



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE COMMITTEE ROOM:
CORPORATE SERVICES ON WEDNESDAY, 16 NOVEMBER 2022 AT 14:00**

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz
Director: Corporate Services, Ms M S Terblanche
Director: Protection Services, Mr P A C Humphreys

External members:

Ms C Havenga
Mr C Rabie

Other officials:

Senior Manager: Built Environment, Mr A M Zaayman (advisor)
Director: Development Services, Ms J S Krieger
Senior Town and Regional Planner, Mr A J Burger
Town and Regional Planner and GIS, Mr H Olivier
Town and Regional Planner, Ms A de Jager
Manager: Secretariat and Records, Ms N Brand (secretariat)

1. OPENING

The chairperson opened the meeting and welcomed members.

2. APOLOGY

No apology was received.

3. DECLARATION OF INTEREST

RESOLVED that cognisance be taken that no declarations of interest were received.

4. MINUTES

4.1 MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD ON 12 OCTOBER 2022

RESOLUTION

(proposed by Mr P A C Humphreys, seconded by Ms C Havenga)

That the minutes of a Municipal Planning Tribunal Meeting held on 12 October 2022 are approved and signed by the chairperson.

5. MATTERS ARISING FROM MINUTES

None.

6. MATTERS FOR CONSIDERATION

6.1 PROPOSED REZONING, DEPARTURE, REMOVAL OF RESTRICTIONS, CONSENT USE AND CONSOLIDATION ON ERF 461 AND ERF 462, KORINGBERG (15/3/3-7, 15/3/4-7, 15/3/5-7, 15/3/10-7, 15/3/12-7) (WARD 1)

Ms A de Jager/...

Ms A de Jager, as author, explained the various land use applications received on Erf 461 and Erf 462, Koringberg and motivated the reasons for the approval thereof.

Erf 461, Koringberg is already developed with a boutique wine cellar and tasting facility and the owner/developer wishes to expand and diversify the business through the establishment of a boutique hotel and restaurant.

Application is therefore made to consolidate Erf 461 and Erf 462, Koringberg to create more developable space, amongst others, to accommodate the required parking bays.

RESOLUTION

- A. Application for the rezoning of Erf 462, Koringberg, in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020) from Residential Zone 1 to Business Zone 1, be approved;
- B. Application for the consolidation of Erf 461 and Erf 462, Koringberg, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), be approved;
- C. Application for the consent use of Erf 461 and Erf 462, Koringberg, in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), in order to accommodate a hotel, be approved;
- D. Approvals A. B. and C. are subject to the conditions that:

D1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 462, Koringberg, be rezoned from Residential Zone 1 to Business Zone 1;
- (b) Erf 461 (997 m² in extent) and Erf 462 (832 m² in extent), Koringberg, be consolidated in order to create one property (1829 m² in extent) to accommodate the proposed uses and parking;
- (c) The consent use authorises a hotel on the property as presented in the application;
- (d) A minimum of twenty seven (27) on-site parking bays be provided and that parking bays be finished in a permanent dust free surface, whether it be tar, concrete, paving or any other material, as approved by the Director: Civil Engineering Services beforehand, and the parking bays be clearly demarcated, at building plan stage;
- (e) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (f) A site development plan, including the parking layout, be submitted to the Senior Manager: Built Environment at building plan stage for consideration and approval;
- (g) A landscaping plan, detailing noise reducing and privacy promoting planting between the development and Erf 460, as well as landscaping that enhances the aesthetic of the parking lot, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (h) Application be made to the Senior Manager: Built Environment for the right to construct or affix and display any signage;
- (i) Any signage be limited to 1 m² in area and may not project over a public street;
- (j) A contact number of the owner be displayed conspicuously on the premises at all times for emergency and/or complaint purposes;
- (k) A code of conduct for guests to the hotel be submitted to the Senior Manager: Built Environment for consideration and approval;
- (l) The owner/developer be responsible for enforcing the code of conduct;
- (m) A register of guests and lodgers be kept and completed when rooms are let, and the register be produced for inspection on request by a municipal official at any time;
- (n) Guest rooms not be converted to, or used as separate dwelling units;
- (o) A Certificate of Compliance be obtained from the West Coast District Municipality for the operation of the hotel and restaurant;
- (p) A trade license be obtained from Swartland Municipality for the operation of the hotel;

6.1/D...

- (q) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;
- (r) The provision of the Hotels Act, 1974 (Act 70 of 1965) be adhered to, to the satisfaction of the relevant authority;

E. Application for the removal of restrictive conditions in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), registered against Title Deed T14581/2012 for Erf 461 and Title Deed T27372/2020 for Erf 462, Koringberg, be approved:

(a) Conditions B.1a. and B.1b. in Title Deed T14581/2012 that read as follows:

"...B.1a. No business for the sale of intoxicating liquor of any kind shall be carried on on the said property until such time as a Village Management Board or a Municipality shall have been established in the Township of Koringberg unless the Kerkeraad for the time being of the Dutch Reformed Church at Koringberg shall have consented thereto or thereafter unless such Village Management Board or Municipality shall have consented thereto.

