



CLEAN AUDITS SINCE 2010/11  
SKOON OUDITS SEDERT 2010/11



Ons gee gestalte aan 'n beter toekoms!  
We shape a better future!  
Sakha ikusasa elingcono!

Lêer verw/ 15/3/3-8/Erf\_1220  
File ref: 15/3/6-8/Erf\_1220

Navrae/Enquiries:  
Ms D N Stellenberg

16 May 2023

NM & Associates Planners and Designers  
PO Box 44386  
CLAREMONT  
7735.

By Registered Mail

Sir/Madam

### OUTCOME OF APPEAL : REZONING AND SUBDIVISION OF ERF 1220, MALMESBURY

The abovementioned appeal refers.

Notice is hereby given in terms of paragraph 91 of Swartland Municipality : Municipal Land Use Planning By-Law (PG 8226 dated 25 March 2020) of the outcome of the abovementioned appeal.

The Appeal Authority has gathered on Monday, 17 April 2023 as well as 8 May 2023 (minutes of meetings attached) and is the resolution as follows:

### RESOLUTION

The Executive Mayor as Appeal Authority of Swartland Municipality therefore dismiss the appeal received from N & M Associates Planners and Designers (on behalf of the owner National Government of the Republic of South Africa), for the following reasons:

- (i) The proposal will not result in the optimum use of land/space within the urban edge, will detract from the character of the area as well as negatively impact the sense of place within the residential neighbourhood it is located;
- (ii) The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area;
- (iii) The proposed use of administrative offices in the proposed location as well as the fact that none of the offices is proposed to be accessed from the identified activity street, is deemed in contradiction with the Municipal Spatial Development Framework, 2019. Section 42(1) of the Spatial Planning and Land Use Management Act, 2013 clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework, 2019. The Municipal Planning Tribunal therefore did not err in its decision to refuse the application;
- (iv) The proposal is deemed to be 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. The short term gain for the department is recognised however the significant cost as well as the long term negative impact

Rig asseblief alle korrespondensie aan:  
Die Munisipale Bestuurder  
Privaatsak X52  
Malmesbury 7299  
Darling Tel: 022 492 2237

Tel: 022 487 9400  
Faks/Fax: 022 487 9440  
Epos/Email: swartlandmun@swartland.org.za

Moorreesburg Tel: 022 433 2246

Kindly address all correspondence to:  
The Municipal Manager  
Private Bag X52  
Malmesbury 7299  
Yzerfontein Tel: 022 451 2366

for the residents in the area, as well as the department, far outweighs the idea of the sustainable accommodation of the Community Corrections office on erf 1220;

- (b) The Executive Mayor as Appeal Authority of Swartland Municipality, in terms of Section 91(7)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), confirms the decision by the Municipal Planning Tribunal, Item 6.5 dated 16 November 2022, to refuse the application for rezoning and subdivision of Erf 1220, Malmesbury.

Yours faithfully



**MUNICIPAL MANAGER**

via Department Development Services

/ds



**MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE MALMESBURY, BANQUETING HALL ON MONDAY, 17 APRIL 2023 AT 14:00**

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**PRESENT:**

The Executive Mayor, ald J H Cleophas (chairperson)  
The Executive Deputy Mayor, cllr J M de Beer  
Cllr D G Bess  
Cllr N Smit  
Ald T Van Essen  
Cllr A K Warnick

Advisor:

Snr Town and Regional Planner, Mr A J Burger  
Town and Regional Planner and GIS, Mr H Olivier

Secretariat:

Manager: Secretariat Services and Records, Ms N Brand

**1. OPENING**

The chairperson opened the meeting and declared the Appeal Authority in session in terms of paragraph 91 of the Swartland Municipality: By-law relating to Municipal Land Use Planning (PG 8226 dated 25 March 2020).

**2. APOLOGIES**

No apologies was received.

**3. MINUTES**

**3.1 MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD ON 16 JANUARY 2023**

**RESOLUTION**

(proposed by cllr N Smit, seconded by cllr D G Bess)

That the minutes of a meeting of the Appeal Authority held on 16 January 2023 be approved and signed by the Executive Mayor.

**4. MATTERS FOR CONSIDERATION**

**4.1 APPEAL RECEIVED ON THE PROPOSED REZONING AND SUBDIVISION OF ERF 1220, MALMESBURY (15/3/3-8, 15/3/6-8)**

An appeal was received on the decision by the Municipal Planning Tribunal (MPT) – Item 6.5 dated 16 November 2022 – to refuse the application for the rezoning and subdivision of Erf 1220, Malmesbury.

