

OVERSTRAND MUNICIPALITY
BY-LAW ON MUNICIPAL LAND USE PLANNING 2015

GENERAL EXPLANATORY NOTE:

[] Words in bold in square brackets indicate deletions from the existing enactment.

_____ Words with a solid line indicate insertions in the existing enactment.

To amend the provisions in the Overstrand By-Law on Municipal Land Use Planning 2015

BE IT ENACTED by the Council of the Overstrand Municipality as follows:

By amending the Index as follows:

16 Application for land development **[required]** and other approvals

27. Ownership of public places and land required for municipal **[engineering services and social facilities]** services, infrastructure and amenities

53. **[Amendments prior to approval]** Request to be granted intervener status.

58. **[Decision-making period]** Timeframe pertaining to an Application

61. **[Determination of]** Decision pertaining to an Application

69. Municipal decision-making structures with respect to applications and appeals

87. **[Objections to compliance notice]** Complaints and objections

90. **[Subsequent application for authorisation of activity]** Application for rectification of a contravention of this By-law (by way of administrative penalty)

Schedule 2 :Overstrand Municipality Land Use Scheme

By amending the Definitions as follows:

By inserting the following new definitions:

“land use scheme” means the Zoning Scheme as contained in Schedule 2: Overstrand Municipality Land Use Scheme (as amended);

“notice period” means the period as made provision for in this by-law and/or other applicable legislation

“overlay zone” or “overlay zoning” means a category of zoning applicable to a particular land unit or area, which:

(i) Stipulates development parameters for a land unit or area, in addition to the underlying zoning or base zone requirements;

(ii) May include further development parameters in a particular area or zone which may be more or less restrictive than for land units which are not covered by the overlay zoning;

“Spatial Planning and Land Use Management Regulations” means the Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015, promulgated in terms of the Spatial Planning and Land Use Management Act and published in Notice R239/2015 in Government Gazette 38594 of 23 March 2015;

By deleting the following definitions in their entirety:

[“occasional use”, in relation to departure, means a right to utilise land for a purpose granted on a temporary basis for a specific occasion or event;]

[“overlay zone” means an area or precinct in a zoning scheme that is demarcated for the purpose of conserving natural resources or promoting certain types of development which is subject to conditions, requirements or restrictions in addition to those of the zoning;]

“emergency” includes a situation which arises as a consequence of floods; strong winds; severe rainstorms; fires; earthquakes and industrial accidents/incidents which may require the relocation of people and/or human settlements as a whole to reasonably safe identified sites;

“Land Use Planning Act” means the Land Use Planning Act.No 3 of 2014, (as amended);

“Spatial Planning and Land Use Management Act” means the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013), (as amended);

By amending section 3 (a) and (d) (iii) as follows:

- (a) appoint an intergovernmental steering committee to compile a draft **[or amend its]** Municipal Spatial Development Framework; or
- (d) in writing inform the Provincial Minister of—
 - (iii) the process contemplated in Sub-section 3 (c) **[that will be followed in the drafting or amendment of the Municipal Spatial Development Framework including the process for public participation];**

By amending section 4(3)(b)(ii) as follows:

- (3) (b) (ii) the Department(s), nominated by the Head of Department; and

By amending section 6(h) as follows:

- (h) **[oversee]** ensure the incorporation of amendments to the draft Municipal Spatial Development Framework or draft amendment of the Municipal Spatial Development Framework to address comments obtained during the process of drafting thereof;

By amending section 8(2)(d) as follows:

- (2)(d) provide detailed policy and the recommended development parameters for land use planning;

By amending section 13(1) as follows:

13. (1) The owner **[of land]** or a person authorised by the owner may apply to the Municipality for the determination of a zoning for land referred to in Section 8 of the Ordinance and which is not deemed to be zoned by virtue of a determination under Subsection 14(1) of the Ordinance.

By amending and renumbering section 16 as follows:

16. Application for land development required and other approvals

(2)(a) a rezoning of land;

(e) a consolidation of land that is not exempted in terms of Section 26;

[(p) an occasional use of land;]

(p) [(q)] to disestablish **[a home]**an owners' association;

(q) [(r)] to rectify a failure by **[a home] an owners'** association to meet its obligations in respect of the control over or maintenance of services;

(r) [(s)] a permission required for the reconstruction of an existing building that constitutes a non – conforming use that is destroyed or damaged to the extent that it is necessary to demolish a substantial part of the building;

(s) determination of an administrative penalty.

