



**MINUTES OF A MUNICIPAL PLANNING TRIBUNAL MEETING HELD IN THE BANQUETING HALL,
MALMESBURY ON WEDNESDAY, 9 MARCH 2022 AT 14:00**

PRESENT

Internal members:

Municipal Manager, Mr J J Scholtz (chairperson)
Director: Corporate Services, Ms M S Terblanche (joined later)
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)
Manager: Secretariat and Records, Ms N Brand (secretariat)
Director: Development Services, Ms J S Krieger
Snr Town and Regional Planner, Mr A J Burger
Town and Regional Planner and GIS, Mr H Olivier

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 9 FEBRUARY 2022

RESOLVED

(proposed by Mr C Rabie, seconded by Ms C Havenga)

That the minutes of a Municipal Planning Tribunal Meeting held on 9 February 2022 are approved and signed by the chairperson.

5. MATTERS ARISING FROM MINUTES

5.1 MINUTES OF MUNICIPAL PLANNING TRIBUNAL HELD ON 9 FEBRUARY 2022

None.

6. MATTERS FOR CONSIDERATION

6.1/...

6.1 PROPOSED REZONING, DEPARTURE AND CONSENT USE ON ERF 278, KORINGBERG (15/3/3-7; 15/3/4-7; 15/3/10-7) (WARD 1)

The chairperson requested Ms de Jager, as author, to give the background on the application received for the rezoning, departure and consent use on Erf 278, Koringberg.

Ms de Jager stated that the property is adjacent to an activity corridor and the character of the area is primarily residential. The Spatial Development Framework (SDF) proposes limited business opportunities, mixed uses and the potential for flats along activity corridors.

The proposed application is therefore supported, except for the consent use for a bottle store. Some of the factors that were taken into consideration for the refusal of the bottle store as a consent use are the proximity to the school, the impact on the community and the public interest confirmed by the objections received.

RESOLUTION

- A. The application for the rezoning of Erf 278, Koringberg from Residential Zone 1 to Business Zone 2 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 a consent use on Erf 278, Koringberg 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. are subject to the conditions that:

C1 TOWN PLANNING AND BUILDING CONTROL

- (a) Erf 278, Koringberg be rezoned from Residential Zone 1 to Business Zone 2: Neighbourhood Business, in order to accommodate:
 - (i) 2 x shops (25 m² each);
 - (ii) 1 x place of assembly (17 0m²); and
 - (iii) 6 x flats (27,5 m² each);
- (b) The consent use be restricted to a place of assembly, as presented in the application;
- (c) The use of the place of assembly be restricted to public and social functions;
- (d) The operating hours of the place of assembly be restricted as follows:
 - (i) 8:00 – 23:00 on weekdays;
 - (ii) 8:00 – 24:00 on Fridays, Saturdays and Public Holidays;
 - (iii) 8:00 – 20:00 on Sundays;
- (e) Music be permitted in the place of assembly only during operating hours detailed in condition (d)(i) and (ii) and not be permitted on Sundays or closed days – closed days are Good Friday and Christmas Day - and that the volume of music be consistent with the requirements of the Western Cape Noise Regulations;
- (f) The use of amplifying sound equipment, speakers, megaphones or any such appliance, be strictly prohibited outside the place of assembly;
- (g) The Western Cape Noise Regulations be complied with at all times;
- (h) The playing of music outside of the place of assembly, in the parking lot or street, be prohibited;
- (i) No guests be allowed to remain at the place of assembly or in the parking lot on the site outside of operating hours;
- (j) A minimum of fifteen (15) 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;
- (k) A development charge be levied for the non-provision of 8 parking bays and the amount be calculated as follows:
(Area of total parking bays) x (value of the property per m²) = (12,5m² x 8) x (R40 per m²);
- (l) Building plans indicating the change in use be submitted to the Senior Manager: Built Environment for consideration and approval;
- (m) Building plans include the method and implementation of sound proofing measures to the satisfaction of the Senior Manager: Built Environment;