The evaluation of the appeal was presented to the Appeal Authority in the report of the Municipal Manager dated 7 March 2023 and the report of the authorised official dated 2 March 2023 respectively.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be more than fair;

4.1/...

- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the MPT in order to conclude on the matter.

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the *audi alteram partem* rule.

The chairperson requested the appellant, represented by Mr Dalvie from N M & Associates Planners and Designers, to table their appeal dated 15 December 2022 – see attached presentation.

The chairperson requested the objectors, represented by Mr Bezuidenhout, to address the Appeal Authority and the following matters, amongst others, are highlighted:

- (1) Nobody, with reference to 24 hour armed response and visible patrol vehicles in the area, can guarantee the safety of residents;
- (2) Furthermore, the 24 hour patrol vehicles and floodlights around the premises will become a nuisance to the adjacent homeowners;
- (3) The proposed fencing is also not of residential nature;
- (4) Public participation was inadequate and during public holidays, the whole adjacent community will be affected and not only ±15 people;
- (5) No traffic impact studies were done and more traffic will be generated;
- (6) The statement that only 10 visits by parolees or probationers to the office per month and by appointment only, is noted, but the impact on traffic must be assessed;
- (7) If the property acquires rights, there is no guarantee what facilities will be established in the near future, e.g. detention cells;
- (8) Alternative premises closer to the correctional services in Malmesbury must be considered as the proposed facilities is not desirable in a residential area;
- (9) All of the surrounding property owners are opposed to the proposed Community Corrections Offices and it is not to the benefit of homeowners who invested in the specific area.

The chairperson requested the Senior Town and Regional Planner to table the evaluation of the authorised official and to reply on the presentation by the appellant.

The Senior Town and Regional Planner confirmed that the MPT thoroughly considered all aspects in the application during the meeting held on 16 November 2022 and the application was refused for the following reasons:

- (1) The historic use of erf 1220 was for residential purposes, hence the Residential Zone 1 zoning;
- (2) National Government's intention to use their properties optimally for other uses as originally intended, cannot be deemed suited for any existing illegal use or future use as seen fit by government. Land need to be suitably zoned, the land uses consistent with the MSDP and other relevant planning policy/legislation and norms and standards, which will not have a negative impact on the character of the area, as well as not be in the interest of the community it serves;
- (3) The principle that "*public facilities need to be integrated with residential areas by means of bringing the service to the people*" is not promoted. The proposed uses remains to be in conflict with the spatial planning of the area and general nature "sense of place" within the residential area as it is not located on existing transport routes, within the CBD or clustered with other public administration facilities. The proposed uses remains to be in conflict with the PSDP, West Coast SDF and MSDP;
- (4) It is clear from the public's interest (objections received during the public participation process as well as the responses on the appeal) that surrounding property owners do not support the proposed uses;
- (5) The principles of spatial sustainability, efficiency and resilience in this case are outweighed by the principle of spatial justice as the character of the area restricts the land uses which can be accommodated;
- (6) There is no degree of control by the Municipality on future uses of the property once the Authority Zone zoning is granted, other than the consideration of building plans;
- (7) Any engagements between the Municipality and the appellant to find mitigation measures to address the community concerns that have been raised as part of the public participation process would not have influenced the decision of the MPT;
- (8) The outcome of the HIA would not have influenced the decision of MPT;

- (9) Restricting the footprints of the proposed Authority zone zoning to that of the buildings would not have influenced the decision of the MPT;
- (10) The Department at no point indicated their willingness to go into discussions with the Municipality to seek an alternative solution or the relocation of the facility to a more ideally located property.

**RESOLUTION**

That the appeal will not be decided on date, and that the parties will be notified of the outcome of the appeal after the Appeal Authority considered all the information.

**(SGD) ALD J H CLEOPHAS**  
**CHAIRPERSON**

**APPLICATION FOR REZONING AND  
SUBDIVISION OF ERF 1220 MALMESBURY  
– APPEAL APPLICATION**



**DEPARTMENT OF  
CORRECTIONAL SERVICES (DCS)  
COMMUNITY CORRECTIONS  
OFFICE**

**AND**

**SAPS WEST COAST STOCK THEFT  
UNIT**

**17 APRIL 2023**

## DEVELOPMENT PROPOSAL

- The intention is to **relocate** the existing Department of Correctional Services Community Corrections Office from its current location next to the Department of Home Affairs in St Thomas street to the site Erf 1220, Malmesbury which is located approximately 550m to the west
- The Community Corrections Office **currently leases premises** but the intention is to relocate to the existing structure on Erf 1220, Malmesbury, which is **owned** by the National Government of the Republic of South Africa and administered by the Department of Public Works and Infrastructure

