



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

A G E N D A

I-AJENDA

**DATE / DATUM / UMHLA : 28 MARCH / MAART / MATSHI
2018**

**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

23 March / Maart / Matshi 2018

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, 28 MARCH 2018** 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, 28 MAART 2018** 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, Umhla we 28 MATSHI 2018** 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 **Council** held on **Wednesday, 28 February 2018** 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 Executive Mayor in view of the fact that the **compilation of the Council agenda** was done before the Mayoral Committee of 28 March 2018 had formally sat.

5.1

FRAUD PREVENTION AND ANTI-CORRUPTION STRATEGY, POLICY AND PLAN 2017/2018

(ITEM 1, PAGE 1 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO THE COUNCIL:

1. that the Fraud Prevention and Anti-Corruption Strategy **be adopted**;
2. that the Fraud Prevention and Anti-Corruption Policy **be adopted**; and
3. that the Fraud Prevention and Anti-Corruption Plan **be adopted** and the Anti-Corruption and Fraud Prevention Plan approved by Council on 26 November 2008, as amended from time to time, **be revoked** simultaneously.

RESPONSIBLE OFFICIAL :

A RIDDLES

TARGET DATE FOR IMPLEMENTATION :

29 MARCH 2018

5.2

ICT DATA BACKUP AND RECOVERY POLICY

**(ITEM 2, PAGE 60 : MANAGEMENT SERVICES PORTFOLIO -
MAYORAL COMMITTEE MEETING : 28 MARCH 2018)**

RECOMMENDATION TO THE COUNCIL:

that the ICT Data Backup and Recovery Policy **be approved.**

RESPONSIBLE OFFICIAL :

C JOHNSON

TARGET DATE FOR IMPLEMENTATION :

MARCH 2018

5.3

DRAFT REVIEWED PERFORMANCE MANAGEMENT FRAMEWORK (PMF)**(ITEM 3, PAGE 93 : MANAGEMENT SERVICES PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 MARCH 2018)****RECOMMENDATION TO THE COUNCIL:**

1. that the draft reviewed Performance Management Framework **be noted**; and
2. that the local community **be invited** to submit representations in connection with the draft reviewed performance management framework.

RESPONSIBLE OFFICIAL :**R LOUW
L BUCCHAINERI
D VAN DER HEEVER
C ROETS****TARGET DATE FOR IMPLEMENTATION :****NONE**

5.4

TRANSFER OF A PORTION OF ERF 1 HAWSTON ($\pm 370\text{M}^2$ IN EXTENT) TO HAWSTON SERVICE STATION (PTY) LTD FOR ADDITIONAL PARKING AND DRIVEWAY PURPOSES

(ITEM 2, PAGE 45 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 1 Hawston ($\pm 370\text{m}^2$ in extent) to Hawston Service Station (Pty) Ltd (registration number 2015/422580/07) for the amount of R50.00/m² (FIFTY RAND PER SQUARE METRE) (VAT excluded) for additional parking and driveway purposes, **be approved**;
2. that it be noted that a condition for transfer will be that a portion of Erf 1 Hawston must be consolidated with the adjoining property of Hawston Service Station (Pty) Ltd, being Erf 412 Hawston;
3. that the transfer of a portion of Erf 1 Hawston be subject to obtaining the necessary subdivision, closure, rezoning and consolidation approvals;
4. that the costs pertaining to the transaction, e.g. application fee, valuation costs, advertisement, subdivision, consolidation, road closure, rezoning, registration of transfer in the Deed Office and related costs, etc. be paid by the Applicant; and
5. that it be noted that the municipal property envisaged to be transferred 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 (Act 56 of 2003).

RESPONSIBLE OFFICIAL :**W MURTZ****TARGET DATE FOR IMPLEMENTATION :****31 MAY 2018****TARGET DATE TO INFORM APPLICANT :****19 APRIL 2018**

5.5

ERF 210 GANSBAAI (MASAKHANE), OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, SUBDIVISION, DEPARTURE, AMENDMENT OF THE OVERSTRAND GROWTH MANAGEMENT STRATEGY AND APPROVAL OF STREET NAMES : MASAKHANE AFFORDABLE HOUSING PROJECT : MESSRS URBAN DYNAMICS ON BEHALF OF OVERSTRAND MUNICIPALITY

(ITEM 3, PAGE 52 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO THE COUNCIL:

that the application for the deviation of the Growth Management Strategy, 2010 in order to provide a residential density of 30 units per hectare in lieu of the 10 - 20 units per hectare in terms of the provisions of Section 22(2) of the Spatial Planning Land Use Management Act, 2013, **be approved.**

RESPONSIBLE OFFICIAL :	SW VAN DER MERWE
TARGET DATE FOR IMPLEMENTATION :	11 APRIL 2018
TARGET DATE TO INFORM APPLICANT :	11 APRIL 2018
TARGET DATE TO INFORM OBJECTOR :	N/A

5.6

PORTION 25 (PORTION OF PORTION 2) OF THE FARM RIVERSIDE NO. 644, DIVISION CALEDON, ERVEN 1909 – 1914, 2275 AND 1198, STANFORD, OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, SUBDIVISION, DEPARTURE, AMENDMENT OF THE OVERSTRAND GROWTH MANAGEMENT STRATEGY AND APPROVAL OF STREET NAMES : STANFORD AFFORDABLE HOUSING PROJECT : MESSRS URBAN DYNAMICS ON BEHALF OF OVERSTRAND MUNICIPALITY

(ITEM 4, PAGE 147 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO COUNCIL:

that the application for the deviation of the Growth Management Strategy, 2010 in order to provide a residential density of 30 units in lieu of the 10 - 20 units per hectare in terms of the provisions of the Spatial Planning Land Use Management Act, 2013, **be approved.**

RESPONSIBLE OFFICIAL :	P ROUX
TARGET DATE FOR IMPLEMENTATION :	11 APRIL 2018
TARGET DATE TO INFORM APPLICANT :	11 APRIL 2018
TARGET DATE TO INFORM OBJECTOR :	N/A

5.7

**HERMANUS: MOUNT PLEASANT INTEGRATED RESIDENTIAL DEVELOPMENT:
TECHNICAL CLOSE OUT REPORT**

**(ITEM 5, PAGE 323 : INFRASTRUCTURE & PLANNING PORTFOLIO -
MAYORAL COMMITTEE MEETING : 28 MARCH 2018)**

RECOMMENDATION TO THE COUNCIL:

that it **be noted** that the Mount Pleasant Integrated Residential Development project in Mount Pleasant, Hermanus, consisting of 172 subsidised houses and 22 serviced sites, has been completed and that the houses have been handed over to the beneficiaries.