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- (n) A site development plan, including parking layout and proposed landscaping that complement the residential character of the area, be submitted to the Senior Manager: Built Environment at building plan stage for consideration and approval;
- (o) Application be made to the Senior Manager: Built Environment for the right to construct or affix and display any signage;
- (p) A sign be affixed to the door of the place of entertainment displaying the operating hours detailed in condition (d)(i) – (d)(iii) above, including the contact details of the owner for the reporting of complaints;
- (q) Any signage be limited to 1 m² in area and may not project over a public street;
- (r) A Certificate of Compliance be obtained from the West Coast District Municipality for the operation of the place of assembly;
- (s) A trade licence be obtained from Swartland Municipality for the operation of the shops;
- (t) No off-site parking be allowed;
- (u) Should the applicant fail to take effective steps to the satisfaction of the Senior Manager: Built Environment to ensure proper compliance with the conditions of approval, the approval for the consent use may be withdrawn after following due process;

C2 WATER

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

C3 SEWERAGE

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

C4 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for the development charge of R32 671,50 towards bulk water supply, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The owner/developer be responsible for the development charge of R36 704,50 towards bulk water distribution, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R18 157,85 towards sewerage, at building plan stage. The amount is due to Swartland Municipality, valid for the year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (d) The owner/developer be responsible for the development charge of R11 096,45 towards streets and storm water, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/247-144-9210);
- (e) The owner/developer be responsible for the development charge of R4 000,00 towards the non-provision of on-site parking, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/222-303-9212);
- (f) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to C4(a).

D. The application for departure on Erf 278, Koringberg 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:

- (a) The number of required on-site parking bays be reduced from 23 to 15;
- (b) The 3 m southern side building line be departed from to 2,96 m for the extent of the existing building;
- (c) The 3 m western rear building line be departed from to 2,06 m for the extent of the existing building;

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E. **GENERAL**

- (a) The approval is, in terms of section 76(2)(w) of the By-Law, valid for 5 years. All conditions of approval be met before the place of assembly comes into operation and the occupancy certificate is issued, after which the 5 year period will no longer be applicable;
- (b) The approval does not exonerate the applicant from obtaining the necessary approval(s) from any other applicable statutory authority;
- (c) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

- F. The application for a consent use on Erf 278, Koringberg be refused, 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 bottle store;

F1 TOWN PLANNING AND BUILDING CONTROL

- (a) The SDF only allows for limited business uses along activity corridors, thus the proposed land use is contradictory to the spatial planning for the area;
- (b) The combination of the bottle store with the place of assembly will constitute a land use that is not consistent with the character of the residential neighbourhood;
- (c) In addition to the residential character of the neighbourhood, the application property is located within 150 m of places of education and social amenities and as such poses a threat to the social and moral wellbeing of the children in the community. The location of the proposed bottle store is in contradiction to the Western Cape Strategic Plan Framework (2019 – 2024).

- G. The reasons for supporting the application are as follows:

- (a) The proposed flats are consistent with the SDF that promotes flats along activity corridors/streets;
- (b) The flats are also consistent with local, provincial and national legislation and policy promoting densification inside the urban edge;
- (c) The shops and place of assembly are consistent with the spatial proposals of the SDF that supports limited business development along activity corridors/streets in area A;
- (d) The place of assembly will make a social facility available to a lower income group that does not necessarily have access to the existing facilities in Koringberg;
- (e) Mitigating measures have been recommended in order to limit the possible disturbances that may be caused by the place of assembly;
- (f) The buildings on the property are existing and no additional construction is proposed. The application for departure from building lines is to formalise the encroachment of the existing building on the new, more restrictive building lines of Business Zone 2 and not because of unauthorised building work;
- (g) The non-provision of on-site parking is considered acceptable, as it is foreseen that some of the bays may be utilised at alternate times, some guests or residents may not have cars or make use of public transport and the non-provision may be mitigated through a financial contribution to the municipality that may in turn be utilised to upgrade the taxi terminal, for instance;
- (h) The development proposal will not negatively impact on the character of the surrounding neighbourhood or the larger Koringberg, as the nature and scale of the development is limited and appropriate in the context;
- (i) The owner/developer runs the risk of losing the land use approval, should any unauthorised land use continue;
- (j) The concerns of the neighbouring and affected property owners are sufficiently addressed in the conditions of approval;