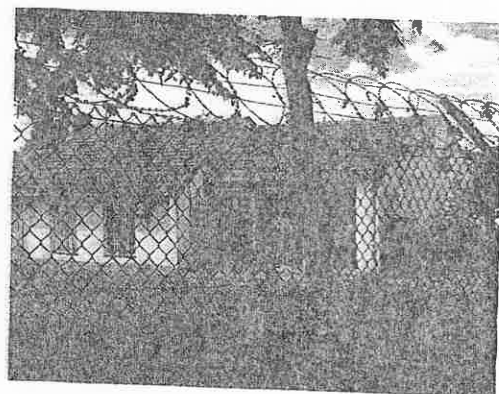
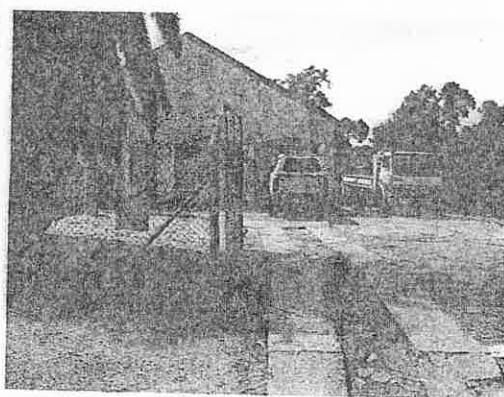
## SITE DESCRIPTION

- The site is **Erf 1220 Malmesbury**
- The site is owned by the **National Government of the Republic of South Africa**
- The site is **1.3ha** in extent
- The site is zoned **Residential Zone 1**
- There are **2 groupings of buildings on the site**, the buildings on the southern part of the site occupied by the SAPS Stock Theft Unit and the unoccupied building cluster on the northern part of the site



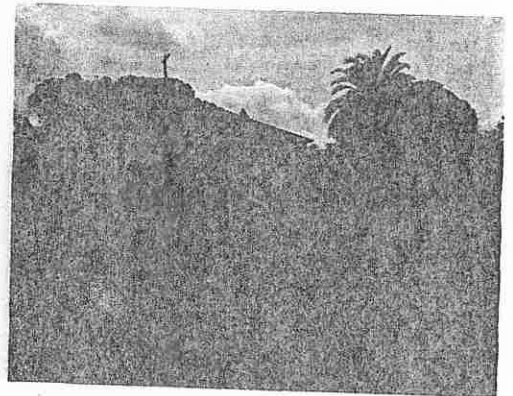
## SITE DESCRIPTION - SOUTHERN BUILDINGS

- The southern grouping of buildings is currently occupied by the SAPS West Coast Stock Theft Unit
- The buildings were constructed in the mid 1970's are single storey and residential in appearance
- The intention was to provide a residence for the Police Station Commander however it was never occupied for this purpose and was used instead as premises for SAPS offices



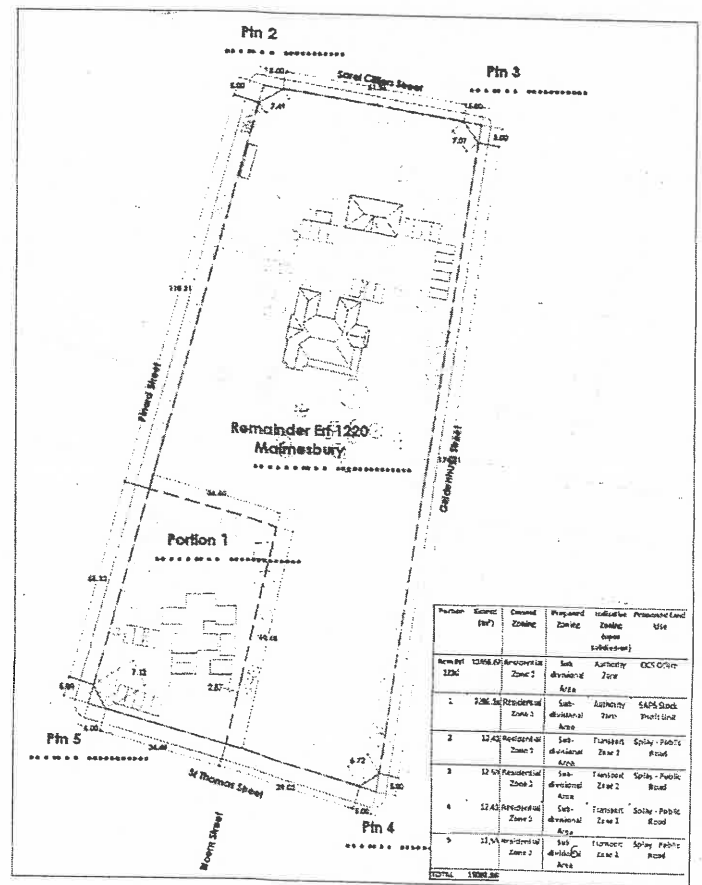
## SITE DESCRIPTION – NORTHERN BUILDINGS

- The northern grouping of buildings is currently vacant and is the location of the proposed Community Corrections Office
- The buildings were constructed between 1894 and 1918 and are single storey and residential in appearance
- They are known locally as “The Old Residency” and were previously occupied by the local Magistrate and more recently the court manager and other agents of the court
- The buildings have been vacant since 2014 when the property was allocated to DCS



