



SPECIAL MEETING OF THE COUNCIL

SPEZIALE VERGADERING VAN DIE RAAD

INTLANGANISO EKHETHEKILEYO YEBHUNGA

A G E N D A

I-AJENDA

DATE / DATUM / UMHLA : 27 JULY/JULIE/JULAYI 2016

**VENUE / PLEK / INDAWO : BANQUETING HALL /
BANKETSAAL**

**CIVIC CENTRE / BURGERSENTRUM / IZIKO LOLUNTU
HERMANUS**

TIME / TYD / IXESHA: 11:00

MUNISIPALITEIT OVERSTRAND MUNICIPALITY

Office of the Municipal
Manager
Municipal Offices
HERMANUS

22 July / Julie / Julayi 2016

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 **WEDNESDAY, 27 JULY 2016** at **11:00** to consider the business set forth in the subjoined agenda.

The attention of Councillors is directed to the Code of Conduct for Councillors and Municipal Officials, Schedules 1 & 2 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

C GROENEWALD
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 **WOENSDAG, 27 JULIE 2016** om **11:00** om die sake op meegaande sakelys te bespreek.

Raadslede se aandag word gevestig op die Gedragskode vir Raadslede en Munisipale Beamptes, Bylae 1 & 2 van die Wet op Plaaslike Regering : Munisipale Stelsels, 2000 (Wet 32 van 2000).

C GROENEWALD
MUNISIPALE BESTUURDER

ISAZISO ESIYA KUBO BONKE OOCEBAKHULU NOOCEBA

INTLANGANISO EKHETHEKILEYO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba intlanganiso **EKHETHEKILEYO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iza kuba se **Banqueting Hall, kwiZiko LoLUNTU, eHermanus ngoLWESITHATHU, 27 JULAYI 2016 ngeye-11:00** ukuqwalasela imicimbi ekule ajenda iqhotyoshelwe apha.

OoCeba bayacelwa ukuba baqwalasele isikhokelo sokuziphatha sooCeba namaGosa kamasipala, amaXwebhu 1 & 2 kaRhulumente wooMasipala: uMthetho weeNkqubo zikaMasipala, 2000 (UMthetho 32 wowama-2000).

C GROENEWALD
LOMPHATHI KAMASIPALA

AGENDA/....

1. OPENING

2. APPLICATIONS FOR LEAVE OF ABSENCE

3. CONFIRMATION OF MINUTES

- 3.1 Minutes of an **Ordinary Meeting** of the **Overstrand Municipal Council** held on **Wednesday, 25 May 2016 at 11:00**

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

5. 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 Special Mayoral Committee in view of the fact that the **compilation of the Special Council agenda** was done before the Special Mayoral Committee of 27 July 2016 had formally sat.

5.1

ANNUAL STOCK TAKING FOR 2015/2016: MUNICIPAL STORES

(ITEM 5, PAGE 1 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the surplus and deficit stock be accounted against the appropriate vote numbers;
2. that the redundant stock at Hermanus Stores (General, Electrical & Cartridge), Gansbaai & Kleinmond stores be written off; and
3. that the stock as recorded on 30 June 2016 be taken as the opening balance of the 2016/2017 stock register.

RESPONSIBLE OFFICIAL :

DRM POTGIETER

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED

5.2

QUARTERLY BANK ACCOUNT WITHDRAWALS NOT IN TERMS OF AN APPROVED BUDGET FOR THE QUARTER ENDING JUNE 2016

(ITEM 6, PAGE 163 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

that the consolidated quarterly report in respect of Bank Account Withdrawals not in terms of an Approved Budget for the quarter ended June 2016, **be noted**.

RESPONSIBLE OFFICIAL :**BA KING****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.3

QUARTERLY BUDGET REPORT FOR JUNE 2016

**(ITEM 7, PAGE 166 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)**

RECOMMENDATION TO THE COUNCIL:

that the budget report for the quarter ended June 2016, prepared as part of the financial reporting obligations arising from the Local Government: Municipal Finance Management Act, 2003, **be noted**.

RESPONSIBLE OFFICIAL :**BA KING****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.4

**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR MAY 2016**

**(ITEM 8, PAGE 215 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)**

RECOMMENDATION TO THE COUNCIL:

1. that the deviations from the procurement processes, approved in terms of the delegated authority for May 2016, **be noted**; and
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for May 2016, **be noted**.

RESPONSIBLE OFFICIAL :**DRM POTGIETER****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.5

**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR JUNE 2016**

**(ITEM 9, PAGE 222 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)**

RECOMMENDATION TO THE COUNCIL:

1. that the deviations from the procurement processes, approved in terms of the delegated authority for June 2016, **be noted**; and
2. that the awards made in terms of Paragraph 16(1)(b) and 17(1)(c), approved in terms of the delegated authority for June 2016, **be noted**.

