



SPECIAL MEETING OF THE COUNCIL

SPEZIALE VERGADERING VAN DIE RAAD

INTLANGANISO EKHETHEKILEYO YEBHUNGA

A G E N D A

I-AJENDA

**DATE / DATUM / UMHLA : 29 AUGUST / AUGUSTUS /
AGASTI 2022**

**VENUE / PLEK / INDAWO : BANQUETING HALL,
CIVIC CENTRE, HERMANUS**

TIME / TYD / IXESHA : 15:00

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

Office of the Municipal
Manager
Municipal Offices
HERMANUS

24 August / Augustus / Agasti 2022

NOTICE TO ALL ALDERMEN & COUNCILLORS

SPECIAL MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that a **SPECIAL MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held in the **Banqueting Hall, Civic Centre, Hermanus**, on **Monday, 29 August 2022** at **15:00** to consider the business set forth in the subjoined agenda.

The attention of Councillors is directed to the Code of Conduct for Councillors, Schedule 7 of the Local Government : Municipal Structures Act, 1998 (Act 117 of 1998).

D O'NEILL
MUNICIPAL MANAGER

KENNISGEWING AAN ALLE RAADSHERE & RAADSLEDE

SPESIALE VERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS WORD HIERMEE GEGEE dat 'n **SPESIALE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word in die **Banketsaal, Burgersentrum, Hermanus**, op **Maandag, 29 Augustus 2022** om **15:00** om die sake op meegaande sakelys te bespreek.

Raadslede se aandag word gevestig op die Gedragskode vir Raadslede, Skedule 7 van die Wet op Plaaslike Regering : Munisipale Strukture, 1998 (Wet 117 van 1998).

D O'NEILL
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO EKHETHEKILEYO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba **INTLANGANISO EKHETHEKILEYO YEBHUNGA**, eza kuba se **Banqueting Hall, kwiZiko LoLUNTU, eHermanus ngoMvulo, Umhla we 29 Agasti 2022 ngeye-15:00** ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

OCeba bayacelwa ukuba baqwalasele isikhokelo sokuziphatha sooCeba, iShedyuli 7 kaRhulumente wooMasipala: uMthetho weeNkqubo zikaMasipala, uMthetho -1998 (uMthetho we-117 ka-1998).

D O'NEILL
LOMPHATHI KAMASIPALA

AGENDA/...

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

**3. STATEMENTS AND COMMUNICATIONS BROUGHT FORWARD BY THE
SPEAKER / EXECUTIVE MAYOR**

- Schulphoek Housing Project
- Sand Mine, Gansbaai

4. CONSIDERATION OF RECOMMENDATIONS MADE BY THE EXECUTIVE MAYOR TO COUNCIL, IN TERMS OF SECTION 160(2) OF THE CONSTITUTION, 1996, AND SECTION 59(1)(a) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 2000 (ACT 32 OF 2000)

REMARK

Please note that the following recommendations contained in this agenda are subject to confirmation or amendment by the Executive Mayor in view of the fact that the **compilation of the Special Council agenda** was done before the Special Mayoral Committee of 29 August 2022 had formally sat.

4.1

PRIORITISED OVERBERG JDMA PROJECT LIST FOR 2022/23

(ITEM 4, PAGE 1 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

that the prioritised Overberg JDMA Long List of Projects for 2022/23 **be noted**.

RESPONSIBLE OFFICIAL/S :

RG LOUW

TARGET DATE FOR IMPLEMENTATION :

NOTED

4.2**FINAL PROCESS PLAN FOR INTEGRATED DEVELOPMENT PLANNING AND BUDGET PREPARATION FOR 2022/2027****(ITEM 5, PAGE 14 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

that the final Process Plan for Integrated Development Planning and Budget preparation for 2022/2027 **be approved.**

RESPONSIBLE OFFICIALS :**RG LOUW
BA KING
R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****5 SEPTEMBER 2022**

4.3**FINAL REVIEWED PERFORMANCE MANAGEMENT FRAMEWORK (PMF)****(ITEM 6, PAGE 52 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**that the final reviewed Performance Management Framework **be approved.****RESPONSIBLE OFFICIAL :****R LOUW
L BUCCHIANERI
D VAN DER HEEVER
C ROETS****TARGET DATE FOR IMPLEMENTATION :****5 SEPTEMBER 2022**

4.4

FIXED ASSETS: DISPOSAL / DERECOGNITION OF ASSETS FOR THE 2021/22 FINANCIAL YEAR**(ITEM 7, PAGE 100 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that it **be noted** that the assets disposed of during the period 01 July 2021 to 30 June 2022 are not needed to provide the minimum level of basic municipal services; and
2. that the derecognition of the Infrastructure Assets replaced / abandoned / disposed of during the period 01 July 2021 to 30 June 2022, **be approved**.