By amending section 22(5)(d) as follows:

22 (5) (d) effect the registration of transfer of a land unit or land units as indicated on the registration diagram / diagrams, or, General Plan; by obtaining of a Certificate of Registered or Consolidated Title; [registration of the transfer of ownership in terms of the Deeds Registries Act of the land unit shown on the diagram or of at least one new land unit shown on the general plan.]

By amending and renumbering section 25 as follows:

[(2)](1)The Municipality may approve the amendment or cancellation of a subdivision plan, including conditions of approval and/or the general plan or diagram, in relation to a land unit or units indicated on the general plan or diagram [of which no transfer has]which has or have not been registered as per the provisions of the Deeds Registries Act.

[(3)](2)When the Municipality approves an application in terms of Subsection (1), any public place that is no longer required by virtue of the approval must be closed.

[(4)](3)The Municipality must notify the Surveyor-General of an approval in terms of Subsection (1), and the Surveyor-General must endorse the records of the Surveyor General's office to reflect the amendment or cancellation of the subdivision, and where applicable, the closure of the public place as contemplated in Subsection (2).

[(5)](4) The **[An]** approval of a subdivision in respect of which an amendment or cancellation has been [is] approved in terms of Subsection (1), remains valid for the remainder of the period contemplated in Section 22(5) applicable to the initial approval of the subdivision, calculated from the date of approval of the amendment or cancellation in terms of Subsection (1).

By amending and renumbering section 26 as follows:

(1) (f) the conveyancing of land in order to effect transfer to the beneficiaries of an approved Municipal housing project;

(1) (g) [(f)] the subdivision of land in order to effect its transfer between spheres of government [from a local authority, a provincial or national government];

(1) ~~(h)~~ **[(g)]** (i) water pipelines, electricity transmission lines, sewer pipelines, gas pipelines or oil, petroleum product pipelines, and boreholes by or on behalf of an organ of state or service provider;

By amending section 27 as follows:

27. Ownership of public places and land for municipal [engineering services and social facilities] services, infrastructure and amenities

By amending section 28 (3)(a) and (b) as follows:

(3) The Municipality may pay a claim if—

(a) in the case of loss of or damage to property, the claimant has proved his or her loss or damage;

(b) in the case of personal injury, the claimant has furnished proof of the quantum of his/her damages, but subject to the right of the Municipality to obtain legal advice as to the correctness of said quantum;

By amending section 29(a) as follows:

(a) allow **[without compensation]** that the following be conveyed across his or her land unit, as may be reasonably required, in respect of other land units:

By amending section 30 as follows:

(1) A person may not apply to the Registrar of Deeds to register the transfer of a new land unit; to apply for a certificate of registered title or a certificate of consolidated title, as the case may be, unless the Municipality has issued a certificate in terms of this Section.

(2) The registration of any property; the application for a certificate of registered title or a certificate of consolidated title, as the case may be, resulting from a land development application may not be effected unless the municipality has certified that all requirements and conditions for the approval have been complied with.

(3) Proof must be furnished **[provided]** to the municipality that all common property including private roads and private places originating from the subdivision, has been developed, prior to the transfer of the first [last] erf to the owners' association as contemplated in Section 31.

(4) The Surveyor – General may not approve or amend a general plan or diagram in respect of the subdivision or consolidation of land units contemplated in this Section without written confirmation from municipality that the subdivision or consolidation is exempted by the [a] municipality in accordance with this Section.

By amending and renumbering section 31 as follows:

31. (1) The Municipality may, when approving an application for a subdivision of land impose conditions relating to the compulsory establishment of an owners' association by the applicant upon the transfer of the first sub-divided property to the new owner. **[for an area determined in the conditions.]**

[7](4) The constitution of an owners' association may contain other objectives as set by the association but may not contain provisions that are in conflict with any law.