RESPONSIBLE OFFICIAL :**DRM POTGIETER****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.6

**SUPPLY CHAIN MANAGEMENT IMPLEMENTATION REPORT – 2015/2016:
4TH QUARTER: 01 APRIL TO 30 JUNE 2016****(ITEM 10, PAGE 228 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)****RECOMMENDATION TO THE COUNCIL:**

that **cognisance be taken** of the activities undertaken and outcomes achieved in the implementation of the Overstrand Municipality Supply Chain Management Policy for the 4th Quarter of 2015/2016.

RESPONSIBLE OFFICIAL :**DRM POTGIETER****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.7

ANNUAL SUPPLY CHAIN MANAGEMENT IMPLEMENTATION REPORT IN TERMS OF PARAGRAPH 6(2)(a) OF THE POLICY: 2015/2016

(ITEM 11, PAGE 251 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the Supply Chain Management Implementation Report for the 2015/2016 financial year submitted in terms of Paragraph 6 of the Supply Chain Management Policy, **be noted**;
2. that, following the provisions of paragraph 6 of the Supply Chain Management Policy, **the report be made public** in accordance with Section 21A of the Local Government: Municipal Systems Act, No. 32 of 2000; and
3. that **the schedules of Deviations, Irregular Expenditure and cases of Minor Breaches be disclosed as a note to the Annual Financial Statements** for the 2015/2016 financial year.

RESPONSIBLE OFFICIAL :**DRM POTGIETER
C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****N/A**

5.8

**SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)
FOURTH QUARTERLY REPORT: APRIL - JUNE 2016****(ITEM 12, PAGE 295 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)****RECOMMENDATION TO THE COUNCIL:**

1. that the content of the report for the fourth quarter of the 2015/2016 financial year on the top level Service Delivery and Budget Implementation Plan **be noted**; and
2. that the amendments to the Departmental and Top Layer SDBIP for the fourth quarter of the 2015/2016 financial year **be approved**.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****TO BE NOTED**

5.9

DRAFT PROCESS PLAN FOR INTEGRATED DEVELOPMENT PLANNING AND BUDGET PREPARATION FOR 2017/2022**(ITEM 13, PAGE 323 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)****RECOMMENDATION TO THE COUNCIL:**

1. that the draft Process Plan for Integrated Development Planning and Budget preparation for 2017/2022 **be noted**;
2. that the draft Process Plan be advertised for public comment; and
3. that the final Process Plan be tabled to the new incoming Council for approval by end August 2016.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****28 JULY 2016**

5.10**SIGNED PERFORMANCE CONTRACTS OF THE SECTION 54A AND 56 APPOINTEES FOR 2016/17****(ITEM 14, PAGE 352 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)****RECOMMENDATION TO THE COUNCIL:**

that the signed performance contracts of the Section 54A and 56 appointees for 2016/17 **be noted**.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****28 JULY 2016**

5.11

RULES AND PROCEDURES FOR THE MUNICIPAL PLANNING TRIBUNAL AND THE APPEAL AUTHORITY

(ITEM 15, PAGE 610 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

that the draft Rules and Procedures for the Municipal Planning Tribunal and Appeal Authority **be adopted**.

RESPONSIBLE OFFICIAL :

R KUCHAR

TARGET DATE FOR IMPLEMENTATION :

10 AUGUST 2016

5.12

HERMANUS, RESCISSION OF COUNCIL RESOLUTION FOR THE TRANSFER OF THE REMAINDER OF ERF 2834 (EXCLUDING ERF 2836 AND INCLUDING ERF 2837), SANDBAAI, ±39,5ha IN EXTENT, FOR MIXED RESIDENTIAL DEVELOPMENT AND A RETIREMENT VILLAGE

(ITEM 16, PAGE 623 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

that Council's resolution dated 3 December 2014 for the transfer of the Remainder of Erf 2834 (excluding Erf 2836 and including Erf 2837), Sandbaai, ±39,5ha in extent, for mixed residential development and a retirement village, to Edevco International (Pty) Ltd at an amount of R42,500,000.00 (VAT excluded), **be rescinded.**

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION :	11 AUGUST 2016
TARGET DATE TO INFORM APPLICANT :	29 JULY 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

5.13

**PORTION OF ERF 210, GANSBAAI, OVERSTRAND MUNICIPAL AREA :
PROPOSED REZONING, SUBDIVISION, DEPARTURE AND AMENDMENT OF THE
OVERSTRAND GROWTH MANAGEMENT STRATEGY (2010) : MESSRS URBAN
DYNAMICS ON BEHALF OF OVERSTRAND MUNICIPALITY**