- H. The reasons for refusal of the application are as follows:

- (a) The SDF only allows for limited business uses along activity corridors, thus the proposed land use is contradictory to the spatial planning for the area;
- (b) The combination of the bottle store with the place of assembly will constitute a land use that is not consistent with the character of the residential neighbourhood;

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- (c) In addition to the residential character of the neighbourhood, the application property is located within 150 m of places of education and social amenities and as such poses a threat to the social and moral wellbeing of the children in the community. The location of the proposed bottle store is in contradiction to the Western Cape Strategic Plan Framework (2019 – 2024).

6.2 APPLICATION FOR REZONING ON ERF 515, YZERFONTEIN (15/3/3-14) (WARD 5)

The author, Mr H Olivier, mentioned that the conveyancer's certificate was requested in order to obtain the opinion from the Registrar regarding the rezoning of Erf 515, Yzerfontein.

Mr Olivier confirmed that the rezoning of Erf 515, Yzerfontein is restricted by the following conditions imposed by the Title Deed, namely:

“C.3 No building on this erf shall be used or converted to use for any purpose other than permitted in terms of these conditions.”

“C.6.(a) This erf shall be used solely for the purpose of erecting thereon one dwelling or other buildings for such purpose as the Administrator may, from time to time after reference to the Township Board and the local authority, approve, provided that if the erf is included within the area of a Town Planning Scheme, the local authority may permit such other building as are permitted by the scheme subject to the conditions and restrictions stipulated by the scheme.”

The Municipal Planning Tribunal concurred that the application be referred back for the amendment thereof regarding the removal of restrictive conditions in order to consider the rezoning of Erf 515, Yzerfontein.

RESOLUTION

That the application be referred back to request the applicant to amend the application to include the application for removal of restrictive conditions and to allow for public participation accordingly.

6.3 PROPOSED DEPARTURE OF DEVELOPMENT PARAMETERS ON ERF 1631, YZERFONTEIN (15/3/4-14) (WARD 5)

[The Director: Corporate Services, Ms M S Terblanche joined the meeting.]

Mr A J Burger, as author, elaborated on the reasons for the refusal to depart from the development parameters on Erf 1631, Yzerfontein. Mr Burger confirmed that there are no merits to approve the departures.

RESOLUTION

A. The application for the departure of development parameters on Erf 1631, Yzerfontein, in order to depart from the 1 m maximum height from which the groundfloor of a building may be raised above the natural ground level to 1,892 m and the 10,5 m height restriction of the highest point of the roof in the case of pitched roofs to 10,867 m, be refused in terms of section 70 of the Swartland Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020):

B. GENERAL

- (a) The applicant/objectors be informed of the right to appeal against the decision of the Municipal Planning Tribunal, within 21 days of this notice, in terms of section 89(2) of the By-Law;

C. The application be refused for the following reasons:

- (a) Erf 1631 is vacant;
- (b) Erf 1631 has a marginal slope from the street to the rear of the property with no other physical restrictions;
- (c) There are no architectural design guidelines applicable to Erf 1631 which gives optimal design freedom within the zoning parameters and National Building Regulations;

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- (d) Erf 1631 is situated on the sea front giving unobstructed views towards the beach and ocean;
- (e) The impact on views from affected properties are deemed a right and need to be protected as the owner/developer intends to develop the property outside the permitted land use rights.

