

**AGENDA of the
Portfolio Committee :Infrastructure and Planning
20 October 2015**

(Also the agenda for the Mayoral Committee Meeting : 28 October 2015)

3.

**CATEGORISATION OF APPLICATIONS TO BE DECIDED BY THE
MUNICIPAL PLANNING TRIBUNAL AND AUTHORISED OFFICIAL IN
PREPARATION FOR THE IMPLEMENTATION OF THE MUNICIPAL
PLANNING BY-LAW**

15/3/3/1

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21 September 2015

1. Executive Summary

The purpose of this report is for Council to consider a decision to categorise the types of applications as prescribed in Section 35(2)(3) of the Spatial Planning and Land Use Management Act (Act 16 of 2013) to be decided by the Municipal Planning Tribunal (MPT) and those to be decided by an authorised official. Further to designate an employee of Overstrand Municipality to carry out the functions of an authorized official to take decisions with regard to certain categorized land use applications.

New planning legislation came into force from 1 July 2015 namely, the Spatial Planning and Land Use Management Act No. 16 of 2013 (SPLUMA), and the Regulations in terms of Section 54 of SPLUMA.

Section 35(2)(3) of SPLUMA requires Council to prescribe the category of applications to be decided by the Municipal Planning Tribunal and those to be decided by the authorised official.

The purpose of this report is to present to Council a proposed model for the categorisation of such applications as contained in Annexure A and to designate an employee of Overstrand Municipality to carry out the functions of an authorized official to take decisions with regard to certain categorized land use applications.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Town- and Spatial Planning

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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)
Regulations in terms of the Spatial Planning and Land Use Management Act 16 of 2013

6. Background/Discussion/Conclusion

Background

Regulations in terms of SPLUMA were published on 23 March 2015 (the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015) under Notice R239/2015 in Government Gazette 38594 in order to categorize planning applications to be decided upon by an authorized official or the Municipal Planning Tribunal.

Underlying principles for the categorisation of applications

The development principles set out in the Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA) apply to spatial planning, land development and land use management. Section 7(c)(iii) expands on this principle of efficiency in the following way: "development application procedures are efficient, streamlined and timeframes are adhered to by all parties"

The categorisation of applications to permit an authorised official to take some decisions is an effective strategy to maximise administrative and operational efficiencies, facilitate service delivery and give effect to the principle referred to above. Having an authorised official deciding on straight

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forward applications allows the MPT to deal with more complex, controversial and strategic applications. It further also offers significant financial benefits since no additional operational costs are required such as for the MPT.

Criteria to consider when categorizing applications

Section 15(2)(a) to (g) of the Regulations in terms of the Spatial Planning and Land Use Act prescribed the following:

“If a Municipality authorises an official to consider and determine certain land development and land use applications as contemplated in Section 35(2) of the Act, it must consider the following aspects in its categorisation of land development and land use applications:

- (a) Type of land development or land use application;*
- (b) Scale and nature of the land development or land use application;*
- (c) The potential impact of the right granted if the land development or land use application is approved;*
- (d) The level of public participation required;*
- (e) Whether or not the land development or land use application is in line with the Municipality’s Spatial Development Framework and other relevant policies;*
- (f) Any other aspect that the Municipality considers appropriate, or*
- (g) Any combination of the aspects referred to in Paragraph (a) to (f).”*

In order to decide which applications are to be decided by the MPT, and which are to be decided by an authorised official, the following criteria, must be taken into consideration:

- Consistency of applications with approved Council Policy such as the Overstrand Municipality Spatial Development Framework (to be called the MSDF) and the Local Spatial Development Frameworks – If an application is not consistent with the approved Council policy, the application should be considered by the MPT. These applications are often controversial and deviations from approved policy often involve a more complex assessment of the application. The decision of the MPT if approved, will be subject to Council approving the amendment of its policy.

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- The level and scale of public participation and public opposition/objections - If there is strong public opposition against an application, the MPT is better suited to decide on such applications.
- Where an authorised official considers that it is in the best interests of the Overstrand Municipality not to exercise his or her powers.