**(ITEM 17, PAGE 627 : SPECIAL MAYORAL COMMITTEE MEETING :
27 JULY 2016)**

RECOMMENDATION TO THE COUNCIL:

that the application for the amendment of the Overstrand Growth Management Strategy, 2010 to increase the gross residential density from 20-30 units per hectare to 39 dwelling units per hectare in terms of the provisions of the Municipal Systems Act, 2000 (Act 32 of 2000), **be approved.**

RESPONSIBLE OFFICIAL :**S VAN DER MERWE****TARGET DATE FOR IMPLEMENTATION :****10 AUGUST 2016**

5.14

ERF 1, HAWSTON, OVERSTRAND MUNICIPAL AREA: PROPOSED SUBDIVISION, DEPARTURE, REZONING TO SUBDIVISIONAL AREA AND AMENDMENT OF THE OVERSTRAND GROWTH MANAGEMENT STRATEGY, 2010 : MESSRS URBAN DYNAMICS WESTERN CAPE ON BEHALF OF OVERSTRAND MUNICIPALITY

(ITEM 18, PAGE 710 : SPECIAL MAYORAL COMMITTEE MEETING : 27 JULY 2016)

RECOMMENDATION TO THE COUNCIL:

that the amendment of the Overstrand Municipality Growth Management Strategy, 2010 in terms of the Municipal Systems Act (Act 32 of 2000) to allow for a development with a density of 36,2 units per hectare, **be recommended for approval.**

RESPONSIBLE OFFICIAL :	H OLIVIER
TARGET DATE FOR IMPLEMENTATION :	10 AUGUST 2016
TARGET DATE TO INFORM APPLICANT :	10 AUGUST 2016
TARGET DATE TO INFORM OBJECTOR :	N/A

6. CONSIDERATION OF REPORTS

6.1

APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : ERF 481, 40 INGANG STREET, DE KELDERS, OVERSTRAND MUNICIPAL AREA : APPEAL SUBMITTED BY SMITH TABATA BUCHANAN BOYES ON BEHALF OF LJ PENZHORN

3/2/3/6

S Swart

(028) 313 8006

Corporate Head Office

20 June 2016

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:

The appellant appeals against the Executive Mayor's decision dated 29 December 2014 that the application for departure in order to enable the owner of Erf 481, De Kelders to relax the 8m height restriction with approximately 0,47m in terms of the provisions of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) **not be approved**.

The Appeal Committee resolved as indicated in the recommendation hereunder.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Not applicable

10. Annexures

Annexure A: Memorandum of Finding and Reasons of the Section 62 Appeal Committee

RECOMMENDATION TO THE COUNCIL:

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

1. that the appeal **be upheld** to the extent that the application for departure in order to enable the owner of Erf 481, De Kelders, Mr LJ Penzhorn, to relax the 8,5m height restriction with approximately 0,47m in terms of the provisions of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) **be approved**;
2. that the Applicant, within a period of 60 days, submit as built building plans for approval;
3. that the Municipality serve an instruction on the Appellant in accordance with Section 40(1) of LUPO to apply for the determination of a contravention levy;
4. that the Appellant be ordered to pay the contravention levy to the Municipality within 30 days after receipt of confirmation from the Overstrand Municipality as to the exact amount due and payable; and
5. that the Appellant **forfeits his deposit** paid in the appeal.

RESPONSIBLE OFFICIAL :

S VAN DER MERWE/S SWART

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED

Annexure A
119



Navrae
Enquiries
Imibuzo

Verwysing
Reference

Date : 17 June 2016

KANTOOR VAN DIE SPEAKER
OFFICE OF THE SPEAKER

A COETSEE

MEMORANDUM OF FINDING AND REASONS OF THE SECTION 62 APPEAL COMMITTEE

The Parties

1. We received an appeal on Erf 481, situate at 40 Ingang Street, De Kelders, Overstrand Municipal area: an appeal submitted by Smith Tabata Buchanan Boyes on behalf of LJ Pentzhorn. Adv W Roux argued on behalf of the appellant. (Hereinafter referred to as "The Appellant")
2. The Municipality was represented by Mr Schalk van der Merwe of Town Planning & Property Administration, as well as Mr L Wallace, the senior manager : Legal Services of the Overstrand Municipality and Mr John Simpson from the Building Department. (Hereinafter referred to as "The Respondent")
3. The committee was approached by the Respondent, prior to the hearing, requesting an opportunity to have discussions with the appellant. The committee created this opportunity, but after deliberations between the parties, it seemed that the parties could not find middle ground. On that basis the committee proceeded with the hearing.¹