RESPONSIBLE OFFICIAL :**J VORSTER****TARGET DATE FOR IMPLEMENTATION :****31 AUGUST 2022**

4.5**WRITING OFF OF 2021/22 NON-TECHNICAL WATER AND ELECTRICITY LOSSES****(ITEM 8, PAGE 108 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that the non-technical electricity losses to the value of R6 057 458.01 for the 2021/22 financial year be written off; and
2. that the non-technical water losses to the value of R2 871 712.64 for the 2021/22 financial year be written off.

RESPONSIBLE OFFICIAL :**BA KING****TARGET DATE FOR IMPLEMENTATION :****1 SEPTEMBER 2022**

4.6

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF ERF 4833 HERMANUS (SITUATED AT 17TH AVENUE VOËLKLIP), ±11,59HA IN EXTENT, BY MEANS OF A COMPETITIVE PROCESS FOR THE DEVELOPMENT OF A RETIREMENT VILLAGE**(ITEM 9, PAGE 118 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that the alienation of a portion of Erf 4833 Hermanus (±11,59 ha in extent) for the development of a Retirement Village by means of a competitive process at a market related price **be approved in principle**;
2. that the alienation of the portion of Erf 4833 Hermanus be subject to a suspensive condition that the successful bidder obtains at own cost all the approvals, e.g., Town Planning/Land Use Planning, etc. necessary for the transfer and subsequent development of the said portion of Erf 4833 Hermanus;
3. that a condition be included in the deed of sale for forfeiture stating that such development must be completed within 2 (two) years from date of registration unless prior written approval is obtained from Overstrand Municipality, under the hand of the delegated authority, for an extension of time;
4. that a condition be included in the deed of sale that interest on the purchase price will be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder;
5. that a condition be registered against the title deed of the Property that it may only be used for the development of a Retirement Village and in line with the development parameters as depicted in the Overstrand Municipality Land Use Scheme, 2020;
6. that all the costs pertaining to the transaction and subsequent development, for example, but not limited to, the transfer costs, water, sewer and electricity connections and the section 14 advertisement, but excluding the valuation costs, be paid by the successful bidder;
7. that the successful bidder registers a servitude in favour of the Municipality for the telecommunications mast on the property against the title deed of the Property, at its own cost, simultaneous with the registration of the transfer;
8. that the successful bidder, at its own cost, constructs the internal municipal and electrical services for the development as well as any link or bulk municipal services that needs to be approved;

9. that the successful bidder enters into a Services Agreement with the Municipality for the provision of internal-, link- and bulk services in terms of the tender, applicable legislation and Council policies; and
10. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL :

A LE ROUX

TARGET DATE FOR IMPLEMENTATION :

12 SEPTEMBER 2022

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

4.7

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF REMAINDER ERF 4771 HERMANUS (SITUATED IN SEVENTH STREET BETWEEN FOURTH AND SIXTH AVENUE, VOËLKLIP), 30 000m² IN EXTENT, BY MEANS OF A COMPETITIVE PROCESS FOR THE DEVELOPMENT OF TOWN HOUSING

(ITEM 10, PAGE 130 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

1. that the alienation of a portion of Remainder Erf 4771 Hermanus ($\pm 30\,000\text{m}^2$ in extent) for a Town Housing development by means of a competitive process at a market related price **be approved in principle**;
2. that the alienation of the portion of Remainder Erf 4771 Hermanus be subject to a suspensive condition that the successful bidder obtains at own cost all the approvals, e.g., Town Planning/Land Use Planning, etc.) necessary for the transfer and subsequent development of the said portion of Remainder Erf 4771 Hermanus;
3. that a condition be included in the deed of sale for forfeiture stating that such development must be completed within 2 (two) years from date of registration unless prior written approval is obtained from Overstrand Municipality, under the hand of the delegated authority, for an extension of time;
4. that a condition be included in the deed of sale that interest on the purchase price will be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder;
5. that a condition be registered against the title deed of the Property that it may only be used for the development of a Town Housing development and in line with the development parameters as depicted in the Overstrand Municipality Land Use Scheme, 2020 under General Residential Zone 1: Town Housing;
6. that all the costs pertaining to the transaction and subsequent development, for example, but not limited to, the transfer costs, water, sewer and electricity connections and the section 14 advertisement, but excluding the valuation costs, be paid by the successful bidder;
7. that the successful bidder, at its own cost, constructs the internal municipal and electrical services for the development as well as any link or bulk municipal services that needs to be approved;

