



ORDINARY MEETING OF THE COUNCIL
GEWONE VERGADERING VAN DIE RAAD
INTLANGANISO YESIQHELO YEBHUNGA

A G E N D A

I-AJENDA

DATE / DATUM / UMHLA :	30 MARCH /MAART / MATSHI 2016
VENUE / PLEK / INDAWO :	BANQUETING HALL / BANKETSAAL CIVIC CENTRE / BURGERSENTRUM / IZIKO LOLUNTU HERMANUS
TIME / TYD / IXESHA :	11:00

MUNICIPALITY / MUNISIPALITEIT / UMASIPALA WE-OVERSTRAND

Office of the Municipal
Manager
Municipal Offices
HERMANUS

24 March/Maart/Matshi 2016

NOTICE TO ALL ALDERMEN & COUNCILLORS

ORDINARY MEETING OF THE OVERSTRAND MUNICIPAL COUNCIL

NOTICE IS HEREBY GIVEN that an **ORDINARY MEETING** of the **OVERSTRAND MUNICIPAL COUNCIL** will be held in the **Banqueting Hall, Civic Centre, Hermanus**, on **WEDNESDAY, 30 MARCH 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

GEWONE VERGADERING VAN DIE OVERSTRAND MUNISIPALE RAAD

KENNIS WORD HIERMEE GEGEE dat 'n **GEWONE VERGADERING** van die **OVERSTRAND MUNISIPALE RAAD** gehou sal word in die **Banketsaal, Burgersentrum, Hermanus**, op **WOENSDAG, 30 MAART 2016** om **11:00** om die sake op meegaande sakelys te bespreek.

Raadslede se aandag word gevestig op die Gedragskode vir Raadslede en Munisipale Beampptes, 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 YESIQHELO YEBHUNGA LIKAMASIPALA WE-OVERSTRAND

OKU KUKWAZISA ukuba intlanganiso **YESIQHELO yeBHUNGA LIKAMASIPALA WE-OVERSTRAND**, iza kuba se **Banqueting Hall, kwiZiko LoLUNTU, eHermanus** ngo**LWESITHATHU, 30 MATSHI 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
UMPHATHI 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, 24 February 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 Mayoral Committee in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 30 March 2016 had formally sat.

5.1

GRANTS-IN-AID: RECOMMENDATIONS FOR 2016/17

(ITEM 1, PAGE 1 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the Grants-in-Aid: Schedule of recommended beneficiaries for the 2016/17 financial year **be noted**; and
2. that the Grants-in-Aid: Schedule of unsuccessful applicants for the 2016/17 financial year **be noted**.

RESPONSIBLE OFFICIAL:

GG SMIT

TARGET DATE FOR IMPLEMENTATION:

JULY 2016

5.2**RISK MANAGEMENT STRATEGY AND POLICY 2015/2016****(ITEM 2, PAGE 7 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

that the reviewed Risk Management Strategy and -Policy **be approved.**

RESPONSIBLE OFFICIAL :**A RIDDLES****TARGET DATE FOR IMPLEMENTATION :****1 APRIL 2016**

5.3**REVIEW OF ANTI-CORRUPTION AND FRAUD PREVENTION PLAN FOR OVERSTRAND MUNICIPALITY****(ITEM 3, PAGE 45 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

that the reviewed Anti-Corruption and Fraud Prevention Plan for Overstrand Municipality **be approved** and implemented for the 2015-2016 financial year.

RESPONSIBLE OFFICIAL :**A RIDDLES****TARGET DATE FOR IMPLEMENTATION :****1 APRIL 2016**

5.4

ERVEN 192 & 11463, 79 CHURCH STREET, WESTCLIFF, HERMANUS, OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, CONSOLIDATION, AMENDMENT OF THE SITE DEVELOPMENT PLAN AND AMENDMENT OF THE SPATIAL DEVELOPMENT FRAMEWORK : MESSRS PLAN ACTIVE ON BEHALF OF DR R BEUKES

(ITEM 3, PAGE 109 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

that, in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application for Amendment of the Overstrand Municipal Wide Spatial Development Framework, 2006 to change the reservation of Erven 192 and 11463, Hermanus from "Residential" to "Commercial", **be approved.**