RESPONSIBLE OFFICIAL :	A JACOBS
TARGET DATE FOR IMPLEMENTATION :	28 MARCH 2018
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A

5.8

**HERMANUS: MSHENXISWA VILLAGE (PREVIOUSLY GARDEN SITE), ZWELIHLE
LOW-INCOME HOUSING DEVELOPMENT: TECHNICAL CLOSE OUT REPORT**

**(ITEM 6, PAGE 493 : INFRASTRUCTURE & PLANNING PORTFOLIO -
MAYORAL COMMITTEE MEETING : 28 MARCH 2018)**

RECOMMENDATION TO THE COUNCIL:

that it **be noted** that the Mshenxiswa Village (previously Garden Site) low-income housing project in Zwelihle, Hermanus, consisting of 58 subsidised houses, has been completed and that the houses have been handed over to the beneficiaries.

RESPONSIBLE OFFICIAL :	A JACOBS
TARGET DATE FOR IMPLEMENTATION :	MARCH 2018
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A

5.9

**HERMANUS: SWARTDAM ROAD SITE A & B, MOUNT PLEASANT & ZWELIHLE
LOW-INCOME HOUSING DEVELOPMENT: TECHNICAL CLOSE OUT REPORT**

**(ITEM 7, PAGE 702 : INFRASTRUCTURE & PLANNING PORTFOLIO -
MAYORAL COMMITTEE MEETING : 28 MARCH 2018)**

RECOMMENDATION TO THE COUNCIL:

that it **be noted** that the Site A & B Swartdam Road low-income housing project in Mount Pleasant and Zwelihle, Hermanus, consisting of 179 subsidised houses, has been completed and that the houses have been handed over to the beneficiaries.

RESPONSIBLE OFFICIAL :	A JACOBS
TARGET DATE FOR IMPLEMENTATION :	MARCH 2018
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A

5.10**MONTHLY REPORT TO COUNCIL ON SUPPLY CHAIN MANAGEMENT (SCM)
POLICY: PARAGRAPH 36, 16(1)(b) AND 17(1)(c) FOR FEBRUARY 2018****(ITEM 5, PAGE 1 : MAYORAL COMMITTEE MEETING : 28 MARCH
2018)****RECOMMENDATION TO THE COUNCIL:**

1. that the deviations from the procurement processes, approved in terms of the delegated authority for February 2018, **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 2018, **be noted**.

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

5.11

CONSIDERATION OF THE 2016/17 ANNUAL REPORT AND ADOPTION OF AN OVERSIGHT REPORT**(ITEM 6, PAGE 6 : MAYORAL COMMITTEE MEETING : 28 MARCH 2018)****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 2016/17 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**

5.12

DRAFT INTEGRATED DEVELOPMENT PLAN (IDP) REVIEW 2018/19

(ITEM 7, PAGE 29 : MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO THE COUNCIL:

1. that the draft reviewed IDP for 2018/19 **be noted**; and
2. that the draft IDP review **be advertised** for public comment in order for Council to consider the final document during the May 2018 Council meeting.

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED

5.13

DRAFT INTEGRATED DEVELOPMENT PLAN (IDP) REVIEW 2018/19

(ITEM 8, PAGE 32 : MAYORAL COMMITTEE MEETING : 28 MARCH 2018)

RECOMMENDATION TO THE COUNCIL:

1. that the draft reviewed IDP for 2018/19 **be noted**; and
2. that the draft IDP review **be advertised** for public comment in order for Council to consider the final document during the May 2018 Council meeting.

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

TO BE NOTED

5.14

**DRAFT SERVICE DELIVERY AND BUDGET IMPLEMENTATION PLAN (SDBIP)
FOR 2018/19**

**(ITEM 9, PAGE 34 : MAYORAL COMMITTEE MEETING : 28 MARCH
2018)**

RECOMMENDATION TO THE COUNCIL:

that the draft Service delivery and Budget Implementation plan (SDBIP) for 2018/19
be noted.

RESPONSIBLE OFFICIAL :

R LOUW

TARGET DATE FOR IMPLEMENTATION :

NOT APPLICABLE

6. CONSIDERATION OF REPORTS

6.1

SUBSTITUTION OF A MEMBER OF THE PORTFOLIO COMMITTEE FOR PROTECTION SERVICES, ECONOMIC DEVELOPMENT AND TOURISM

3/2/3/5

H van Tonder

(028) 313 8037

Council Support Services

15 March 2018

1. Executive Summary

The purpose of the report is to grant Council an opportunity to amend the composition of the Portfolio Committee for Protection Services, Economic Development & Tourism.

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

- Section 79 and 80 of the Local Government: Municipal Structures Act, No 117 of 1998 (Structures Act)
- Section 160(8) of the Constitution of the Republic of South Africa, 1996 (Constitution)

6. Discussion

Council resolved on 28 February 2018, *inter alia*, as follows:

RESOLVED (SUPPORTED BY 22 COUNCILLORS):

Economic
Development,
Tourism
&
Protection
Services

Cllr E Gillion (Chairperson), Cllrs L Ntsabo,
G Cohen, V Macotha and C Tafu-Nwonko

In the meanwhile the Electoral Commission declared Cllr C Resandt as councillor in the proportional councillor vacancy which occurred as a result of the passing of the late Ald R Smith.