8. that the successful bidder enters into a Services Agreement with the Municipality for the provision of internal-, link- and bulk services in terms of the tender, applicable legislation and Council policies;
9. that a services servitude for the water pipeline be registered against the title deed of the Property in favour of the Municipality, at the successful bidder's cost, simultaneous with the registration of the transfer; and
10. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL :

A LE ROUX

TARGET DATE FOR IMPLEMENTATION :

12 SEPTEMBER 2022

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

4.8

ESTABLISHMENT OF LOCAL DRUG ACTION COMMITTEE

**(ITEM 11, PAGE 144 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)**

RECOMMENDATION TO THE COUNCIL:

1. that the establishment of a Overstrand Local Drug Action Committee **be noted**; and
2. that the Executive Mayor considers the role, functions and recommendations for the LDAC and duly **nominate and appoint representatives for a period of 5 years**, not exceeding the term of office of Council.

RESPONSIBLE OFFICIAL :**G SMIT****TARGET DATE FOR IMPLEMENTATION :****30 SEPTEMBER 2022**

4.9

**REVISED SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)
FOURTH QUARTERLY REPORT: APRIL - JUNE 2022****(ITEM 12, PAGE 149 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that the adjusted service delivery performance for the fourth quarter of the 2021/22 financial year on the top-level Service Delivery and Budget Implementation Plan **be approved**;
2. that the adjusted service delivery performance for the fourth quarter of the 2021/22 financial year be updated on the electronic performance management system; and
3. that, should there be further adjustments to the service delivery performance for the fourth quarter of the 2021/22 financial year on submission of the draft AFS to the Auditor-General (AG) at the end of August 2022, the revisions may be updated on the electronic performance management system.

RESPONSIBLE OFFICIAL :**RG LOUW****TARGET DATE FOR IMPLEMENTATION :****31 AUGUST 2022**

4.10

SUBMISSION OF THE DRAFT UNAUDITED ANNUAL REPORT FOR THE FINANCIAL YEAR 2021/22

(ITEM 13, PAGE 152 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

that tabling of the 2021/22 **DRAFT** unaudited Annual Report, **be noted**.

RESPONSIBLE OFFICIAL :**RG LOUW****TARGET DATE FOR IMPLEMENTATION :****NONE**

4.11

**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR JULY 2022**

**(ITEM 14, PAGE 158 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)**

RECOMMENDATION TO THE COUNCIL:

1. that the deviations from the procurement processes, approved in terms of the delegated authority for July 2022, **be noted**;
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for July 2022, **be noted**; and
3. that the awards made through the Bid Committee system, and formal written price quotations in excess of R30 000 and all price quotations below R30 000 for July 2022, **be noted**.

RESPONSIBLE OFFICIAL :**C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

4.12

PROPOSED OVERSTRAND MUNICIPALITY TINY HOUSE POLICY

**(ITEM 15, PAGE 172 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)**

RECOMMENDATION TO THE COUNCIL:

that the Tiny House Policy **be approved**.

RESPONSIBLE OFFICIAL :

S MULLER

TARGET DATE FOR IMPLEMENTATION :

1 SEPTEMBER 2022

4.13

PROPOSED OVERSTRAND MUNICIPALITY INVESTMENT INCENTIVE POLICY

**(ITEM 16, PAGE 191 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)**

RECOMMENDATION TO THE COUNCIL:

that the Draft Investment Incentive Policy, as amended, **be approved.**

RESPONSIBLE OFFICIAL :

S MULLER

TARGET DATE FOR IMPLEMENTATION :

1 SEPTEMBER 2022

4.14

PORTIONS OF ERVEN 249 AND 832 HERMANUS: WRITE BACK OF AMOUNTS RAISED– MR MA DE KLERK

(ITEM 17, PAGE 238 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

that Council **approves** the writing back of the amount of R532,149.04 (FIVE HUNDRED AND THIRTY-TWO THOUSAND ONE HUNDRED AND FORTY-NINE RAND AND FOUR CENTS) representing basic and infrastructure charges for electricity (Tariffs E1C1 and EF1 as contained in the approved budget) on municipal account number 900000362271 for the period 1 April 2017 to 30 September 2020.