[8](5) The constitution of an owners' association may be amended when necessary provided that an amendment that may affect any rights of the Municipality or a provision referred to in Subsection (3), is approved by the Municipality.

(6) The constitution of an owners' association takes effect upon the registration of transfer of ownership of the first land unit to a person other than the developer.

[9](7) An owners' association which comes into being by virtue of Subsection (1)— (a) has as its members all the owners of land units originating from the subdivision and their successors in title, who are jointly liable for expenditure incurred in connection with the association; and (b) is upon registration of the first land unit, automatically constituted.

[10](8) The design guidelines contemplated in Subsection (3) (d) may introduce more restrictive development rules than the rules provided for in the zoning scheme.

[11](9) If an owners' association fails to meet any of its obligations contemplated in Subsection (3), the Municipality may take appropriate action to rectify the failure and recover from the members referred to in Subsection **[(7)](3)** (a), the amount of any expenditure incurred by it in respect of those actions.

[12](10) The amount of any expenditure so recovered is, for the purposes of Subsection (9), considered to be expenditure incurred by the owners' association

By amending section 35 as follows:

(1) The Municipality may, **[of its own accord or]** on application in terms of Section **[13] 16** (2) by notice in the Provincial Gazette amend, suspend or remove, either permanently or for a period specified in the notice and either unconditionally or subject to any condition so specified, any restrictive condition.

(6) The Municipality must cause a notice of the decision to remove, suspend or amend a restrictive condition to be published in the Provincial Gazette after the decision comes into operation as contemplated in Subsection (5) and notify the Registrar of Deeds of the decision.

By amending and renumbering section 36 as follows:

36 (1) The applicant must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette **[as contemplated in Section 35(1)]**, submit the following to the Registrar of Deeds:

(c) a copy of the notification **[of the approval]** as published in the Provincial Gazette

(2) The Registrar of Deeds and the Surveyor-General must, after the amendment, suspension or removal of a restrictive condition by notice in the Provincial Gazette as contemplated in Section 35 (6), make the appropriate entries in and endorsements on any relevant register, title deed, diagram or plan in their respective offices or submitted to them, as may be necessary to reflect the effect of the amendment, suspension or removal of the restrictive condition.

By amending section 39 as follows:

(1) An application must be accompanied by the following documents, where applicable;

By amending section 45 as follows:

(2) The owner **[of land]** must in writing inform the Municipality as to whether he or she has withdrawn his or her power of attorney granted to another person to make an application on his or her behalf.

(3) When an application has been withdrawn the application will be considered finalised and a new application, if any, may be submitted.

(4) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-law and prior to the submission of the planning report to the Authorised official or Municipal Planning Tribunal—

(a) at the applicant's own initiative;

(b) as a result of objections and comments made during the public notification process; or

(c) at the request of the Municipality.

(5) Should an amendment to an application be considered material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resubmitted to municipal departments, other organs of state and service providers.

(6) In the event that an amended application is submitted in accordance Subsection (5) the Municipality may require payment of additional application fees.

By amending section 48 as follows:

(1) Notice of an application contemplated in Section 47(1) and Subsection (2) must be served—

(c) on each person whose rights or legitimate expectations will be affected by the **[approval of the]** application.

By amending section 50 as follows:

(1) (g) by means of data messages contemplated in the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002), by sending a copy of the notice to the person, if the person has an email address or other electronic address; or

By amending and renumbering section 51 as follows:

(1) All petitions must clearly state—

[(a) the contact details of the authorised representative of the signatories of the petition;

(b) the full name and physical address of each signatory; and

(c) the objection and reasons for the objection.

(2) Notice to the person contemplated in Subsection (1)(a), constitutes notice to all the signatories to the petition]

(a) (i) The full name, surname, national identity number and physical address of each signatory;

(ii) The full name, surname, postal address, telephone number and facsimile of no more than two specified persons to whom further communication relating to the application may be directed; provided that where such information is not made available, the Municipality shall direct further communication only to the first person who signed such petition and whose address is known; and only the first objector will be recorded as the legal objector; and

(iii) Each page of a petition containing the signature of a petitioner shall contain at least a summary of the objection.