# APPLICATION DETAILS

- **Rezoning of Erf 1220 Malmesbury, from Residential zone 1 to Subdivisional Area** to make provision for the following indicative zonings and land uses upon subdivision
  - **Authority zone (for the SAPS and DCS office land uses)** (Remainder Erf 1220 and Portion 1); and
  - **Transport Zone 2 for Portions 2-5** (to accommodate the road splays);
- **Subdivision of Erf 1220 Malmesbury into 6 portions**
  - **Remainder Erf 1220 Malmesbury** (to be used for the proposed **DCS Community Corrections Office**)
  - **Portion 1** (to be used for the existing **SAPS Stock Theft Unit**)
  - **Portions 2-5** (to be used for road splays)



## APPEAL MOTIVATION – RESPONSE TO REASONS FOR REFUSAL

### SUMMARY RESPONSE TO MUNICIPAL REASONS FOR REFUSAL

- The proposed development is motivated as being **largely in accordance with the SPLUMA and LUPA spatial principles**
- From a spatial perspective, public facilities are **integrated with residential land uses** and not functionally fragmented as in the old Apartheid spatial planning therefore responding to the principle of spatial justice and integration
- According to DCS “**Social Reintegration (Community Corrections Offices) is of the integration of probationers and parolees into the community as part of the Departments rehabilitation programmes. It is a priority of government to deliver services closer to communities, while ensuring that office facilities that are in a safe and humane condition, hence the need for alternative and suitable office accommodation**”
- The **heritage value** of the Old Residency (including the associated structures, its access and parking) **limits densification** (as proposed in principle by the PSDF and MSDF) and **redevelopment of the property as a whole**
- The development proposal was **intentionally limited to the existing structures on site in order to minimise the impact of the proposed development and to provide a degree of comfort that no unforeseen development will occur.** Further development will require additional land use applications subject to municipal approval thereof
- The proposal will ensure that the existing buildings and its heritage value is maintained thereby maintaining the sense of place of the area

## **APPEAL MOTIVATION – RESPONSE TO REASONS FOR REFUSAL**

### **SUMMARY RESPONSE TO MUNICIPAL REASONS FOR REFUSAL**

- The proposed development is in accordance with the MSDF which accommodates Authority Use. The purpose of a municipal spatial development framework (as indicated in Chapter 4 Section 12 of SPLUMA) is to “provide clear and accessible information to the public and private sector and provide direction for investment purposes;”.(RSA, 2015). In this circumstance the proposed development was prepared in terms of the MSDF as Authority use is clearly indicated as a recommended land use within the MSDF Zone C for Malmesbury.
- DPWI is attempting to rationalise public resources and reduce expensive leases. The Authority Zone will permit other existing authority uses located elsewhere to relocate to the site (subject to the necessary land use and heritage applications) and thereby enabling clustering of public facilities and a more effective use and densification of the site
- Due to the low key nature of the proposed uses no engineering services or road network/traffic impacts are anticipated

## APPEAL MOTIVATION – RESPONSE TO REASONS FOR REFUSAL

### SUMMARY RESPONSE - SECURITY AND OPERATIONAL RESPONSE

- The building will be under 24 hour armed response from security services stakeholders. This will have the advantage of more visibility of security vehicles in the area.
- In the history of the DCS's current office since 2004 to date there has been **no threatening or negative security related incidents** to the surrounding community or shops, the school and school children.
- The renovation plan will **include fencing, lighting, and any other measures required for security purposes**. The proposed DCS office will ensure that there is **adequate street lighting and visibility during the evenings**.
- There are an average of only 10 visits by parolees or probationers to the office per month and these are by appointment only.
- The occupation of the building will bring more people to the area and contribute to the security and visibility for area.
- The DCS offices does not operate on a 24 hour basis, they operate from 07h00 till 16h00 during which time **parolees or probationers are allowed to visit the offices on an appointment basis only**. There are **flexi-hour shifts from 14h00 to 22h00 which the staff use for home visitations**.
- During **weekends offices are opened at 07h00 for reporting** and thereafter officials are dispatched for home visits. The main office visits are conducted in community service points which are in different areas (where parolees are residing).
- Violators will be taken directly to prison and not to the DCS offices.