Cllr L Ntsabo serves on two portfolio committees, to wit Finance and Protection Services, Economic Development & Tourism and the Democratic Alliance recommended that Cllr Resandt substitutes him on the latter portfolio committee.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that Cllr L Ntsabo be substituted by Cllr C Resandt on the Portfolio Committee for Protection Services, Economic Development & Tourism.

RESPONSIBLE OFFICIAL:**H VAN TONDER****TARGET DATE FOR IMPLEMENTATION:****28 MARCH 2018**

6.2

ALLEGED MISCONDUCT: CLLRS SS TEBELE AND VC MACOTHA

3/2/3/1

H van Tonder

(028) 313 8037

Corporate Head Office

15 March 2018

1. Executive Summary

The purpose of this report is to afford Council the opportunity to consider a report in respect of the above matter.

2. Service Delivery and Budget Implementation Plan Reference

Not applicable

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Schedule 1 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) (the Systems Act).
- Overstrand Municipality's Standard By-law on Rules of Order for Internal Arrangements
- Procedure for investigation regarding any allegation of misconduct against a member of Overstrand Municipal Council

6. Discussion

Item 2 of Schedule 1 of the Systems Act provides as follows:

"2. General conduct of councillors.—A councillor must—

- (a) perform the functions of office in good faith, honestly and a transparent manner; and*
- (b) at all times act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality are not compromised."*

The duty of the Chairperson (Speaker) of the Council, in so far as the Code of Conduct of Councillors is concerned, is embedded in Item 13 of the Code and reads as follows:

“13(1) If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must—

- (a) authorise an investigation of the facts and circumstances of the alleged breach;*
 - (b) give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and*
 - (c) report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.*
- (2) A report in terms of subitem (1) (c) is open to the public.*
- (3) The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.*

(4) ... “

The Speaker was of the opinion that the conduct of Cllrs SS Tebele and VC Macotha during a meeting of Council on 30 August 2017 warranted an investigation. In executing the aforementioned and as he might be a witness in a possible disciplinary hearing, he requested the Municipal Manager, with approval of the late Executive Mayor, to advise who can be briefed for purposes of such an investigation. Upon advice of the Municipal Manager, Attorneys Fairbridges Wertheim Becker were briefed.

The report received from Attorneys Fairbridges Wertheim Becker is attached as Annexure ‘A’ to this report.

The Speaker indicated that, for any number of reasons, he does not agree with the conclusion reached by the attorneys. Apart from indicating that the conclusion might be problematic for the way in which future council meetings are to be conducted, he indicated that it is not for him to challenge the said conclusion. The Speaker furthermore indicated that he cannot execute his delegated authority in this regard and recommends that Council considers the way forward.

Item 14 of the Code of Conduct of Councillors provides as follows:

“14. Breaches of Code. – (1) A municipal council may –

- (a) investigate and make a finding on any alleged breach of a provision of this Code; or*
- (b) establish a special committee –*
 - (i) to investigate and make a finding on any alleged breach of this Code; and*
 - (ii) to make appropriate recommendations to the Council.*
- (2) If the council or a special committee finds that a councillor has breached a provision of this Code, the council may –*
 - (a) issue a formal warning to the councillor;*
 - (b) reprimand the councillor;*
 - (c) request the MEC for local government in the province to suspend the councillor for a period;*
 - (d) fine the councillor; and*
 - (e) request the MEC to remove the councillor from office.”*

7. Financial Implications

Legal expenditure to the amount of R50 647.50 was incurred.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexure

Annexure A: Report received from Attorneys Fairbridges Wertheim Becker

RECOMMENDATION TO THE COUNCIL:

that the report received from Attorneys Fairbridges Wertheim Becker regarding the alleged misconduct of Cllrs SS Tebele and VC Macotha **be considered** for purposes of the way forward.

RESPONSIBLE OFFICIAL :**H VAN TONDER****TARGET DATE FOR IMPLEMENTATION :****18 APRIL 2018**

Annexure A

1/19



Our ref: AP/aa/OVE4/0117
 Your ref:
 Date: 10 November 2017

THE SPEAKER
ALD ANTON COETSEE
OVERSTRAND MUNICIPALITY

Email: antoncoetsee@hermanus.co.za **BY EMAIL**

THE EXECUTIVE MAYOR
ALD RUDOLPH SMITH
OVERSTRAND MUNICIPALITY

Email: rsmith@overstrand.gov.za **BY EMAIL**

THE MUNICIPAL MANAGER
MR COENIE GROENEWALD
OVERSTRAND MUNICIPALITY

Email: cgroenewald@overstrand.gov.za **BY EMAIL**

Dear Sirs

RE: REPORT TO COUNCIL ON ALLEGED MISCONDUCT BY COUNCILLORS

Tel: +27 21 495 9300 • Fax: +27 21 419 5135 • Email: attorneys@fairbridges.co.za • Website: www.fairbridges.co.za
 11th Floor, South Tower, The Towers, Heerengracht, Cape Town 8001 • P.O. Box 536, Cape Town 8000, South Africa • Docex 2, Capetown.

Directors: Deirdré Olivier (Chairperson), Sheri Breslaw, John Bromley, Richard Cheeseman, Evelyn Chimombe-Munyoro, Herman Conradie, Caroline Dichmont, Bob Groeneveld, Kevin Hacker, Jean Herbert, Bernard Joffe, Amish Kika, Melanie Kilian, Louis Le Roux, Sinen Mnguni, Zunaid Mohamed, Julia Penn, Greer Penzhorn, Adela Petersen, Diane-Maree Rauch, Darryl Reece, David Short, Waheeda Shreef, Wickaum Smith, Jaco van der Westhuizen, Johann van Eeden, André van Rensburg. **Senior Associates:** Gaby Meintjes, Karol Michalowski, Jodi Poswellski. **Associates:** Daniel Hart, Graham Houston, Nosiphiwo Qwabi, Julia Rushton, Inge Surtie, Daniel Treves. **Consultants:** Anne Boag, Hymie Chait, Solomon Gordon, Monty Hacker, Andrew Hewitt, Pieter Pretorius, Louis Rood, Peter Watts. **Practice Manager:** Robin Kirkby.

FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

Also in Johannesburg.

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We were instructed by the Speaker of the Overstrand Municipality to conduct an investigation into the alleged misconduct of two Councillors, namely Councillor Samuel Simphiwe Tebele and Councillor Vuyani Colbert Macotha at the council meeting of 30 August 2017.

Section 13 of Schedule 1 of the Local Government: Municipal Systems Act 32 of 2000 provides that:

- (1) *If the chairperson of a municipal council, on reasonable suspicion, is of the opinion that a provision of this Code has been breached, the chairperson must-*
 - (a) *authorise an investigation of the facts and circumstances of the alleged breach;*
 - (b) *give the councillor a reasonable opportunity to reply in writing regarding the alleged breach; and*
 - (c) *report the matter to a meeting of the municipal council after paragraphs (a) and (b) have been complied with.*
- (2) *A report in terms of subitem (1) (c) is open to the public.*
- (3) *The chairperson must report the outcome of the investigation to the MEC for local government in the province concerned.*
- (4) *The chairperson must ensure that each councillor when taking office is given a copy of this Code and that a copy of the Code is available in every room or place where the council meets.*

Correspondence was addressed to both Councillors in terms of Section 13 of Schedule 1 of the Municipal Systems Act 32 of 2000 on the instructions of the Speaker. The Councillors elected not to respond in writing but spoke to us telephonically to place their response on record. The allegations levelled against each of the Councillors are as follows:

COUNCILLOR VUYANI COLBERT MACOTHA

1. On or about 30 August 2017 at an ordinary meeting of council you failed to preserve order and decorum at the meeting and obstructed the business of the meeting and you behaved in an unseemly manner. By doing so you breached the bylaw on Rules of Order for the internal arrangements of Overstrand Municipality.
2. You breached the code of conduct of Councillors by failing to act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality was not compromised.



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COUNCILLOR SAMUEL SIMPHIWE TEBELE

1. On or about 30 August 2017 at an ordinary meeting of council you flouted a decision of the Speaker during the course of the meeting and challenged the ruling of the Speaker on a point of order. By doing so you breached the bylaw on Rules of Order for the internal arrangements of Overstrand Municipality.
2. You breached the code of conduct of Councillors by failing to act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality was not compromised.

Copies of the letters are attached hereto marked annexures "OVE1" and "OVE2".

We interviewed both of the Councillors, as well as the Municipal Manager and the Speaker.

We were also furnished with the recordings of the proceedings of the council meeting as well as a transcript of the relevant portions.

COUNCILLOR MACOTHA

Councillor Macotha advised that his conduct did not disrupt of the meeting. He raised an issue of concern relating to the violence at Pearly Beach and Kleinmond that erupted as a result of protest action. He felt that these issues had to be dealt with and he was of the view that he was constantly ignored by the Speaker and the Mayor. The Speaker switched off the microphone while he was still addressing the council meeting. He felt that the points that he raised were considered to be less important by the Speaker. The point that he was trying to make was that a solution needed to be found regarding the violence or investors would pull out their investment from Hermanus. He indicated that he wanted to address the issues and raise it because there were members from those communities present in the audience and they wanted to see that their concerns were been taken seriously and that it would be debated at the council meeting.

COUNCILLOR TEBELE

4/19

Councillor Tebele was of the view that the Speaker should have addressed the matter at the council meeting and he should have requested that he leave the council chambers if he had a problem with his conduct. He said that the Speaker failed to do so and he was of the view that to charge him in terms of the code of conduct and the by-law was not the correct procedure. Councillor Tebele's main complaint was that the Speaker did not allow him to address the council meeting and that he would simply switch off the microphone system thus preventing Councillors from speaking.

THE SPEAKER

The Speaker was requested to advise why he did not invoke Section 19 of the By-law; more in particular subsection 2 and 3 thereof. Section 19 of the By-law provides that:

Conduct of Councillors and members of the public

19. (1) Councillors and members of the public must preserve order and decorum at meetings, and they may not —

- (a) behave in an unseemly manner;*
- (b) obstruct the business of a meeting;*
- (c) challenge the ruling of the Speaker on any point of order; or*
- (d) commit any breach of the rules.*

(2) If a councillor or member of the public breaches sub rule (1), the Speaker must direct the councillor or member of the public to refrain from the breach.

(3) If a councillor or member of the public disregards the directions of the Speaker under sub rule (2), the Speaker may direct the councillor or member of the public —

- (a) if speaking, to discontinue his or her speech; or*
- (b) to withdraw from the place of meeting for the remainder of the meeting or, if necessary, to be removed, from the meeting, by a person designated by the Speaker.*

(4) If the Speaker fails to act under sub rule (3), any councillor may move a motion to require the Speaker to do so.

(5) The motion referred to in sub rule (4) must be moved without notice, and if the motion is seconded, it must be put to the vote forthwith without debate.

According to the Speaker it would not have been an effective mechanism to invoke because it never goes down well. He referred to the experiences of other municipalities but did not refer to any



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incidents at Overstrand Municipality. He also indicated that there is no alternative venue available to conduct the meeting, should they be required to change venue. The Speaker also referred us to two cases that we deal with below that he was relying on that guided his decision not to invoke section 19(3).

He was of the view that it was a much safer route in practice for him to rather address the alleged misconduct in the manner in which he has elected to do so i.e. to charge the Councillors after the meeting. The Speaker also advised that in terms of the Rules of Order, Councillors must be quiet when the Speaker speaks. There are no time limits in the rules and the Speaker has the discretion to limit the time allowed for Councillors to address council. Councillors speak at the discretion of the Speaker. The Speaker confirmed that he exercises control over the microphone system.