B.1b. No business for the sale of intoxicating liquor commonly known as a canteen business shall at any time be carried on on the said property..."
be removed; and

(b) Condition B.1b. in Title Deed T27372/2020 that reads as follows:

"...B.1 No business for the sale of intoxicating liquor commonly known as a canteen business shall at any time be carried on on the said property..."
be removed;

(c) The following process be followed:

- i. The applicant/owner applies to the Deeds Office to amend the Title Deed in order to reflect the removal of the restrictive conditions;
- ii. The following minimum information must be provided to the Deeds Office in order to consider the application, namely:
 - Copy of the approval by Swartland Municipality;
 - Original Title Deed, and
 - Copy of the notice which was placed by Swartland Municipality in the Provincial Gazette;

(d) A copy of the amended Title Deed be provided to Swartland Municipality for record purposes;

F. Application for the departure from development parameters, in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PK 8226, dated 25 March 2020), on the newly created property, Koringberg, be approved, subject to the conditions that:

- (a) The minimum number of parking bays be departed from and 27 parking bays be provided in lieu of the required 33 parking bays;
- (b) The eastern side building line of 3 m be departed from to 0,3 m for the extent of the storage building and container structure, as presented in the application;

F1 WATER

(a) The consolidated property be provided with a single water connection;

F2 SEWERAGE

(a) The consolidated property be provided with a conservancy tank of minimum 8 000 litre volume, that is accessible to the service truck from the street;

F3 ELECTRICITY

- (a) The owner/developer takes cognisance of the requirements formulated by Eskom, as stated in their letter with reference number 07054-22, dated 22 September 2022;

F4 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for the development charge of R4 893,89 towards bulk water supply. The amount is due to the Swartland Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The owner/developer be responsible for the development charge of R4 356,20 towards bulk water distribution. The amount is due to Swartland Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R2 421,05 towards sewerage. The amount is due to the Swartland Municipality, valid for the year of 2022/2023 and may be revised thereafter (mSCOA 9/240-184-9210);
- (d) The Council resolution of May 2022 makes provision for a 35% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2022/2023 and may be revised thereafter. The discount is not applicable to F4(a).

G. GENERAL

- (a) Should the extension of any existing service be needed in order to provide the development with services, said extension be for the account of the owner/developer;
- (b) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued. Failure to comply will result in the approval expiring;
- (c) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (d) Appeals against the Tribunal decision should be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500,00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

H. The application be supported for the following reasons:

- (a) The development is consistent with the proposals of the SDF;
- (b) The development is sensitive in scale and nature to its context in Koringberg;
- (c) There are no physical restrictions on the property that will have a negative impact on the application;
- (d) The rezoning of Erf 462 to Business Zone 1 allows for the consolidation with Erf 461, which is already zoned Business Zone 1;
- (e) The number of parking bays provided are sufficient;
- (f) The building line departure may be considered advantageous in terms of noise control and privacy, and further mitigation may be established through landscaping;
- (g) The removal of the restrictive condition will not negatively impact on the rights of the owner/developer, nor on the rights of the previous holders;
- (h) The proposed development is not foreseen to impact negatively on the health or safety of the surrounding community;
- (i) The development will not have a negative impact on the cultural heritage of the area, nor on the biophysical environment;
- (j) The impact on the traffic volumes and movement of Koringberg is considered mild;
- (k) Services are available on the property and the increased load will be mitigated through development contributions;
- (l) The proposal is consistent with the principles of SPLUMA and LUPA.

6.2 APPLICATION FOR A CONSENT USE ON ERF 708, CHATSWORTH (15/3/10-2) (WARD 4)

Application is made for a consent use on Erf 708, Chatsworth in order to accommodate a house shop as an additional land use.

Mr H Olivier confirmed that, in accordance with the Municipal Land Use Planning By-law, the occupant(s) of the dwelling must operate the house shop, therefore the dwelling must first be completed before the house shop becomes operational.

RESOLUTION

- A. The application for the consent use on Erf 708, Chatsworth, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020); subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent authorises a house shop, restricted to $\pm 25\text{m}^2$, as presented in the application;
- (b) Building plans, clearly indicating the house shop in relation to the house, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) The operation of the house shop may not result in congestion along Cemetery Road, therefore at least one on-site parking bay for the house shop be provided from Cemetery Road;
- (d) Application for construction of or attaching an advertising sign to the building be submitted to the Senior Manager: Built Environment, for consideration and approval. Only one sign, not exceeding 1 m^2 in area and not exceeding the land unit boundaries with any part of it, be permitted and it indicate only the name of the owner, name of the business and nature of the retail trade;
- (e) No more than three persons, including the occupant of the property, be permitted to be engaged in retail activities on the land unit;
- (f) Only pre-packaged food products be sold;
- (g) No food preparation be allowed in the house shop;
- (h) The following activities not be allowed for sale in the house shop:
 - i. The sale of wine and alcoholic beverages;
 - ii. Storage or sale of gas and gas containers;
 - iii. Vending machines;
 - iv. Video games; and
 - v. Snooker or pool tables;
- (i) Application for a trade license be submitted to the Director: Development Services for consideration and approval;
- (j) Application for a Certificate of Compliance be submitted to the West Coast District Municipality for consideration and approval;
- (k) The letter of authorisation from Swartland Municipality be displayed inside the house shop;
- (l) Operating hours of the house shop be limited from 07:00 to 22:00 daily;
- (m) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;
- (n) The dwelling house be completed and an occupation certificate be obtained, prior to the house shop coming into operation;

A2 WATER

- (a) The existing connection be used and that no additional connections be provided;

A3 SEWERAGE

- (a) The existing connection be used and that no additional connections be provided;

A4 STREETS AND STORMWATER

- (a) Deliveries may only be done by delivery vehicles with a gross vehicle mass of 16000 kg;

B./...

