indicates that the member is not in favour of the recommendation. Should there be no

opposition then it must be recorded in the minutes that the decision was unanimous.

- 8.3 The Chairperson shall, in the event of an equality of votes on any question, have a casting vote in addition to his/her deliberative vote on any question before the Tribunal.
- 8.4 A member may only vote if he or she has been present during the debate of the matter.

## **9. INTERRUPTION, SUSPENSION, ADJOURNMENT AND SITE VISITS**

- 9.1 The Chairperson must on reasonable motivation and on a majority vote of the members, interrupt or postpone proceedings and adjourn the meeting.
- 9.2 On resumption of the meeting at a later time or date, the meeting will consider the unfinished business before continuing with any new matters on the agenda.
- 9.3 The Chairperson may make provisions for the members to attend a site meeting pertaining to any matter on the agenda. The Chairperson will have the right to decide if parties should or should not accompany the Tribunal members on said site visit.

## **10. MINUTES**

- 10.1 The Administrator must ensure that all proceedings of the Tribunal are recorded electronically and its decisions, including reasons, are minuted.
- 10.2 Every member of the Tribunal as well as any other person attending a meeting must sign the attendance register and the Administrator must ensure that a record is made in the minutes of a meeting of the names of those members who:
  - 10.2.1 are absent with leave having been granted by the Chairperson;
  - 10.2.2 are absent without leave having been granted;
  - 10.2.3 arrive after the meeting has started (with time of arrival);
  - 10.2.4 absent themselves from the meeting at any time (with time of departure and arrival);
  - 10.2.5. leave the meeting prior to the conclusion thereof and that the time and reason for departure are recorded.
- 10.3 The correctness of the minutes must, subsequent to the meeting, be signed off by the Chairperson after circulation to the members present, and thereafter be made available on the Municipality's webpage.

# OVERSTRAND MUNICIPALITY

## RULES OF PROCEDURE FOR THE MEETINGS OF THE APPEAL AUTHORITY

*Munisipaliteit • U-Masipala • Municipality*



**1. Application of Rules**

- 1.1 Revised rules of procedure may be adopted by the Appeal Authority, with the approval of Council as and when such revision may be necessary. All revisions must be approved by Council.

**2. Selection of an Advisory Panel**

- 2.1 The Appeal Authority may select an advisor or advisory panel which will give comment and advice to the Appeal Authority on matters pertaining to the appeal.

**3. Submission of appeals and Notice of Meetings**

- 3.1 Appeals submitted to the Appeal Authority must be in writing within 21 days of decision taken by the Tribunal or an authorised employee.
- 3.2 Any fee relating to the submission of an appeal must be paid on or before the date of submission in order to be regarded as eligible.
- 3.3 The serving of notices and procedures relating thereto will be done as prescribed in Section 79 of the Overstrand Municipality By-law on Municipal Land Use Planning.
- 3.4 The Appeal Authority may accept an appeal in writing from a person who has received intervener status from the Municipal Manager.
- 3.5 The Appeal Authority may determine the dates and times of meetings to be convened.

**4. Recommendations and Criteria**

- 4.2 The Appeal Authority must apply the criteria as set out in the Overstrand Municipality By-law on Municipal Land Use Planning, including the Municipality's IDP, policies, plans and strategies.
- 4.3 The Administrator must ensure that the necessary information from the Municipal Tribunal or authorised official who made the decision must be made available to the Appeal Authority.

- 4.4 No additional information shall be added during the appeal process which was not included with the documentation which was submitted to the Municipal Tribunal or authorised official.