Matters to be considered *in limine*

-
- 1 This opportunity was created during delivery of argument by the appellant

4. The committee was satisfied that the appeal was submitted within 21 days,² and that the required deposit was paid by appellant.³
5. In the appeal bundle, an inspection in loco is requested. The committee decided that it will proceed with hearing arguments and then decide whether an inspection in loco is necessary.
6. The appellant was the applicant in the previous application and the committee was satisfied that no rights have vested and therefore the discretion of the committee to confirm, amend, vary or revoke the previous decision was not disqualified.
7. The committee was satisfied that the allegations made by appellant, as contained in the appeal bundle, sufficiently indicate that the appellant had the right to administrative action in accordance with Section 33(1) of the Constitution of the Republic of South Africa 1996, which are the rights that stands to be protected in terms of Section 62(1) of the Local Government : Municipal Systems Act (Act 32 of 2000).⁴

The Merits

8. The Merits of this matter is clear from the documents that served before the committee. For purposes of brevity it will not be repeated herein at length.

Procedure followed in the Appeal

9. Neither one of the parties submitted written heads of argument prior to the hearing.

2. See page 2 of the appeal bundle.

3. See page 2 of the appeal bundle.

4. *Synthell (Pty) Ltd v City of Cape Town and another* (17780/2007) [2008] ZAWCHC 120 (13 March 2008) at paragraph 51(c)

10. The appellant represented by Adv. Le Roux argued his case. We will deal with certain of the arguments raised later herein.
11. At the end of appellant's argument, the panel had certain time constraints and decided to postpone the matter, upon certain considerations.
12. The Respondent indicated that it was satisfied to merely submit written heads of argument and not necessarily to come and argue their case at a future date.
13. The chairman of the panel indicated that if the arguments between the parties raised factual disputes, the panel will have to call the parties back at a future date.
14. The following time frames were discussed and confirmed.
 - 14.1 The appeal committee support services will type the record pertaining to the arguments raised by Adv. Le Roux on behalf of appellant and provide such record to the appellant within 14 days from date of the hearing.
 - 14.2 The appellant is then to confirm that he is satisfied that the record is a true reflection of the arguments raised by Adv. Le Roux, where after the record will be forwarded to the Respondent who will provide its written arguments within 14 days thereafter to all members of the appeal committee as well as to the appellant.
 - 14.3 The appellant will then reply if deemed necessary within 14 days thereafter.
 - 14.4 After all the documents are in, the panel undertook to deliberate and deliver a finding within 14 days thereafter.
15. The appeal was heard on 14 April 2016 and the record was typed and delivered to the appellant on 25 April 2016. The appellant requested that the record be typed more complete pertaining to

what was said after Adv. Le Roux completed his arguments. The complete record was delivered to appellant on 28 April 2016.

16. The reply from Adv. Le Roux was received on 10 May 2016 and the record was then forwarded to the Respondent on the same day.
17. On 24 May 2016, the Respondent requested via email for an extension. The committee was convened on 25 May 2016 discussing the request by the Respondent and came to the decision that it was *functus officio* pertaining to its previous decision in laying down certain time frames and that this decision could only be amended by agreement between the parties, alternatively after hearing argument. A letter was sent to Respondent on 25 May 2016 informing the Respondent of the decision and requesting that Respondent contact the appellant as a matter of urgency and inform the appeal committee by not later than 31 May 2016 what the outcome of such discussions were. If the appellant did not agree to the extension that the committee will then be convened for the parties to come and argue the extension. No response in this regard was received from the Respondent and the chairman of the committee gave notice to members of the committee to convene on 6 June 2016 in order to deliberate and come to a finding.
18. I pause to mention that the lethargic attitude of the Respondent, pertaining to the timeframes set by this committee and its failure to participate is frowned upon, by this committee, as it inevitably makes the adjudication of this matter more difficult.

The arguments raised by appellant

19. Without regurgitating the arguments raised by the appellant, it seems in brief that the appellant argues that Section 36(1) of the Land Use Planning Ordinance 15 of 1985 (hereinafter referred to as LUPO) requires the panel to consider and thereafter to determine whether approval of the application for a departure will have a negative effect on existing rights of neighbouring properties and if so, approval of the application must be deemed undesirable. If it is found by the panel that it

will not have a negative effect on existing rights of neighbouring properties, the application must be deemed desirable, or so the argument goes.⁵

20. We also considered further arguments raised by the appellant, as will become apparent later herein.

The Respondent's case

21. In the item that served before the Executive Mayor on 5 December 2014 to 18 January 2015 under the heading "Evaluation", the Respondent says that the rights that stands to be protected is the vested rights of adjoining property owners, such as loss of privacy, overlooking, loss of light, loss of view, and property value. In paragraph 1(b) of the decision of the Executive Mayor, she finds that amongst others her reasons for not approving the application is that it will set an undesirable precedent, the accumulative impact of which would impact negatively on the vested rights of the adjoining properties and character of the area by reason of loss of outlook, light and privacy.