B. GENERAL

- (a) The approval is in terms of section 76(2) (w) of the By-Law valid for a period of 5 years. All conditions of approval be complied with within the 60 days from the date of notice of the approval and that failing to do so will result in the lapsing of the approval;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

C. The application be supported for the following reasons:

- (a) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (b) The application complies with the land uses proposed for this area of Chatsworth, as determined by the SDF;
- (c) The application supports the local economy and promotes entrepreneurship and local businesses, as a goal of the IDP;
- (d) The proposed house shop complies with the development parameters and requirements of the By-Law;
- (e) The development is envisioned to promote economic opportunities, shorter travel distances and amenities in the residential neighbourhood;
- (f) The proposed consent use will not negatively affect the character of the neighbourhood.

6.3 PROPOSED AMENDMENT OF AN APPROVED SUBDIVISION PLAN, AMENDMENT OF CONDITIONS OF APPROVAL, SUBDIVISION, PERMANENT DEPARTURE, PHASE AND EXEMPTION ON ERF 9468, MALMESBURY (15/3/4-8, 15/3/6-8, 15/3/13-8) (WARD 4)

Mr A J Burger, confirmed that the purpose of the application is the re-arrangement of phase 2A of the Mount Royal Golf Estate development.

The land use rights for the development as a whole was approved by Swartland Municipality in 2005 and the development was divided in 4 phases, which was also divided into sub-phases.

The re-arrangement of the layout of phase 2A will result in the provision of two additional single residential erven, the enlarging of the group housing erf and the reduction of private open spaces.

The Municipal Planning Tribunal emphasised the importance of creating accessible and functional open spaces as part of the design criteria of the group housing development.

RESOLUTION**A. The application for the amendment of the approved subdivision plan on portion of Erf 327, Malmesbury and a portion of the Remainder of the farm Tweefontein no. 969, Division Malmesbury be approved in terms of section 70 of the By-Law. The subdivision plan for Phase 2A be amended as follows:**

- (a) 11 x Residential Zone 1 erven;
- (b) 1 x General Residential Zone 1 erf;
- (c) 4 x Open space Zone 2 erven (private open space); and
- (d) 4 x Transport Zone 2 erven (private roads)

B./...

- B. The application for the amendment of conditions with regard to the existing approval on portion of Erf 327, Malmesbury and a portion of the Remainder of the farm Tweefontein no. 969, Division Malmesbury be approved in terms of section 70 of the By-Law. The conditions be amended as follows:
- ”...(a) That approval be granted in terms of the provision of section 16(1) of Ordinance 15 of 1985 for the rezoning of a portion of Erf 327, Malmesbury (33,82ha in extent) and a portion of the Remainder of Farm Tweefontein nr. 969 (75,03ha in extent), division Malmesbury to subdivisional area in order to establish the following land uses:
- (a) Residential Zone 1 : 501 erven;
 - (b) General Residential Zone 1 (Group housing) : 4 erven;
 - (c) General Residential Zone 3 (Flats) : 1 erf;
 - (d) Business Zone 1 : 2 erven
 - (e) Open Space Zone 2 : private open space
 - (f) Transport Zone 2 : private roads
- C. The application for subdivision of the group housing portion on Erf 6468, Malmesbury be approved in terms of section 70 of the By-Law, as follows:
- (a) 28 x portions between 350m² - 450m² in extent (General Residential Zone 1 : Group housing);
 - (b) 2 x portions between 195m² - 210m² in extent (Open Space Zone 2 : Private open space);
 - (c) 1 x portion of 2 490m² in extent (Transport Zone 2 : Private road);
- D. Application for a departure of the development parameters in order to depart from the required 1400m² open space on the group housing portion of Erf 9468, Malmesbury to 406m² open space, be approved in terms of section 70 of the By-law;
- E. The application for phasing of the subdivision plan on Erf 9468, Malmesbury be approved in terms of section 70 of the By-law, as follows:
- (a) Phase 2A.1: General Residential Zone 1 erf for further subdivision in 28 group housing erven; 2 open spaces and a road; 1 Open Space Zone erf (Private Open Space) and 1 Transport Zone 2 erf (road);
 - (b) Phase 2A.2: 4 Residential Zone 1 erven; 1 Open Space Zone 2 erf (private open space); 1 Transport Zone 2 erf (Road);
 - (c) Phase 2A.3: 7 Residential Zone 1 erven; 1 Open Space Zone 2 erf (private open space); 1 Transport Zone 2 erf (road);
 - (d) Phase 2A.4: 1 Open Space Zone 2 erf (private open space); 1 Transport Zone 2 erf (road) and a 2,5m wide pipe line servitude, subject to the condition that:
 - (i) Open Space Zone 2, Erf 16 (±1,415 ha in extent) be developed before clearance be given on Erven 5 to 12;
 - (ii) A detailed landscape plan be submitted to the Senior Manager: Built Environment for consideration and approval;
- F. A 2.5m wide pipe line servitude over Erf 9468, Malmesbury, is exempted from approval in terms of section 34(1)(g)(i) of the Swartland Municipality: Municipal Land Use Planning By-law (PG 8226 of 25 March 2020).
- G. GENERAL
- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. Failure to comply will result in the approval expiring;
 - (b) The approval does not exempt the owner/developer to comply with any other applicable legislation;

6.3/G...