RESPONSIBLE OFFICIAL :**H VAN DER STOEP****TARGET DATE FOR IMPLEMENTATION :****13 APRIL 2016****TARGET DATE TO INFORM APPLICANT :****13 APRIL 2016****TARGET DATE TO INFORM OBJECTOR :****13 APRIL 2016**

5.5

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF TWO PORTIONS OF ERF 1253, STEMMET STREET, EASTCLIFF, HERMANUS

(ITEM 17, PAGE 596 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Portion A of Erf 1253, Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), ±361m² in extent, for gardening purposes to Mr Martin Gerhardus Delpport for an amount of R141,41/m² (ONE HUNDRED AND FOURTY ONE RAND AND FOURTY ONE CENTS PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion Portion A of Erf 1253, Eastcliff, Hermanus, is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;
4. that Portion A of Erf 1253, Eastcliff, Hermanus, may only be used for gardening purposes;
5. that Portion A of Erf 1253, Eastcliff, Hermanus, must be consolidated with the adjoining property of Mr Martin Gerhardus Delpport, being Erf 11094, Eastcliff, Hermanus;
6. that the alienation of Portion A of Erf 1253, Eastcliff, Hermanus, be subject to obtaining the necessary subdivision, rezoning and consolidation approvals;
7. that the costs pertaining to the transaction, e.g. subdivision, possible consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser;
8. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003); and

9. that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857, Hermanus), $\pm 468\text{m}^2$ in extent, for gardening purposes by means of a closed tender process **not be approved**.

RESPONSIBLE OFFICIAL :

A KOTZE

TARGET DATE FOR IMPLEMENTATION :

29 APRIL 2015

TARGET DATE TO INFORM APPLICANT :

15 APRIL 2015

TARGET DATE TO INFORM OBJECTOR :

N/A

5.6

HERMANUS, TRANSFER OF A PORTION OF ERF 4771 (ADJACENT TO ERF 4075), HERMANUS, ±205M² IN EXTENT, FOR GARDENING PURPOSES (VOËLKLIP)

(ITEM 18, PAGE 606 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), ±205m² in extent, for gardening purposes to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER) (VAT excluded), **be approved;**
2. that the Municipal Manager be authorised to sign all documents relating to the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip) to Mr Paul Mark and Mrs Beverley Lewin;
3. that cognisance be taken of the fact that the subject portion of Municipal property is **not required** for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, No 56 of 2003;
4. that Mr Paul Mark and Mrs Beverley Lewin be responsible for all the subdivision, consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, excluding the valuation costs, the transfer and the registration of the property in the Deeds Office;
5. that an access servitude be registered over the remainder of Erf 4771, Voëlklip, Hermanus to provide access to the proposed subdivided erf at the cost of the purchaser; and
6. that the subject portion of Erf 4771, Voëlklip, Hermanus, be consolidated with the adjoining property of the purchaser, to wit Erf 4075, Voëlklip, Hermanus.

RESPONSIBLE OFFICIAL :

D TALJAARD

TARGET DATE FOR IMPLEMENTATION :

4 APRIL 2016

TARGET DATE TO INFORM APPLICANT :

N/A

5.7

HERMANUS, TRANSFER OF ERF 640 (A PORTION OF ERF 560) ZWELIHLE, 852M² IN EXTENT, FOR CHURCH PURPOSES

(ITEM 19, PAGE 613 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of Erf 640 (a portion of Erf 560), Zwelihle, 852m² in extent, for church purposes to the Church of Christ Mission for the amount of R47,000.00 (FORTY SEVEN THOUSAND RAND ALONE) (VAT excluded), **be approved**;
2. that the Municipal Manager be authorised to sign all documents relating to the transfer of Erf 640 (a portion of Erf 560), Zwelihle to the Church of Christ Mission;
3. that cognisance be taken of the fact that the subject portion of Municipal property is **not required** for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, No 56 of 2003; and
4. that Church of Christ Mission be responsible for all the costs pertaining to the advertisement of the transfer and the registration of the property in the Deeds Office.