22. We considered all information supplied in the bundle.

Evaluation

5. "In otherwords, lack of desirability, effect on existing rights, the fact that there is some element of lack of desirability, the fact that there is some element on the effect on existing rights is not a basis to refuse the application. You are asked to make a valued judgement and you must do so only with reference to those two factors. If you do so you will do well irrespective of what the outcome is for the appellant, your first and foremost obligation and in the sense, your sense of achievement of success in this matter depends not on whether you are right or wrong necessarily with the outcome, but whether you prepare you consciously apply the correct criteria, in other words to apply the law, that is your first and foremost responsibility and that is also my first and foremost responsibility to assist you in doing so, irrespective of the outcome, we must do that first, then if the outcome is good for the appellant, that's another thing, but as long as we apply the correct criteria, then at least all of us have achieved some success here."

23. As stated earlier, no written arguments were received by the Respondent and we therefore accepted that the case put forward by the Respondent in the appeal bundle is the Respondent's best case.
24. The panel found that the applicable height was 8,5m and that the arguments of the appellant should be followed in this regard.
25. It was not in dispute that the appellant submitted building plans, which building plans adhered to the height restrictions, but that the alterations was not strictly done in accordance with the building plans which resulted in an end product which violated the scheme regulations pertaining to height at least.
26. With regard to the test to determine desirability in accordance with Section 36 (1) of LUPQ, we agree with the appellant that our determination should be done in terms of a two prong approach, firstly whether there is a real and valid infringement on existing rights, pertaining at least to those rights listed by the Respondent and thereafter depending on this determination, then to determine in the second instance, the matter of desirability.
27. It was argued by the appellant that the Respondent in fact did not make out a case on the documents or otherwise, that there was an infringement of existing rights pertaining to the categories listed and which the Executive Mayor relied on when taking her decision, not to approve the initial application. We agree with the appellant in this regard and find it difficult to understand on what basis the Executive Mayor found support for her decision in an unfounded allegation that there was an infringement of certain existing rights.⁶
28. The appellant argues further that :

"this application is not penal in nature, in other words it does not deal with a sanction imposing a sanction on a person who is transgressed or violated certain of the building regulations. This is not a function of this appeal committee".

⁶ See paragraph 1(b) of the Executive Mayor's decision.

29. It seems that this argument by the appellant is too convenient. The appellant admits that his building height contravenes the scheme regulations for Gansbaai, and can hardly divorce himself from the fact that there should be consequences, furthermore Section 40 of LUPO clearly provides for rectification of contraventions.
30. In light of the aforesaid, it is submitted that the determination of this committee is not as simple as argued by the appellant, in that we either uphold the appeal or we dismiss the appeal. If it was so simple, then the direction and/or parameters set by LUPO and the scheme regulations flowing from it, could hardly serve as a guideline for future planning. Surely if the parameters set by LUPO and the scheme regulations flowing from it, was contravened then there must be a consideration that the interest of society was violated, and that such violation must have consequences.
31. As stated earlier herein, it must be clear that the decision of the Executive Mayor in relying thereon that certain vested rights of adjoining properties would be negatively affected is unreasonable. The municipality failed in the item before the Executive Mayor to establish, on a real basis, that certain vested rights of adjoining properties have been negatively affected. Furthermore the Municipality failed to provide the Executive Mayor with alternative remedies available to her in exercising her discretion, other than demolition. To determine that the applicant in that application before the Executive Mayor must demolish a portion of his building to come in line with the zoning scheme regulations is too harsh under the circumstances.
32. Without derogating from the seriousness of the appellants actions, it must be said that the appellant did have plans approved which complied with the scheme regulations. The contravention is found in not building according to the approved plans. This only became apparent after 7 years.
33. It is also too convenient for the municipality to say that they did nothing wrong against the background of Section 39(1)(b) of LUPO which compels a municipality to enforce compliance with the zoning scheme regulations. It simply makes no sense to approve building plans and thereafter to do nothing to ensure that the property owner indeed complies with the approved building plan.

Surely at some point within a reasonable period after approval of the building plan, the building should be certified by the municipality as complying with the approved building plan. To wait 7 years to do this exercise seems unreasonable.