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## HERITAGE CONSIDERATIONS

### Heritage Impact Assessment in progress:

- Heritage Consultant: Sarah Winter
- Draft HIA completed 20 March 2023
- Public participation: 20 March to 26 April 2023
- To be submitted to HWC on 27 April 2023
- To appear at HWC IACOM on 17 May 2023
- RoD expected end May 2023



*Aerial photo of the site, c1938*

## HERITAGE CONSIDERATIONS

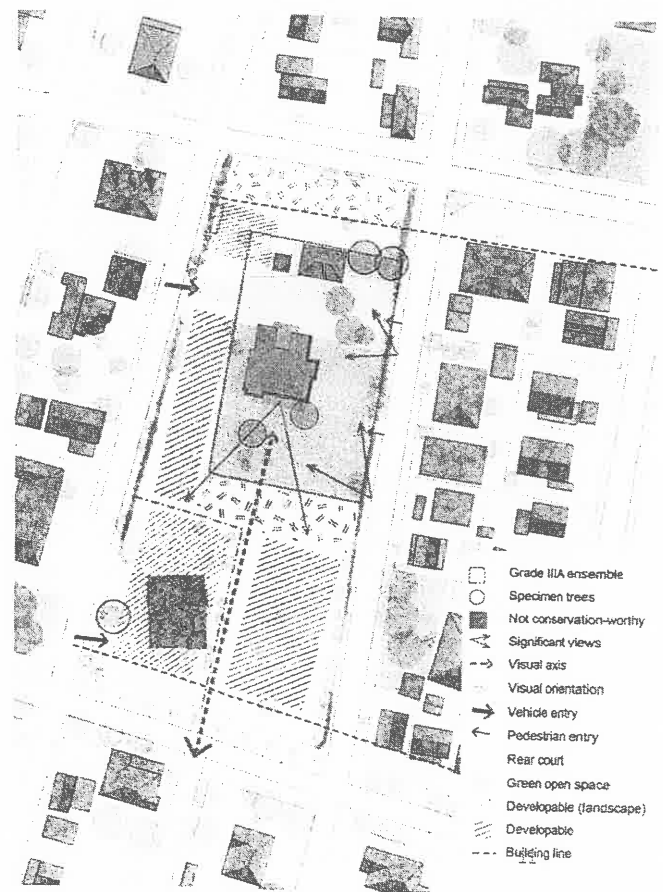
### Draft HIA's findings:

#### Heritage significance grading:

"The **villa and barn ensemble** ...encircled by its treed setting, is assessed by this report to have **Grade IIIA significance** for its intrinsic, aesthetic and architectural value, and the visual spatial relationship with its setting.

The landscape setting is an intrinsic part of the ensemble,

however, the development of the south portion mars the formal coherence of the whole and **should be excluded from the IIIA designation.**"



## HERITAGE CONSIDERATIONS

### Draft HIA's findings:

- "The proposal introduces potential change to the residential character of site, and impact to its historical Grade IIIA structures.
- The site is located in an area with a fairly high concentration of historical dwellings of some heritage significance, sufficient for it to be identified as a proposed Special Area.
- Any **negative impact to the character of the immediate built environment and landscape context can be mitigated by implementing the heritage design indicators outlined in Section F of this report**, which aim to avoid introducing an institutional and introverted character to the site, and to rather maintain its visual-spatial connection and green edge conditions to the streetscape context.
- **Negative impact to the villa building of the proposed adaptive reuse can be mitigated through architectural implementation that applies a heritage sensibility**. Proposals should observe the **indicators included in section F** of this report and be overseen by an architect with experience in buildings of this period to ensure that the character, form and condition of the villa is not compromised by the works."

## HERITAGE CONSIDERATIONS

### Draft HIA's recommendations:

"It is recommended that HWC ...

...endorse the Heritage Indicators outlined in Section F of the HIA report and

...endorse the HIA as having satisfied the provisions of Section 38 (3) of the NHRA.

It is recommended that HWC **allow the proposed rezoning and subdivision to proceed subject to the following conditions:**

- The submission of building plan proposals to HWC for alterations for adaptation of the villa and barn buildings.
- A building maintenance programme for the villa and outbuilding needs to accompany the building plan submission to HWC.
- A Site Development and Landscape Plan indicating edge security and planting, vehicle access, parking, lighting, surface treatments and other landscaping must be submitted to HWC for approval.
- Building alterations are subject to the heritage indicators (Section F of this report) and require monitoring by an architectural professional with heritage experience."