(iv) the interest of the body or person in the application;

(v) an affidavit stating that he or she is not colluding with any applicant, objector or appellant and is prepared to act in regard to the application or appeal as the Municipality may direct.

(b) The reasons for the petition must be set out in sufficient detail —

(i) the facts and circumstances which explain the comments contained within the petition;

- (ii) the undesirable effect which the application will have on the area and/or demonstrate that she or he will be adversely affected by the decision;
- (iii) any aspect of the application which is not considered consistent with applicable policy.

(2) Any written notification by the Municipality to petitioners shall be regarded as sufficient if such notification is sent to the persons contemplated in Sections 50 (1)(f) and 51 (1)(a)(ii).

(3) A petition that does not comply with the above requirements or as contemplated in Sections 53 (3) and 53 (4), will not be considered and processed as a valid petition and will not be regarded as an objection.

By amending section 53 as follows:

53. Request to be granted intervener status [Amendments prior to approval]

[(1) An applicant may amend his or her application at any time after notice of the application has been given in terms of this by-laws and prior to the approval thereof—

- (a) at the applicant's own initiative;**
- (b) as a result of objections and comments made during the public notification process; or**
- (c) at the request of the Municipality.]**

[(2) If an amendment to an application is material, the Municipality may require that further notice of the application be given in terms of this By-law and may require that the notice and the application be resent to municipal departments, organs of state and service providers.]

(1) A person contemplated in Subsection (3) may, within the period contemplated in Subsection (4), submit a petition on the prescribed form and with proof of payment, to the Municipal Manager to be granted intervener status.

(2) Upon receipt of a petition the Municipal Manager must direct the petition to the delegated authority.

(3) A person may submit a petition only if he or she has not been given notice of the application in terms of Sections 48, 50(f) or 50(g) and –

- (a) if the application has not yet been resolved – the petitioner has an interest in the application; or
- (b) if the application has been resolved – the petitioner has a pecuniary or proprietary interest which is or has been or may be adversely affected or is able to demonstrate that she or he will be adversely affected by the decision or an appeal with regard to the decision.

(4) A petition will be invalid if submitted –

(a) more than seven days after the petitioner became aware of the application or resolution with regard to an application or may reasonably have been expected to have become aware of the application or resolution with regard to an application; or,

(b) after 21 days from the date of the decision of the Authorised Official or Municipal Planning Tribunal, or,

(c) if an appeal has been submitted, from the date of the decision of the Appeal Authority.

(5) A petitioner must submit the required information as contemplated for in Section 51 (1)(a) and (b).

(6) The Authorised Official, Municipal Planning Tribunal or Appeal Authority, as the case may be, may direct a copy of the petition and the information contemplated in Subsection (5) to the existing parties to the proceedings for comment.

(7) The Authorised Official, Municipal Planning Tribunal or Appeal Authority may –

(a) refuse a petition if submitted late or as contemplated in terms of Subsection (3) and (4);

(b) in the event that a question arises as to whether the petition should be granted–

(i) the Municipal Planning Tribunal or the Authorised Official must decide the validity of the petition if the application has not yet been decided; or

(ii) the Appeal Authority if the application has been decided.

(8) In deciding whether to grant a petitioner intervener status, the Municipal Planning Tribunal, Authorised Official or Appeal Authority, as the case may be, must consider at least whether –

(a) the petitioner qualifies in terms of Subsections (3) and (4);

(b) no existing party to the proceedings adequately represents the interest of the petitioner;

(c) the petitioner represents other persons who have a similar interest in the proceedings and whom are not otherwise represented;

(d) refusal of the petition would impede the ability of the petitioner to protect his or her interests;

(e) the petitioner's objection, comments or representations are relevant to the proceedings; are different from those of the existing parties, and may assist the decision-maker; and

(f) granting the petition would not cause undue delay or otherwise prejudice the interests of any party to the proceedings.

(9) The decision-maker must notify the petitioner and the existing parties to the proceedings of the outcome of the petition.

(10) There is no appeal against a decision to either grant or refuse a petition.

(11) A person who is granted intervener status is regarded as an appellant.