THE MUNICIPAL MANAGER

The Municipal Manger advised that there was a robust debate and discussion at the council meeting on certain topics. He confirmed that the meeting was completed and was not cancelled or postponed. Section 19(3) of the by-law has never been invoked by the Speaker since he has been at Overstrand Municipality. Law enforcement officers, as well as the Director responsible for law enforcement, were present at the meeting and their assistance could have been called upon, in the event that it was necessary to act in terms of section 51 of the Rules of Order. The Municipal Court would have been able to assist with enforcing the penalties.

THE LAW

The case law deals with circumstances in Parliament. However, the principles would be applicable to meetings of municipal councils by extension.

The Speaker advised that he was informed by the *De Lille* and *Malema* judgments and that is one of the reasons why he did not follow section 19 of the Rules of Order as these judgments dealt with situations where members of parliament were requested to leave the chamber by the Speaker.

We set out a brief summary of the important aspects of each case.

SPEAKER OF THE NATIONAL ASSEMBLY V DE LILLE AND ANOTHER 1999 (4) SA 863 (SCA)



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This matter had its origin in the Cape High Court Provincial Division (as it was then called) and the High Court's decision was subsequently confirmed, on appeal, by the Supreme Court of Appeal.

The High Court dealt with the issue of the powers of Parliament and parliamentary privilege, and found that such powers and privilege, to the extent of their inconsistency or incompatibility with the Constitution, are invalid.

In particular, section 57(1)(a) of the Constitution does not embrace the power to suspend a Member of Parliament as punishment for contempt. Such suspension, the court found, was inconsistent with the requirements of representative democracy, because it penalised not only the Member or her party, but also the electorate which voted for that party.

The High Court noted that section 58(1) of the Constitution, providing for freedom of speech in Parliament, was an absolute freedom, subject only to the rules and orders of the National Assembly.

The Supreme Court of Appeal (SCA) dismissed the appeal against the ruling of the High Court, but on narrower grounds. It noted that no national legislation or Rules or Orders of Parliament provided for the suspension of a Member where she was not obstructing or disrupting or unreasonably impeding the management of orderly business within the Assembly, but merely making a non-obstructive and non-disruptive speech. Such a suspension, accordingly, had no constitutional authority, and was therefore void.

The court concluded that the punishment imposed on the first applicant was for statements she had made in the Assembly in the exercise of her freedom of speech, protected by the Constitution. The punishment of suspension was not authorised by the rules of Parliament. The freedom of speech conferred by section 58(1) of the Constitution is an absolute freedom in the sense that it is subject only to the rules and orders of the Assembly. It is not subject to the limitations clause of the Constitution. Accordingly, the first applicant's suspension was unconstitutional and in violation of her freedom of speech.

The court also found that Section 57(1) (a) of the Constitution permits the Assembly to determine and control its internal arrangements and proceedings and procedures. It does not, however, follow that the Assembly may do so in a manner inconsistent with the Constitution. The exercise of power conferred on the Assembly by section 57(1) (a) remains subject to the Constitution and subject to constitutional review by the Courts.



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The Speaker is of the view that to ask a councilor to leave the meeting, as is provided for in the Rules of Order, would be similar to what the court found in the De Lille case in that it would be "inconsistent with the requirements of representative democracy, because it penalised not only the Member or her party, but also the electorate which voted for that party." (quote from case)

We deal with this hereunder.

CHAIRPERSON, NATIONAL COUNCIL OF PROVINCES v MALEMA AND ANOTHER 2016 (5) SA 335 (SCA)

The Supreme Court of Appeal (SCA) dismissed the appeal by the Chairperson of the National Council of Provinces against a decision of the Western Cape Division of the High Court, Cape Town, and accordingly upheld an order reviewing and setting aside certain rulings that she had made against Mr Julius Malema (the first respondent) while chairing a joint sitting of the National Assembly and the National Council of Provinces. The issue before the SCA was whether the court a quo was correct in reviewing and setting aside as unlawful the Chairperson's rulings during a parliamentary debate following the 2014 State of the Nation Address that: (i) Mr Malema's statement that the African National Congress (ANC) government had 'massacred the people in Marikana' was unparliamentary; (ii) Mr Malema must withdraw that statement; and (iii) Mr Malema's refusal to comply with her order to withdraw the statement amounted to contempt of her authority, justifying an order that he must leave the House.

The chairperson of the sitting, the Chairperson of the NCOP, ruled that Malema's statement contravened the standing order that 'Members should not be allowed to impute improper motives to other Members, or cast personal reflections on the integrity of Members, or verbally abuse them in any other way'; requested Malema to withdraw the statement; and when he refused, ordered him to leave. Malema successfully reviewed the ruling in the High Court, and the Chairperson appealed to the Supreme Court of Appeal.

The court held that the chairperson did not properly apply the standing order and that there had not been proper grounds to instruct Malema to leave. The court held further that Malema had not been disrupting the proceedings (a basis to order a member to leave); and the instruction stemmed from the erroneous ruling that Malema had contravened the standing order. The court then dismissed the appeal.



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The court also held that "*the Constitution guards Parliament's role as an incubator of political speech. There is nothing unparliamentary about robust, emotive language.*"

The court in the *Malema* case further stated that "*the Chairperson attempts to shift the focus of this appeal to Mr Malema's alleged contempt for her authority. Once she had made a ruling, so her argument goes, he was not entitled to disobey it. But it does not follow from this that the Chairperson necessarily had the constitutional authority to suspend Mr Malema from the proceedings in the circumstances in which she did. It is clear that he was not suspended because his behaviour was obstructing or disrupting or unreasonably impeding the management of orderly business within the House, but rather as some kind of punishment for simply making a speech (which did not obstruct or disrupt the proceedings in the House at the time), but was nevertheless considered objectionable and unjustified by others, particularly, so it would seem, members of the majority party. It is important to emphasise that the former kind of suspension is a necessary protective measure, the latter not. When Mr Malema refused to withdraw his statement that had been ruled unparliamentary by the Chairperson, he did so on pain of sanction. The sanction imposed by the Chairperson was his suspension from the House for the rest of the day. He did — as he was obliged to — comply with the directive of the Chairperson that he leave the House. In that he acted correctly, for until that decision was set aside by a court it could not simply be ignored (Oudekraal Estates (Pty) Ltd v City of Cape Town and Others 2004 (6) SA 222 (SCA) ([2004] 3 All SA 1; [2004] ZASCA 48) para 26).*"

This confirms that the Rules of Order can be invoked to request a party to leave the meeting where the behaviour complained of is of such a nature that it is disruptive or obstructive.

