FILE: 18/156/PB

ERF 156, PLETtenberg Bay: PROPOSEd REZONING AND VARIOUS RELATED MATTERS: APPEAL

RESOLUTION BY THE ACTING EXECUTIVE MAYOR ACTING IN HIS CAPACITY AS THE APPEAL AUTHORITY:

1. DECISION:

1.1. That in terms of Section 60, read with Section 81(9)(b) of the Planning By-Law, and applied mutatis mutandis, approval be granted for the following:

(a) The rezoning of Erf 156, Plettenberg Bay from ‘Single Residential’ to ‘General Residential’ to allow the development of a ‘boutique hotel’ accommodating 18 bedroom-suites, broadly in accordance with the “Proposed Hotel on Signal Hill” plans (Project No. 2011 – 1406);

(b) A permanent departure from the provisions of the Zoning Scheme to allow the minimum prescribed size of a site zoned for ‘General Residential’ (hotel) purposes to be decreased from 4 000 m² to 948 m² in the case of Erf 156, Plettenberg Bay;

(c) A permanent departure from the provisions of the Zoning Scheme to allow the maximum prescribed bulk of a site zoned for ‘General Residential’ purposes to be increased from 0, 75 to 1, 62 in the case of Erf 156;

(d) Permanent departures from the provisions of the Zoning Scheme to allow the following building line relaxations in respect of Erf 156, Plettenberg Bay:
   (i) Relaxation of the building line along the street (western) boundary to accommodate stair cases and other features leading into the building;
   (ii) Relaxation of the building line along the northern (lateral) boundary from 5, 25 m to 0 m;
   (iii) Relaxation of the building line along the southern (lateral) boundary from 5, 25 m to ± 1, 5 m;
   (iv) Relaxation of the building line along the eastern (rear) boundary from 4, 5 m to ± 1, 8 m;

(c) A permanent departure from the provisions of the Zoning Scheme to allow the prescribed additional parking requirement of 20 on-site parking bays for a ‘licenced hotel’ to be waived.

(f) A permanent departure from the provisions of the Zoning Scheme to allow the prescribed height restriction to be relaxed from 10, 6 m to 11, 7 m to accommodate a swimming pool as a feature of visual significance.

(g) A permanent departure from the provisions of the Zoning Scheme to allow the prescribed coverage to be relaxed from 50% as shown on the Site Plan (Erf 156 Plettenberg Bay: House Lecoua) prepared by Entity Architects.

(h) The subdivision of Erf 237 to re-instate the previously approved subdivision diagram for Erf 9170 (a closed portion of an unmade street reserve).

1.2. That the approvals granted in paragraph 1.1 above be subject to the following conditions imposed in terms of Section 60 of the Planning By-Law:

(a) That the development occurs broadly in accordance with the “Proposed Hotel on Signal Hill” plans (Project No. 2011 – 1406) submitted at rezoning stage, suitably adapted to accommodate any conditions of approval, provided that deviations that do not affect the
principle of the development concept hereby approved may be allowed at building plan stage.

(b) That special attention be given during the design of the final building plans to measures relating to the reduction of water and energy use.

(c) That the Building Control Officer be directed to ensure that aspects pertaining to the structural integrity and safety of the building are appropriately considered during the building plan approval process.

(d) That a view-deck accessible to the public as referred to in paragraph 5.6(s) of the response of the applicant to the objections received dated 20 July 2018 be provided as part of the development project.

(e) That a Memorandum of Understanding pertaining to the upgrading of Signal Hill as part of the development of Erf 156, Plettenberg Bay be entered into between the Municipality and the owner of Erf 156, Plettenberg Bay within 3 months of building plan approval, and that this Memorandum addresses aspects such as the provision of bus and overflow parking, access to the boutique hotel via Signal Hill, upgrading and extension of public boardwalks, lighting and security, etc.

(f) That the Municipal Manager be authorized to sign the Memorandum of Understanding on behalf of the Municipality.

(g) That municipal services be provided at the cost of the land owner to the satisfaction of the Municipality, and that a Services Agreement broadly based on the Services Report of GLS Consulting Engineers dated 23 November 2017 (as well as any other relevant requirements of the Municipality) be concluded within 2 months of building plan approval (or such extended period that may be allowed by the Municipal Manager), and that the payment of augmentation levies and capital contributions in accordance with the policy of the Municipal Council (inclusive of performance of payment) as well as the relocation of any municipal services that may be present on the site be stipulated in the Services Agreement.