RESPONSIBLE OFFICIALS :

**A LE ROUX
E HOONENBERG**

TARGET DATE FOR IMPLEMENTATION :

15 SEPTEMBER 2022

TARGET DATE TO INFORM APPLICANT :

N/A

TARGET DATE TO INFORM OBJECTOR :

N/A

4.15

APPOINTMENT OF THE JOINT AUDIT AND PERFORMANCE AUDIT COMMITTEE (JAPAC) MEMBERS

(ITEM 18, PAGE 245 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

1. that Council grants permission and appoints the current Audit Committee members of the Overberg District Municipality as the members of the Joint Audit and Performance Audit Committee (JAPAC) of Overstrand Municipality; and
2. that a Chairperson be appointed by Council.

RESPONSIBLE OFFICIAL :

DC VAN DER HEEVER

TARGET DATE FOR IMPLEMENTATION :

29 AUGUST 2022

4.16

REPORT ON THE PROPOSED ADJUSTMENTS BUDGET FOR 2022/2023

**(ITEM 19, PAGE 249 : SPECIAL MAYORAL COMMITTEE MEETING :
29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that, in terms of section 28(1) and section 29 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), the Adjustments Budget for 2022/2023 **be approved** as set out in the following schedules:

- Schedule 1:** Budgeted financial performance (revenue & expenditure by municipal vote)
- Schedule 2:** Budgeted financial performance (revenue by source & expenditure by type)
- Schedule 3:** Budgeted multi-year capital appropriations by standard classification (vote) and associated funding by source
- Schedule 4:** Budgeted financial position
- Schedule 5:** Budgeted cash flow
- Schedule 6:** Cash backed reserves and acc. surplus reconciliation
- Schedule 7:** Asset management
- Schedule 8:** Basic service delivery measurement;

2. that the following schedules be noted:

- Schedule 9:** Budgeted financial performance (revenue & expenditure by standard classification)
- Schedule 10:** Budgeted capital appropriations by municipal vote

3. that the changes (adjusted financial figures) to the Service Delivery and Budget Implementation Plan (SDBIP) for 2022/23 **be approved**; and
4. that the revised SDBIP for 2022/23 **be made public**.

RESPONSIBLE OFFICIAL :

BA KING
RG LOUW

TARGET DATE FOR IMPLEMENTATION :

31 AUGUST 2022

4.17

OVERSTRAND MUNICIPALITY CLOSED CIRCUIT TELEVISION POLICY ON MUNICIPAL AND PRIVATELY OWNED PROPERTY MONITORING PUBLIC SPACES

(ITEM 20, PAGE 338 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

that the Overstrand Municipality Closed Circuit Television Policy on Municipal and Privately Owned Property Monitoring Public Spaces, **be adopted.**

RESPONSIBLE OFFICIAL :

**NJ MICHAELS
L SMITH**

TARGET DATE FOR IMPLEMENTATION :

1 OCTOBER 2022

4.18

HERMANUS, A PORTION OF PORTION 3 OF FARM 585 (BEESEMHOOT KLOOF): DEVIATION FROM SEVERAL PARAGRAPHS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 TO ACCOMMODATE SUBSISTENCE AND EMERGING FARMERS (PIG FARMING) ON MUNICIPAL OWNED LAND BY MEANS OF LONG-TERM LEASE AGREEMENT: CAMPHILL AGRICULTURAL PRIMARY COOPERATIVE PRIMARY COOPERATIVE LIMITED (2022/604653/24)

(ITEM 21, PAGE 387 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 4 of the Administration of Immovable Property Policy exempting Camphill Agricultural Primary Cooperative Primary Cooperative Limited (2022/604653/24) from paying the prescribed application fee, **be approved;**
2. that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing the Municipality to enter into a direct lease with Camphill Agricultural Primary Cooperative Primary Cooperative Limited (2022/604653/24), **be approved;**
3. that the deviation from paragraph 24 of the Administration of Immovable Property Policy, exempting Camphill Agricultural Primary Cooperative Primary Cooperative Limited (2022/604653/24) from obtaining a valuation from an independent valuer to determine the market related rental amount and that the rental amount be an amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget multiplied by 20 (maximum pens allowed), **be approved;**
4. that the deviation from paragraph 36 of the Administration of Immovable Property Policy, exempting Camphill Agricultural Primary Cooperative Primary Cooperative Limited (2022/604653/24) from paying the advertisement cost and that the Municipality bears, via the LED Department, the advertisement cost, **be approved;** and
5. that the deviation from paragraph 41 of the Administration of Immovable Property Policy, exempting Camphill Agricultural Primary Cooperative Primary Cooperative Limited (2022/604653/24) from paying rates, taxes, sewerage, refuse, the water basic fee, connection costs and the water deposit and only be liable for payment for water consumption at the tariff W3A5 as contained in the Municipality's approved Annual Budget, **be approved.**

| | |
|--|------------------------|
| RESPONSIBLE OFFICIAL : | X KOSI |
| TARGET DATE FOR IMPLEMENTATION : | 28 OCTOBER 2022 |
| TARGET DATE TO INFORM APPLICANT : | 21 OCTOBER 2022 |
| TARGET DATE TO INFORM OBJECTOR : | N/A |