6.4 PROPOSED CONSENT USE ON ERF 1821, YZERFONTEIN (15/3/10-14) (WARD 5)

An application for a consent use on Erf 1821, Yzerfontein was received in order to accommodate a second dwelling on the property.

Mr Olivier confirmed that Erf 1821, Yzerfontein is currently zoned Residential Zone 1 and that a second dwelling is permitted as a consent use under the Residential Zone 1 zoning.

RESOLUTION

- A. The application for consent use on Erf 1821, Yzerfontein 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:

A1 TOWN PLANNING AND BUILDING CONTROL

- (a) The consent use authorises a second dwelling, as presented in the application;
- (b) The second dwelling adheres to the applicable development parameters;
- (c) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;

A2 WATER

- (a) A single water connection be provided and no additional connections be provided;

A3 SEWERAGE

- (a) The property be provided with a conservancy tank of minimum 8 000 litre capacity and that the tank be accessible to the municipal service truck via the street;

A4 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for the development charge of R5 445,25 towards the supply of regional bulk water, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The owner/develop be responsible for the development charge of R4 502,25 towards bulk water reticulation, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R8 280,00 towards waste water treatment, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-183-9210);
- (d) The owner/develop be responsible for the development charge of R5 612,00 towards sewerage, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (e) The owner/developer be responsible for the development charge of R11 500,00 towards streets, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/249-188-9210);
- (f) The owner/developer be responsible for the development charge of R3 192,40 towards storm water, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/248-144-9210);
- (g) The owner/developer be responsible for the development charge or R10 419,00 towards electricity, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/253-164-9210);

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- (h) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to A4(a);

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 an occupancy certificate be issued and failing to do so may result in administrative action;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval from any other applicable statutory authority;
- (c) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

C. The application be supported for the following reasons:

- (a) The proposed second dwelling is a residential use and is therefore consistent with the proposals of the SDF;
- (b) A second dwelling is accommodated as a consent use under Residential Zone 1 of the By-Law;
- (c) The development proposal supports the optimal utilisation of the property;
- (d) The second dwelling may support the tourism industry in Yzerfontein, as well as the local economy;
- (e) The second dwelling provides in a need for a larger variety of housing opportunities to the wider population;
- (f) The development proposal will not negatively impact on the character of the surrounding neighbourhood or the larger Yzerfontein.

6.5 PROPOSED CONSENT USE AND DEPARTURE ON ERF 11180, MALMESBURY (15/3/10-8; 15/3/4-8) (WARD 8)

Mr Burger, as author, confirmed that the application entails the consent use on Erf 11180 to establish a double dwelling and the departure to depart from the required 4 on-site parking bays to 0 on-site parking bays.

Mr Burger stated that historically Erf 11180, Malmesbury did not provide on-site parking and a total of 4 on-site parking bays for the double dwelling house are required according to Residential zone 1 zoning parameters. However, credit can only be given for 2 on-site parking bays.

A discussion followed on the levying of a tariff for the continued illegal land use and it is established that Section 96(3) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) authorises the institution of a fine for every day the illegal land use continues.

RESOLUTION

- A. The application for consent use on Erf 11180, 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 use authorises a double dwelling, as presented in the application;
- (b) Building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- (c) Approval be obtained from Heritage Western Cape at building plan stage;
- (d) A municipal tariff of R135 455,00 for the continued illegal land use be levied at building plan stage;

A2 WATER

- (a) The existing single 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;