The finding

34. On the basis of reasons given earlier herein, it is the finding of this committee that :

34.1 The appeal be upheld to the extent that the application for departure in order to enable the owner of Erf 481 De Kelders, LJ Penzhorn, to relax the 8,5 metre height restriction with approximately 0,47 metres in terms of the provisions of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985) be approved.

34.2 That the applicant within a period of 60 days submit as built building plans for approval

34.3 That the municipality serve an instruction on the appellant in accordance with Section 40(1) of LUPO to apply for the determination of a contravention levy.

34.4 That the appellant be ordered to pay the contravention levy to the municipality within 30 days after receipt of confirmation from the Overstrand municipality as to the exact amount due and payable.

34.5 That the appellant forfeits his deposit paid in the appeal.

35. The committee did not deem it necessary to have an inspection *in loco*.

DATED at HERMANUS on this 17th day of JUNE 2016



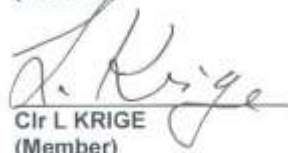
Aid. A COETSEE
(Chairperson)



Cir D COETZEE
(Member)



Cir M DYANI
(Member)



Cir L KRIGE
(Member)

6.2**INVESTIGATION INTO THE INSTANCE OF FRUITLESS AND WASTEFUL EXPENDITURE: NON-DELIVERY OF THE 28 DAY CLEARING AND MAINTENANCE OF VEGETATION NOTICE ON OPEN LAND, PROPERTY 219, SANDBAAI****3/2/3/8****H van Tonder
20 July 2016****(028) 313 8037****Corporate Head Office****1. Executive Summary**

The purpose of the report is to request Council to approve the writing off of fruitless and wasteful expenditure in the amount of R2 672,15.

2. Service Delivery and Budget Implementation Plan Reference - Ignite

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance.

4. Delegated Authority

Not applicable

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003) (MFMA)

Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

Fire Hazard Management Policy for the clearing and maintenance of vegetation on open land.

6. Background/Discussion**Background**

Dispute was received from RM Peda the owner regarding the clearing of his plot Erf 219, Sandbaai. Mr Peda objected to the clearing of his plot, because he had not received a notification to clear the overgrown vegetation, and requested an investigation to this matter.

Discussion

An investigation was lodged by the Division Commander of the Fire Department, Joe Schoeman whereby he found that:

- (i) The instruction to issue a notice for the property to be cleared was send to the administrator's office on the 16 July 2014;
- (ii) The notice was issued by the administrator on 27 July 2014 and sent per registered mail RD880484505za, with a compliance date 3 September 2014, to the address (RM Peda, P.O. Box 203, George, 6530);
- (iii) On 9 October 2014, the 2nd inspection commenced, and the plot was found to be still overgrown;
- (iv) The erf number was thus subsequently placed on the contractor's list for clearing and was cleared accordingly.

It was discovered that the original notice was addressed to the incorrect address. The correct postal address was P.O. Box 2038 and not P.O. Box 203.

The mistake (typing error) can be regarded as unintentional/oversight due to human error and not negligence. This incorrect address therefore, resulted in the actual owner not receiving the notice to which he is adamant that he would have responded.

The incumbent of the Plot Clearing Administrator post at the time of the incident was vacant due to the previous official having resigned. However, in an attempt to provide continuity, the function was intermittently filled by temporary incumbents. The temporary employee at the time of the administrative oversight reported to Ms Buli Plaatjies, Assistant Manager: Hermanus Administration and is no longer in service of the Municipality.

The property was cleared by the municipal contractor resulting in the cost as determined by tender and the administration fee being levied on the municipal account of R Peda.

Mr Peda indicated in writing that the cost to clear his plot could be no more than R420.00 plus 20 % which is R504.00. He also stated that he might have cleared the plot of the overgrown vegetation himself at no cost. However, Mr Peda resides in George and the traveling cost (return) alone to Hermanus would have been considerably more than R504.00.

The Section 79 Committee on Fruitless and Wasteful Expenditure consisting of Ald A Coetsee, Ald M Ponoane, Cllrs L Beyers-Cronje and K Brice will meet on 26 July 2016 and the Speaker will report verbally on the matter.

7. Financial Implications

R2 672,15

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that the Section 79 Committee on Fruitless and Wasteful Expenditure's recommendation as put forward by the Speaker, be considered.