4.19**TRIBUNAL: PROPOSAL TO CALL FOR NOMINATIONS FOR EXTERNAL MEMBERS FOR PLANNING TRIBUNAL****(ITEM 22, PAGE 407 : SPECIAL MAYORAL COMMITTEE MEETING : 29 AUGUST 2022)****RECOMMENDATION TO THE COUNCIL:**

1. that council rescinds its previous criteria as contained in Council Resolution 24 February 2021;
2. that the Council rescinds its previous decision taken on 26 January 2022;
3. that the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020, specifically Section 72(1)(a) and (b) remain the same:
 - 72(1)(a) A minimum of four (4) employees in full time service of the Municipality be appointed.
 - 72(1)(b) that a minimum of one (1) person who is not a Municipal employee or Councillor and who have the knowledge and experience of Spatial Planning, Land Use Management or the Law related thereto, be appointed by the Municipality.”
4. that Council call for nominations for external members for the Municipal Planning Tribunal from the public as well as Provincial Administration;
5. that the following additional criteria be made applicable when calling for nominees for external members of the public:
 - a) person must have a Town planning / Law degree;
 - b) person must have been registered with the Planning Council for at least seven (7) years;
 - c) person with Law degree should be an admitted attorney with at least seven (7) years practising experience in Town Planning related matters.
 - d) that the person must either reside in Overstrand or own property in Overstrand, and
 - e) that the nominees not be active in his/her profession in Overstrand.
6. that the call for nominations be advertised in local paper(s);
7. that the Code of Conduct and the Terms and Conditions as contained in Annexures B and C, be applicable; and

8. that remuneration is according to tariff as contained in Annexure A, subject to the following:
- a) three (3) hours preparation time be allowed per sitting;
 - b) tariff per sitting as prescribed, and
 - c) travel allowance for people who reside or have a property be determined from that property to place of sitting.

RESPONSIBLE OFFICIAL:

R KUCHAR

TARGET DATE FOR IMPLEMENTATION:

10 OCTOBER 2022

5. CONSIDERATION OF REPORTS**5.1**

APPEAL IN TERMS OF SECTION 62(1) OF THE LOCAL GOVERNMENT MUNICIPAL SYSTEMS ACT: DECISION OF THE MUNICIPAL MANAGER AND EXECUTIVE MAYOR ON 2 JUNE 2022: ERF 2488, RIVIERGANS CRESCENT, PERLEMOENBAAI, GANSBAAI

15/3/10/R

L Coetzee

20 July 2022

Manager: Building Control

028 313 9091

1. Executive Summary

To submit a resolution of the proceedings of the Appeal Committee to Council for information.

2. Service Delivery and Budget Implementation Plan - IGNITE

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Not applicable. The matter is submitted **for information** only.

5. Legal Requirements

Section 62 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000)

6. Discussion

The nature of the appeal is as follows:

An appeal was lodged on 14 June 2022 by surrounding property owners in terms of Section 62 of the Local Government: Municipal Systems Act 32 of 2000, against the decision by the Municipal Manager and concurred to by the Executive Mayor, to allow the owner of Erf 2488, Riviergans Crescent, Perlemoenbaai, Gansbaai to stay on site in a shed structure for a period of one year.

The Appeal Committee resolved as indicated in the recommendation hereunder.

7. Financial Implications

Refunding of Appeal Deposit to Appellant

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

Annexure A: Record of Decision of Appeal held on 4 August 2022

RECOMMENDATION TO THE COUNCIL:

that the decision of the Section 62 Committee **be noted**, namely:

1. that this appeal **be dismissed** as the consent for the owner to occupy the temporary structure on Erf 2488, Perlemoenbaai was given in terms of the National Building Regulations SANS 10400-F:2010 sF10(6) and that the owner may remain in the builder's shed for a period ending 30 June 2023, subject to the following conditions:
 - (a) the sanitary facilities must comply with F11 of SANS10400-F 2010 Edition 3;
 - (b) the electrical connection on the property must comply with the safety and all other applicable legislation; and
 - (c) that progress is made on the building and checked every three (3) months by the building inspector to ensure acceptable progress is being made.
2. that, if any of the above is not complied with, the structure that is subject of this appeal, shall be demolished and material removed off the premises; and

3. that, because this Committee was provided with additional information by the Appellant and is adding limiting conditions to the approval of twelve (12) months as given by the Municipal Manager and concurred by the Executive Mayor, the deposit **be refunded** to the Appellant.