- (c) Appeals against the Tribunal decision should be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500,00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed;

H. The application be supported for the following reasons:

- (a) Erf 9468 does not have any physical restrictions which will impact negatively on the proposed development;
- (b) The development proposal remains to complement the character of the surrounding area;
- (c) The development proposal is in compliance with the spatial planning of Malmesbury;
- (d) The application is in compliance with the planning principles of LUPA and SPLUMA;
- (e) The group housing development complies with density of 25 units/ha as required by the Planning By-law;
- (f) The impact of the reduced provision of private open space inside the group housing development is deemed low in context with the fast private open spaces provided in the development as a whole. This principle has already been implemented in another group housing development inside the estate;
- (g) The erf sizes of the single residential erven are compliant with minimum erf sizes for similar erven in Malmesbury as well as inside the estate;
- (h) The existing Service Level Agreement remains unchanged and in force;
- (i) The additional 9 holes for the golf course remain to be developed before the commencement of phase 3;
- (j) The approval of DEADP for possible amendments to the "Record of Decision" is not required to inform decision making on this application;
- (k) The development as a whole is still in the "Development Period" which enables the owner/developer to make changes to the undeveloped phases of the development.

6.4 APPLICATION FOR A CONSENT USE ON ERF 799, KALBASKRAAL (15/3/10-6) (WARD 7)

Mr H Olivier mentioned that a complaint was received regarding the operation of a house shop on Erf 799, Kalbaskraal and after an investigation it was found that the operation of the house shop is in contradiction with the zoning of the property.

A formal notice was issued on the owner with the instruction to seize the illegal land use and to apply for a consent use to legally operate the house shop.

RESOLUTION

- A. The application for the consent use on erf 799, Kalbaskraal, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent authorises a house shop, restricted to ± 17 m², as presented in the application;
- (b) Building plans, clearly indicating the house shop in relation to the house, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) The operation of the house shop may not result in congestion/obstruction along Sand or Calabash Streets, therefore at least one on-site parking bay be provided from Calabash Street;
- (d) Application for construction of or attaching an advertising sign to the building be submitted to the Senior Manager: Built Environment for consideration and approval. Only one sign, not exceeding 1 m² in area and not exceeding the land unit boundaries with any part of it, be permitted and it indicate only the name of the owner, name of the business and nature of the retail trade;

6.4/A...

- (e) No more than three persons, including the occupant of the property, are permitted to be engaged in retail activities on the land unit;
- (f) Only pre-packaged food products may be sold;
- (g) No food preparation be allowed in the house shop;
- (h) The following activities not be allowed for sale in the house shop:
 - (i) The sale of wine and alcoholic beverages;
 - (ii) Storage or sale of gas and gas containers;
 - (iii) Vending machines;
 - (iv) Video games; and
 - (v) Snooker or pool tables;
- (i) Application for a trade license be submitted to the Director: Development Services for consideration and approval;
- (j) Application for a Certificate of Compliance be submitted to the West Coast District Municipality for consideration and approval;
- (k) The letter of authorisation from Swartland Municipality be displayed inside the house shop;
- (l) Operating hours of the house shop be limited from 07:00 to 22:00 daily;
- (m) The Western Cape Noise Control Regulations (PG 7141 dated 20 June 2013) be adhered to, to the satisfaction of the relevant authority;

A2 WATER

- (a) The existing connection be used and that no additional connections be provided;

A3 SEWERAGE

- (a) The existing connection be used and that no additional connections be provided;

A4 STREETS AND STORMWATER

- (a) Deliveries may only be done by delivery vehicles of with a gross vehicle mass of 16000 kg;

A5 WEST COAST DISTRICT MUNICIPALITY

- (a) The applicant ensures compliance with the requirements of Regulation 638 of 22 June 2018 (Regulations Governing General Hygiene Requirements for Food Premises, The Transport of Food and Related Matters);
- (b) Food not be handled or permitted to be handled on the subject property without a valid certificate of acceptability, as required in terms of the above mentioned regulations;

B. GENERAL

- (a) The approval is in terms of section 76(2) (w) of the By-Law valid for a period of 5 years. All conditions of approval be complied with within the 60 days from the date of notice of the approval and that failing to do so will result in the lapsing of the approval;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed;

C. The application be supported for the following reasons:

- (a) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;
- (b) The application complies with the land uses proposed for this area of Kalbaskraal, as determined by the SDF;
- (c) The application supports the local economy and promotes entrepreneurship and local businesses, as a goal of the IDP;

6.4/C...

- (d) The proposed house shop complies with the development parameters and requirements of the By-Law;
- (e) The development is envisioned to promote economic opportunities, shorter travel distances and amenities in the residential neighbourhood;
- (f) The proposed consent use will not negatively affect the character of the neighbourhood.