RESPONSIBLE OFFICIAL :**D TALJAARD****TARGET DATE FOR IMPLEMENTATION :****4 APRIL 2016****TARGET DATE TO INFORM APPLICANT :****N/A**

5.8

HERMANUS, TRANSFER OF UNREGISTERED ERF 11457 (A PORTION OF ERF 243), HERMANUS ±2023M² IN EXTENT, FOR COMMUNITY PURPOSES (MOUNT PLEASANT)

(ITEM 20, PAGE 619 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 11457 (a portion of Erf 243), Hermanus (Mount Pleasant), ±2023m² in extent, for community purposes to Hermanus Night Shelter Association for the amount of R136,000.00 (ONE HUNDRED AND THIRTY SIX THOUSAND RAND ALONE) (VAT excluded), **be approved**;
2. that the Municipal Manager be authorised to sign all documents relating to the transfer of unregistered Erf 11457 (a portion of Erf 243), Hermanus (Mount Pleasant) to Hermanus Night Shelter Association;
3. that cognisance be taken of the fact that the subject portion of Municipal property is **not required** for the provision of the minimum level of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, No 56 of 2003; and
4. that Hermanus Night Shelter Association be responsible for all the costs pertaining to the advertisement of the transfer and the registration of the property in the Deeds Office.

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

30 APRIL 2016

TARGET DATE TO INFORM APPLICANT :

N/A

5.9

ERF 332, CORNER OF ARCADIA- AND ESPLANADE STREET, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : PROPOSED REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS, AMENDMENT OF THE OVERSTRAND MUNICIPAL WIDE SPATIAL DEVELOPMENT FRAMEWORK, REZONING AND SUBDIVISION : MESSRS NUPLAN AFRICA ON BEHALF OF ARAWEN PROPERTIES (PTY) LTD

(ITEM 21, PAGE 625 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

that the application for Amendment of the Overstrand Municipal Wide Spatial Development Framework, 2006 to change the reservation of Erf 332, Pearly Beach from commercial to single residential, open space and road usage, **be approved**.

RESPONSIBLE OFFICIAL :**SW VAN DER MERWE****TARGET DATE FOR IMPLEMENTATION :****13 APRIL 2016****TARGET DATE TO INFORM APPLICANT :****13 APRIL 2016****TARGET DATE TO INFORM OBJECTORS :****13 APRIL 2016**

5.10**KLEINBAAI NODAL DEVELOPMENT FRAMEWORK : MESSRS DECA & CSM ON BEHALF OF OVERSTRAND MUNICIPALITY****(ITEM 22, PAGE 781 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

that Council adopts the Kleinbaai Nodal Development Study as part of the Overstrand Spatial Development Framework, subject to the following conditions:

- (a) that parking at the Kleinbaai slipway for shark/whale watching boats be restricted to a maximum of 10 parking bays in accordance with the recommendations of the Engineering Report; and
- (b) that any future permits over and above the 10 referred to in (a) above, be issued by Western Cape and/or National Government be subject thereto that such enterprises operates from Gansbaai Harbour.

RESPONSIBLE OFFICIAL :**SW VAN DER MERWE****TARGET DATE FOR IMPLEMENTATION :****13 APRIL 2016****TARGET DATE TO INFORM APPLICANT :****13 APRIL 2016****TARGET DATE TO INFORM OBJECTOR :****N/A**

5.11

DEMARCATON OF RESTRUCTURING ZONES : RESTRUCTURE ZONE CRITERIA AND METHODOLOGY AND DEMARCATON OF RESTRUCTURING ZONES**(ITEM 23, PAGE 871 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

that the properties as listed in Annexure B to the agenda item, **be approved** in principle as Restructuring Zones.

RESPONSIBLE OFFICIAL :**R KUCHAR****TARGET DATE FOR IMPLEMENTATION :****13 APRIL 2016****TARGET DATE TO INFORM APPLICANT :****N/A****TARGET DATE TO INFORM OBJECTOR :****N/A**

5.12

DE KELDERS: RESCISSION AND SUBSTITUTION OF COUNCIL RESOLUTION DATED 25 JUNE 2008 FOR THE SALE OF ERF 1196, DE KELDERS: BETWEEN GUTHRIE AND VYFER STREETS: TURNSTONE TRADING 48 CC (WHALE COVE DEVELOPMENT)