By amending and renumbering section 58 as follows:

58 Timeframes pertaining to applications [Decision-making period]

(1) The administrative phase commences only after a complete land development and or land use application has been submitted to a municipality and the components of the said administrative phase contemplated in Subsection (2), for which the municipality is responsible, may not exceed than 12 months.

(2) The administrative phase is the phase during which all public participation notices have to be published and responded to; parties have to be informed; public participation processes finalised; intergovernmental participation processes finalised and the application referred to the Municipal Planning Tribunal or Authorised Official for consideration and decision-making

(3) [1] When the power to take a decision is delegated to an authorised employee and no [integrated process in terms] provision of any other law has to be complied with the authorised employee must decide on the application within 60 days after completion of the administrative phase contemplated in Subsection (2).

(4) [2] When the power to take a decision is not delegated to an authorised employee and no [integrated process in terms] provision of any other law has to be complied with the Municipal Planning Tribunal must decide on the application within 90 days after completion of the administrative phase contemplated in Subsection (2).

(5) [3] The authorized employee or Tribunal, as the case may be, may extend the period contemplated in Subsections (3) or (4) in exceptional circumstances which may include the following:

(b) if additional information is required in order to consider the application.

[(b) In the case of the Tribunal, if an oral hearing is to be held.]

By amending section 61 as follows:

61. [Determination of] Decision pertaining to an application

By amending and renumbering section 64 as follows:

(1) The Municipality may at any time correct an error in the wording of its decision provided that the correction does not change its decision or results in an alteration, suspension or deletion of a condition of its approval.

(2) The Municipality may, of its own accord or on application by the applicant or an interested party, upon good cause shown, condone an error in a procedure, if the condonation does not have a material and adverse effect on, or unreasonably prejudices, another party.

By amending section 66 as follows:

(g) a registered planner's written assessment in terms of Section 66 of LUPA, 2014, including: [application in terms of the By-Law:]

- (i) an amendment of a Spatial Development Framework or Land Use Scheme
- (ii) an approval of an overlay zone contemplated in the land use scheme
- (iii) a phasing, amendment or cancellation of a subdivision plan or part thereof
- (iv) a determination of a zoning

By amending section 67 as follows:

(2)(w) the payment of an administrative penalty as contemplated in Section 90 in respect of the unlawful use of land;

[(w) requirements for an occasional use that must specifically include –

- (i) parking and the number of ablution facilities required;**
- (ii) maximum duration or occurrence of the occasional use; and**
- (iii) parameters relating to a consent use in terms of the zoning scheme;]**

(3) If a Municipality imposes a condition contemplated in Subsection (2)(a), an engineering services agreement must be concluded between the Municipality and the owner of the land prior to commencement of the construction of engineering infrastructure [concerned before the construction of infrastructure commences on the land].

[(12) The Municipality may, on its own initiative or on application, amend, delete or impose additional conditions after due notice to the owner and any persons whose rights may be affected.]

By amending section 69 as follows:

69. Municipal planning decision-making structures in respect of applications and appeals

By amending section 73 (2)(b) as follows:

(2)(b) the member tenders his or her resignation in writing to the chairperson of the Tribunal or, if the member who resigns is the chairperson of the Tribunal, to the Council;

By amending and renumbering section 77 as follows:

[(3) Any person who wishes to make a verbal representation to the Tribunal must, 14 days prior to a meeting, request the Administrator in writing to make a representation at the meeting.]

[4] (3) If a request for verbal representation is allowed in terms of the rules and procedures then the Chairperson must consider and decide the request and if approved, impose any reasonable conditions [that it may deem fit].

By amending and renumbering section 79 as follows:

(4) [(6)] The notice must allow persons 21 days from date of notification of the appeal to comment on the appeal.

(5) [(4)] Any person who lodge an appeal or apply for intervener status to the Municipal Manager must submit proof of payment of appeal fees as may be determined by the Municipality.

(6) [(5)] The notice must be served in accordance with Section 115 of the Municipal Systems Act and in accordance with the additional requirements as may be determined by the Municipality.

[(7) If an objector lodges an appeal, the Municipality must give notice of the appeal to the applicant within 14 days of receipt thereof.]

[(8) A person or body who has received notice of the appeal may comment on the appeal within 21 days of being notified.]