Other cases

In *Democratic Alliance v African National Congress and Another* 2015 (2) SA 232 (CC) (2015 (3) BCLR 298; [2015] ZACC 1) para 133 the Constitutional Court pointed out that:

'Political life in democratic South Africa has seldom been polite, orderly and restrained. It has always been loud, rowdy and fractious. That is not a bad thing. Within the boundaries the Constitution sets, it is good for democracy, good for social life and good for individuals to permit as much open and vigorous discussion of public affairs as possible.'



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Madlanga J stated in *Democratic Alliance v Speaker, National Assembly and Others* **2016 (3) SA 487 (CC)** ([2016] ZACC 8): at para 44, that:

'It cannot be all conduct that annoys and tests the patience of the presiding officer and some in Parliament that amounts to interference or disruption. Robustness, heatedness and standing one's ground inherent in the nature of parliamentary debate. To warrant removal from the Chamber, interference or disruption must go beyond what is the natural consequence of robust debate. Otherwise the very idea of parliamentary free speech may be eroded. In the heat of a debate one must expect that — from time to time — a member's contributions will not come to a screeching, mechanical halt once the presiding officer has ruled that the member desist from further debate on a subject.'

RULES OF PARLIAMENT

Academic writer Pierre de Vos, in discussing the rules of parliament, states that the rules of Parliament as well as the Powers, Privileges, and Immunities of Parliament and Provincial Legislatures Act of 2004 do regulate some forms of speech and conduct in Parliament. Similar provisions are contained in the Rules of Order of the Municipality.

De Vos advises that rule 49 of the National Assembly requires members of the National Assembly to take their seats when the presiding officer rises to speak. Rule 50 allows the presiding officer to order a member to stop his or her speech when the member persists in irrelevance or repetition of arguments. Rule 63 prohibits members from using "offensive or unbecoming language". Rule 66 prohibits members from reflecting "upon the competence or honour" of a judge or a member of a Chapter 9 institution.

De Vos also states that it is important to note that rule 72 of the National Assembly makes clear that every member of the National Assembly has a right to raise a point of order and may speak to do so. (Where a speaker refuses to hear a member who raises a point of order – she is in breach of the rules which she is supposed to uphold.)

De Vos points out that despite this, the speaker does have broad powers. She has a right to order a member to withdraw from the chamber where there is a breach of the rules or, in serious cases, to suspend the member. If the speaker is presiding this cannot be done after the fact, but must be done while the house is sitting.



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A "disturbance" in the rules of parliament is defined as "any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee".

This definition according to De Vos is vague: He looked at it in the context of the *Malema* judgment and asked the question: does it include statements made by MPs in which they raise points of order to demand that the President answer questions posed to him, when the President is illegally protected by the speaker from having to answer? And if it is a disturbance, is it an *improper* disturbance as required by the Act? Is an *improper* disturbance not only related to threats, violence and destruction of property and not to disturbances caused by the exercise of freedom of speech by Members of Parliament? He concludes that given the fact that the Constitution guarantees the right of Members of Parliament to free speech in Parliament, these provisions have to be given a narrow interpretation to limit their scope.

In the same vein, contempt includes, amongst other things, improperly interfering with or impeding the exercise or performance by Parliament or a House or committee of its authority or functions; assaulting or threatening another MP; while Parliament or a House or committee is meeting, creating or taking part in any disturbance within the precincts; bribing MPs or taking a bribe; or hindering or obstructing a staff member in the execution of the staff member's duties.

The Rules of parliament also deal with situations where a Member of Parliament refuses to leave the chamber when ordered to do so. Rule 53A of the National Assembly purports to deal with a situation where a Member of Parliament refuses to leave the chamber when ordered to do so by the presiding officer in terms of rule 51. Rule 51 allows a presiding officer to order a Member of Parliament to leave the chamber:

"If the presiding officer is of the opinion that a member is deliberately contravening a provision of the rules, or that a member is in contempt of or is disregarding the authority of the Chair, or that a member's conduct is grossly disorderly."

The presiding officer will of course first have to inform the targeted Member of Parliament which rule he or she is "deliberately contravening" or on the basis of which rule he or she is "in contempt of the authority of the presiding officer". This requires the presiding officer to have an intimate knowledge of and respect for the rules.



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If a situation arises where the presiding officer has lawfully ordered a Member of Parliament to leave the chamber and the Member of Parliament refuses, the new rule 53A will point to the proper way to deal with the situation. Rule 53A(1) allows the presiding officer to instruct the sergeant-at-arms to remove the Member of Parliament from the chamber and the precincts of Parliament if the Member of Parliament refuses to leave as instructed by the presiding officer.

If the sergeant-at-arms is unable to personally effect the removal of the member, the presiding officer may call upon the Parliamentary Protection Services to assist in removing the Member of Parliament from the chamber and the precincts of Parliament.

There are however existing rules of the National Assembly that provide presiding officers with the authority and legal means to act fairly but decisively against Members of Parliament who disrupt proceedings in Parliament. For example rule 63 prohibits a Member of Parliament from using "offensive or unbecoming language" in Parliament. The use of swear words or other so-called vulgar words by Members of Parliament is therefore prohibited. What is not prohibited is the use of "unparliamentary language". This means that when the presiding officer rules speech impermissible on the basis that it is unparliamentary, he or she has no legal authority to do so.