(ITEM 25, PAGE 1201 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

1. that direct alienation and transfer of unregistered Erf 1196, De Kelders, to the Whale Cove Master Property Home Owners Association at an amount of R165,000.00 (ONE HUNDRED AND SIXTY FIVE THOUSAND RAND) (VAT excluded), **be approved**;
2. that Council take cognisance of the fact that the direct alienation is only approved as unregistered Erf 1196, De Kelders, is classified as a non-viable property;
3. that unregistered Erf 1196, De Kelders, be notarially tied with Erven 1072-1078, 1121, 1122, 1125, 1126 and 1183, De Kelders, but only after Erf 1196, De Kelders has been rezoned from ordinary erf to General Business Zone II, at the cost of the purchaser;
4. that the rezoning and notarial tie of unregistered Erf 1196, De Kelders, be finalized by purchaser within 12 months after the registration of the property in the Deeds Office;
5. that the purchase price of R165,000.00 be set towards the purchase of the spare electrical capacity;
6. that it will be made a condition of sale that the property cannot be transferred before the Municipality has taken transfer of the new 500kVA miniature substation;
7. that the initial objection received against the alienation of unregistered Erf 1196, De Kelders, be rejected for the reasons stipulated under item 6.2 of the report that served before Council on 25 June 2008;
8. that all the costs pertaining to the transaction, e.g. subdivision, rezoning, transfer costs, water- and sewer connections (if applicable), bulk services contribution (if applicable), etc., excluding the valuation costs, be paid by the purchaser; and

9. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL :

A KOTZE

TARGET DATE FOR IMPLEMENTATION :

29 APRIL 2016

TARGET DATE TO INFORM APPLICANT :

15 APRIL 2016

TARGET DATE TO INFORM OBJECTOR :

N/A

5.13

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

**(ITEM 5, PAGE 1 : MAYORAL COMMITTEE MEETING : 30 MARCH
2016)**

RECOMMENDATION TO THE COUNCIL:

1. that the deviations from the procurement processes, approved in terms of the delegated authority for February 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 February 2016, **be noted**.

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

5.14

CONSIDERATION OF THE 2014/15 ANNUAL REPORT AND ADOPTION OF AN OVERSIGHT REPORT**(ITEM 6, PAGE 6 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

that, in terms of Section 129 of the Local Government : Municipal Finance Management Act, 2003 (Act 56 of 2003) and having duly considered the 2014/15 Annual Report of the Overstrand Municipality and the content of this item, the said report **be approved** without reservation.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****NOT APPLICABLE**

5.15**DRAFT INTEGRATED DEVELOPMENT PLAN (IDP) REVIEW 2016/17****(ITEM 7, PAGE 20 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

1. that the draft reviewed IDP for 2016/17 **be noted**; and
2. that it furthermore be noted that the final document is to be considered by Council during the May 2016 Council meeting.

RESPONSIBLE OFFICIAL :**R LOUW****TARGET DATE FOR IMPLEMENTATION :****7 APRIL 2016**

5.16**DRAFT WATER SERVICES DEVELOPMENT PLAN FOR 2016/2017****(ITEM 8, PAGE 22 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RECOMMENDATION TO THE COUNCIL:**

1. that the Draft Water Services Development Plan (WSDP) for 2016/2017 **be noted**; and
2. that it furthermore be noted that the Final Draft 2016/17 WSDP, with inputs from the public and other stakeholders taken into account, is to be considered for approval at the meeting of Council during May 2016.

RESPONSIBLE OFFICIAL :**H BLIGNAUT****TARGET DATE FOR IMPLEMENTATION :****1 JULY 2016**

5.17

DRAFT OPERATING AND CAPITAL BUDGET FOR 2016/2017, INDICATIVE BUDGET FORECASTS FOR 2017/2018 TO 2018/2019 AND DRAFT BUDGET RELATED POLICIES

(ITEM 9, PAGE 24 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

that the tabling of the draft Operating and Capital Budget for 2016/2017, indicative budget forecasts for 2017/2018 to 2018/2019 and the draft budget related policies **be noted.**

RESPONSIBLE OFFICIAL :

S REYNEKE-NAUDE

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED

5.18

DRAFT SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP) FOR 2016/17

(ITEM 10, PAGE 26 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

that the draft Service Delivery and Budget Implementation Plan (SDBIP) for 2016/17 **be noted.**

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

NOT APPLICABLE

5.19

SIGNED REVISED PERFORMANCE PLANS OF THE SECTION 54A AND 56 APPOINTEES FOR 2015/16

(ITEM 11, PAGE 28 : MAYORAL COMMITTEE MEETING : 30 MARCH 2016)

RECOMMENDATION TO THE COUNCIL:

that the signed revised performance plans of the Section 54A and 56 appointees for 2015/16 **be noted.**

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

4 APRIL 2016

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) : ERVEN 2528 AND 2529, PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : DU PLESSIS HOFMEYR MALAN INC ON BEHALF OF PSP EIENDOMME CC : AMENDED REPORT

3/2/3/6

S Swart

(028) 313 8006

Corporate Head Office

14 March 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 26 February 2015 that the application for a consent use and amendment of the Site Development Plan 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: Record of Decision of Appeal held on 17 February 2016

RECOMMENDATION TO THE COUNCIL:

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

1. that the appeal **be dismissed**; and
2. that the appellant forfeits the deposit paid.