(7) [(9)] The Municipality may refuse to accept any comments after the closing date.

(8) [(10)] The Municipality, after receipt of an appeal—

(9) [(11)] The authorised employee must complete the pre-hearing process (all the necessary documentation must be obtained, the applicant and objectors must be informed and the appeal referred to the Appeal Authority) within [30]150 days of receipt of the notice of appeal [draft a report assessing the appeal and submit it to the Appeal Authority within 30 days of receipt of the comments contemplated in Subsection (6) and (8), as the case may be.].

(10) [(12)] The Appeal Authority must decide on the appeal within 60 days from the expiry of the period contemplated in Subsection [(11)] (9).

(11) The Appeal Authority may extend the period contemplated in Subsection (10) in exceptional circumstances.

(12) [(13)] The parties to the appeal must be notified in writing of the decision of the Appeal Authority within 21 days from the date of the decision as contemplated in Subsection (10) and (11) [12].

(13)[(14)] The Municipality must—

By amending section 83 as follows:

(1)(c) conditions imposed in terms of this By-law or **[previous planning legislation]** any law repealed by the Land Use Planning Act.

By amending section 84 as follows:

(1) Any person who—

(a) contravenes or fails to comply with Section 16(1), 16(5) and 84(2);

(b) fails to comply with a compliance notice issued in terms of Section **[87] 85;**

(d) upon registration of transfer of the first land unit arising from a subdivision to a person other than a developer fails to transfer all common property, including private roads and private places originating from the subdivision to the owners' association;

(2) An owner who permits land to be used in a manner set out in Subsection (1)(c) and who does not cause the use to be ceased or take reasonable steps to ensure that the use ceases, or who **[permits a person to]** breaches the provisions of a land use [zoning] scheme, is guilty of an offence and liable upon conviction to a fine or imprisonment for a period not exceeding 20 years or to both a fine and such imprisonment.

(4) The Municipality **[must]** may adopt fines and contravention penalties duly approved by the district courts within the Municipalities jurisdiction, to be imposed in the enforcement of this by – law.

By amending section 85 as follows:

(2)(c) rectify the contravention of or non-compliance with a condition of approval within a specified period.

(2)(d) apply in terms of Section 90 for the determination of an administrative penalty;

[85 (6) A person who received a compliance notice in terms of this section may lodge representations to the Municipality within 30 days of receipt of the notice.]

(6) If relevant, the notice may advise the owner or other person of their right to apply for rectification of the contravention as contemplated in Section 90, and may state that the Municipality intends to institute the measures contemplated in Section 84 in the event that

the owner or other person fails to apply for rectification of the contravention within a specified time.

(7) The notice may invite the owner within a specified time to inform the Municipality what steps have been taken to comply with the notice.

By amending section 86 as follows:

(1) (b) describe the activity **[concerned]** and the land on which it is being carried out;

(1)**[(f) provide for an opportunity for a person to lodge representations contemplated in terms of Section 85(6) with the contact person stated in the notice;]**

(f) [(g)] issue a warning to the effect that—

(2) Any person who receives a compliance notice must comply with that notice within the time period stated in the notice. [unless the Municipality has agreed to suspend the operation of the compliance notice in terms of Section 87.]

By amending and renumbering section 87 as follows:

87. [Objections to compliance notice] Complaints

[(1) Any person or owner who receives a compliance notice in terms of Section 85 may object to the notice by making written representations to the Municipal Manager within 30 days of receipt of the notice.

(2) Subject to the consideration of any objections or representations made in terms of Subsection (1) and any other relevant information, the Municipal Manager — (a) may suspend, confirm, vary or cancel a notice or any part of the notice; and (b) must specify the period within which the person who received the notice must comply with any part of the notice that is confirmed or modified.]

(1) A person, who is, or may be, affected by an alleged contravention of this By-Law, must in writing and using the prescribed form or in a manner determined by a policy, request the Municipality to investigate the alleged contravention and to act in accordance with the provisions of this Section.