Discussion

Considering the abovementioned criteria, it is suggested that the different types of applications be categorised into two categories, namely Category 1: applications which are to be decided by the MPT, and Category 2: applications to be decided by an authorised official (See Annexure A). This approach is consistent with the SPLUMA Regulations and the Western Cape Land Use Act 2104 (Act 3 of 2014).

The principles set out above have been used to differentiate between the types of applications, complexity and sensitivity of the application.

The proposed categorization as contained in Annexure A is very similar to the current categorization albeit that the decision making body in terms of the Executive Mayor will now be the MPT.

Further removal, relaxation of title deed restrictions is a new function assigned by legislation to the Municipality which has now been added.

The delegation as proposed can in future be amended or added on as the situation warrants.

Designation of authorized official for the purposes of Section 114(1)(b)

It is necessary for Council to designate an official to be an authorised official for the purposes of deciding Category 2 applications. It is suggested that the Senior Manager : Town- and Spatial Planning be designated as the authorised official.

Conclusion

That the Municipal Planning Tribunal considers applications as reflected in Category 1 and the authorized official of those prescribed in Category 2.

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That the Senior Manager : Town- and Spatial Planning be designated to be the authorised official.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Application Categorisation

RECOMMENDATION TO THE COUNCIL:

1. that the categorisation of planning applications as contained in Annexure A, **be approved;**
2. that Category 1 applications be decided by the Municipal Planning Tribunal;
3. that Category 2 applications be decided by the Authorised Official; and
4. that the Senior Manager: Town- and Spatial Planning be designated as the authorised official, for the purposes of Section 35(2) of SPLUMA, to decide on Category 2 applications;

RESPONSIBLE OFFICIAL :

RIAAAN KUCHAR

TARGET DATE FOR IMPLEMENTATION :

11 NOVEMBER 2015

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 OCTOBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the categorisation of planning applications as contained in Annexure A, **be approved;**
2. that Category 1 applications be decided by the Municipal Planning Tribunal;
3. that Category 2 applications be decided by the Authorised Official; and
4. that the Senior Manager: Town- and Spatial Planning be designated as the authorised official, for the purposes of Section 35(2) of SPLUMA, to decide on Category 2 applications;

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Categorization of applications		ANNEXURE A		
	Application Type	Council	Category 1 (MPT)	Category 2 (AO)
1.	Approval / amendment of Overlay Zone/Spatial Development Framework	X		
2.	Approval / amendment of Zoning Scheme	X		
3.	Categorization of applications	X		
4.	Rezoning		X Objection	X No objection
4.1	Departure			X
4.2	Permanent			X
4.2	Temporary			X
5.1	Subdivision or phasing of subdivision (not exempted)			X
5.2	Subdivision to (sub divisional area)		X Objection	X No objection
5.3	Subdivision / consolidation exempted			X
6.	Consolidation			X
7.	Removal, amendment or suspension of Title Deed Restrictions)		X Objection	X No objection
8.	Permission, Amendment or deletion of conditions of approval			X
9.	Amendment or cancelation of subdivision plan or part thereof (including General Plan)		X Objection	X No objection
10.	Determination of zoning			X
11.	Closure of public place / part thereof (Permanent)		X Objection	X No objection
12.	Extension of time			X
13.	Permissions in terms of zoning scheme			X
14.	Occasional use of land			X
15.	Disestablishment of Home Owners' Association;		X	
16.	Rectification of failure by Home Owners' Association to meet its obligations		X	
17.	Consent use		X Objection	X No objection
18.	Determination of an administrative penalty – Sec 84 (4)			X
19.	Correction of zoning map error			X
20.	Applications where delegated official elects not to exercise power		X	
21.	Amendment of Site Development Plan			X
22.	Relaxation Title Deed Restrictions			X
23.	Compilation/Amendment of Home Owners' Association Constitution/ Design Guidelines			X