RESPONSIBLE OFFICIAL :

S VAN DER MERWE/S SWART

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED



RECORD OF DECISION
17 FEBRUARY 2016

RE:
APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : ERVEN 2528 AND 2529,
PEARLY BEACH, OVERSTRAND MUNICIPAL AREA : DU PLESSIS HOFMEYR
MALAN INC ON BEHALF OF PSP EIENDOMME CC : AMENDED REPORT

PRESENT :

COUNCILLORS

Ald A Coetsee
Cllr D Coetzee
Cllr M Dyani
Cllr V Macotha
Cllr L Krige

CAPACITY

Chairperson: Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee

OFFICIALS

Mr R Kuchar
Mr S van der Merwe
Mr L Wallace
Ms S Swart

Senior Manager : Town Planning
Senior Town Planner
Legal Advisor
Administrative Officer, Secretariat

APPELLANT

PSP Eiendomme CC

Represented by Mr JP du Plessis from DHM Attorneys

APOLOGIES

None

ABSENT

None

APPELLANT:

PSP Eiendomme CC, herein represented by Mr J P du Plessis from DHM Attorneys.

RESPONDENT:

Overstrand Municipality herein represented by Mr R Kuchar, Senior Manager : Town Planning and Mr S van der Merwe, Senior Town Planner.

NOTICE OF APPEAL HEARING:

Notices were sent to all parties concerned.

NATURE OF APPEAL:

The appellant appeals against the Executive Mayor's decision dated 26 February 2015 that the application for a consent use and amendment of the Site Development Plan be approved.

CONSTITUTION:

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

The Chairperson, Ald Coetsee, declared that no members of the Appeal Committee have a conflict of interest in the application barring their presence to this meeting.

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 Executive Mayor, and therefore the appeal was regarded as valid and could proceed.

It was noted that the deposit was paid in terms of the approved tariffs.

SITE VISIT:

None

CONSIDERATION OF APPEAL:

At the Section 62 Appeal Committee meeting which was held on 26 November 2015, the Appellant argued *in limine* that the Gansbaai Zoning Scheme had been repealed before date of the decision by the Executive Mayor on 26 February 2015. The new zoning scheme that existed at the time of the decision did not provide for a transitional phase that authorise applications submitted before the new zoning scheme was adopted, and as such, the application could not have been considered in terms of a zoning scheme that no longer existed. It was, in the opinion of the Appellant, therefore not competent

for the Executive Mayor to have granted approval in terms of the Gansbaai Zoning Scheme Regulations. The Section 62 Committee resolved at the time that a legal opinion be obtained to clarify this argument. The legal opinion was obtained and submitted to this Committee. On the arguments *in limine* the Committee was guided by the following:

- (a) In the matter of *Transnet v Ngcezula* 1995 (3) SA 538, it was stated in the headnote that when a new Act is silent as to the consequences of repeal of a previous Act, that the provisions of Section 12(2) of the Interpretation Act 33 of 1957 applies; and
- (b) In the leading academic work, "*Wetsuitleg 'n inleiding vir studente*" (by Christo Botha) *Derde Uitgawe (Juta & Co Ltd 1998)* at page 112, the aforesaid case law is discussed and specifically how s12(2) of the Interpretation Act operates.

The Committee found that the Executive Mayor could legitimately consider the Application in terms of the Gansbaai Zoning Scheme as she did, even though the Gansbaai Zoning Scheme has been repealed at the time. The point *in limine* was dismissed, and the Appellant was afforded the opportunity to proceed with his arguments on the merits of the Appeal. The Respondent was also afforded an opportunity to raise arguments. None of the arguments went further than that which was contained in the bundle and will therefore not be repeated herein.