(2) A complaint lodged in terms of this section must be contained in an affidavit stating:

(a) the name, surname, address and contact details of the complainant;

(b) the origin (i.e address / location / source) of the alleged contravention;

(c) the nature of the alleged contravention;

(d) when the alleged contravention was first noticed and/or;

(e) the duration and frequency of the alleged contravention;

(f) the name and address of the alleged perpetrator.

(3) Upon receipt of a complaint, the municipality must investigate the complaint

(4) The municipality must inform the complainant of the outcome of the investigation within 30 days of the investigation having been completed and the steps to be taken to remedy the contravention in the event that the municipality is of the opinion that a provision of this By-Law has been or is being contravened

By amending section 88 as follows:

If a person fails to comply with a compliance notice the Municipality may—

(b) apply to a a [the High] Court of competent jurisdiction for an order restraining that person from continuing with the illegal activity; and/or to demolish, remove or alter any building, structure or work illegally erected or constructed and/or to rehabilitate the land concerned without the payment of compensation; or,

(c) in the case of a temporary departure or consent use, the Municipality may withdraw the approval granted and **[then act in terms of]** take any of the other steps contemplated in Section [87] 85.

By amending section 89(2) as follows:

(2) If the person or owner fails to cease with the activity with immediate effect [immediately], the Municipality may apply to a [High] Court [with] of competent jurisdiction for an urgent interdict or any other relief as may be necessary.

By amending and renumbering of section 90 as follows:

90. [Subsequent application for authorisation of activity] Application for administrative penalty

[(1) If instructed to rectify or cease an unlawful land use or building activity, a person may make an application to the Municipality for any land development contemplated in Section 16(2), unless the person is instructed under Section 86 to demolish the building work.

(2) The applicant must, within 30 days after approval is granted, pay to the Municipality a contravention penalty in the amount determined by the Municipality.]

(1) A person who is in contravention of this By-Law, and who wishes to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned.

(2) A person making an application contemplated in Subsection (1) must –

(a) submit an application;

(b) pay the prescribed fee;

(c) provide the information contemplated in Subsections (3); and

(d) comply with the duties of an applicant in Section 84.

(3) The applicant must, to the satisfaction of the Municipality, provide the following information such as-

(a) the nature, duration, gravity and extent of the contravention;

(b) the conduct of the person (allegedly) involved in the contravention;

(c) a report by a quantity surveyor in matters of unauthorised building/construction;

(d) whether the unlawful conduct was stopped; and

(e) whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

(4) The report regarding the/an administrative penalty must be considered by the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be.

(5) If the Authorised Official, the Municipal Planning Tribunal or Appeal Authority decides to impose an administrative penalty on a person who has contravened this By-Law, it must determine an amount which –

(a) for building work in contravention of this By-Law – may not be more than 100% of the value of the building, construction and engineering work unlawfully carried out, as determined by the Municipality;

(b) for land use in contravention of this By-Law – may not be more than 100% of the municipal valuation of the area that is used unlawfully, as determined by the Municipality; and

(c) for building work and land use in contravention of this By-Law – must comprise the penalties in both paragraphs (a) and (b).

(6) When determining an appropriate administrative penalty, the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, must take into consideration for the information provided by the applicant in Subsection (3), and should the information be insufficient the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, may request additional information.

(7) The Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, must notify the person who is in contravention of this By-Law of its decision and if it decides to impose an administrative penalty, the notice must –

(a) set out the administrative penalty;

(b) include the provisions of Section 62;

(c) state that the person must pay the administrative penalty to the Municipality within 30 days of the effective date of decision contemplated in Section 62 or within such further period that the Authorised Official, the Municipal Planning Tribunal or Appeal Authority, as the case may be, may decide;

(d) state that the payment of an administrative penalty in terms of this Section does not limit the Municipality's power to investigate the offence and/or institute a criminal prosecution; and

(e) state that, without further notice, the Municipality may apply to a court of competent jurisdiction for an order confirming the administrative penalty and/or other appropriate relief including the costs of the application.

(8) The Municipality may apply to a Court of competent jurisdiction for an order confirming the order of the Municipality.

By inserting into the By-law:

Schedule 2 : Overstrand Municipality Land Use Scheme (OMLUS)

Short Title:

The By-law is called the Overstrand Municipality Amendment By-law on Municipal Land Use Planning 2019.