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## **OUTCOME OF APPEAL: PROPOSED REZONING AND SUBDIVISION OF ERF 1220, MALMESBURY**

### **Introduction**

#### **Process**

It is noted that the appellant did not appeal the process followed by the Municipality during the consideration of the application. The process followed in the consideration of the application is therefore deemed true and fair.

#### **Public Participation**

Concerns raised by the residents regarding the public participation followed by the Municipality are noted, however, in terms of Section 56(2) (c) & (d) of the Swartland Municipality: Municipal Land Use Planning By-Law (PG 8226 of 25 March 2020), formal notice were served on each person whose rights or legitimate expectations were deemed to be affected by the approval of the application as well as on every owner of land adjoining the land concerned. A total of 19 properties were identified by the municipality, deemed to be affected, should the property be used as offices. In terms of Section 55 of the said By-Law public notice of the application was also done as required with the publishing of the application in a newspaper circulating in the area, the Provincial Gazette as well as the municipality's website. The public participation process followed is therefore deemed compliant with the applicable legislation. Given the nature of the response received from the residents in the area, the public participation process followed with the consideration of the application is deemed effective.

#### **Timeframes**

With the decision of the Municipal Planning Tribunal taken on the 16<sup>th</sup> of November 2022 it is noted that the period provided for the submission of appeals did run from 28 November to the 19<sup>th</sup> of December 2022 and the notices for the commenting on the appeal to all interested and affected parties, was therefore during the school holidays. This was found to be purely circumstantial and not intentional as to exclude anybody from the process. The application was processed in terms of the relevant timeframes required and the notices were sent in accordance with the provisions of the applicable By-Law. Secondly, in terms of an appeal the By-law does not make provision for any extension of commenting periods, however, it is clear that the municipality did allow an extension of the period for comments on the appeal. This is deemed to be reasonable to the residents of the area and none of the parties objected to this extension.

#### **Contradiction with planning policy, norms and standards**

The development proposal is deemed inconsistent with the Provincial Spatial Development Framework, 2014 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 as well as negatively impact the sense of place within the residential neighbourhood it is located, as well as will not improve accessibility. The proposed offices envisaged within an

area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area.

Authority usage as defined, is very diverse, with the applicable zoning scheme referring to military training centres, police stations, correctional institutions, road stations and camps as well as a variety of municipal service delivery related uses and public utility facilities. It can therefore not be interpreted that because the land use proposal zone make provision for authority use, that all types of authority use is consistent with the area as well as the spatial planning vision and principles of the Municipal Spatial Development Framework (MSDF).

The proposed use of administrative offices in the proposed location as well as the scale of the proposed rezoning was found to be in contradiction with the MSDF and therefore the Municipal Planning Tribunal did not err in its decision to refuse the application.

Section 42(1) of SPLUMA clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the MSDF.

#### **Public interest**

It is agreed that the proposal will have some short term gains for the department however the significant cost as well as the long term negative impact for the residents in the area as well as the department, far outweighs the idea of the sustainable accommodation of the community corrections office on Erf 1220. It is agreed that public administration facilities should be conveniently located next to transport routes, within the CBD, or clustered with other public administration facilities as it ensures improved accessibility for all.

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;

#### **Resolution**

(a) That the appeal received from N & M Associates Planners and Designers (on behalf of the owner National Government of the Republic of South Africa) be dismissed by the Appeal Authority for the following reasons:

1. The proposal will not result in the optimum use of land / space within the urban edge, will detract from the character of the area as well as negatively impact the sense of place within the residential neighbourhood it is located. The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area.
2. The proposed use of administrative offices in the proposed location as well as the fact that none of the offices is proposed to be accessed from the identified activity street, is deemed in contradiction with the MSDF. Section 42(1) of SPLUMA, 2013 clearly state that the

Municipal Planning Tribunal may not make a decision which is inconsistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and the Municipal Spatial Development Framework. The Municipal Planning Tribunal did not err in its decision to refuse the application.

3. The proposal is deemed to be 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, the short term gain for the department is recognised however the significant cost as well as the long term negative impact for the residents in the area, as well as the department, far outweighs the idea of the sustainable accommodation of the Community Corrections office on the subject property.

(b) That the decision for the refusal of the application on Erf 1220, Malmesbury by the Municipal Planning Tribunal, Item 6.5 dated 16 November 2022, be upheld;



## MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD IN THE OFFICE OF THE MAYOR ON MONDAY, 8 MAY 2023

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### PRESENT:

The Executive Mayor, Alderman J H Cleophas (chairperson)  
The Deputy Executive Mayor, Cllr J M de Beer  
Cllr D G Bess  
Cllr N Smit  
Ald T van Essen  
Cllr A K Warnick

### 1. OPENING

The chairperson opened the meeting.