A4 DEVELOPMENT CHARGES

- (a) The owner/developer be responsible for the development charge of R6 534,30 (R10 890,5 x 0.6) towards the supply of regional bulk water, at building plan stage. The amount is due to the Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA: 9/249-176-9210);
- (b) The owner/developer be responsible for the development charge of R7 340,83 towards bulk water reticulation, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/249-174-9210);
- (c) The owner/developer be responsible for the development charge of R3 631,57 towards sewerage, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/240-184-9210);
- (d) The owner/developer be responsible for the development charge of R5 410,05 towards streets and stormwater, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter (mSCOA 9/247-144-9210);
- (e) The owner/developer be responsible for the development charge of R4 358,90 towards electricity, at building plan stage. The amount is due to Swartland Municipality, valid for the financial year of 2021/2022 and may be revised thereafter. (mSCOA 9/253-164-9210);
- (f) The Council resolution of May 2021 makes provision for a 40% discount on development charges to Swartland Municipality. The discount is valid for the financial year 2021/2022 and may be revised thereafter. The discount is not applicable to A4(a);

- B. The application for a departure of development parameters on erf 11180, Malmesbury, be approved in terms of Section 70 of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), as follows:

- (a) Departure of the required 4 on-site parking bays to 0;
- (b) Credit be given for the non-provision of 2 on-site parking bays and a financial contribution be made for the non-provision of the remaining 2 on-site parking bays calculated at $R900/m^2 \times 25 m^2 = R22\ 500,00$

C. GENERAL

- (a) The approval is, in terms of section 76(2)(w) of the By-Law, valid for 5 years. All conditions of approval be complied with within a period of 2 months, by 16 May 2022, after which the 5 year period will no longer be applicable;
- (b) The approval does not exonerate the applicant from obtaining any necessary approval(s) from any other applicable statutory authority;
- (c) The applicant/objectors be notified of the outcome and their right to appeal in terms of Chapter VII, Section 89 of the By-law;

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

- (a) The application is in compliance with the planning principles of LUPA and SPLUMA;
- (b) The application is consistent with local, regional and provincial spatial planning policy regarding densification;
- (c) The development proposal complies with all applicable zoning parameters of the Residential zone 1 zoning, except for on-site parking;
- (d) The proposed double dwelling will complement and not have a negative impact on the character of the surrounding residential area;
- (e) The development proposal supports the optimal utilisation of the property;
- (f) 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;

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- (g) The double dwelling will provide in a need for a larger variety of housing opportunities to the wider population;
- (h) Sufficient services capacity exists to accommodate the proposed double dwelling;
- (i) The number of people or number of families which may reside in a dwelling house is not a decision making criteria for a consent use for second dwelling or double dwelling;
- (j) The historical situation regarding the provision of no on-site parking on Erf 11180 will continue to exist;
- (k) Section 96(3) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020) authorises the institution of a fine for every day the illegal land use continues. Municipal tariffs make provision for a tariff to be levied for a continued unauthorised land use. The reluctance of the owner to rectify the illegal land use and unauthorised building work cannot be condoned.

6.6 APPLICATION FOR A DEPARTURE ON ERF 742, MALMESBURY (15/4/2-8) (WARD 10)

Mr Olivier, as author, discussed the application for a departure on Erf 742, Malmesbury in order to accommodate the existing wooden structure.

The property is currently zoned Residential Zone 1 and the applicable building lines are 4 m street, 1,5 m side and 2 m rear. The structure, as per proposed building plan, is situated only 550 mm from the rear property boundary.

Mr Olivier explained the reasons for the refusal of the application as stated in the report.

RESOLUTION

- A. The application for a departure from development parameters on Erf 742, Malmesbury be refused 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 portion of the structure encroaching the building lines be demolished before 9 May 2022;
 - (b) That amending building plans be submitted to the Senior Manager: Built Environment for consideration and approval;
- B. The applicant and objector be informed of their right to appeal against this decision of the Municipal Planning Tribunal, in terms of section 89(2) of the By-Law;
 - C. The application be refused for the following reasons:
 - (a) Building lines are control measures that not only accommodate services but also preserve the nature and character of the area. The sheer extent of the structure is such that the applicants need can be accommodated without encroaching the building line;
 - (b) It is clear from Division: Building Control that the structure needs to undergo significant alterations for it to comply with the National Building regulations.

**(SIGNED) J J SCHOLTZ
CHAIRPERSON**