6.5 APPLICATION FOR REZONING AND SUBDIVISION ON ERF 1220, MALMESBURY (15/3/3-8, 15/3/6-8) (WARD 8)

The subject property is owned by the National Government and currently contains two groupings of buildings. The one building is hosting the West Coast Stock Theft Unit of the South African Police Services and the other buildings are intended to be used as a Community Corrections Office by the National Department of Correctional Services.

The National Department of Public Works applied for the rezoning of Erf 1220, Malmesbury from Residential Zone 1 to Subdivisional Area to legalise the current and proposed office land uses.

The Municipal Planning Tribunal confirmed that the application is not complete in order to make an informed decision, amongst others, the uncertainty about the type of governmental functions that will be established on the property and the impact thereof on surrounding residential properties. Furthermore, the application is not in compliance with the planning legislation and can not be considered.

RESOLUTION

- A. The application for the rezoning and subdivision of Erf 1220, Malmesbury, be refused in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020).
- B. General
 - (a) It is recommended that the department seek an alternative solution or location for the proposed Community Corrections Office, in a location that could be considered favourable. It is advised that the department and the Municipality work together in identifying property that is ideally located, that is suitably zoned / consistent with the MSDF, will not have a negative impact on the character of the area, as well as would be in the interest of the community it serves.
 - (b) Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500, 00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed;
- C. The application be refused for the following reasons:
 - (a) The development proposal does not adhere to the spatial planning principles and can therefore be considered inconsistent with the spatial planning principles as contained in SPLUMA and LUPA;
 - (b) Spatial Justice: The proposal does not affect or address spatial and development imbalances through the improved access to and use of land. It is argued that the proposal to rezone a property with the extent of 1,3ha within the urban edge in order to accommodate administrative offices, only occupying 5% of the property and with the proposal restricting the use to the existing buildings, is not seen desirable. It is not in-line with the spatial planning goals as well as does not contribute to densification. As the rezoning effectively sterilises the property for any other development and will remain like that for years to come. This is deemed to be in contradiction with the MSDF, 2019 which promotes the effective use of property and services as well as supports densification;

- (c) It is recognized that the MSDF does accommodate Authority use within the area, however, as mentioned above, the proposal is deemed inconsistent with the goals of the local, district and provincial spatial policies as it will not promote the effective use of property and services as well as support densification. For these reasons the proposal does not contribute to spatial justice;
- (d) **Spatial Sustainability:** The proposal to rezone such a large property within a residential neighbourhood to accommodate administrative offices is deemed undesirable as it is in conflict with the general nature “sense of place” within the neighbourhood and will therefore detract from the character of the area. Furthermore, it could be argued that the proposed development will not result in a more spatially compact and resource-efficient settlement and will therefore not optimise the use of existing infrastructure. Although the proposal does include the use of under-utilised property the proposal is not seen as spatially sustainable;
- (e) **Efficiency:** The development proposal will not promote the optimal utilisation of services in the area. The applicant does motivate that the application seeks to regularise the existing stock theft unit as well as the potential cost saving should the office need to move to another location. Further, the applicant also motivates that in terms of efficiency the co-location of public services on the same property contribute to the principle of efficiency. However, the illegal land use cannot be used as motivation for the municipality to approve the proposed application, secondly due to the extent of the site, the amount of money needed to renovate the old dwelling in order to make it compliant with fire and safety regulations in order to specifically accommodate the use of it as offices, is not seen as effective. It is agreed that there is a number of advantages in co-locating public administration facilities and therefore more suitable locations are available to the department to co-locate its facilities, like the existing prison complexes as well as the existing police station in Malmesbury;
- (f) The municipality is also bound by timeframes with the processing of land use applications, and although it is agreed that the comments / conditions from Heritage Western Cape is critical information required to assist the decision making, the time frame provided by the Department that the information will only be provided in July 2023 is unacceptable. The Municipality need to finalise the application, ensuing compliance with the applicable By-Law as well as to ensure efficiency. Therefore this application does not comply with the principle of efficiency;
- (g) The development proposal is deemed inconsistent with the PSDF as the proposal will not achieve higher densities, will not result in the optimum use of land / space within the urban edge, will detract from the character of the area, it will negatively impact the sense of place within the residential neighbourhood it is located as well as will not improve accessibility;
- (h) The proposal is deemed to be in contradiction with the West Coast District SDF, 2020 as it will not result in the enhancement of the quality of life nor will it improve the access to amenities and opportunities of the residents affected by the application;
- (i) The proposal is deemed to be in contradiction with the MSDF, 2019 which rather promotes the effective use of property and services as well as supports densification;
- (j) Not one of the proposed offices have their access taken from the activity street, St Thomas Street. Both offices are accessed of Pinard Street which is a low order residential street;
- (k) In terms of section 42(1) of SPLUMA it is clear that the Municipal Planning Tribunal must make a decision which is consistent with the norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the Municipal Spatial

6.5/C(k)/...