### 2. MINUTES OF A MEETING OF THE APPEAL AUTHORITY HELD ON 17 APRIL 2023

#### RESOLUTION

(proposed by cllr N Smit, seconded by cllr D G Bess)

That the minutes of a meeting of the Appeal Authority held on 17 April 2023 be approved and signed by the Executive Mayor.

### 3. MATTERS FOR CONSIDERATION

#### 3.1 OUTCOME ON APPEAL RECEIVED ON THE PROPOSED REZONING AND SUBDIVISION OF ERF 1220, MALMESBURY (15/3/3-8, 15/3/6-8)

An appeal was received on the decision by the Municipal Planning Tribunal on 16 November 2022, i.e. to refuse the application for the rezoning and subdivision of Erf 1220, Malmesbury.

The evaluation of the appeal was presented to the Appeal Authority on 17 April 2023 in the report of the Municipal Manager dated 7 March 2023 and the report of the authorized official dated 2 March 2023, respectively.

At a meeting of the Appeal Authority held on 17 April 2023 all the parties to the appeal, being the appellant and objectors were given the opportunity, in order to apply the *audi alteram partem* rule, to make submissions to the Appeal Authority.

The Appeal Authority **RESOLVED** on 17 April 2023 –

"That the appeal will not be resolved on date and that all parties will be notified of the outcome of the Appeal Authority after due consideration of all the information, including (but not limited to) all submissions made (orally and in writing)."

The merits of the appeal was considered and assessed by the Appeal Authority on 8 May 2023, taken into account all relevant legislation and policy guidelines, including the Swartland Municipal Spatial Development Framework (MSDF, approved by Council on 30 May 2021) in order to adhere to all requirements.

The chairperson stated that the Appeal Authority must adhere to the following requirements in resolving the appeal:

- (1) All actions must, in terms of administrative law and natural justice, be procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
- (2) All the relevant facts must be legally considered and evaluated independently of the matters considered by the MPT in order to conclude on the matter.

An appeal is considered by the appeal Authority of Swartland Municipality in terms of the provisions of Section 89 to 91 of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), hereafter referred to as **the By-Law**.

In terms of section 89(5) of the By-Law, "... when the appeal authority considers an appeal, it must have regard to-

- (a) the provisions of section 75, read with the necessary changes; and
- (b) the comments of the Provincial Minister contemplated in section 52 of the Western Cape Land Use Planning Act, 2014

In this case the comment of the Provincial Minister was not deemed necessary and was therefore not requested by the Municipal Manager as determined by Section 52 (a) of the Western Cape Land Use Planning Act, 2014.

In terms of section 90(2) An appeal must set out the following—

- (a) the grounds for the appeal which may include the following grounds:
  - (i) that the administrative action was not procedurally fair as contemplated in the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000);
  - (ii) grounds relating to the merits of the land development or land use application on which the appellant believes the Tribunal or authorised employee erred in concluding his / their decision.

The chairperson further stated that all parties to the appeal were invited to make submissions to the Appeal Authority in adherence to natural justice to apply the audi alteram partem rule.

The chairperson requested the appellant, represented by Mr Dalvie from N M & Associates Planners and Designers, to table their appeal dated 15 December 2022.

Thereafter the chairperson requested the objectors, represented by Mr Bezuidenhout, to address the Appeal Authority.

Then the chairperson requested the Senior Town and Regional Planner to table the evaluation of the authorised official and to reply on the presentation by the appellant.

The following matters were discussed in reaching the decision:

#### **(1) Process**

With reference to Section 90(2) of the By-Law, the Appeal Authority notes that the appellant did not appeal the process followed by the Municipality during the consideration of the application.

The process followed in the consideration of the application is therefore deemed true and fair.

#### **(2) Public Participation**

Concerns raised by the residents regarding the public participation followed by the Municipality are noted. However, in terms of Section 56(2) (c) & (d) of the By-Law, formal notice were served on each person whose rights or legitimate expectations were deemed to be affected by the approval of the application as well as on every owner of land adjoining the land concerned. A total of 19 properties were identified by the municipality, deemed to be affected, should the property be used as offices.

In terms of Section 55 of the By-Law, public notice of the application was also done as required with the publishing of the application in a newspaper circulating in the area, the Provincial Gazette as well as the municipality's website.

The public participation process followed is therefore deemed compliant with the applicable legislation.

Given the nature of the response received from the residents in the area, the Appeal Authority deems the public participation process followed with the consideration of the application as effective.