DISCUSSION

We have been requested to investigate the facts and circumstances of the alleged breach of the Code of Conduct for Councillors. The allegations against the Councillors are that they breached the Rules of Order at the Council meeting of 30 August 2017 and this is in a breach of the Code of Conduct for Councillors which necessitated an investigation in terms of section 13 of the Systems Act.

The Councillors elected not to provide a written response but gave their versions telephonically.

The investigation of any allegation of misconduct against a member of the municipal council is usually done by the Speaker who then forms a prima facie view on whether there has been a breach of the code of conduct.

In this matter the Speaker is the complainant and a potential witness in any disciplinary proceedings which necessitated an independent investigation.



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The Speaker is of the view that there have been clear breaches of the bylaw on Rules of Order for the Internal arrangements of Overstrand Municipality by both Councillors and that the Councillors should be prosecuted. The Speaker did not to rely on the remedy provided in the bylaw on Rules of Order for the internal arrangements for the reason set out above but rather to seek to charge them in terms of the Code of Conduct for Councillors.

The two Councillors are accused of undermining the authority of the Speaker (Cllr Tebele) and behaving without the necessary decorum required at the Council meeting and disrupting the meeting. (Cllr Macotha)

Cllr Tebele's defence is that the Speaker should have dealt with his decision to not withdraw his statement at the meeting. The question is whether the Speaker should have deal with the misconduct at the meeting or whether this misconduct constitutes a breach of Section 2 of the Code of Conduct for Councillors in the Municipal System's Act.

The courts have held that s 57, which provides that the National Assembly 'may determine and control its internal arrangements, proceedings and procedures; and make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement is wide enough to enable the National Assembly to maintain internal order and discipline in its proceedings.

As Mahomed CJ observed in *Speaker of the National Assembly v De Lille and Another* 1999 (4) SA 863 (SCA) (1999 (11) BCLR 1339; [1999] ZASCA 50) para 16:

'This would, for example, include the power to exclude from the Assembly for temporary periods any member who is disrupting or obstructing its proceedings or impairing unreasonably its ability to conduct its business in an orderly or regular manner acceptable in a democratic society. Without some such internal mechanism of control and discipline, the Assembly would be impotent to maintain effective discipline and order during debates.' (cf Malema case supra)

Similarly, the Rules of Order of the Council of the Overstrand Municipality determine and control its internal arrangements, proceedings and procedures; and make rules and orders concerning its business. These rules are contained in the bylaw on Rules of Order for the internal arrangements of



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Overstrand Municipality. Section 19 of the Rules of Order sets out the conduct to be adhered to in meetings and what remedies the Speaker has in the event that parties breach this rule.

The rules make provision that the Speaker has a right to direct a Councillor to refrain from the breach and if the Councillor disregards this direction, the Speaker may direct the Councillor, if speaking to discontinue his speech or to withdraw from the place of the meeting or, if necessary, be removed by a person designated by the Speaker. If the Speaker is presiding this cannot be done after the fact, but must be done while the council is sitting.

Section 19 has never been invoked by the Speaker at Overstrand Municipality so we cannot say that it would not be an effective mechanism, in the circumstances. It would have been appropriate to invoke this mechanism at the meeting.

This does not mean that situations may never arise where it would not be appropriate to invoke Section 19, and then it may well be necessary to address the misconduct in terms of the Code of Conduct for Councillors.

In this instance we are of the view that we may face difficulty in successfully charging the Councillors with undermining the Speaker under the Code of Conduct for Councillors. This is so as the charges do not conveniently fall within one of the categories of misconduct under the Code.

The Speaker relied on the *De Lille* judgment and the *Malema* judgment in deciding not to invoke section 19 of the rules.

We point out that in the *De Lille* case they dealt with suspension of a Member of Parliament and freedom of speech at meetings. They found that there was no behaviour that obstructed or disrupted or unreasonably impeded the management of orderly business at the meeting. What the court stated was that "It is clear, that the respondent was not suspended because her behaviour was obstructing or disrupting or unreasonably impeding the management of orderly business within the Assembly, but as some kind of punishment for making a speech in the Assembly some days earlier which did not obstruct or disrupt the proceedings in the Assembly at the time." These facts are thus not the same as the current matter.

The *Malema* judgment also confirms that when a party is requested to leave the chamber by the speaker, a party is obliged to do so. The court stated that "*When Mr Malema refused to withdraw his statement that had been ruled unparliamentary by the Chairperson, he did so on pain of sanction.*"



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The sanction imposed by the Chairperson was his suspension from the House for the rest of the day. He did — as he was obliged to — comply with the directive of the Chairperson that he leave the House. In that he acted correctly, for until that decision was set aside by a court it could not simply be ignored"

Cllr Macotha's defence is that his behaviour at the meeting does not amount to a disruption and that his conduct is not a breach of the Code of Conduct for Councillors.

Insofar as the alleged disruption of the meeting is concerned, we have referred to various cases above which state that *"There is nothing unparliamentary about robust, emotive language"* and that *'Political life in democratic South Africa has seldom been polite, orderly and restrained. It has always been loud, rowdy and fractious. That is not a bad thing. Within the boundaries the Constitution sets, it is good for democracy, good for social life and good for individuals to permit as much open and vigorous discussion of public affairs as possible.*

We have also advised that contempt in this context includes, amongst other things, improperly interfering with or impeding the exercise or performance by Parliament or a House or committee of its authority or functions; assaulting or threatening another MP; while Parliament or a House or committee is meeting, creating or taking part in any disturbance within the precincts; bribing MPs or taking a bribe; or hindering or obstructing a staff member in the execution of the staff member's duties.