Development Framework. Due to the proposal being inconsistent with and in contradiction with the spatial planning policies as mentioned above, the application can therefore not be approved;

- (l) No site-specific circumstances were illustrated by the applicant to justify any departure from the MSDF, 2019;
- (m) The proposal to rezone such a large property within a residential neighbourhood to accommodate administrative offices is deemed undesirable as it is in conflict with the general nature "sense of place" within the neighbourhood and will therefore detract from the character of the area. The property, also accommodating the old residency, is of historical, architectural as well as contextual significance;
- (n) There are much more advantages in clustering public administration / functional facilities at existing locations;
- (o) The proposal is deemed not in the interest of the community affected by the application nor is it in the interest of the staff or the parolees that need to visit the property, as it will not improve accessibility;
 - (i) The proposal is inconsistent with the spatial planning proposals, is situated in a residential area and the rezoning of such a large property within a residential neighbourhood to accommodate administrative offices is deemed undesirable as it is in conflict with the general nature "sense of place" within the neighbourhood and will therefore detract from the character of the area;
 - (ii) Should the status quo remain there is a risk that the current state of the property will continue to deteriorate ultimately resulting in the complete loss of the heritage asset as well as the negative impact on neighbouring properties due to the lack of proper maintenance of the subject property. Should the application be approved the rezoning will effectively sterilise the property for any other development and will remain like that for the foreseeable future;
 - (iii) The proposal to rezone such a large property within a residential neighbourhood to accommodate administrative offices is deemed undesirable as it is in conflict with the general nature "sense of place" within the neighbourhood and will therefore detract from the character of the area;
 - (iv) The need for the DCS office in Malmesbury is recognised, the proposed location of it within a residential area on the other hand is not supported. Not only is it prejudicial to the interests of the residents in the area but also, it is not conveniently located next to transport routes, within the CBD, or clustered with other public administration facilities to be in the interest of the staff or the parolees that need to visit the offices;
 - (v) There is no long term benefit to the proposed development as it is not deemed sustainable. In the short term the Department will have a state owned building in which to accommodate the DCS office, however, the proposed repurposing of the historic building on the site in order to use it as offices as well as the potential negative impact on the area far outweighs the potential cost saving that the department claims to achieve;
- (p) The application contains no detail on the future developments on the rezoned erf, the impacts thereof on the residential neighbourhood can therefore not be determined;
- (q) The property, accommodating the old residency, is of historical, architectural as well as contextual significance and is therefore deemed an important heritage resource. Other than the proposed renovation of the buildings, the application does not contain detail on the proposed preservation of this significant heritage resource.

6.6 APPLICATION FOR BUILDING LINE DEPARTURE ON ERF 3402, MALMESBURY (15/4/2-8) (WARD 10)

Mr A de Jager confirmed that the application arised from a building plan application that was received. The supporting documents to the building plan application did not include a motivation or written consent from the affected property owners (Erf 3401) for the side building line departure by the carport as the owner/developer was not successful to obtain such consent.

The Municipality send a formal written notice to the affected property owners notifying them of the application for building line departure on Erf 3402, Malmesbury. The owners of Erf 3041 objected to the building line departure.

RESOLUTION

A. The application for a departure from development parameters on Erf 3402, Malmesbury, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The approval authorises the departure from the 1,5 m eastern side building line to 0 m, restricted to the length of the proposed new carport structure;
- (b) Any stormwater run-off be managed on-site on Erf 3402 and discharged in the nearest municipal street;

B. GENERAL

- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued. Failure to comply will result in the approval expiring;
- (b) Appeals against the Tribunal decision should be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500,00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed;

C. The application be supported for the following reasons:

- (a) The alternative available space on the property was evaluated and determined to be less suitable for the construction of the carport, than the proposed position;
- (b) The proposed location is considered the most practical approach, as it will utilise the existing dwelling as part of the structure, as well as make use of the existing entrance to the property;
- (c) The current, unauthorised carport comprises of a portion of the boundary wall, columns and shade netting on the eastern façade. It is argued the construction of a solid brick wall with a roll-up door will enhance the aesthetic impact of the carport, provide greater privacy between Erf 3401 and Erf 3402 and increase security for both parties;
- (d) The formalised, solid brick wall is foreseen to provide protection to Erf 3401 from western sunshine, without compromising the light quality inside the dwelling;
- (e) Stormwater from the carport will be managed via a gutter system and directed on-site to the nearest municipal stormwater system;
- (f) The proposal is consistent with similar departures in the area and the character of the neighbourhood is not negatively impacted.

6.7 PROPOSED REZONING AND SUBDIVISION OF ERF 1237, RIEBEEK KASTEEL (15/3/3-11, 15/3/6-11) (WARD 12)

Ms A de Jager, as author, tabled the item regarding the rezoning and subdivision of Erf 1237, Riebeeck Kasteel in order to establish a group housing development with 31 group housing erven, a private road and 7 private open spaces on the property.

6.7/...

The application was previously referred back by the Municipal Planning Tribunal in order to notify the Heritage Western Cape of the development and also to ensure that the proposed private open spaces are accessible and functional for the development.