THE MEETING STOOD DOWN AT 14:20 FOR DELIBERATION BY THE PANEL

THE MEETING RESUMED AT 14:50

On the argument of inadequate disclosure, the Committee found that the Appellant was adequately informed as to the reasons for the dismissal of the objection, alternatively the Appellant had adequate time during the conduct of the Appeal to obtain such reasons, and that this ground of Appeal cannot succeed.

On the argument of "Just Administrative Action", the Committee found that the arguments raised by the Appellant cannot be sustained and that the arguments raised by the Respondent on page 5 of the bundle should be followed. The Appeal cannot succeed on this point.

On the argument of "Traffic Concerns", the Committee found that the arguments raised by the Appellant do not come to the rescue of the Appellant, and that the arguments raised by the Respondent on page 5 of the bundle should be followed. It was found by the Committee that the Appeal cannot succeed on this point.

The Committee then –

RESOLVED (UNANIMOUSLY):

1. that the appeal **be dismissed**; and
2. that the appellant forfeits the deposit paid.

The session of the Appeal Committee closed at 15:25

SIGNED ON THIS 14TH DAY OF MARCH 2016 AT HERMANUS BY THE APPEAL COMMITTEE:

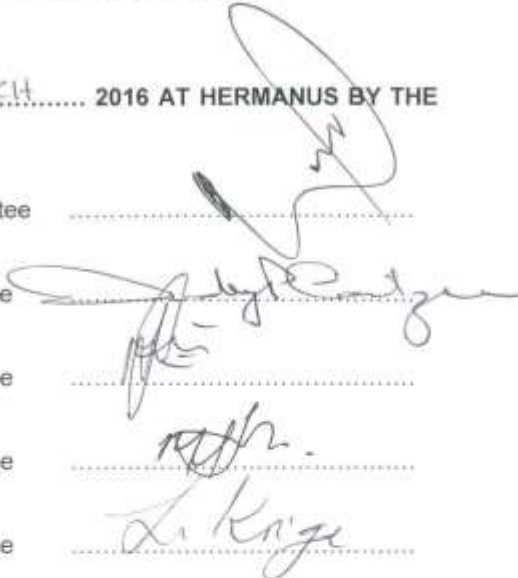
Cllr A Coetsee **Chairman:** Appeal Committee

Cllr D Coetzee **Member:** Appeal Committee

Cllr V Macotha **Member:** Appeal Committee

Cllr M Dyani **Member:** Appeal Committee

Cllr L Krige **Member:** Appeal Committee

Handwritten signatures of the Appeal Committee members, including the Chairman and four members, written over the dotted lines of the signature lines.

6.2

APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : THE REMAINDER ERF 2395, VOëLKLIP, OVERSTRAND MUNICIPAL AREA : PROPOSED DEPARTURE : JMF COUTTS ON BEHALF OF "THE TRUSTEES FOR THE TIME BEING OF THE JARE PROPERTY 2 TRUST"

3/2/3/6

S Swart

14 March 2016

(028) 313 8006

Corporate Head Office

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 30 September 2015 to refuse the application for a departure in order to:

- (a) relax the lateral building line from 2m to 0m in order to accommodate the proposed extension to the garage; and
- (b) relax the street building line from 3m to 0m in order to accommodate the proposed pergola.

The Appeal Committee resolved as indicated in the recommendation hereunder.

7. Financial Implications

The full deposit to be refunded to the 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 17 February 2016

RECOMMENDATION TO THE COUNCIL:

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

1. that the Executive Mayor's decision dated 30 September 2015 **be suspended** for a period of 90 days to allow the appellant to submit as-built buildings plans together with the necessary town planning applications in order to legalise what exists on the site;
2. that, if these applications and/or as-built building plan are not submitted within 90 days calculated from 18 February 2016, the decision of the Executive Mayor will become final;
3. that, if the plans and applications as mentioned in paragraph 2 above are submitted within 90 days, the decision of the Executive Mayor will lapse and will be of no force or effect;
4. that the municipality's date stamp on the documents will be regarded as sufficient proof of submission of the new plan and applications; and
5. that the full deposit **be refunded** to the appellant.