The court has also stated that *'It cannot be all conduct that annoys and tests the patience of the presiding officer and some in Parliament that amounts to interference or disruption. Robustness, heatedness and standing one's ground inherent in the nature of parliamentary debate. To warrant removal from the Chamber, interference or disruption must go beyond what is the natural consequence of robust debate. Otherwise the very idea of parliamentary free speech may be eroded. In the heat of a debate one must expect that — from time to time — a member's contributions will not come to a screeching, mechanical halt once the presiding officer has ruled that the member desist from further debate on a subject.*

We submit that Cllr Macotha's behaviour at the meeting cannot be construed to have interfered with or impeded the meeting nor did it hinder or obstruct the continuance of the meeting. He may not have been polite or orderly and he may not have immediately acceded to the Speaker's request to stop speaking but we are of the view that this does not amount to a disruption of the meeting, in this context, given what is said in the case law. S19 could have been invoked to effectively deal with his



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conduct, if the Speaker was of the view that Cllr Macotha was not adhering to his initial request to stop speaking.

For the same reasons as set out above we do not think that Cllr Macotha's conduct amounts to misconduct under the Code for Councillors and we may face difficulty in pursuing such an avenue.

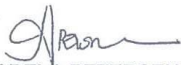
CONCLUSION

On our analysis of the facts, our prima facie view is that a breach of the code of conduct cannot be established for the reasons set out above. As a result our recommendation is not to proceed with further action against the Councillors and that they must be advised of this decision by the Speaker.

We advise accordingly.

Yours faithfully

FAIRBRIDGES WERTHEIM BECKER



ADELA PETERSEN

E-mail address: apetersen@fairbridges.co.za

Direct line: 021 405-7337

Direct fax: 0866394266





16/19
OVE 1

Our ref: AP/aa/OVE4/0117

Your ref:

Date: 21 September 2017

COUNCILLOR VUYANI COLBERT MACOTHA

9276 Eluxolweni Street

ZWELIHLE

HERMANUS

7200

Email: vmacotha@overstrand.gov.za

BY EMAIL

Dear Councillor Macotha

RE: OVERSTRAND MUNICIPALITY / COUNCILLORS

We have been instructed by the Speaker of Overstrand Municipality to conduct a preliminary investigation in terms of section 13 of Schedule 1 of the Municipal Systems Act 32 Of 2000 on the basis that the provisions of the Code of Conduct for Councillors as well as the bylaw on rules of order for the internal arrangements of Overstrand Municipality have been breached by you in the following respects:

1. On or about 30 August 2017 at an ordinary meeting of council you failed to preserve order and decorum at the meeting and obstructed the business of the meeting and you behaved in an unseemly manner. By doing so you breached the bylaw on rules of order for the internal arrangements of Overstrand Municipality.

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16th Floor, South Tower, The Towers, Haarlemstraat, Cape Town, 80011 • P.O. Box 536, Cape Town 8000, South Africa • Docex 2, Cape Town

Directors: Deirdré Olivier (Chairperson), Sheri Breslaw, John Bromley, Richard Cheeseman, Evelyn Chimombe-Munyoro, Herman Conradie, Caroline Dichmont, Bob Groeneveld, Kevin Hacker, Jean Herbert, Bernard Joffe, Amish Kika, Melanie Kilian, Louis Le Roux, Sinen Mnguni, Zunaid Mohamed, Julia Penn, Greer Penzhorn, Adela Petersen, Diane-Maree Rauch, Darryl Reece, David Short, Waheeda Shreef, Wickaam Smith, Jaco van der Westhuizen, Johann van Eeden, André van Rensburg. **Senior Associates:** Gaby Meintjes, Karol Michalowski, Jodi Poswellestki. **Associates:** Daniel Hart, Graham Houston, Nosiphiwo Qwabi, Julia Rushton, Inge Surtie, Daniel Treves. **Consultants:** Anne Boag, Hymie Chait, Solomon Gordon, Monty Hacker, Andrew Hewitt, Pieter Pretorius, Louis Rood, Peter Watts. **Practice Manager:** Robin Kirkby.

FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

Also in Johannesburg.

17/19

2. You breached the code of conduct of councillors by failing to act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality was not compromised.

You are hereby advised that you have the right to respond to the allegations in writing.

Please let us have your response by no later than 28 September 2017.

Yours faithfully
FAIRBRIDGES WERTHEIM BECKER



ADELA PETERSEN
E-mail address: apetersen@fairbridges.co.za
Direct line: 021 405-7337
Direct fax: 0866394266





18/19

OVE 2

Our ref: AP/aa/OVE4/0117

Your ref:

Date: 21 September 2017

COUNCILLOR SAMUEL SIMPHIWE TEBELE

68 Tebele Street

ZWELIHLE

HERMANUS

7200

Email: stebele@overstrand.gov.za; simpra10@yahoo.com

BY EMAIL

Dear Councillor Tebele

RE: OVERSTRAND MUNICIPALITY / COUNCILLORS

We have been instructed by the Speaker of Overstrand Municipality to conduct a preliminary investigation in terms of section 13 of Schedule 1 of the Municipal Systems Act 32 Of 2000 on the basis that the provisions of the Code of Conduct for Councillors as well as the bylaw on rules of order for the internal arrangements of Overstrand Municipality have been breached by you in the following respects:

1. On or about 30 August 2017 at an ordinary meeting of council you flouted a decision of the Speaker during the course of the meeting and challenged the ruling of the Speaker on a point of order. By doing so you breached the bylaw on rules of order for the internal arrangements of Overstrand Municipality.

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FAIRBRIDGE ARDERNE & LAWTON INC. - Reg. No. 1985/000003/21.

Also in Johannesburg.

19/19

2. You breached the code of conduct of councillors by failing to act in the best interest of the municipality and in such a way that the credibility and integrity of the municipality was not compromised.

You are hereby advised that you have the right to respond to the allegations in writing.

Please let us have your response by no later than 28 September 2017.

Yours faithfully
FAIRBRIDGES WERTHEIM BECKER



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

8. CONSIDERATION OF NOTICES OF MOTIONS / QUESTIONS

At the time of the closing of the agenda, no notices of motions/questions were received.

9. CONSIDERATION OF MOTIONS OF EXIGENCY (IF ANY)