RESPONSIBLE OFFICIAL :**B KING
C LE ROUX****TARGET DATE FOR IMPLEMENTATION :****5 AUGUST 2016**

6.3**INVESTIGATION INTO THE IRREGULAR EXPENDITURE REGARDING PAYMENT MADE TO THE BEACH ROAD CAFÉ HAWSTON IN RESPECT OF THE SUPPLY OF NEWSPAPERS TO THE HAWSTON LIBRARY****3/2/3/8****H van Tonder****(028) 313 8037****Corporate Head Office****19 July 2016**

1. Executive Summary

The purpose of the report is to request Council to approve the writing off of irregular expenditure incurred for the purchasing of newspapers for Hawston Library to the amount of R1 412,30 (excluding VAT).

2. Service Delivery and Budget Implementation Plan Reference - Ignite

Not applicable

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services

4. Delegated Authority

None

5. Legal Requirements

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) (MFMA)
Overstrand Municipality Supply Chain Management Policy

6. Background/Discussion

The Hawston Library has been acquiring the supply of the daily newspapers, Die Burger and Cape Times, from the general dealer nearest to the Library, namely Beach Road Café, Hawston, since the construction of the Library.

There is no other supplier in the close proximity to the Hawston Library. The practice was conducted without any problems up until June 2014. With the advent of the 2014/15 financial year, the Librarians of the various libraries in Hermanus Area were requested to load requisitions for the supply of

newspapers preferably up front for a period and not on a month to month basis as was done in the past. The Hawston Library loaded the requisition for first two months i.e. July – August 2014 (requisition number 44672, dated 15 August 2014) Order number 19637 was issued on 28 August 2014.

The requisition for September onwards was loaded on to the system on 10 December 2014. The Librarian, Belinda May was informed that the order to Beach Road Café could not be processed in terms of the SCM Policy, due to the fact that the services had been rendered already.

The supply of the newspapers was ceased on 31 December 2014. This payment amounted to R1 610,02 (R1 412,30 VAT Excl.)

Newspapers were supplied to the Hawston Library for the period September 2014 to December 2014 without a purchase order.

No newspapers were provided for the remainder of the financial year and to date, there is still no supplier for the Cape Times. The Libraries are an important source of information and it was deemed an important part of the service delivery to receive the daily newspapers. It was common knowledge that advertisements for employment and tenders are placed in these required newspapers.

The Section 79 Committee on Fruitless and Wasteful Expenditure consisting of Ald A Coetsee, Ald M Ponoane, Cllrs L Beyers-Cronje and K Brice will meet on 26 July 2016 and the Speaker will report verbally on the matter.

7. Financial Implications

Irregular expenditure to the value of R1 412,30 (excluding VAT)

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that the Section 79 Committee on Fruitless and Wasteful Expenditure's recommendation as put forward by the Speaker, be considered.

RESPONSIBLE OFFICIAL:**B KING
C LE ROUX****TARGET DATE FOR IMPLEMENTATION:****5 AUGUST 2016**

6.4**INVESTIGATION INTO THE INSTANCE OF FRUITLESS AND WASTEFUL EXPENDITURE: THE PAYMENT OF FUNDS TO AN INCORRECT CREDITOR, BEING CORPTRAIN TRADING (PTY) LTD****3/2/3/8****H van Tonder
19 July 2016****(028) 313 8037****Corporate Head Office**

1. Executive Summary

The purpose of the report is to request Council to approve the writing off of fruitless and wasteful expenditure in the amount of R176 250.

2. Service Delivery and Budget Implementation Plan Reference - Ignite

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance.

4. Delegated Authority

Not applicable

5. Legal Requirements

Local Government: Municipal Finance Management Act 2003, (Act 56 of 2003) (MFMA)
Overstrand Municipality Supply Chain Management Policy dated 25 May 2008, as amended.

6. Background/Discussion**Background**

The Section 79 Committee considered a report on 29 March 2016, stating the circumstances and facts related to an incorrect payment made to Corptrain Trading (Pty) Ltd. The municipality has further considered the issue of recoverability in the subsequent report and the Legal Services Department has also provided commentary to the item.

The recommendation to the committee in the previous report, based on further consideration of the circumstances and facts, inclusive of legal commentary, stated as follows:

“That it be recommended to Council that the Fruitless and Wasteful Expenditure to the value of R176 250, in relation to the payment of funds to an incorrect creditor, being Corptrain Trading (Pty) Ltd, be certified as irrecoverable and written off in terms of section 32(2)(b) of the Local Government: Municipal Finance Management Act, Act 56 of 2003.”

After consideration of the report, the committee came to the conclusion that there was negligence.

The committee subsequently requested Ms S Reyneke-Naudé to request Ingrid Thesen to supply the committee, within 14 days, with full reasons why she should not be held accountable for the erroneous payment to Corptrain Trading (Pty) Ltd.

