

**AGENDA of the  
Portfolio Committee : Finance & Tourism  
14 February 2023  
(Also the agenda for the Mayoral Committee Meeting : 14 February 2023)**

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**5.  
MEMORANDUM OF UNDERSTANDING: INTERGOVERNMENTAL CO-ORDINATION  
– MANAGEMENT OF DANGER POINT LIGHTHOUSE**

**F Lloyd  
6 February 2023**

**Tourism Manager**

**(028) 313 5022**

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**1. Executive Summary**

The purpose of this memorandum is to provide, and outline an understanding with Transnet regarding the promotion of tourism and SMME development at the Danger Point Lighthouse. This understanding will form the basis of a working agreement and a Memorandum of Understanding with Transnet.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Directorate: Economic, Social Development and Tourism  
Department: Tourism

**3. Compliance with Strategic Priorities**

Provision of democratic, accountable, and ethical governance  
Promotion of tourism, economic and social development

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

N/A

**6. Background/Discussion/Evaluation/Conclusion**

The need to open the Lighthouse was necessitated from requests, comments and “complaints” received from locals and visitors. Overstrand Municipality engaged Barney Germishuys (former logistics manager of Transnet).

Correspondence followed and a meeting between Transnet and Overstrand Municipality took place. It was agreed that Tourism, acting for the Municipality, could open the grounds on 30 April 2022. The Lighthouse opened at least one weekend per month since April and received 3864 visitors from 30 April till 31 December 2022.

Discussions with Agulhas National Park provided a comparative Memorandum of Understanding to be considered from the drafting of the Overstrand document

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which were discussed with Overstrand Legal Services and engagements initiated with Bheki Mhlongo of Transnet to agree on items for inclusion in the Memorandum. From the delayed response as well as the suspension of Transnet officials involved with Danger Point Lighthouse, it can be gathered that the signing of a Memorandum will be a lengthy process.

**7. Financial Implications**

In the instance that an agreement is signed, the financial implications will relate to:

Volunteers at the Lighthouse:	Rnil (no cost)
Maintenance and upkeep:	R5000 per month

**8. Staff Implications**

Volunteers:	Rnil (no cost)
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**9. Comments from other Departments, Divisions and Administrations**

Legal department advised that definitions are expanded and Transnet prompt to respond to the Memorandum. More definitions were added including one for navigation equipment.

**10. Annexures**

Annexure A: Memorandum of Understanding.

**RECOMMENDATION:**

that a Joint Management Committee be established and comments on the Memorandum of Understanding be pursued.

**RESPONSIBLE OFFICIAL :**

**F LLOYD**

**TARGET DATE FOR IMPLEMENTATION :**

**1 MARCH 2023**

INTERGOVERNMENTAL COORDINATION: MANAGEMENT OF THE DANGER POINT LIGHTHOUSE IN GANSBAAI  
FOR LOCAL SMME AND TOURISM DEVELOPMENT AND BENEFICIATION

MADE AND ENTERED INTO BETWEEN

TRANSNET LIMITED

HEREIN REPRESENTED BY \_\_\_\_\_ IN HIS/HER CAPACITY AS \_\_\_\_\_

AND DULY AUTHORISED TO DO SO (HEREINAFTER REFERRED TO AS "TRANSNET")

AND

OVERSTRAND MUNICIPALITY

HEREIN REPRESENTED BY \_\_\_\_\_ IN HIS/HER CAPACITY AS \_\_\_\_\_

AND DULY AUTHORISED TO DO SO (HEREINAFTER REFERRED TO AS "MUNICIPALITY")

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MEMORANDU OF AGREEMENT (MOU)  
BETWEEN TRANSNET AND THE OVERSTRAND MUNICIPALITY

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1. PARTIES

The Parties to this Agreement are:

- 1.1 Transnet Limited
- 1.2 Overstrand Municipality

2. DEFINITIONS

In this agreement, the following words and phrases have the meanings given to them below:

- 2.1 "Agreement" means this Agreement, together with any annexures thereto.
- 2.2 "The Property" means the development property situated on Portion 8 of the Farm 711, Caledon, excluding the Lighthouse tower building, the administrative offices and the contractor's residence.
- 2.3 "Transnet" means a public company with limited liability as established by the Legal Succession of the South African Transport Services Act, No 9 of 1989.
- 2.4 "Municipality" means the Overstrand Municipality, established in terms of the Local Government: Municipal Structures Act 1998 read with the Province of the Western Cape: Provincial Gazette 5588 dated 22 September 2000.
- 2.5 "Danger Point Lighthouse" means the developed portion of the property which falls within the physical and jurisdictional boundary of the Overstrand Local Municipality.
- 2.6 "Tourist facilities" means the two buildings and parking area on the property which is earmarked to be used as a coffee shop and guest house respectively.
- 2.7 "Navigational Aid (NAVAID)" means any sort of signal, markers or guidance equipment include that necessary to emit from a system of lamps and lenses and to serve as a beacon.
- 2.8 "SMME" means Small Medium and Micro Enterprises

3. PREAMBLE

The parties recognise that:

- 3.1 Transnet in terms of the Government Immovable Asset Management Act 19 of 2007 (GIAMA), is the custodian of the property.
- 3.2 The proposed utilisation of the facilities not being used by Transnet will enhance local tourism and create income required for the upkeep and management of the facilities.
- 3.3 Cooperation, support, and integration between spheres of government are essential in achieving the on-going growth and development of a prosperous South Africa.
- 3.4 Integration of government implementation plans, and management strategies is essential for the broader common good as well as the economic success of the local, provincial and national economy.

3.5 Public access to the coastline and its tourism and economic potential is entrenched in South African law.

3.6 The Danger Point Lighthouse and surroundings presents significant potential for further economic growth, social development, and local economic development within the Municipality.

#### 4. PURPOSE OF THE AGREEMENT

4.1 To reduce to writing the agreement with respect to the use and management of the property.

4.2 To establish a working relationship between the Parties as it relates to the goals and implementation of this Agreement.

#### 5. OBLIGATIONS OF THE PARTIES

5.1 The obligation of the Municipality is as follows:

5.1.1 Marketing the Danger Point Lighthouse and circulating opening times.

5.1.2 The management and running of the opening of the Danger point Lighthouse to the public, SMME development and local tourism and economic development.

5.1.3 The placement of tenants and rotation thereof on the property in consultation with Transnet.

5.1.4 The general maintenance of the garden and moving of the lawn for the duration of the agreement.

5.1.5 The Municipality undertakes to contribute to general maintenance and the upkeep of the Danger Point Lighthouse and related tourism facilities once the income from tourism to the property can support such expenses.

5.1.6 Provision of security assistance to Transnet

5.1.7 To adhere to the Broad Based Black Economic Empowerment Policy in the allocation of space to SMMEs to ensure access to Previously Disadvantaged Individuals, Women, Youth and Persons with disabilities.

5.1.8 Managing bookings made by guesthouses.

5.1.9 Assessing the viability of establishing a guest house on the property.

5.1.10 Enter into intergovernmental arrangements with other Government Agencies that support SMME development.

5.1.11 Responsible for holding costs including water and electricity.

5.1.12 Provide Transnet with quarterly reports in terms of opening times, visitor numbers, SMME empowerment and revenue generated.

5.2 The obligation of Transnet is as follows:

5.2.1 To ensure that the property is used for local beneficiation, SMME development and local economic development within the jurisdiction of the Overstrand Municipality.

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- 5.2.2 To provide the Municipality with access to the property for its intended purposes.
- 5.2.3 To provide oversight of the use of the property to ensure it is being utilised effectively.
- 5.2.4 Maintenance of the lighthouse tower (inside and outside).
- 5.2.5 Maintenance of all navigation equipment (inside and outside).
- 5.2.6 Maintenance of standby power supply (generator) including refuel and cable network.
- 5.2.7 Fencing and firebreaks on the erf boundaries of the property.
- 5.2.8 Management of the operations of the lighthouse.
- 5.2.9 Upkeep and maintenance of official residence of all officials residing on the property.

## 6. OUTCOMES

The parties commit to achieving the following outcomes from the implementation of this Agreement:

- 6.1 Facilitating local tourism via visitation to the Danger Point Lighthouse.
- 6.2 The effective use of the property for the sole purpose of local beneficiation, SMME development and tourism and local economic development for Previously Disadvantaged Individuals, Women, Youth and Persons with disabilities.
- 6.3 The effective management of the property in conjunction with Transnet.
- 6.4 The establishment of a joint management committee (JMC) shall be done within 30 days after the signing of this agreement to advise on the implementation and updating of the Management Plan. The JMC shall be comprised of three members appointed by the Municipality and three members appointed by Transnet. Provision may be made for representation of civil society to serve in a non-voting capacity in the JMC. The JMC shall determine its procedures and other organisational matters provided that it shall meet at least three times per annum. A decision of the JMC shall be made by consensus.