RESPONSIBLE OFFICIAL:**L COETZEE**



Annexure A
1/8

RECORD OF DECISION
4 AUGUST 2022
10:00

RE:
APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : DECISION OF THE
MUNICIPAL MANAGER AND CONCURRED BY THE EXECUTIVE MAYOR ON
2 JUNE 2022: ERF 2488 RIVIERGANS CRESCENT, PERLEMOENBAAI, GANSBAAI

PRESENT :

COUNCILLORS

Ald D Coetzee
Cllr A Komani
Cllr R Dees
Cllr M Sihlahla
Cllr S Williams

CAPACITY

Chairperson : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee (Joined at 10:20)

OFFICIALS

Mr H Blignaut
Mr L Coetzee
Ms S Swart

Acting Director : Infrastructure & Planning
Manager : Building Control
Council Support Services

APPELLANT

Mr D G Ras
Mr C Klotz
Ms A Klotz
Ms D Ras
Ms M Nowers

For Appellants
Appellant
Appellant
Appellant
Appellant

APOLOGIES

None

SESSION OF APPEAL COMMITTEE

4 AUGUST 2022

APPELLANT:

Surrounding property owners : Erf 2488, Perlemoenbaai, Gansbaai

RESPONDENT:

Overstrand Municipality herein represented by Mr H Blignaut (Acting Director : Infrastructure & Planning) and Mr L Coetzee (Manager : Building Control).

NOTICE OF APPEAL HEARING:

Notices were sent to all parties concerned.

NATURE OF APPEAL:

The appellants appealed against the decision of the Municipal Manager and concurred by the Executive Mayor on 2 June 2022 to allow the owner of Erf 2488, Riviergans Crescent, Perlemoenbaai, Gansbaai to remain on site in a shed structure on her erf for a period not exceeding one year from 1 July 2022.

CONSTITUTION:

With the presence of a quorum, the Appeal Committee was regarded as duly constituted.

VALIDITY OF APPEAL:

It was determined by the Appeal Committee that the appeal was lodged within the prescribed time frame viz. within 21 days of written notification of the decision taken by the Municipal Manager and concurred by the Executive Mayor on 2 June 2022, and the required deposit was paid. The appeal was regarded as valid and could proceed.

SITE VISIT:

None

CONSIDERATION OF APPEAL:

The consultant for the appellants, Mr D G Ras, was given time to address the Committee and emphasised that they strongly deny the allegation that racism was involved in the application and stated that this was purely a matter of violation of the Municipality's By-laws, other statutes and the National Building Regulations as well as of the Municipal Systems Act in that the decision of both the Municipal Manager and Executive Mayor is *ultra-virus* and must be rescinded.

Mr Ras, referring to a written communication within the documents received from the Municipal Manager, stated the appellant was of the opinion that the owner of Erf 2488,

Perlemoenbaai will probably not be in a financial position to finish her dwelling within one year. He then added that, in terms of Administrative Justice, any decision must be able to be complied with and completed, this then further reason why the decision must be rescinded.

The appellants wish the Municipality to revert to the situation of 2019 when compliance orders were issued to the owner by the Building Control Department which were not complied with and to stop the illegal activities on the property and to reserve the area as it ought to be in terms of its zoning. Mr Ras further emphasised that other factors such as the structure's safety, electrical safety and running of wastewater into the road, must be seriously considered.

The Respondent for the Municipality, Mr L Coetzee (Manager : Building Control) was afforded time to respond and he informed the Committee that the building plans which were originally approved by the Building Department were not for the structure on the property and no application was received for a temporary structure.

The Chairperson then asked Mr Coetzee if a builder's shed is allowed on a building site. Mr Coetzee then referred the committee to the National Building Regulations SANS 10400-F:2010 and read sF10(1) which states:

"F10(1) Any owner or person carrying out or performing work in connection with the erection or the demolition of any building may erect on the site of such work such temporary builder's sheds as may be necessary."

In response to a further question from the Chairperson if security personnel may occupy such a structure, Mr Coetzee read sF10(6) which states:

"F10(6) Security personnel employed in connection with a building which is being or which is to be erected or demolished may be accommodated in builder's sheds, subject to such requirements and conditions as may be necessary for the safeguarding of public health and the health of such personnel and for avoiding nuisance or inconvenience to persons in the vicinity of such building."

In reply to a question from the Chairperson if the owner could operate as her own security, Mr Coetzee replied that she could but she could not sleep in the structure as she was to act as a night watchman. Also, a builder's shed may also not contain a bed. Mr Ras then added that a builder's shed may also not have windows as it was meant for storing material.