Discussion

The request of the Section 79 Committee to Mrs. Ingrid Thesen was discussed with Mrs Thesen on the same day, directly after the meeting of the committee by Mrs Reyneke-Naudé in collaboration with Mr Wallace from our Legal Services department.

Mrs. Thesen indicated that she will consider the request, but also requested to have the opportunity to discuss the request with her union, as she was uncertain with regard to this, as an unexpected turn of events, after she received a sanction of a final written warning after admitting that she acted negligently, in conclusion of the disciplinary process at that time.

The submission of the reasons as requested was followed up on numerous occasions subsequent to the discussion with her. Confirmation was also received from the chairperson of IMATU that this matter was reported to them.

It has ultimately transpired that, although there might have been willingness by Mrs. Thesen to adhere to the request, she ultimately decided to accept the guidance from IMATU, as the “safest” position.

The Section 79 Committee on Fruitless and Wasteful Expenditure consisting of Ald A Coetsee, Ald M Ponoane, Cllrs L Beyers-Cronje and K Brice will meet on 26 July 2016 and the Speaker will report verbally on the matter.

7. Financial Implications

R176 250

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that the Section 79 Committee on Fruitless and Wasteful Expenditure's recommendation as put forward by the Speaker, be considered.

RESPONSIBLE OFFICIAL :**B KING
C LE ROUX
E HOONEBERG****TARGET DATE FOR IMPLEMENTATION :****5 AUGUST 2016**

6.5
CONFERRING OF ALDERMANSHIP/ALDERLADYSHIP

3/3/2

S Swart

(028) 313 8006

Corporate Head Office

20 May 2016

1. Executive Summary

The purpose of this report is to inform Council that, in terms of the approved criteria for conferring of Alderman- and Alderladyship, Councillors D Coetzee, R Smith and M Sapepa qualify for this title and to therefore request Council to consider the awarding of the title to aforementioned Councillors.

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

None

5. Legal Requirements

Criteria accepted by the Council on 29 June 2005 for awarding aldermanship/ alderladyship to councillors.

6. Discussion

Council adopted the criteria for awarding aldermanship/alderladyship to councillors, as follows:

- “1. that the concept of awarding aldermanship/alderladyship to councillors in acknowledgement of services rendered, **be recognised by Council**, and

2. that the following criteria **be accepted** by the Overstrand Municipality for awarding aldermanship/alderladyship to councillors : -
- 2.1 a councillor who served as mayor for a full term (5 years);
- 2.2 a councillor who served as Speaker, Deputy Mayor or as member of the Mayoral Committee (initially the Executive Committee) of the same municipality for two consecutive terms (10 years);
- 2.3 a councillor who obtained a minimum of fifteen points serving for the same municipality, or twenty points serving for more than one municipality, on the following scale : -
- ONE point for each year serving as Councillor. PLUS;
- TWO additional points for each year serving as Mayor in a previous municipality or in the same municipality if a full term of five years was not completed;
- ONE additional point for each year serving as Speaker, Member of an Executive/Mayoral Committee or serving as Deputy Mayor in a previous municipality or the same municipality if two full terms were not completed;
- ONE additional point for each year serving as Chairperson of a Ward Committee or a standing committee in the previous dispensation;
- ONE additional point for each year representing a Municipality on a District Municipality;
- TWO additional points for each year serving in a District Municipality as Mayor;
- ONE additional point for each year serving in a District Municipality as member of the Mayoral Committee, Speaker or Executive/Mayoral Committee;
3. that all service in a municipality that formed part of the Overstrand Municipality when the amalgamation took place, be regarded as service in the same municipality.”

The available service records of all councillors were checked and their points were calculated as per the attached table (Annexure A). According to these calculations the following councillors qualify for aldermanship/alderladyship:

- Dudley Peter Coetzee;
- Rudolph John Smith; and
- Michelle N Sapepa

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A : Evaluation of Aldermanship/Alderladyship : Score Sheet

RECOMMENDATION TO THE COUNCIL:

that aldermanship/alderladyship **be conferred** upon Councillors D Coetzee, R Smith and M Sapepa in acknowledgement for services rendered by them to the community.

RESPONSIBLE OFFICIAL :**S SWART****TARGET DATE FOR IMPLEMENTATION :****27 JULY 2016**

ALDERMANSHIP 2016

ANNEXURE A

Name	Cllr	Mayor 1-5yrs	Exec Comm	Ward Chair	Distr Mun	Total
COETZEE, D	5	0	1	5	4	15
SAPEPA, M	5	0	0	5	5	15
SMITH, R	9	0	5	5	1	20