### **(3) Timeframes**

With the decision of the Municipal Planning Tribunal taken on the 16<sup>th</sup> of November 2022 the Appeal Authority notes that the period provided for the submission of appeals did run from 28 November to the 19<sup>th</sup> of December 2022 and the notices for the commenting on the appeal to all interested and affected parties, was therefore during the school holidays.

The Appeal Authority finds it to be purely circumstantial and not intentional as to exclude anybody from the process. The application was processed in terms of the relevant timeframes required and the notices were sent in accordance with the provisions of the applicable By-Law.

Secondly, in terms of an appeal, Section 90 of the By-law does not make provision for any extension of commenting periods, however, it is clear that the municipality did allow an extension of the period for comments on the appeal.

The Appeal Authority deems it to be reasonable to the residents of the area and none of the parties objected to this extension.

### **(4) Contradiction with planning policy, norms and standards**

The Appeal Authority is of opinion that the development proposal is inconsistent with the Western Cape Provincial Spatial Development Framework, 2014 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 as well as negatively impact the sense of place within the residential neighbourhood it is located, as well as will not improve accessibility.

The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area.

Authority usage as defined, is very diverse, with the applicable development management scheme (Schedule 2 of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020) referring to military training centres, police stations, correctional institutions, road stations and camps as well as a variety of municipal service delivery related uses and public utility facilities.

It can therefore not be interpreted that because the land use proposal zone, as proposed in the Municipal Spatial Development Framework, 2019 approved by Council (Item 7.2 of Council Meeting dated 30 May 2019), make provision for authority use, that all types of authority use is consistent with the area as well as the spatial planning vision and principles of the said Municipal Spatial Development Framework.

The Appeal Authority therefore conclude that the proposed use of administrative offices in the proposed location as well as the scale of the proposed rezoning is in contradiction with the MSDF, 2019 and therefore the Municipal Planning Tribunal did not err in its decision to refuse the application.

Section 42(1) of Spatial Planning and Land Use Management Act, Act 16 of 2013, clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework.

### **(5) Public interest**

The Appeal Authority is of opinion that the proposal will have some short term gains for the department however the significant cost as well as the long term negative impact for the residents in the area as well as the department, far outweighs the idea of the sustainable accommodation of the community corrections office on Erf 1220. Public administration facilities should be conveniently located next to transport routes, within the Central Business District or clustered with other public administration facilities as it ensures improved accessibility for all.

The Appeal Authority therefore believes that 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 erf 1220, as it will not improve accessibility.

Lastly, the Appeal Authority determined that the proposed application contains no detail on the future developments on the rezoned erf, the impacts thereof on the residential neighbourhood can therefore not be determined.

Section 89. (1) of the By Law determines that '... The executive mayor is the appeal authority in respect of decisions of the Tribunal or an authorised employee contemplated in sections 78(a) or (b) and a failure to decide on an application as contemplated in section 68.

## **RESOLUTION**

- (a) The Executive Mayor as Appeal Authority of Swartland Municipality therefore dismiss the appeal received from N & M Associates Planners and Designers (on behalf of the owner National Government of the Republic of South Africa), for the following reasons:
  - (i) The proposal will not result in the optimum use of land/space within the urban edge, will detract from the character of the area as well as negatively impact the sense of place within the residential neighbourhood it is located;
  - (ii) The proposed offices envisaged within an area which is mainly residential in nature, having its operational hours up to 23h00 in the evening, as confirmed by the Department of Correctional Services, will have a negative impact on the character of the area;
  - (iii) The proposed use of administrative offices in the proposed location as well as the fact that none of the offices is proposed to be accessed from the identified activity street, is deemed in contradiction with the Municipal Spatial Development Framework, 2019. Section 42(1) of the Spatial Planning and Land Use Management Act, 2013 clearly state that the Municipal Planning Tribunal may not make a decision which is inconsistent with provincial government policies and the Municipal Spatial Development Framework, 2019. The Municipal Planning Tribunal therefore did not err in its decision to refuse the application;
  - (iv) The proposal is deemed to be 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. The short term gain for the department is recognised however the significant cost as well as the long term negative impact for the residents in the area, as well as the department, far outweighs the idea of the sustainable accommodation of the Community Corrections office on erf 1220;
- (b) The Executive Mayor as Appeal Authority of Swartland Municipality, in terms of Section 91(7)(b) of the Swartland Municipality: Municipal Land Use Planning By-Law, (PG 8226 of 25 March 2020), confirms the decision by the Municipal Planning Tribunal, Item 6.5 dated 16 November 2022, to refuse the application for rezoning and subdivision of Erf 1220, Malmesbury.