The Chairperson then asked Mr Coetzee to point the committee to the relevant legislation that he relies on to support his view but he was unable to do so and repeated that no application was submitted by the owner for a temporary structure on Erf 2488, Perlemoenbaai.

The Chairperson then asked Mr Coetzee what the specification was for a builder's shed and what application was required for a builder's shed that was to be used to

accommodate security personnel; again he was not able to provide this information but stated that shipping containers were usually used as builder's sheds.

Mr Ras also stated that the Appellant believed that the owner had submitted new plans for a house. Mr Coetzee confirmed that new building plans were submitted and approved and, in his opinion, are an improvement on the previously approved plans as the building material changed from timber to brick. He also stated that as this was a new application, the owner would again have twelve months in which to start building.

Mr Coetzee further informed the Committee that, according to law, continuation of construction must be visible every three (3) months and the Building Department tried to assist the owner of Erf 2488, Perlemoenbaai by not issuing a notice on her as they want her and any other person to rather build and complete their houses. He further stated that, when he ultimately wanted to issue the owner with a notice to vacate the property, he was stopped from doing so by the Municipal Manager.

The Chairperson asked Mr Coetzee if the building in the new plans would be built on the existing foundation and Mr Coetzee confirmed that that was so. The Chairperson then stated that, in his opinion, it meant that the new plans were in fact amended plans and that as such building work had started, and progress in terms of the Building Regulations had to be shown.

THE MEETING STOOD DOWN AT 11:05 IN ORDER FOR THE PANEL TO DELIBERATE

THE MEETING RESUMED AT 12:40

The appeal by the appellant is that the decision by the Municipal Manager and concurred by the Executive Mayor to allow the owner of Erf 2488, Perlemoenbaai, Gansbaai to continue to stay in the structure on her erf for a period not exceeding one (1) year, from 1 July 2022, be rescinded.

The appellant raised several factors which they took issue with, that are included in the appeal bundle presented to the Appeal Committee, regarding the decision taken by the Municipal Manager and concurred by the Executive Mayor. These included inaccuracies in a Face Book post by the Mayor, questioning if the electricity supply to Erf 2488 is metered, questioning if plans were submitted for a temporary structure and why the Municipality did not take legal action against the owner of Erf 2844 if their municipal account was in arrears, also why the property was not sold to defray costs. They also questioned why the owner was granted indigent status (this information is protected by the POPI act).

However, in the appeal court case of *CC Groenewald v M5 Developments*, the court ruled that a Section 62 appeal need only to consider the facts directly influencing the matter as a narrow rather than a broad appeal and this Committee has applied this approach.

The facts before the Committee are that the owner of Erf 2488, Perlemoenbaai occupies a temporary structure on the erf. This case has a history as it starts in 2019.

On 04 June 2019 the Manager Building Services wrote to the owner of Erf 2844, Perlemoenbaai in which he states:

"Permission was granted for your caravan to be placed on your property for the sole purpose of guarding your building material on site during the construction process."

He continues: "In regard to the above mentioned, approval was granted under certain conditions in terms of Section F10 of the building regulations." He then draws the attention of the owner to sF10(6) of the National Building Regulation Act No 103 of 1977, which he quotes.

In this letter the Manager Building Control also states that no progress had been evident on the building over the previous two months other than a tank that had been built. He then states: "In the light of the above mentioned, notice are (*sic*) hereby given to remove the caravan from the premises and to clean the plot so that it does not become a nuisance to neighbouring properties. Should such failure were (*sic*) due to circumstances beyond your control, proof there off (*sic*) must be submitted to this office within 10 working days for consideration by Council. Alternatively you are to proceed with the construction of the building and to ensure that adequate progress is made during the construction process."

In a communication dated 27 June 2019 the Building Inspector states that the caravan had been removed from the property. This is confirmed in a communication from the Manager Building Control dated 15 July 2019. The claim by the appellant that the compliance orders issued by the building department in 2019 were not complied with are thus incorrect.

In a letter to the owner of Erf 2488 Perlemoenbaai from the Manager Building Services dated 23 July 2019 he states:

"We hereby would like to bring to your attention that all caravans, use (*sic*) for the purpose of accommodating a night watchman in the future will not be allowed. Night watchmen will only be accommodated in builder's sheds as per the National building regulation act and such builder's sheds will not be allowed to be furnished with sleeping facilities, unless last mentioned are pre-approved via the building department."