RESPONSIBLE OFFICIAL :

P ROUX/S SWART

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED



RECORD OF DECISION
17 FEBRUARY 2016

RE:
APPEAL LODGED IN TERMS OF SECTION 62 OF THE LOCAL GOVERNMENT:
MUNICIPAL SYSTEMS ACT, 2000 (ACT 32 OF 2000) : THE REMAINDER ERF 2395,
VOëLKLIP, OVERSTRAND MUNICIPAL AREA : PROPOSED DEPARTURE : JMF
COUTTS ON BEHALF OF "THE TRUSTEES FOR THE TIME BEING OF THE JARE
PROPERTY 2 TRUST"

PRESENT :

COUNCILLORS

Ald A Coetsee
Cllr D Coetzee
Cllr M Dyani
Cllr V Macotha
Cllr L Krige

CAPACITY

Chairperson: Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee
Member : Appeal Committee

OFFICIALS

Mr R Kuchar
Mr P Roux
Mr L Wallace
Ms S Swart

Senior Manager : Town Planning
Town Planner
Legal Advisor
Administrative Officer, Secretariat

APPELLANT

JMF Coutts

Represented by Mr JP du Plessis from DHM Attorneys

APOLOGIES

None

ABSENT

None

APPELLANT:

Mr J F Coutts in his capacity as Trustee for "The Trustees for the Time Being of the Jare Property 2 Trust", represented in the appeal by Mr J P du Plessis from DHM Attorneys.

RESPONDENT:

Overstrand Municipality herein represented by Mr R Kuchar, Senior Manager : Town Planning and Mr P Roux, Town Planner.

NOTICE OF APPEAL HEARING:

Notices were sent to all parties concerned.

NATURE OF APPEAL:

The appellant appeals against the Executive Mayor's decision dated 30 September 2015 to refuse the application for a departure in order to:

- (a) relax the lateral building line from 2m to 0m in order to accommodate the proposed extension to the garage; and
- (b) relax the street building line from 3m to 0m in order to accommodate the proposed pergola.

CONSTITUTION:

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

The Chairperson, Ald Coetsee, declared that no members of the Appeal Committee have a conflict of interest in the application barring their presence to this meeting.

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 Executive Mayor, and therefore the appeal was regarded as valid and could proceed.

It was noted that the deposit was paid in terms of the approved tariffs.

SITE VISIT:

The Appeal Committee members and officials visited the subject property to conduct an in loco inspection prior to the meeting.

CONSIDERATION OF APPEAL:

It became apparent that, even though the appeal is very narrow, the Section 62 Committee must consider the appeal in a wider context because other matters which are strictly speaking not before the committee, have a direct impact on the outcome of the appeal. This is specifically influenced by the parking on site which is inadequate, and it was said that the current building materially deviates from the approved building plans. It became apparent that, if the appeal succeeds, it will not really solve the magnitude of problems that currently exist on site. Likewise, if the appeal does not succeed, it also will not solve anything because there are various other applications that still need to be brought and as-built building plans that need to be submitted. It was mentioned that the building plan that was submitted during the appeal process can be used as a basis to start with a proper public participation process in order to get approval. It makes sense to allow the appellant to start over.

THE MEETING STOOD DOWN AT 16:40 FOR DELIBERATION BY THE PANEL**THE MEETING RESUMED AT 16:45**

The Committee then –

RESOLVED (UNANIMOUSLY):

1. that the Executive Mayor's decision dated 30 September 2015 **be suspended** for a period of 90 days to allow the appellant to submit as-built buildings plans together with the necessary town planning applications in order to legalise what exists on the site;
2. that, if these applications and/or as-built building plan are not submitted within 90 days calculated from 18 February 2016, the decision of the Executive Mayor will become final;
3. that, if the plans and applications as mentioned in paragraph 2 above are submitted within 90 days, the decision of the Executive Mayor will lapse and will be of no force or effect;
4. that the municipality's date stamp on the documents will be regarded as sufficient proof of submission of the new plan and applications; and
5. that the full deposit **be refunded** to the appellant.

The session of the Appeal Committee closed at 17:10

SIGNED ON THIS 14TH DAY OF MARCH 2016 AT HERMANUS BY THE APPEAL COMMITTEE:

Cllr A Coetsee **Chairman:** Appeal Committee

Cllr D Coetzee **Member:** Appeal Committee

Cllr V Macotha **Member:** Appeal Committee

Cllr M Dyani **Member:** Appeal Committee

Cllr L Krige **Member:** Appeal Committee

[Handwritten signatures of the Appeal Committee members]

- 7. URGENT MATTERS SUBMITTED BY THE MUNICIPAL MANAGER (IF ANY)**

- 8. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS**

- 9. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)**