## 7. DURATION AND TERMINATION

- 7.1 This Agreement commences on the last date of signature hereto and remains in force for a period of 3 (three) years, unless extended by agreement by all Parties.
- 7.2 This Agreement may be terminated by either party by providing 3 (three) months written notice.

## 8. CESSION

- 8.1. No party may cede, assign, delegate or transfer any of its rights or obligations under MOA without the prior written consent of other party which the latter may in their sole discretion grant or refuse.

## 9. LIMITATIONS AND LIABILITIES

Transnet may only be held liable for damages, loss or injuries suffered or incurred by their parties provided that such damages, loss or injuries flows from structural defects of the immovable property due to the negligence of Transnet officials or its authorized agents. For all other claims, damages, loss and injuries suffered by third parties (including but not limited to duty care claims) as a result of access, use, permission to enter and remain in the property, etc., granted either expressly, impliedly or in writing by the Municipality, the municipality shall be held liable and herewith indemnifies Transnet as the custodian.

**10. VARIATIONS OF THE AGREEMENT**

Variations of this agreement may only be made by consultation and agreement between the parties. no amendment or variation of this agreement shall be of any force or effect unless reduced to writing and signed by both parties.

**11. CO-OPERATION AND GOOD FAITH**

The parties always undertake to provide each other every possible assistance and to extend to each other the maximum possible co-operation for purposes of attaining the objectives of this memorandum. The parties shall at all times consult with each other in the utmost good faith and the affairs between them shall be administered and promoted with the highest degree of integrity.

**12. FORCE MAJEURE**

If any party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement, by any cause beyond the reasonable control of that party, the party so affected must, to the extent prevented, be relieved of its obligations hereunder during the period of such events and is not liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other party may suffer due to or resulting from such delay or failure, provided always that written notice of the occurrence constituting force majeure shall be given 24 (twenty four) hours by the affected party.

**13. DISPUTE RESOLUTION**

This agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa. The Parties have a duty to avoid disputes, and the parties must make every reasonable effort.

13.1.1. To avoid a dispute when exercising the statutory power; or

13.1.2. To settle a dispute without resorting to judicial proceedings.

13.2. In the event of a dispute arising from this agreement, the parties shall make every effort to settle such dispute amicably.

13.3. if the dispute is not capable of being settled between the parties amicably, such dispute shall be elevated to the Senior Management /Executive or their duly assigned representatives for mediation purposes.

13.4. Should the dispute – despite such mediation- remain unresolved for a period of 30 (thirty) days after being referred, either party may declare such dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing, in which the event the parties will follow the procedure as outlined in Section 42 of the intergovernmental Relations Framework Act, 2005 (Act 13 of 2005).

13.5.the decision of the Arbitrator is final and binding.

**14. NO WAIVER**

14.1. the failure of either party to insist upon the strict performance of any provision of this agreement or to exercise any right, power or remedy consequent upon a breach hereof does not

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constitute a waiver by such party to require strict and punctual compliance with each and every provision of this agreement.

15. WHOLE AGREEMENT

This document embodies the whole agreement between the parties. No party shall have any right or remedy arising from any undertaking, warranty or representation not included in this agreement.

16. DOMICILUM

16.1. The parties as their *domicilia citandi et executandi* the following addresses.

16.1.1. TRANSNET LIMITED

101 De Korte Street  
BRAAMFONTEIN  
2001  
Tel.:(011) 242 4032

16.1.2. OVERSTRAND MUNICIPALITY

Magnolia Street  
HERMANUS  
7200  
Tel.: (028) 313 8000  
Email: [enquiries@overstrand.gov.za](mailto:enquiries@overstrand.gov.za)

Signed at \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_ 2023

in the presence of the undersigned witnesses.

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_

For and on behalf of TRANSNET

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his/her authority hereto

Signed at \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_ 2023

in the presence of the undersigned witnesses

AS WITNESSES:

1. \_\_\_\_\_
2. \_\_\_\_\_

For and behalf of the OVERSTRAND  
MUNICIPALITY

\_\_\_\_\_  
Name:  
Capacity:  
Who warrants his/her authority hereto