The committee noted that the Manager Building Control in this communication refers to builder's sheds and night watchmen, both in the plural. During the s62 Appeal hearing the Manager Building Control again stated that a builder's shed could not contain a bed, however when asked to point the committee to the legislation that he relied on in reaching this conclusion, he could not. He said that a night watchman was to keep watch over the equipment and material on the site at night and so should not sleep. He did concede that sF10 of the National Building Regulations refers to Security Personnel and not Night Watchmen.

Subsequent to being advised on 28 January 2020 that she may not re-place her caravan on the property, the owner of the erf has built a structure which can be construed as a builder's shed as she was advised that security personnel may be accommodated in builder's sheds and she was informed of sF10(6) of the National Building Regulations.

The Manager Building Control could not provide any legislation to support his opinion that security personnel may not sleep in a builder's shed or that a bed may not be placed in such a shed. Also, in his letter to the owner of 28 January 2020, the Manager Building Control states that the reason the owner was originally granted permission to place a caravan on her building site, was because she was to act as a night watchman at night and work during the day. Clearly, he must have realised that she would sleep in the caravan as it is absurd to expect a person to work during the day and then stay awake all night as a watchman before returning to work the next day.

This Appeal Committee was informed that revised plans had recently been approved which were an improvement on the previous plans and the Appellant was of the opinion that the owner of Erf 2488, Perlemoenbaai is not in a financial position to comply with the 12-month restriction placed on the owner and thus the decision to allow the owner to remain on the erf, should be rescinded.

The Section 62 Committee was of the opinion that it can not predict the owner's future financial position. The Manager Building Control mentioned that the owner had informed the building department that she had about R80 000 (Eighty Thousand Rand) to enable her to start building.

The National Building Regulations and Building Standards Act No 103 of 1977, section 11, states as follows:

"..... if for a period exceeding three (3) months, the erection of a building is not proceeded with, the local authority in question may, by notice in writing, served by post or delivered, order the owner of such building to resume and complete the erection of such building within the period specified in such notice."

In Section 11(3) it states:

"If the local authority in question is of the opinion that such building is unsightly or dangerous to life or property, or deviates from the value of joining or neighbouring properties, such local authority may by notice in writing, served by post or delivered, order such owner to demolish such building, to remove the material of which this building consisted, and any other material or rubbish from the site in question and to otherwise clean up such site within the period specified in the last mentioned notice."

From the above it is clear that the Building Inspector or the Manager Building Control should have issued a notice ordering the owner of Erf 2488, Perlemoenbaai to resume and complete the erection of the building within the period specified in the notice. This was not done and subsequently the Municipal Manager in his capacity as the Chief Accounting Officer of the Municipality issued an instruction that such a notice was to be

issued giving the owner twelve months to complete the building and that no further extension was to be granted.

The claim by the Manager Building Control that he was stopped from issuing an order on the owner by the Municipal Manager was noted but this could only have taken place after the matter had been brought to the attention of the Municipal Manager and he had already issued his instruction in this regard.

The Committee agreed that the consent granted for the owner to remain on the premises for a further 12 months from 1 July 2022 could not be extended because of the amended building plans that were recently approved.

The Committee then –

RESOLVED (UNANIMOUSLY):


1. that this appeal **be dismissed** as the consent for the owner to occupy the temporary structure on Erf 2488, Perlemoenbaai was given in terms of the National Building Regulations SANS 10400-F:2010 sF10(6) and that the owner may remain in the builder's shed for a period ending 30 June 2023, subject to the following conditions:
 - (a) the sanitary facilities must comply with F11 of SANS10400-F 2010 Edition 3;
 - (b) the electrical connection on the property must comply with the safety and all other applicable legislation; and
 - (c) that progress is made on the building and checked every three (3) months by the building inspector to ensure acceptable progress is being made.
2. that, if any of the above is not complied with, the structure that is subject of this appeal, shall be demolished and material removed off the premises; and
3. that, because this Committee was provided with additional information by the Appellant and is adding limiting conditions to the approval of twelve (12) months as given by the Municipal Manager and concurred by the Executive Mayor, the deposit **be refunded** to the Appellant.


The session of the Appeal Committee closed at 12:46


SESSION OF APPEAL COMMITTEE


4 AUGUST 2022

SIGNED ON THIS 16TH DAY OF AUGUST 2022 AT HERMANUS BY THE APPEAL COMMITTEE:

Ald D Coetzee **Chairperson** : Appeal Committee 

Cllr A Komani **Member** : Appeal Committee 

Cllr S Williams **Member** : Appeal Committee 

Cllr M Sihlahla **Member** : Appeal Committee 

Cllr R Dees **Member** : Appeal Committee 