(h) That in accordance with paragraph 3 of the Council decision of 2 August 2001, whereby the permanent closure of a portion of Erf 237, Plettenberg Bay was approved, the outstanding administrative procedures to give effect to this closure be finalized.

(i) That after finalization of the outstanding administrative procedures mentioned in paragraph (h) above, unregistered Erf 9170, Plettenberg Bay be consolidated with Erf 156, Plettenberg Bay.

(j) That prior to the consolidation referred to in paragraph (i) above, the required Purchase Agreement and related matters in respect of unregistered Erf 9170, Plettenberg Bay referred to in paragraphs 6 and 7 of the Council decision of 2 August 2001 be finalized and the terms thereof be complied with by the owner of Erf 156, Plettenberg Bay.

(k) That the applicant provides a conveyancer’s certificate confirming that there are no restrictive conditions of title that may impact on the proposed development prior to building plan approval.

2. REASONS FOR THE DECISION:

Background:

2.1. In accordance with the provisions of the Planning By-Law the Authorized Official, Mr D Friedman, should have taken a decision on the application by 3 October 2018, but has failed to do so. Due to this failure the applicant had no other option than to submit an appeal against this failure.
Resolutions by the (previous) Appeal Authority:

2.2. The (previous) Executive Mayor has resolved as follows in his capacity as the (previous) Appeal Authority:

2.2.1. That it be confirmed for the purposes of Section 81(7) of the By-Law on Land Use Planning (‘the Planning By-Law’) that the matter falls within the jurisdiction of the Appeal Authority.

2.2.2. That it be confirmed for the purposes of Section 81(1) and (2) of the Planning By-Law that the Appeal Authority is satisfied that the appeal can be adequately determined by consideration of the material lodged with the Appeal Authority.

2.2.3. That it be confirmed for the purposes of Section 81(7)(a) of the Planning By-Law the appeal that was lodged against the failure by the Authorized Employee to take a decision be upheld.

2.2.4. That it be recorded that as the Planning By-Law is silent on this aspect and as unique circumstance apply to this application, the Appeal Authority is satisfied that the principle established in Section 81(9)(b) of the Planning By-Law finds equal application where an appeal is lodged against the failure by the Authorized Employee to take a decision, and where the Appeal Authority upholds that appeal.

2.2.5. That due to the complexity of the matter the Bitou Municipal Planning Tribunal be appointed as technical advisor in terms of Section 81(10) of the Planning By-Law to consider and make a recommendation regarding the various applications.

Rationale:

2.3. Adv. A. de Vos (SC) provided an opinion dated 16 December 2019 confirming that the unlawful use of the property and the Court Order are not a prohibition to the Municipality considering the rezoning application.

2.4. Sigma Consulting Civil and Structural Engineers were commissioned as technical assistants to the Appeal Authority to provide an objective, independent opinion on the structural integrity of the building, and in a report dated 3 June 2020 concluded that the majority of the structural elements appear sound and stable and that the structure can be developed into an occupied building.

2.5. Due to the nature of the various objections received and as the failure to take a decision occurred within the Department: Economic Development and Planning an independent Professional Planner was commissioned as a technical assistant to the Appeal Authority to investigate the matter and make an objective, unbiased recommendation.

2.6. VPM (Planning) recommended in a report dated June 2020 that the application for the rezoning of the property as well as the various departures be approved.

2.7. Mr. R. Stone was commissioned to provide an independent Technical Legal Advisory Report, taking into account all of the above and all the relevant documentation. In his report dated 20 August 2020 Mr. Stone recommended that the appeal be upheld and that the rezoning be approved, subject to appropriate conditions.

2.8. Although numerous objections to the proposal were received, the applicant has shown clearly in his letter dated 20 July 2018 that most of the objections were based on an incorrect understanding of the relevant facts.

2.9. The proposed development complies with the prescribed criteria contained in the relevant legislation as explained by the applicant in his motivation report dated February 2018, in his
response to the objections dated 20 July 2018, and in particular as summarized and explained in the report of VPM (Planning) dated June 2020.

2.10. The Bitou Municipal Planning Tribunal considered the matter on 2 February 2021 and recommended that "the recommendation of the independent Professional Planner be accepted, and that the application for the rezoning of Erf 156 as well as the various departures from the provisions of the Zoning Scheme be approved".

S Gcabayi
ACTING EXECUTIVE MAYOR / APPEAL AUTHORITY

DATE
21/June/2021