RESOLUTION

- A. The application for the rezoning of Erf 1237, Riebeek Kasteel, from Residential Zone 1 to Subdivisional Area, be approved in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- B. The application for the subdivision of Erf 1237, Riebeek Kasteel, be approved in terms of section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020);
- C. Approvals A and B above are subject to the conditions that:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 1237 (17 697m² in extent) be rezoned from Residential Zone 1 to Subdivisional Area in order to accommodate the following zoning categories, as presented in the application on Site Plan A101, dated 2022/06/09:
 - i. 31 x General Residential Zone 1 erven (12 968m² in extent); and
 - ii. 1 x Transport Zone 1: Private Road (2 672m² in extent);
 - iii. 7 x Open Space Zone 2: Private Open Space portions (2 057m² in extent);
- (b) Erf 1237 be subdivided as follows and as presented in the application on Site Plan A101, dated 2022/06/09:
 - i. 31 x General Residential Zone 1 erven between 400m² - 507m² in extent;
 - ii. 1 x Transport Zone 1: Private Road of 2 672m² in extent;
 - iii. 7 x Open Space Zone 2: Private Open Space portions between 24m² - 720m² in extent;
- (c) The required on-site parking bays be provided consistent with the requirements of General Residential Zone 1 and as presented on Site Plan A101, dated 2022/06/09;
- (d) A detailed Site Development Plan, be submitted to the Senior Manager: Built Environment for consideration and approval;
- (e) A Landscape Plan be submitted to the Senior Manager: Built Environment for consideration and approval, including:
 - i. Detailed landscaping proposals for communal open spaces and green strips within the development, specifying planting, materials, street furniture, play structures and any other such detail applicable to landscaping;
 - ii. Detailed landscaping proposals for the sidewalks outside of the development, for the entire perimeter of the boundary wall;
- (f) The green strips along the internal roads remain unobstructed, unfenced and maintained by the Owners' Association into perpetuity, and that the condition be included in the Owners' Association Constitution;
- (g) The construction and external landscaping of the boundary wall be completed before the transfer of the first residential property;
- (h) The landscaping of the shared internal open spaces be completed before the transfer of the tenth residential property;
- (i) The boundary wall be constructed with columns and permeable panels, as presented in the application;
- (j) The entrance gate to the development be located at least 10m from the property boundary in order to allow sufficient stacking distance for minimum two vehicles at a time;
- (k) The General Plan be submitted to the Surveyor-General for approval, including proof to the satisfaction of the Surveyor-General of—
 - i. the municipality's decision to approve the subdivision;
 - ii. the conditions of approval imposed in terms of section 76; and
 - iii. the approved subdivision plan;and copies of said diagrams be made available to the Municipality;
- (l) An Owners Association be established in terms of section 39 of the By-Law and that a constitution be compiled and submitted to the Senior Manager: Built Environment, for consideration and approval;

- (m) The constitution of an owners association be approved by the municipality before registration of the transfer of the first land unit and make provision for—
 - i. the owners association to formally represent the collective mutual interests of the area, suburb or neighbourhood set out in the constitution in accordance with the conditions of approval;
 - ii. control over and maintenance of buildings, services or amenities arising from the subdivision;
 - iii. the regulation of at least one annual meeting with its members;
 - iv. control over the design guidelines of the buildings and erven arising from the subdivision;
 - v. the ownership by the owners' association of all common property arising from the subdivision, including:
 - a. private open spaces;
 - b. private roads; and
 - c. land required for services provided by the owners association;
 - vi. enforcement of conditions of approval or management plans;
 - vii. procedures to obtain the consent of the members of the owners association to transfer an erf if the owners' association ceases to function; and
 - viii. the implementation and enforcement by the owners' association of the provisions of the constitution.
- (n) The Transport Zone 2 erf and the Open Space Zone 2 portions be transferred to the Owners Association, before transfer of the first residential property is approved;
- (o) The legal certificate which authorises transfer of the subdivided portions in terms of Section 38 of By-law will not be issued unless all the relevant conditions have been complied with;

C2 WATER

- (a) The development be provided with an internal water network that connects to the municipal water network;
- (b) The internal water network be designed by a professional engineer registered in terms of Act 46 of 2000 and that the design be submitted to the Director: Civil Engineering Services for consideration and approval;
- (c) Construction of the internal network be completed under the supervision of the appointed engineer at subdivision stage;
- (d) An analysis of the network be completed by the appointed engineer to ascertain whether elements of the Water Master Plan need to be implemented in order to accommodate the development, and the results be submitted to the Director: Civil Engineering Services;
- (e) The internal water network not be adopted by the Municipality and remain the responsibility of the Owners Association;

C3 SEWERAGE

- (a) The development be provided with an internal sewerage network that connects to the municipal sewerage network;
- (b) The internal sewerage network be designed by a professional engineer registered in terms of Act 46 of 2000 and that the design be submitted to the Director: Civil Engineering Services for consideration and approval;
- (c) Construction of the internal network be completed under the supervision of the appointed engineer at subdivision stage;
- (d) An analysis of the network be completed by the appointed engineer to determine whether elements of the Sewerage Master Plan need to be implemented in order to accommodate the development, and the results be submitted to the Director: Civil Engineering Services;
- (e) The internal sewerage network not be adopted by the Municipality and remain the responsibility of the Owners Association;

C4 STREETS AND STORMWATER

- (a) Stormwater be directed underground towards a suitable connection with the municipal stormwater system, to ensure that post-development volumes remain the same as pre-development stormwater volumes on the property;
- (b)/...

6.7/C4...

- (b) The internal private road be provided with a permanent, dust free surface, whether it be tar, concrete, paving or any other material previously approved by the Director: Civil Engineering Services;
- (c) Both the internal road network and stormwater network be designed by a professional engineer registered in terms of Act 46 of 2000 and that the design be submitted to the Director: Civil Engineering Services for consideration and approval;
- (d) Construction of the internal road and stormwater networks be completed under the supervision of the appointed, suitably qualified engineer at subdivision stage;
- (e) The internal stormwater and road networks not be adopted by the Municipality and remain the responsibility of the Owners Association;

C5 DEVELOPMENT CONTRIBUTIONS

- (a) The owner/developer is responsible for a development charge of R191 672,80 toward the bulk supply of regional water, at clearance stage. The amount is payable to the Swartland Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA 9/249-176-9210);
- (b) The owner/developer is responsible for the development charge of R275 638,90 towards bulk water reticulation, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA: 9/249-174-9210);
- (c) The owner/developer is responsible for the development charge of R384 139,10 towards sewerage, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA: 9/240-184-9210);
- (d) The owner/developer is responsible for the development charge of R273 563,15 towards roads and storm water, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA: 9/247-144-9210).
- (e) The owner/developer is responsible for the development charge of R13 076, 70 towards electricity, at building plan stage. The amount is payable to the Municipality, valid for the financial year of 2022/2023 and may be revised thereafter (mSCOA: 9/253-164-9210);
- (f) The Council resolution of May 2022 makes provision for a 35% discount on development charges to Swartland Municipality, except for condition C5(a), which is payable in full. The discount is valid for the financial year 2022/2023 and may be revised thereafter;

D. GENERAL

- (a) Should the extension of any existing service be needed in order to provide the development with services, said extension be for the account of the owner/developer;
- (b) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. All conditions of approval be complied with before the occupancy certificate be issued. Failure to comply will result in the approval expiring;
- (c) Appeals against the Tribunal decision should be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500,00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

E. The application be supported for the following reasons:

- (a) The application is in compliance with the character and erf size for the specific portion of Riebeek Kasteel, as determined by the SDF;
- (b) The application is seen as densification which is supported by the SDF and PSDF;
- (c) The application complies with section 42 of SPLUMA and Principles referred to in Chapter VI of LUPA;

6.7/E...

- (d) The proposed subdivision will not negatively affect the character of the neighbourhood, as it is located outside the boundaries of the historic precinct of Riebeek Kasteel;
- (e) There is sufficient services capacity to accommodate the newly created erf;
- (f) The increase in traffic load, due to the development, is considered negligible;
- (g) The rights of surrounding property owners will not be negatively affected, as the developable area of the proposed portion will remain extensive;
- (h) All development parameters of the By-Law be adhered to.

6.8 PROPOSED CONSENT USE ON ERF 1900, RIEBEEK KASTEEL (15/3/10-11) (WARD 12)

Mr A J Burger confirmed that a building plan application for a dwelling with a unattached second dwelling (smaller than 60 m²) was approved on 8 September 2021. During the construction phase the owner/developer deviated from the approved building plan by moving the second dwelling and attaching it to the main dwelling as well as constructing a double storey.

The illegal building work was brought to the attention of the Municipality by the adjacent neighbour on Erf 2016, Riebeek Kasteel.

An application for a consent use for a double dwelling on Erf 1900, Riebeek Kasteel was therefore received.

RESOLUTION

- A. The application for a consent use on Erf 1900, Riebeek Kasteel, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), subject to the conditions that:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent authorises a double dwelling on Erf 1900, as presented in the application;
- (b) The double dwelling complies with the applicable zoning parameters of the By-law;
- (c) At least 4 on-site parking bays be provided to the satisfaction of the Senior Manager: Built Environment;
- (d) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;

A2 WATER

- (a) The existing water connection be used and that no additional connections be provided;

A3 SEWERAGE

- (a) The existing sewerage connection be used and that no additional connections be provided;

B. GENERAL

- (a) The approval is, in terms of section 76(2)(w) of the By-Law valid for a period of 5 years. Failure to comply will result in this approval expiring;
- (b) Appeals against the Tribunal decision be directed, in writing, to the Municipal Manager, Swartland Municipality, Private Bag X52, Malmesbury, 7299 or by e-mail to swartlandmun@swartland.org.za, no later than 21 days after registration of the approval letter. A fee of R4 500,00 is to accompany the appeal and section 90 of the By-Law complied with, for the appeal to be valid. Appeals that are received late and/or do not comply with the aforementioned requirements, will be considered invalid and will not be processed.

- C. The application be supported for the following reasons:

- (a) The application is in compliance with the planning principles of LUPA and SPLUMA;

6.8/...

- (b) The application is consistent with local, regional and provincial spatial planning policy;
- (c) The development proposal complies with all applicable zoning parameters of the Residential zone 1 zoning and will not have a negative impact on the privacy or property values of neighbouring properties;
- (d) Erf 1900 does not have any physical restrictions which may have a negative impact on this application;
- (e) The proposed double dwelling will complement and not have a negative impact on the character of the surrounding residential area;
- (f) The development proposal supports the optimal utilisation of the property;
- (g) The proposed land use is considered as a desirable activity within a residential neighbourhood, as it will accommodate residential activities compatible with that of the existing area;
- (h) The double dwelling will provide in a need for a larger variety of housing opportunities to the wider population;
- (i) Sufficient services capacity exists to accommodate the proposed double dwelling;
- (j) The views from Erf 2016 are deemed a privileged and not a right.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**